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# Contemporary Fiqh Issues Related to the Usage of Technology in Family Law

**Ahmed M. Khater, PhD**

AMJA Resident Fatwā Committee Secretary (أمين اللجنة الدائمة للإفتاء)

AMJA Fiqh Expert (خبير)

AMJA Online Mufti

Dean, College of Islamic Studies, Assistant Professor, Guidance College

Dean, English College of Islamic Law, Assistant Professor, Islamic University of Minnesota

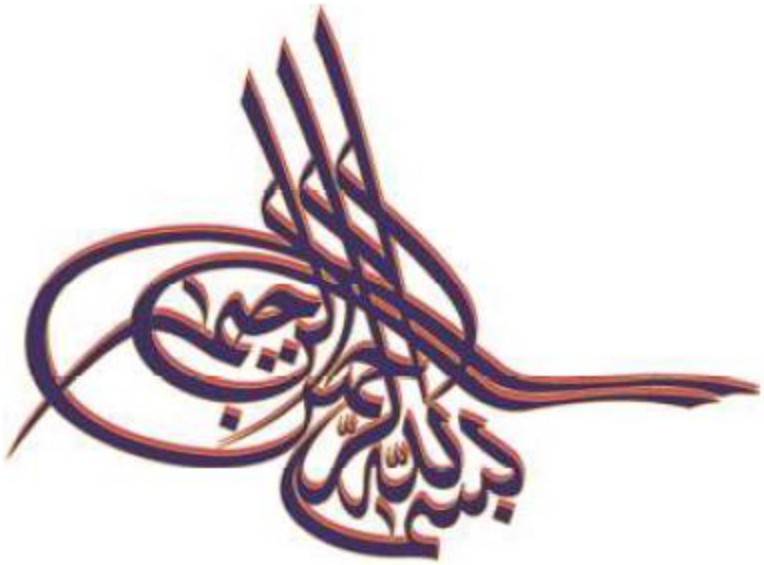
Adjunct Assistant Professor of Islamic Studies, St. Mary's College of California

Faculty in Islamic Law, Mishkah University

Visiting Scholar and Former Faculty in Islamic Studies, Graduate Theological Union

Resident Scholar, Masjid Annur Islamic Center

Senior Fellow, Yaqeen Institute


بسم الله الرحمن الرحيم

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# 1 INTRODUCTION

In the name of Allah, the Most Merciful, the Grantor of Mercy

All praise is due to Allah, and may His peace and blessings be upon His prophet Muhammad, and upon his family and companions, and those who follow in their footsteps until the end of time. To proceed:

This is an abridged paper discussing some modern issues pertaining to the usage of technology in family law. This paper was originally over a hundred pages before being informed of the page limit. Whoever is interested in a more in-depth discussion can reach out to me.

These issues are related to: getting to know a spouse for marriage, conducting the marriage contract, communicating with a spouse, and ending the marriage contract. Takhrīj of these issues upon the four madhhabs and classical positions is the methodology taken in this paper, and the opinions of contemporary scholars are not added for brevity. It is essential for the reader to go back to the sources cited in the paper to come across the many details and differences of opinion on these matters. The main topics discussed are:

1. The ruling on executing a marriage contract, divorce, khulʿ, and having witnesses via modern means of communication;
2. The rulings of khalwah (seclusion) in terms of online communication;
3. The ruling on women posting their pictures online in order to get married;
4. Posting pictures of caricatures or emojis of males or females online;
5. Spouses or relatives video chatting online without proper ḥijāb.

The reader should know that there are many topics that needed to be discussed for proper discussion. However, the page limit did not allow for that to happen. Thus, a few of the topics were only referred to the in footnotes.

May Allah make our deeds solely for His sake, and a proof for us and not against us on the day that we meet Him.

Ahmed Khater

# 2 SECTION ONE: CONDUCTING MARRIAGE CONTRACTS, DIVORCE, KHUL ʿ AND HAVING WITNESSES VIA MODERN MEANS OF TECHNOLOGY

## 2.1 Marriage Contracts via Email, Text Messaging, Whatsapp Messaging, and the Like

The default for marriage contracts is that they are conducted in the same gathering with all parties present, and the offer and acceptance are exchanged without delay or interruption. However, at times the parties are not in the same physical gathering, and at times delays and interruptions occur between the offer and acceptance. Classical scholars have discussed these issues based on the means of correspondence available during their times. To derive rulings for conducting marriage contracts by modern modes of correspondence, a summary of classical rulings concerning marriage contracts via letters and with interruptions need to be mentioned.

### 2.1.1 Marriage Contracts via Letters

Classical scholars discussed conducting marriage contracts through writing, including writing when both parties are present and with letters when they are separated, and differed concerning the validity of marriages in these cases. The four madhhabs find marriage contracts done by writing problematic in at least some of its forms, with leniency given to those who are mute. The Mālikīs[1] and Shāfi ʿīs[2] said that marriage via writing would not be valid, and the Shāfi ʿ īs mention another opinion where it would be valid if there are two witnesses for the oral offer that is then written down and sent, and when the written offer or the news of the offer reaches the other party they would accept orally or write the acceptance, and have two witnesses present (with a difference whether it must be same two witnesses that attended the offer or not).

The relied upon position of the Ḥanbalīs[3] is that marriage contracts conducted via writing are invalid. Other positions mentioned in the school include: it was said that it would be valid, and it was also said that it is to be differentiated between the writing being done in the physical gathering as opposed to it being used when separated, with the latter being valid.[4] This differentiation between

1 See for example: ʿ Ulaysh, *Minaḥ al-Jalīl*, (Beirut: Dar al-Fikr, 1989), 3:268; al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, 3rd ed. (Dār al-Fikr , 1992), 3:419; al-Zurqānī, *Sharḥ al-Zurqānī*, (Beirut: Dar al-Kutub al- Ilmiyyah, 2002), 3:300; al-Ṣāwī, *Ḥāshiyat al-Ṣāwī ʿAlā al-Sharḥ al-Ṣaghīr*, (Dar al-Ma'arif, ND), 2:350; Ibn Isḥāq, Khalīl, *al-Tawḍīḥ Fī Sharḥ Mukhtaṣar Ibn al-Ḥājib*, 1st ed. (Markaz Najībawayh, 2008), 3:505.

2 See for example: al-Shirbīnī, *Mughnī al-Muḥtāj* (Dār al-Kutub al- Ilmiyyah, 1994), 4:230; al-Nawawī, *al-Majmūʿ* (Dār al-Fikr, ND), 9:162-169; al-Ramlī, *Nihāyat al-Muḥtāj* (Beirut: Dar al-Fikr, 1984), 6:212-213; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3rd ed. (Beirut: al-Maktab al- Islāmī, 1991), 7:37, 3:341, 8:41; al-Shirwānī, *Ḥashiyat al-Shirwānī ʿAlā Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 7:223; al-Rāfi ʿ ī, *al-Sharḥ al-Kabīr*, 1st. ed. (Beirut: Dār al-Kutub al-Ilmiyyah, 1997), 7:495-496; al-Jamal, *Ḥāshiyat al-Jamal* (Dār al-Fikr, ND), 3:10.

3 See for example: al-Buhūtī, *Kashshāf al-Qināʿ* (Dar al-Kutub al- Ilmiyyah, ND), 3:148, 5:38-39; al-Mardāwī, *al- Inṣāf*, 1st ed. (Cairo: Hajar Publishing, 1995), 20:103, 105-107; Ibn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qahirah, 1968), 7:80-81; Ibn Taymiyyah, *al-Ikhtiyārāt al-Fiqhiyyah*, 1st ed. (Mecca: Dar Alam al-Fawa'id, 2013), 2:683-684; al-Buhūtī, *Sharḥ Muntahā al- Irādāt*, 1st ed. (Ālam al-Kutub, 1993), 2:632; al-Ruḥaybānī, *Maṭālib Ūlī al-Nuhā*, 2nd ed. (al-Maktab al-Islāmī, 1994), 5:50; Abū Yaʿlā, *al-Riwāyatayn Wa al-Wajhayn*, 1st ed. (Riyadh: Maktabat al-Maʿārif, 1985), 2:114-115; al-Majd, *al-Muḥarrar*, 2nd ed. (Riyadh: Maktabat al-Maʿārif, 1984), 1:257-259; Ibn Mufliḥ, *al-Nukat Wa al-Fawāʿid*, 2nd ed. (Riyadh: Maktabat al-Maʿārif, 1984), 1:257-259; al-Kalwadhānī, al-Hidāyah, 1st ed. (Muʾassasat Ghirās, 2004), 388; Ibn Rajab, *Qawāʿid Ibn Rajab*, 1st ed. (Dār Ibnʿ Affān, 1998), 1:311; See: Ibn Mufliḥ, *al-Furūʿ*, 1st ed. (al-Risālah, 2003), 6:122; Ibn Taymiyyah, *Majmūʿ al-Fatāwā* (Saudi Arabia: Mujammaʿ al-Malik Fahd, 1995), 13:410-411, 21:139-140; Ibn Taymiyyah, *al-Mustadrak ʿAlā Majmūʿ al-Fatāwā*, 1st ed. ( Muḥammad Ibnʿ Abd al-Raḥmān Ibn Qāsim, 1998), 4:144-146.

4 Similar positions in the school were mentioned for separation between the offer and acceptance.

the parties being together and them being separated is based upon the narration of ʾImām ʾAḥmad concerning marriage via oral messenger: ʾAbū Ṭālib reports that ʾImām ʾAḥmad was asked about a man, whom a group of people came to and said "marry off to so and so," and he said "I give to him in marriage for one thousand." The people went back to the husband and informed him and he said that he accepted. ʾImām ʾAḥmad was asked if this would be a nikāḥ and he said yes. The Ḥanbalīs differed concerning how to interpret this report. The apparent meaning of this report is that he validated the contract even though the acceptance came after the contractual gathering. Is it to be kept upon the apparent meaning or to be interpreted in another way such as being a case of agency or suspended marriage? Or is it to be considered that there is more than one opinion from him on this issue? All of this was discussed by them.

The Ḥanafīs[5] said that writing when the parties are present would not be valid. As for if they are separated, it would be allowed for one party to send the offer in written form to the other party. The other party would then have to read the offer out loud on behalf of the first party in the presence of two witnesses and then verbally accept. The second party would be an agent for the first party, pronounce the offer, and then they would pronounce their acceptance, with the witnesses hearing both the offer and acceptance

## 2.1.2 Marriage Contracts via Modern Messaging Technology

Based on what was mentioned in the previous section, many of the scholars would not allow marriage contracts via emails, messaging, and the like due to their position on conducting marriage contracts by writing. Those who were more lenient with conducting a marriage contract via letters and messengers would allow the same via modern emails and messages with the conditions they stipulated. As for those who do not allow this, it is argued that marriage via writing is a form of implicit communication, and the witnesses would not know the intention of the parties in this way, and that writing is only allowed for the mute due to necessity. This is in addition to the discontinuity between the offer and acceptance that occurs with emails and messages. The latter issue will be looked at in the next sections. ʾIbn Taymiyyah, however, does address the other objections mentioned when he spoke about comprehensive principles for contracts - financial, marital, and others. These principles are from the intents of the Divine Law when it comes to contracts. From them is a principle concerning the form of transaction. He mentions that there are three opinions on the matter.

The first: the default is that contracts are not valid without a ṣīghah, or what some scholars refer to as the offer and acceptance. This is because the default for transactions is that they occur with consent, and emotions can only be measured by terms that express what is in the heart, for actions such as the physical exchange can be interpreted differently. Contracts are of the genus of speech, and they in transactions are like dhikr and supplications in acts of worship. He says that this is the apparent position of al-Shāfiʿī , and an opinion in the madhhab of ʾAḥmad, found as a statement from ʾAḥmad (riwāyah manṣūṣah) for some issues such as for sales and endowments, or as a derived position (riwāyah mukharrajah) such as for gifts and leasing. They also allow using signs instead of statements when the latter is not possible like for one who is mute, and they also allow writing instead of verbal statements when there is a need, as well as in other cases the texts have exempted for need, such as slaughtering the hadī sacrifice before reaching the Holy Sanctuary due to fear that it will die, and then marking the sandal around its neck in its blood as a sign for the people, and whoever takes from it owns it.

5 See for example: ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 3:12-14, 3:21, 4:512-513; al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 2nd ed. (Dār al-Kutub al-ʿIlmiyyah, 1986), 2:231, 233; Ibn al-Humām, *Fatḥ al-Qadīr* (Beirut: Dār al-Fikr, ND), 3:197-198; ʾIbn Nujaym, *al-Baḥr al-Rāʾiq*, 2nd ed. (Dār al-Kitāb al-ʾIslāmī, ND), 3:90; al-Sarakhsī, *al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, 1993), 5:15-16; ʾIbn Nujaym, *al-ʾAshbāh Wa al-Naẓāʾir*, 4th ed. (Damascus: Dār al-Fikr, 2005), 296.

The second position is that it is valid with actions for those contracts that are often conducted with actions, such as that which is sold with a physical transaction, endowments such as one who built a mosque and allowed people to pray in it, or made land as an endowment for burial, or building a place for purification for people, and some types leases such as one giving their clothes to the one who washes them or to a sewer. If these types of transactions are not valid via actions then much of the affairs of the people would be ruined. From the time of the Prophet peace be upon him until the time of the author, people have been transacting in these manners without the use of words. This is what is prominent in the principles of ʾAbū Ḥanīfah, and is an opinion in the madhhabs of ʾAḥmad and al-Shāfiʿī.

The third position: contracts occur via all that indicates what is intended[6], whether it be statement or action. What the people consider to be a sale or lease then that is sufficient even if people differ in terms and actions. There is no set definition in the Divine Law or language. These terms differ based on the different languages, and it is not incumbent upon the people to use certain terms in transactions, nor is it prohibited to conduct contracts with other than what others contract with, even if it may be recommended to have certain characteristics. This is what is prominent in the principles of Mālik, and what is apparent in the madhhab of ʾAḥmad. That is why, according to what is apparent in ʾAḥmad's school, the physical exchange is allowed irrespective of whether one party or neither spoke. Thus all that the people consider to be a sale is so. Similarly, when it comes to gifts, leases such as transportation boats or animals, using bathhouses, giving clothes to washers and sewers, and giving food to cooks, they fall under this. His companions even differed regarding if khulʿ could occur with physical exchange. ʾAbū Ḥafṣ al-ʿUkbarī and ʾAbū ʿAlī ʾibn Shihāb al-ʿUkbarī said it was valid and they quoted statements from ʾAḥmad, the companions, and successors in support of their position. This may be what is prominent in his statements. He stated that divorce occurs with both action and statement, and he used as proof that it occurs via writing, the ḥadīth: "Allah has forgiven my followers the evil thoughts that occur to their minds, as long as such thoughts are not put into action or uttered." He said that writing is considered to be an action. ʾIbn Ḥāmid, al-Qādī and others said separation only occurs via speech, and they also used the words of ʾAḥmad for their position, and that since marriage needs to occur verbally, so does ending it.

As for marriage, ʾIbn Ḥāmid, al-Qādī, ʾAbū al-Khaṭṭāb and others said that it does not occur except with the terms of al-ʾinkāḥ or al-tajwīj. This is also the position of al-Shāfiʿī, based on that it does not take place with implicit terms due to their need of an intention and since the witnesses cannot witnesses the intention. They also did not allow the terms of gifting, giving, and other terms for ownership to be used for the marriage contract. Furthermore, many of these scholars also said that these terms had to be in the Arabic language for the one who is able. If he cannot learn it, then the contract could be conducted with those specific words in other languages. If he is able to learn it, then there are two opinions based on the position that those two words are specific for the contract, and that there is a taʿabbudī element to it. ʾIbn Taymiyyah believes this position goes against the principles of ʾAḥmad, and says that there is no clear statement from him supporting their position. Rather, what they cited of his statement that he did not regard a woman gifting herself to a man to be a marriage due to the verse "(O Prophet), this privilege is yours alone to the exclusion of other believers," is actually about not allowing that which is specific to the Prophet peace be upon him - a marriage without a dowry. Rather, he said that a marriage contract would be valid if one were to say: 'I have freed you and made your emancipation your dowry.' However, the companions of ʾAḥmad differed in this regard. ʾIbn Ḥāmid was consistent and said that in this case he would need to use the specific terms for marriage. al-Qādī ʾAbū Yaʿlā and others made this case an exception from analogy and that this was a form of ʾistiḥsān. ʾIbn ʿAqīl mentioned an opinion in the school that it would be valid without the terms of marriage because of the statement of ʾAḥmad in this regard. ʾIbn Taymiyyah says this is closer to the statements and principles of ʾAḥmad. He then says the madhhab of Mālik is similar to ʾAḥmad's madhhab on this. The companions of Mālik differed regarding

6 See also: ʾIbn Taymiyyah, *al-Qawāʿid al-Nūrāniyyah*, 1st ed. (Saudi Arabia: Dārʾ Ibn al-Jawzī, 2001), 155.

if a marriage is valid with other than the specific terms for marriage. What is reported from Mālik is not allowing what is specific to the Prophet peace be upon him - gifting without a dowry. ʾIbn al-Qāsim said he did not know of a statement from Mālik regarding a person gifting his daughter intending marriage for her, but he found it permissible. ʾIbn Taymiyyah said that the position of some of the companions of ʾAḥmad and Mālik that a marriage contract is not valid except with the two specific terms of marriage is not in accordance with their principles. He then mentions the reasons why those scholars say that:

The first major reason is that the terms besides these two specific ones are implicit (kināyah), and implicit terms need intention. The relied upon positions in the two schools is that the context surrounding implicit terms makes them explicit and takes the place of expressing the intention. This is what they mentioned for divorce, slander, and the like. The contexts for marriage, with people gathering and talking about why they gathered, are known. Thus, in this setting if someone said I give you ownership of her for one thousand dirhams, everyone in the gathering would know by necessity that what is meant is marriage, and this term has become widespread amongst people such that marriage is often called ownership. This is also found in the ḥadīth "'Go! I have married her to you for what you know of the Qur'an (by heart),'" for in one version it states "mallaktukahā" (literally: I give you ownership of her). The fact that it was narrated one time with the first terminology and another time with the second shows that the terms were seen to be the same. Furthermore, specifying the use of an Arabic term in this situation is not in according with the principles and statements of ʾAḥmad, and the principles of the evidences of the Divine Law. Marriage is valid from Muslims and non-Muslims. Even if it is something you can draw closer with to God, it is like emancipation and charity, and emancipation does not need specific terms, neither Arabic nor non-Arabic. Similarly, charity, endowments, and gifts do not require an Arabic term by consensus. Even if a non-Arab learns the Arabic terms, he might not understand them they way he understands his language.

ʾIbn Taymiyyah mentions that if one were to say it is disliked to conduct contracts in other than Arabic without a need the way it is disliked to speak in other than Arabic without a need in general, then this could be accepted, as was narrated from Mālik, ʾAḥmad, and al-Shāfiʿī. The companions of Mālik, al-Shāfiʿī and ʾAḥmad said that the marriages of non-Muslims are based upon their customs. What they consider to be a marriage between them can be accepted when they enter into Islam and seek the judgment of Muslims if it does not include then a preventative. If they do not consider it to be a marriage then it would not be allowed to recognize it. They even said that if a non-Muslim combatant coerced a female non-Muslim combatant and had relations with her, or she allowed him, and they considered this to be a marriage, then this would be recognized, or else it would not. A statement or action indicating what is intended is not specific for Muslims as opposed to non-Muslims. What is specific for the Muslim is that they show that this relationship is not illicit: "desiring chastity, not unlawful sexual intercourse or taking [secret] lovers," "[They should be] chaste, neither [of] those who commit unlawful intercourse randomly nor those who take [secret] lovers." Thus, there is a command to have a guardian, witnesses and the like, to clearly show that this is not an illicit relationship, and to protect women from imitating immoral women. That is why it has been reported that: "no woman should perform her own marriage. It is an adulteress who performs her own marriage." This is shown by legislating beating the duff, the wedding feast that makes the marriage public, witnesses or announcement or both based on the three opinions on the matter; all three are opinions in the school of ʾAḥmad. Those who say only witnesses are sufficient say that this is sufficient in making it public to separate it from illicit relationships, and it protects lineage when there is denial. ʾIbn Taymiyyah says: "Thus the wisdom behind these issues that the Divine Law has taken into consideration in the Book, Sunnah, and reports is clear. As for stipulating a specific term then there is no textual or rational (evidence). This comprehensive principle that we have mentioned- that contracts are valid with all which indicates their purposes from action and statement- is what the principles of the Divine Law (ʾuṣūl al-Sharīʿah) indicate."

ʾIbn Taymiyyah mentioned many verses from the Qurʾān that order, allow or prohibit various transactions. And he mentions that the proof from these verses is: firstly, the verses suffice with consent in sales- "but only [in lawful] business by mutual consent," and pleasure for donations- "but if they willingly remit any part of it, consume it with good pleasure." These texts, which talk about mutually onerous and volitional transactions, did not stipulate specific terms or actions to be used to indicate consent and pleasure. Rather, it is known by necessity that they know of peoples' consent and pleasure in various ways. Knowing this is by necessity in the majority of ways contracts are conducted, and apparent for some of them, and if that knowledge is present the ruling is based on it according to the Qurʾān, and in accordance with the fiṭrah (innate disposition).

Secondly, these terms have come in the Qurʾān and Sunnah and rulings were based upon them. Thus, these terms need to have definitions. Some terms are known by language (such as sun, moon, etc), others by the Divine Law (such as prayer, zakah, etc). Those terms which do not have a definition in the language or in the Divine Law, the customs of the people determine them, such as possession as is in the ḥadīth "He who buys foodstuff should not sell it till he has received it." The Divine Law did not define sales, leasing, gifting, and the like. This is not found in the Qurʾān, Sunnah, nor was it reported by the companions or successors that contracts had specific terms. Rather it has been said that that position goes against an old consensus and that it is an innovation. Nor is there a definition in the Arabic language for this. Rather, the Arabs called these various ways in sales, sales.

Thirdly, the actions and statements of people are of two types: acts of worship, and customs. By induction, we find that the principles of the Divine Law (ʾuṣūl al-sharīʿah) indicate that acts of worship are only established via the orders of the Divine Law. As for customs, they are left to the people, and the default concerning them is not_impermissibility. Only what has been prohibited by the religion is excluded from this. Thus, that which has not been ordered to be done by the Divine Law is not an act of worship, and that which has not been ordered to not do from customs cannot be said to be prohibited. That is why ʾAḥmad and other jurists from ʾAhl al-Ḥadīth said that the default concerning acts of worship is tawqīf; only that which the Divine Law has legislated is allowed, as the Qurʾān states: "Or have they partners [i.e., other deities] who have ordained for them a religion to which Allah has not consented?" As for customs, the default is allowance, and only that which the Divine Law has prohibited is what is impermissible, for the Qurʾān says: "Say, 'Have you seen what Allah has sent down to you of provision of which you have made [some] lawful and [some] unlawful?'" ʾIbn Taymiyyah also mentions other verses in this regard, as well as the ḥadīth: "I have created My servants as one having a natural inclination to the worship of Allah but it is Satan who turns them away from the right religion and he makes unlawful what has been declared lawful for them and he commands them to ascribe partnership with Me, although he has no justification for that." ʾIbn Taymiyyah calls this "a great, beneficial principle."

Based on this, sales, gifting, leasing, and the like are from the customs of people, and thus people can conduct sales and leases how they wish as long as the Divine Law has not prohibited it just as they eat and drink as they wish as long as the Divine Law has not prohibited it. Some forms may be recommended or disliked. What the Divine Law has not defined is to remain upon the default ruling. Looking at the Sunnah, the reports of the companions, and the reports of the successors regarding sales, leases, and volitional transactions, it known by necessity that they did not restrict themselves to specific wordings for both parties. ʾIbn Taymiyyah says the reports on this matter are plenty. From the examples ʾIbn Taymiyyah gives is the mosque that the Prophet peace be upon him built, and the mosques that were built by Muslims during and after his time. He did not order them to say "I have made this mosque an endowment" or the like. Rather, he said: "'Whoever built a mosque, Allah would build for him a similar place in Paradise,'" and he based the ruling on the building of the mosque itself. Similarly, when the Prophet peace be upon him bought a camel from ʾIbn ʿUmar, he said "This camel is for you O 'Abdullah," and ʾIbn ʿUmar did not say anything to accept. The Prophet peace be upon him would receive and give gifts, and possessing them was the acceptance. He would be asked and he would give, or he would give without being asked. The giving

was the offer, and the possession was the acceptance. When the Prophet peace be upon him slaughtered camels, he said: "Anyone who wants can cut off a piece." The Prophet did not divide the meat himself. This was the offer and the cutting off of pieces was the acceptance. Similarly no set terms were stipulated when giving to those whose hearts can be softened. He also made showing the attributes of a product the same as verbally stipulating the presence of those attributes as a condition, such as al-muṣarrāh and the like in cases of deceit. ʾIbn Taymiyyah mentions that actions (taṣarrufāt) are of two types: contracts and possessions, as is mentioned in the ḥadīth: "May Allah's mercy be on him who is lenient in his buying, selling, and in demanding back his money." ʾIbn Taymiyyah mentions that the purpose of contracts is possession and usage. Possession is either valid or invalid like contracts, and there are legal rulings that are based on contracts like they are based on possession. If possession is based on customs, then similarly contracts are as well. Also, customary permission to allow action of an agent, ownership, and usage, is like verbal permission. This is all valid with that which indicates consent from statement and action. The Prophet peace be upon him gave the pledge of riḍwān on behalf of ʿUthmān ʾibn ʿAffān even though he was absent. The Prophet also entered the people of the trench into the houses of ʾAbū Ṭalḥā and Jābir without their permission because he knew that they would allow this. The Prophet Muḥammad said to the one who asked for a ball of hair for repairs: "You can have what belongs to me and to Banu al-Muttalib." Similarly, this would apply to the Prophet peace be upon him giving to those whom their hearts may be soften according to those who say they were given from the four-fifths of the war booty. It was also reported that the Prophet peace be upon him appointed ʿUrwah ʾibn al-Jaʿd to buy a sheep for a dinār, and he bought two sheep and sold one of them for a dinār, and ʾAḥmad interpreted the text by him having had general permission. A similar story is narrated for Ḥakīm ʾibn Ḥizām. ʾIbn Taymiyyah also mentions other reports from the salaf on this. These all show that acting without specific permission for benefiting from something, and in mutually onerous and volitional transactions, is allowed with customary permission.[7]

Based on this, what is chosen is that how marriage contracts are to be conducted goes back to customs. The usage of any language, wording or actions that customarily would be considered a marriage is allowed. Thus, marriage contracts via writing, even between those who are separated, would be valid.8 9

## 2.1.3 Conducting Marriage Contracts with Digital Pictures, Emojis, Symbols

It was mentioned that leniency was given to the one who is mute regarding conducting a marriage contract by writing. Similarly, leniency was given to the mute to conduct the contract with gestures, with differences in details amongst the scholars regarding the gesture. However, they did not allow for the one who is able to speak to use gestures, just like they were strict about conducting it through writing as seen in the previous sections. ʾIbn Taymiyyah, as was mentioned, said that marriage contracts can be conducted based on the customs of people; whatever a people regard as a nikāh then this would be valid with any statement or action they use. However, he also mentioned that a gesture would be accepted when one could not speak. Would then marriage with images and symbols be closer to that with gestures such that it would not be accepted from the one who can speak, or would it be considered a customary action that could be accepted? And what is the

7 ʾIbn Taymiyyah, *Majmūʿ al-Fatāwā*, 4th ed. (al-Manṣūrah: Dār al-Wafāʾ, 2011), 15:7-15. See also: ʾIbn Taymiyyah, *al-ʿIkhtiyārāt al-Fiqhiyyah Li Shaykh al-ʾIslām Ladā Talāmīdhihi*, 1st ed. (Mecca: Dārʿ Ālam al-Fawāʾid, 2014), 2:681; ʾIbn Taymiyyah, *Majmūʿ al-Fatāwā* (Saudi Arabia: Mujammaʿ al-Malik Fahd, 1995), 29:447-448; ʾIbn Taymiyyah, *al-ʿIkhtiyārāt al-Fiqhiyyah Li Shaykh al-ʾIslām* (Dār al-ʿĀṣimah, ND), 293-294.

8 See ʾIbn Taymiyyah, *al-Fatāwā al-Kubrā*, 1st ed. (Dār al-Kutub al-ʿIlmiyyah, 1987), 6:277.

9 See al-Shawkānī, *al-Sayl al-Jarrār*, 1st ed. (Dārʾ Ibn Ḥazm, ND), 361.

difference between the two? It is debatable, and thus it is to be avoided especially since other means are readily available.[10]

## 2.2 Marriage Contracts Conducted via Live Video Gathering

Conducting a marriage contract over a video conference generally involves parties that are physically far away from each other, but are virtually in the same gathering. Classical jurists discussed the concepts of connected and disconnected gatherings, and the affect physical distance between parties has on the validity of contracts in various areas of law, and not just in family law. Using the classical rulings in this regard for takhrīj upon the madhhabs (furūʿ upon furūʿ) is more nuanced than many people realize when discussing this matter as will be seen. To begin to see if virtual gatherings can be considered connected gatherings in ruling or not, the relevant rulings on this matter to look at initially include: defining connected and disconnected gatherings, what constitutes separation of a gathering, pausing between the offer and acceptance, and when can the acceptance be delayed from the offer and still be considered connected in ruling.

As for discussing connected gatherings, scholars did discuss scenarios that are relatable to the technology in question. Some of these cases involve distance between the parties the way a virtual gathering would be. The Shāfiʿīs mention conducting a sale contract between two parties far away calling to one another, and it was discussed if they moved away from their positions would that affect their right to rescind or not. They also mentioned the issue of sound from one party being carried to another party by the wind.[11] The Ḥanafīs were stricter in determining what was a connected gathering, and took a more physically-present understand of a gathering. They emphasized the need for one gathering, and if that gathering differs it is problematic. Thus, if two parties conduct a contract while walking or riding it would not be valid because of the change of gathering. If one of the parties stands up during the contractual gathering it would also be invalid.[12] They did differ, however, concerning the issues of walking and standing up. It was also said by some that if one called out to another from behind a wall or from a far it would not be allowed, as this would be considered being separated. However, it was also said that if the distance and barrier do not impair hearing and understanding between the two, then it would be allowed. While they did mention the problem of conducting a contract while walking or riding because it would be a change in gathering, they did allow it while on a moving boat and said it was considered the same gathering in ruling.[13]

When it comes to separating from the gathering (tafarruq), the Shāfiʿīs and Ḥanbalīs said that this goes back to customs.[14] This is like how customs define possession, storage and the like. The

10 See sources cited in previous sections.

11 al-Anṣārī, Zakariyyah, *ʾAsnā al-Maṭālib* (Dār al-Kitāb al-Islāmī, ND), 2:49; al-Nawawī, *al-Majmūʿ* (Dār al-Fikr, ND), 9:181; al-Jamal, *Ḥāshiyat al-Jamalʿ Alā Sharḥ al-Manhaj* (Dār al-Fikr, ND), 3:13.

12 This was also reported from some of the salaf. See for example: ʾIbn ʿAbd al-Barr, *al-ʾIstidhkār*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000), 6:475; al-Qurṭubī, *Tafsīr al-Qurṭubī*, 2nd ed. (Cairo: Dār al-Kutub al-Miṣriyyah, 1964), 5:153.

13 See for example: al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 2nd ed. (Dār al-Kutub al-ʿIlmiyyah, 1986), 5:137-138, 2:232; Ibn Nujaym, *al-Baḥr al-Rāʾiq*, 2nd ed. (Dār al-Kitāb al-ʾIslāmī, ND), 3:89, 5:294, 6:209; al-Zaylaʿī, *Tabyīn al-Ḥaqāʾiq*, 1st ed. (Cairo: al-Maṭbaʿah al-Kubrā al-ʾAmīriyyah, 1895), 4:4, see also the Ḥāshiyah of al-Shilbī; Ibn al-Humām, *Fatḥ al-Qadīr* (Beirut: Dār al-Fikr, ND), 3:191, 6:254-255, 7:137; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 3:14, 4:527-528, 5:258; Ḥaydar, ʿAlī, *Durar al-Ḥukkām Fī Sharḥ Majalat al-ʾAḥkām*, 1st ed. (Dār al-Jīl, 1991), 1:153-156.

14 See for example: ʾIbn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qahirah, 1968), 3:483-484, 4:85; al-Buhūtī, *Kashshāf al-Qināʿ* (Dar al-Kutub al-Ilmiyyah, ND), 3:200; al-Buhūtī, *Sharḥ Muntahā al-ʾIrādāt*, 1st ed. (ʿĀlam al-Kutub, 1993), 2:36; al-Mardāwī, *al-ʾInṣāf*, 1st ed. (Cairo: Hajar Publishing, 1995), 11:273-274; al-Anṣārī, Zakariyyā, *Fatḥ al-Wahhāb* (Dār al-Fikr, 1994), 1:199, 208; al-Imrānī, *al-Bayān Fī Madhhab al-ʾImām al-Shāfiʿī*, 1st ed. (Jeddah: Dār al-Minhāj, 2000), 5:18-19; al-Anṣārī, Zakariyyah, *ʾAsnā al-Maṭālib* (Dār al-Kitāb al-Islāmī, ND), 2:48-49; al-Bakrī, *ʾIʿānat al-Ṭālibīn*, 1st ed. (Dār al-Fikr, 1997), 3:34-35; al-Ramlī, *Ghāyat al-Bayān* (Beirut: Dār al-Maʿrifah, ND), 187; al-Shirbīnī, *Mughnī al-Muḥtāj* (Dār al-Kutub al-Ilmiyyah, 1994), 2:408; al-Irāqī, *Ṭarḥ al-Tathrīb* (al-Maṭbaʿah al-Miṣriyyah al-Qadīmah, ND), 6:155; al-Nawawī, *al-Majmūʿ* (Dār al-Fikr, ND), 9:180. See the texts in section one for more detail concerning how customs

Shāfiʿīs mentioned from the examples of this is that in an open space separation would occur by the two parties giving each other their backs and taking some steps,[15] or by walking until they cannot hear each other usually. If they walk together without separating they would still be considered in the gathering.[16] Similarly, a barrier between them would not be considered having separation, unless they ordered for it to be built in which case they differed. The Ḥanbalīs mentioned similar scenarios as well based on customs determining separation. They mentioned turning the back and walking away in big open spaces, as well as walking away until they cannot hear each other usually, but there is a difference regarding needing to not be able to hear each other. They also said that building a barrier would not make them separated. The various schools mentioned many scenarios, but only a few related to the issue at hand were mentioned here to demonstrate their understanding.

The scholars also differed regarding pauses between the offer and the acceptance, and their rulings regarding it may differ depending on the type of contract. The Ḥanafīs and Ḥanbalīs were more lenient when it came to a pause between the offer and acceptance in the contractual gathering, whereas the Shāfiʿīs were not. The Malikīs were lenient when it came to a sale contract, but not in a marriage contract. The different schools differed over the specifics in this regard, but it is noteworthy to mention that they do cite customs in their opinions. It is also important to mention that there are opinions that allow for the acceptance to come after contractual gathering as can be seen in some of the sources cited in this section and in the first section of the paper. Even those schools that generally would not allow a delay in the acceptance until after the gathering make exceptions in some issues, and for some of these exceptions customs is cited. We find that scholars allowed for cases of contractual gatherings that are considered united in ruling even if not physically united, as well as in other issues like possession and acceptance in ruling. The brevity of the paper, however, prevents mentioning these examples and going into more detail.[17]

The reasons for the differing regarding separation revolve around: what is considered to be turning away from the contractual gathering and not being pleased, using analogy upon what is considered a problematic pause or separation in others areas of law such as in acts of worship, transactions, and family law, and exercising caution when it comes to marriage. However, what indicates pleasure or displeasure, and what is considered joining and separating, have not been defined by the Sharīʿah. That which was not defined by the Divine Law it determined by custom as

play a role in determining validity of transactions. You will find for example many scholars saying what people consider to be a sale is a sale. See also the details given in these texts concerning how customs play a role in possession in ruling and the like. Some of these texts were cited and others were not for brevity. See one example here: al-Zaylaʿī, *Tabyīn al-Ḥaqāʾiq*, 1st ed. (Cairo: al-Maṭbaʿah al-Kubrā, 1895), 4:4.

15 This was reported from some of the salaf. See for example: ʾIbn ʿAbd al-Barr, *al-ʾIstidhkār*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000), 6:475; al-Qurṭubī, *Tafsīr al-Qurṭubī*, 2nd ed. (Cairo: Dār al-Kutub al-Miṣriyyah, 1964), 5:153.
16 Something similar was reported from some of the salaf. See for example ibid, 5:154.
17 See for example: al-Ṣāwī, *Ḥāshiyat al-Ṣāwī ʿAlā al-Sharḥ al-Ṣaghīr* (Dār al-Maʿārif, ND), 3:14; al-Dusūqī, *Ḥāshiyat Dusūqī ʿAla al-Sharḥ al-Kabīr* (Dār al-Fikr, ND), 2:221; al-Mardāwī, *al-ʾInṣāf*, 1st ed. (Cairo: Hajar Publishing, 1995), 11:11; al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, 3rd ed. (Beirut: Dār al-Fikr, 1992), 3:422, 4:237-241; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 4:512-513; ʿUlaysh, *Minaḥ al-Jalīl*, (Beirut: Dar al-Fikr, 1989), 3:268-269; al-Dusūqī, *Ḥāshiyat Dusūqī ʿAla al-Sharḥ al-Kabīr* (Dār al-Fikr, ND), 3:3, 5; al-Zurqānī, *Sharḥ al-Zurqānī* (Beirut: Dar al-Kutub al-ʿIlmiyyah, 2002), 3:355-356; Ibn al-ʿArabī, *al-Qabas Fī Sharḥ Muwwaṭṭaʾ Mālik*, 1st ed. (Dār al-Gharb al-ʾIslāmī, 1992), 777; ʾIbn Rushd, *Bidāyat al-Mujtahid* (Cairo: Dār al-Ḥadīth, 2004), 3:187; Ibn Isḥāq, Khalīl, *al-Tawḍīḥ Fī Sharḥ Mukhtaṣar ʾIbn al-Ḥājib*, 1st ed. (Markaz Najībawayh, 2008), 5:193-194; Ibn Rushd, *al-Bayān wa al-Taḥṣīl*, 2nd ed. (Beirut: Dār al-Gharb al-ʾIslāmī, 1988), 5:213-214; Ibn Abī Zayd, *al-Nawādir Wa al-Ziyādāt*, 1st ed. (Beirut: Dār al-Gharb al-ʾIslāmī, 1999), 6:442; al-Māzarī, *Sharḥ al-Talqīn*, 1st ed. (Dār al-Gharb al-ʾIslāmī, 2008), 2:1030-1031; al-Shirbīnī, *Mughnī al-Muḥtāj* (Dār al-Kutub al-ʿIlmiyyah, 1994), 2:329-330; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3rd ed. (Beirut: al-Maktab al-ʾIslāmī, 1991), 7:39; al-Nawawī, *al-Majmūʿ* (Dār al-Fikr, ND), 9:169; al-Anṣārī, Zakariyyah, *ʾAsnā al-Maṭālib* (Dār al-Kitāb al-ʾIslāmī, ND), 2:4-5, 3:117; al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 3:380-381, 7:215; al-Subkī, *al-ʾAshbāh wa al-Naẓāʾir*, 1st ed. (Dār al-Kutub al-ʿIlmiyyah, 1991), 1:124-127; al-Buhūtī, *Sharḥ Muntahā al-ʾIrādāt*, 1st ed. (Dār Ālam al-Kutub, 1993), 2:6, 633; al-Buhūtī, *Kashshāf al-Qināʿ*, (Dar al-Kutub al-ʿIlmiyyah, ND), 3:147-148, 5:41; al-Ruḥaybānī, *Maṭālib ʾŪlī al-Nuhā*, 2nd ed. (al-Maktab al-ʾIslāmī, 1994), 3:7-8, 5:50. al-ʿAynī, *al-Bināyah Fī Sharḥ al-Hidāyah*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000), 8:7-9; al-Ramlī, *Nihāyat al-Muḥtāj* (Beirut: Dar al-Fikr, 1984), 3:381-382.

is mentioned by many scholars of law and legal theory.[18] Similarly, it can be argued that the examples used for analogy are not similar enough to the case at hand.

Now, the usage of what was mentioned before is based on the assumption that hearing digital sound and seeing digital video would be treated the same as hearing a real voice or seeing a real person. In reality this is not the case, and that is why I said in the beginning of the section that doing takhrīj upon what the madhhabs consider to be sight, and by extension sound, is a nuanced matter. This issue was brought up by classical scholars when mentioning if looking at a person through water, glass, in a mirror, or at an image of a person is like actually seeing the person or not (citations can be found in the section on posting pictures). The jurists discussed if seeing the crescent in a mirror would be considered seeing it truly or not. They discussed if one made his wife's divorce conditional upon seeing someone and then she saw them in a mirror, would she be divorced? Similarly, if one made an oath to not see the face of someone and then they saw it in a mirror, would this violate the oath? Also, would looking at the private part of a woman in the mirror make her impermissible for you to marry? Scholars also discussed if looking at another person's private parts via a mirror or reflection would be impermissible like looking at them directly, and when it came to testifying about defects they discussed looking at the private part with a mirror and if that would be the same as truly seeing it. During these discussions it is seen that the jurists differed if seeing something in the mirror is actually seeing it or not. They even discussed differences in terms of reflection of light. It is clear that if seeing something in a mirror, which involves reflection of light like our sight, can be problematic with classical jurists, then surely looking at images and pixels would be even more so. Based on this, would hearing someone over the phone or over an online video call be considered hearing their speech? A phone turns one's voice from sound waves into digital data, which is then sent to the other party and is converted into sound waves again. The sound the other party is hearing is not actually your voice, but rather is a recreation of your voice. This is thus closer to sending a message to the other party that is translated or decoded through a messenger, than being actual speech.[19] This would be the case as well if recorded voice notes were sent to each other. This no doubt would affect the rulings if takhrīj was done based on the furūʿ we have in the classical texts.

## 2.2.1 Online Marriage Contractual Gathering

If takhrīj is done based on what is in the classical texts, what everyone in the world considers to be sight and speech with the use of technology would not be classified as so if this is looked at technically from the books of jurisprudence as was shown. Thus, instead of takhrīj upon furūʿ, looking at the intents of the Sharīʿah on this issue would be more accurate in trying to see what classical scholars would say if they saw the modern state of the world, especially since these matters were not defined by the Divine Law but were left up to the customs of people according to the position we have chosen. What is intended by the Divine Law is that there be a connection between the two parties to exchange what is being exchanged in a form that indicates they are pleased with this transaction. The Sharīʿah did not come with specifications regarding the form of this exchange. Today, zoom and online gatherings are customarily considered connected gatherings. People meet

18 See for example: al-Subkī, Taqī al-Dīn, al-Subkī, Tāj al-Dīn, *al-ʾIbhāj* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1995), 1:364-365: al-Suyūṭī, *al-ʾAshbāh Wa al-Naẓāʾir*, 1st ed. (Dār al-Kutub al-ʿIlmiyyah, 1990), 93, 98-99; al-Subkī, *al-ʾAshbāh wa al-Naẓāʾir*, 1st ed. (Dār al-Kutub al-ʿIlmiyyah, 1991), 1:51-52; al-Zarkashī, *al-Manthūr Fī al-Qawāʿid*, 2nd ed. (Kuwaiti Ministry of Endowment, 1985), 2:356-357; ʾIbn Taymiyyah, *Majmūʿ al-Fatāwā*, (Saudi Arabia: Mujammaʿ al-Malik Fahd, 1995), 7:286; 19:235-236; 24:38-40; 35:349-350; 7:286; 19:235-236; 20:345-346; 22:216; 29:15-16; 29:53; 29:227; 29:448; 35:350-351; 20:345-346; 20:533; 31:278; 35:350-351; 19:248-249; 19:235-236; Ibn Taymiyyah, *Sharḥ al-ʿ Umdah Book of Purification*, 1st ed. (Riyadh: Obekan Publishing, 1992), 106, 474-475; Ibn Taymiyyah, *al-Ṣārim al-Maslūl* (Saudi Arabia: al-Ḥaras al-Waṭanī al-Suʿūdī, ND), 531; ʾIbn al-Qayyim, *ʾIʿlām al-Muwaqqiʿīn ʿAn Rabb al-ʿĀlamīn*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1991), 1:202-203; Ibn Taymiyyah, *al-Radd Alā al-Manṭiqiyyīn* (Beirut: Dār al-Maʿrifah, ND), 52; ʾIbn Ḥajar, *Fatḥ al-Bārī* (Beirut: Dār al-Maʿrifah, 1959), 4:328-330; al-Mardāwī, *al-Taḥbīr* (Riyadh: Maktabat al-Rushd, 2000), 6:2791; al-Subkī, *Takmilat al-Majmūʿ* (Dār al-Fikr, ND), 12:313.

19 See the citations and texts in this section and the previous ones for the rulings on buying and selling via letters and messengers to see how this could affect other areas of law. Some of these texts were cited and others were not due to brevity.

and conduct their transactions in this manner as if they were physically present. Thus, even if the speech or the video might not be real speech or sight, they can be considered to be speech and sight in ruling. Just as there were cases where the scholars deemed there to be connectivity in ruling, this can also be deemed a united gathering in ruling. These gatherings also need not have any pauses between the offer and acceptance in ruling, and all parties needed can be present and can see and hear in ruling as well.

However, as was mentioned, some scholars were more lenient than others in these matters, and some will not agree to take these gatherings to be connected in ruling. It would therefore be good to avoid the difference of opinion.

## 2.2.2 Marriage Contract via Phone

This is similar to the previous issue, and what was said in the last section also applies here. It is worthy to note that speaking on the phone is close to the issue of two people calling to each other as is mentioned by some classical scholars, as well as the issue of the wind carrying the sound. It is actually closer to the latter in how the function occurs, for with cell phones "the sound" is actually transmitted through the air. However, it is closer to the former in that it can be controlled and organized like a physical meeting, whereas the wind carrying sound is accidental and cannot be controlled.

Based on looking at the intent of the Divine Law, it is chosen that a phone conference would be a connected gathering in ruling. Regarding the witnesses not being able to see over the phone, the majority of scholars did not stipulate that the witnesses be able to see.[20] Thus, a marriage contract conducted over the phone could be valid, and Allah knows best. It should be made sure that the people speaking on the phone are the actual people intended.[21] Just like the last issue, it would be good to avoid this to stay away from the difference of opinion.

20 *al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah*, 2nd ed. (Kuwait: Ministry of Endowment, 2002), 41:298-299.
21 See citations from the Ḥanafīs on calling out to one another with a barrier; from it I got the idea of the importance of making sure you can identify the other party.

# 3 SECTION TWO: ENDING THE MARRIAGE CONTRACT VIA MODERN MEANS OF TECHNOLOGY

## 3.1 Divorce by Writing

The ḥanafīs mention two types of divorce by writing: that which is a form of formal writing and that which is informal. Divorce through writing formally or by addressing the wife (and the like. See citations for details) would count even without intention. Informal writing such as writing on a wall and not referring to her and not sending it to her (a wall can't be sent, but other material like a small piece of paper could be) would count if there was intention. Written divorce will also not count if unclear and ambiguous.[22] The Mālikīs mention various scenarios for writing the divorce. There are three cases when writing the divorce: either intending divorce, not sure, or with no intention. In these cases he either sends the divorce or does not. Furthermore, in these scenarios either it reaches or does not reach. If one wrote the divorce with intention, then the divorce would count when he finished writing the divorce. If he was not sure then it would count if the writing reached the wife or her guardian. As for not having intention, the Mālikīs differed concerning how to treat this.[23] For the Shāfiʿīs, writing the divorce is considered a form of implicit divorce, and so it needs intention. If one wrote it with intention then it would count. There are other opinions they mention as well.[24] As for the ḥanbalīs, if the written divorce used explicit terms for divorce, then it counts even without intention. If implicit terms were used then it would only count with intention.[25]

### 3.1.1 Divorce by Email and Text

Based on what was mentioned, written divorce via emails and texts would count in the different schools based on the scenario. The ḥanafīs would count the divorce with email and text even without intention if it was written formally or addressed the wife or was sent to the wife. If one merely types the divorce into the phone or on the computer without referring to the wife or sending it then intention would be needed for divorce to count. For the Mālikīs, if one wrote the email with divorce with intention then it would count when one finished writing the divorce. For the Shāfiʿīs and ḥanbalīs, writing an email with divorce could also count by merely writing based on the details mentioned before.

### 3.1.2 Khul' via Online Gathering

According to the ḥanafīs, the khulʿ is considered an oath for the husband, and a contract of exchange for the wife. However, there is another position in the school that says it is an oath for both sides. According to the relied upon position, if the husband is the one who gives the offer for khulʿ, then the offer remains even if the husband leaves because for him it is an oath and so it is binding for him. However, if she got up, then the offer would drop. If she was not present, she can

22 See for example: al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 2nd ed. (Dār al-Kutub al-ʿIlmiyyah, 1986), 3:100; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 3:246-247; Ibn Nujaym, *al-Baḥr al-Rāʾiq*, 2nd ed. (Dār al-Kitāb al-ʾIslāmī, ND), 3:267.

23 See for example: al-Dusūqī, *Ḥāshiyat Dusūqīʿ Ala al-Sharḥ al-Kabīr* (Dār al-Fikr, ND), 2:384-385; ʿ Ulaysh, *Minaḥ al-Jalīl*, (Beirut: Dar al-Fikr, 1989), 4:90-92; al-Sawi, *Hashiyat al-Sawi Ala al-Sharh al-Saghir*, (Dar al-Ma'arif, ND), 2:568-570; al-Kharashī, *Sharḥ Mukhtaṣar Khalīl* (Beirut: Dār al-Fikr, ND), 4:49.

24 See for example: al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 8:20-23; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3rd ed. (Beirut: al-Maktab al-'Islāmī, 1991), 8:40-41; al-Juwaynī, *Nihāyat al-Maṭlab*, 1st ed. (Dār al-Minhāj, 2007), 14:73-75.

25 al-Buhūtī, *Sharḥ Muntahā al-ʾIrādāt*, 1st ed. (ʿĀlam al-Kutub, 1993), 3:86; al-Buhūtī, *Kashshāf al-Qināʿ* (Dār al-Kutub al-Ilmiyyah, ND), :5249 ; al-Ruḥaybānī, *Maṭālib ʾŪlī al-Nuhā*, 2nd ed. (al-Maktab al-Islāmī, 1994), 5:345, 346.

accept in the gathering that the offer reached her in, and if she leaves that gathering the offer drops. If the wife is the one who gave the offer, the acceptance from the husband must be in that gathering, and if she or he leaves it then the offer drops and he cannot accept after that.[26]

According to the Mālikīs, khulʿ is a contract of exchange for both parties. They allow for the khulʿ to be conditional upon something in the future, and thus the acceptance and fulfillment of the condition can be after the gathering where the offer was made from the husband (see details mentioned by them regarding this). There is another opinion however that it would have to be in the gathering.[27]

The Shāfiʿīs differed concerning whether khulʿ is considered a faskh (annulment) or divorce, and this led to differing over the rulings pertaining to it. Those who say it is an annulment said this was a contract of exchange for both parties and thus it would not be conditional. Therefore, the acceptance from them must be in the gathering. If however it is considered a divorce, if the offer is from the husband and it was not conditional, then it is considered a contract of exchange. If he made it conditional (see details mentioned by them regarding this) then the divorce occurs when the action that it is made conditional upon occurs and can be delayed if the language used allowed for flexibility in time, such as using the terms "when," or "whenever," etc. If he used the term "if," then the divorce only occurs if the condition is fulfilled right away. If the offer comes from the wife, regardless if it is conditional or not, if the husband responds right away then this is considered a contract of exchange with a hint of jaʿālah for the wife. In this case the husband needs to respond right away unless she uses language that indicates flexibility in the time.[28]

According to the Ḥanbalīs, if khulʿ is done with the terms of khulʿ, faskh, or mufādāh, and he did not intend divorce, then it is considered an annulment. Khulʿ would be considered an irrevocable divorce if compensation is given with: the term divorce was used, if the term khulʿ was used with the intention for divorce, or if an implicit term of divorce was used with the intention of divorce. If there is no compensation then it is considered a revocable divorce. If the divorce is made conditional upon payment, she becomes divorced when she fulfills the condition even if this is delayed, and it does not have to be immediate. If the wife makes the offer then the husband must respond immediately for her to be separated.[29]

*Therefore:*

According to the opinions mentioned, at times the same gathering is needed for the offer and acceptance, and at times a delay in the acceptance is allowed. Based on what was mentioned in previous sections concerning virtual gatherings being considered connected, if khulʿ was done over a video conference it would be valid inshāʾAllāh, and what was mentioned before would apply here.

26 See for example: al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 2nd ed. (Dār al-Kutub al-ʿIlmiyyah, 1986), 3:145; al-Samarqandī, *Tuḥfat al-Fuqahāʾ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1994), 2:199-200; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 3:442.

27 See for example: al-Zurqānī, *Sharḥ al-Zurqānī*, (Beirut: Dar al-Kutub alʿ Ilmiyyah, 2002), 4:135-136. See also the ḥāshiyah of al-Banānī.

28 See for example: alʾ-Anṣārī, Zakariyyah, *ʾAsnā al-Maṭālib* (Dār al-Kitāb alʾ-Islāmī, ND), 3:242; al-Shirbīnī, *Mughnī al-Muḥtāj* (Dār al-Kutub alʿ- Ilmiyyah, 1994), 4:440-442, 447; al-Ramlī, Nihāyat al-Muḥtāj(Beirut: Dar al-Fikr, 1984), 6:407-408; al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 7:483; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3rd ed. (Beirut: al-Maktab alʾ-Islāmī, 1991), 7:381.

29 See for example: al-Buhūtī, *Kashshāf al-Qināʿ* (Dar al-Kutub alʿ- Ilmiyyah, ND), 5:216, 218, 224-225.

# 4 SECTION THREE: FINDING A SPOUSE VIA MODERN MODES OF TECHNOLOGY

## 4.1 Chatting Online to Know One Another

With modern technology people are now able to look for a spouse online. The nature of social media, marriage websites, and the like involves secluded forms of communication. A man and woman may be alone in a virtual chat room speaking without anyone being able to see what they are saying. By looking at the definitions of khalwah mentioned by classical scholars, it can be determined if being alone virtually would take the same ruling.

### 4.1.1 Khalwah (Seclusion)

A man being alone with a foreign woman in a place where no one else sees them is impermissible[30] in general.[31] Khalwah is of two types: legislated and not legislated. That which is legislated is further divided into valid and invalid.[32] This prohibition is one of means. The prohibition of zinā is an end and purpose that the Divine Law aims to achieve. The prohibition of seclusion is from the means to achieve this end.[33] Means are of levels: those which are close to the ends so they are given their ruling, and those which are far which are not. Then there are those in between which causes the scholars to differ.

The Divine Law prohibited seclusion between the genders as a form of blocking the means. The context and place of zinā (maẓinnah) was given the ruling of prohibition like zinā.[34] A means (dharī

30 See for example: al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 2nd ed. (Dār al-Kutub al-ʿIlmiyyah, 1986), 5:125; al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, 3rd ed. (Dār al-Fikr , 1992), 6:320; ʾIbn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qahirah, 1968), 10:181; al-Nawawī, *al-Minhāj Sharḥ Ṣaḥīḥ Muslim*, 2nd ed. (Beirut: Dārʾ Iḥyāʾ al-Turāth al-ʿArabī, 1972), 14:153;ʾIbn Ḥajar, *Fatḥ al-Bārī* (Beirut: Dār al-Maʿrifah, 1959), 4:77; al-Qurṭubī, *al-Mufhim Li MaʾAshkal Min Talkhīs Kitāb Muslim*, 1st ed. (Beirut: Dārʾ Ibn Kathīr, 1996), 5:500; al-Shawkānī, *Nayl al-ʾAwṭār*, 1st ed. (Egypt: Dār al-Ḥadīth, 1993), 6:134. While consensus has been cited that khalwah is prohibited (ḥarām), see the differing opinions mentioned in the Ḥanafī madhhab: ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 6:368.

31 There are times however where it would not be prohibited, some agreed upon and others differed upon. See for example: al-Nawawī, *al-Majmūʿ* (Dār al-Fikr, ND), 4:279; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 6:368; al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, 3rd ed. (Dār al-Fikr , 1992), 2:523, 526, 5:393; Ibn Rushd, *al-Bayān wa al-Taḥṣīl*, 2nd ed. (Beirut: Dār al-Gharb al-ʾIslāmī, 1988), 4:427-428. There are various issues that are differed upon in the within the different madhhabs themselves. However the brevity of the paper does not allow us to mention them.

32 See the definitions of exclusion between the madhhabs: ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 3:132, 6:368; : al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 2nd ed. (Dār al-Kutub al-ʿIlmiyyah, 1986), 2:292-293;ʿUlaysh, *Minaḥ al-Jalīl*, (Beirut: Dar al-Fikr, 1989), 3:433; al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, 3rd ed. (Dār al-Fikr , 1992), 3:507; al-Dusūqī, *Ḥāshiyat Dusūqīʿ Ala al-Sharḥ al-Kabīr* (Dār al-Fikr, ND), 2:302; al-Tusūlī, *al-Bahjah Fī Sharḥ al-Tuḥfah* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1998), 1:591; al-Sawi, *Hashiyat al-Sawi Ala al-Sharh al-Saghir*, (Dar al-Maʾarif, ND), 2:674; al-Buhūtī, *Sharḥ Muntahā al-ʾIrādāt*, 1st ed. (ʿĀlam al-Kutub, 1993), 3:21-22; al-Buhūtī, *Kashshāf al-Qināʿ* (Dar al-Kutub al-ʿIlmiyyah, ND), 5:151-152; al-Shirbīnī, *Mughnī al-Muḥtāj* (Dār al-Kutub al-ʿIlmiyyah, 1994), 4:374; al-Māwardī, *al-Ḥāwī al-Kabīr*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 9:540, 10:322;ʾIbn Mufliḥ, *al-Furūʿ*, 1st ed. (al-Risālah, 2003), 8:183; al-Zarkashī, *Sharḥ Mukhtaṣar al-Khiraqī*, 1st ed. (Obekan, 1993); 5:316;ʾIbn Ḥajar, *Fatḥ al-Bārī* (Beirut: Dār al-Maʿrifah, 1959), 9:333.

33 al-Qarāfī, *al-Dhakhīrah*, 1st ed. (Beirut: Dār al-Gharb al-ʾIslāmī, 1994), 2:129, 4:192-193.

34 The science of ʾuṣūl al-fiqh deals with four main areas of focus (each containing various subcategories and issues): the sources of legislation, how to derive rulings from the sources, the rulings that are derived, and who is qualified to derive those rulings. When discussing one of the pillars of qiyās (analogy), the ʿillah (effective cause), the books of legal theory mention how to determine the effective cause of the ʾaṣl (original case), another pillar of analogy. These methods are referred to as masālik al-ʿillah. Effective causes can be determined through texts (this includes al-ṣarīḥ, al-ẓāhir, and al-ʾīmāʾ wa al-tanbīh types), consensus, and juristic derivation. The latter category includes al-sabr wa al-taqsīm, al-munāsabah, al-shabah, al-dawarān. The procedure of al-munāsabah (suitability) is directly related to maqāsid al-sharīʿah. al-Munāsabah also has other names, such as al-ʾikhālah and takhrīj al-manāṭ. This process involves determining an effective cause found in the ʾaṣl by establishing that there is a relationship between a characteristic in the ʾaṣl and the ruling. This characteristic is deemed suitable (thus called al-munāsib) if when applying the ruling due to the presence of this characteristic

ʿah) was defined by the scholars of ʾuṣūl differently. Some defined it technically in a way close to its linguistic meaning, as that which leads to and is a reason for or way to something.[35] Others defined it more specifically: as that which leads to that which is not allowed. It is an action which itself is allowed, but leads to that which is not allowed.[36] Thus, sadd al-dharāʾiʿ (blocking the means) is preventing that which is allowed so that it does not lead to that which is not allowed, i.e. blocking the means that lead to that which is not allowed in the Divine Law.[37]

Means were divided into different categories by the scholars of legal theory. Based on the definitions mentioned, scholars differed in what they included in their categorization. al-Qarāfī divided means into three categories: a category that there is agreement regarding blocking them, and preventing them is based on textual evidence, or consensus that they will certainly lead to harm. The second is a category that there is agreement regarding not blocking them, and this is based on the rarity of these means leading to that which is not allowed, and that they do not directly lead to them. The third category is those which the scholars differed over whether they should be blocked or not. From those that are differed upon that are relevant to the issue of the opposite gender speaking alone is the issue of looking at women and speaking with them.[38]

al-Qurṭubī also divided means into three categories. That which leads to that which is not allowed, either certainly leads to it occurring, or not. The first category he did not consider to be related to blocking the means, but rather it is from those matters which must be avoided to avoid the ḥarām so they are also prohibited - that which the obligatory cannot be accomplished except with is also obligatory.[39] The second category is: that which does not certainly lead to that which is not

achieves the intent of the Divine Law, namely bring about benefit or repelling harm. al-Munāsib can be divided in various ways. It can be divided based on how certainly it would achieve the intent of the Divine Law if the ruling is applied due to it (this is of six categories: certainly, most likely, equally likely, less likely, and not possible). The purposes of the Divine Law that are achieved when rulings are applied due to the presence of suitable characteristics can be divided into: ḍarūrī (necessary), ḥājī (needed), and taḥsīnī (luxurious). Each of the three categories of benefits also has a takmīlī (complimentary) category. The benefits the Divine Law came to protect are religion, life, intellect, lineage, wealth, and honor (this last one is differed over in terms of being a separate category or not), each of which has levels that fall under the previous categories. al-Munāsib also can be categorized based on if the Divine Law recognizes it or not. If the Divine Law recognizes the specific characteristic to be the reason for the specific ruling by text or consensus, then this is called al-muʾathir (effective). If the specific characteristic is not recognized for a specific ruling by text or consensus, but rather text or consensus recognizes a specific characteristic with the genus of a ruling, vice versa, or the genus of a characteristic is recognized as the reason for the genus of a ruling, then this is called al-mulāʾim (appropriate). In this last case, khalwah was given the ruling of prohibition, which is the ruling for illicit intercourse, because it is the maẓinnah (context) for it, and so the context of a thing was given its ruling. That which has not been recognized by the Divine Law in the manners mentioned in the last two categories can be further divided into two other categories: al-gharīb (the characteristic is recognized for the ruling but not by text or consensus) al-mursal (It is not recognized. This is further divided into types). The scholars of legal theory have also mentioned the prohibition of seclusion falling under one of the categories of al-mursal which is al-mursal al-mulāʾim (the remote genus of the characteristic is recognized for the genus of the ruling) since it leads to illicit intercourse. al-khalwah is a remote genus, since it includes illicit intercourse and other than it. Note: Scholars have different classifications. See for example: alʾAṣbahānī, *Bayān al-Mukhtaṣar*, 1st ed. (Saudi Arabia: Dār al-Madanī, 1986), 3:122-130; ʾIbn al-Najjār, *Sharḥ al-Kawkab al-Munīr*, 2nd ed. (Riyadh: Obekan, 1997), 4:115-205; al-Zarkashī, *Tashnīf al-Masāmiʿ*, 2nd ed. (Maktabat Qurṭubah, 2006), 3:166-220; al-Mardāwī, *al-Taḥbīr* (Riyadh: Maktabat al-Rushd, 2000), 7:3401-318;ʾIbn Qudāmah, *Rawḍat al-Nāẓir*, 2nd ed. (Muʾassasat al-Rayyān, 2002), 2:210-213; al-Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍah*, 1st ed. (Beirut: Muʾassat al-Risālah, 1987), 3:389 onwards; al-Subkī, Taqī al-Dīn, al-Subkī, Tāj al-Dīn, *al-ʾIbhāj*, 2nd ed. (Beirut: Dārʾ Ibn Ḥazm, 2011), 3:60-61.

35 See for example: al-Qarāfī, *Sharḥ Tanqīh al-Fuṣūl*, 1st ed. (Sharikat al-Ṭibāʿah al-Fanniyyah al-Muttaḥidah, 1973), 448-449;ʾIbn al-Qayyim, *ʾIʿlām al-Muwaqqiʿīn ʿAn Rabb al-ʿĀlamīn*, 1st ed. (Beirut: Dār al-Kutub alʿIlmiyyah, 1991), 3:109.

36 ʾIbn Taymiyyah, *al-Fatāwā al-Kubrā*, 1st ed. (Beirut: Dār al-Kutub alʿIlmiyyah, 1987), 6:172-173; al-Bājī,ʾ*Iḥkām al-Fuṣūl*, 1st ed. (Beirut: Muʾassasat al-Risālah, 1989), 2:567; al-Shāṭibī, *al-Muwāfaqāt*, 1st ed. (Dārʾ Ibnʿ Affān, 1997), 5:183.

37 al-Qarāfī, *Sharḥ Tanqīh al-Fuṣūl*, 1st ed. (Sharikat al-Ṭibāʿah al-Fanniyyah al-Muttaḥidah, 1973), 448-449; al-Birmāwī, *Sharḥ al-ʾAlfiyyah*, 1st ed. (Giza: Maktabat al-Tawʾiyyah, 2015), 5:190.

38 al-Qarāfī, *Sharḥ Tanqīh al-Fuṣūl*, 1st ed. (Sharikat al-Ṭibāʿah al-Fanniyyah al-Muttaḥidah, 1973), 448-449; al-Qarāfī, *al-Furūq* ʿĀlam al-Kutub, ND), 3:266-267.

39 al-Birmāwī, *Sharḥ al-ʾAlfiyyah*, 1st ed. (Giza: Maktabat al-Tawʾiyyah, 2015), 5:190-191.

allowed - it either usually leads to it, usually does not, or both occur equally. The first category is to be blocked, and the second and third are differed upon.[40]

Ibn al-Qayyim divided the means into four categories. The first is that which certainly leads to what is not allowed. The second is that which is used to lead to that which is permissible, but it is used with the intention to reach harm. The third is that which is used to reach that which is permissible, and it is not used with the intention of reaching harm, but it usually leads to it, and its harm is more preponderant than its benefit. The fourth is that which is used to lead to that which is permissible, and it may lead to harm, and its benefit is more preponderant than its harm. Included in this category which is relevant to getting to know someone for marriage over the internet is looking at the one you are proposing to. The first category is to be prevented, and the last category is to be allowed. As for the second and third categories, he was of the opinion that they are to be blocked.[41]

al-Shāṭibī divided the means into four categories. The first is that which certainly leads to the harm occurring. This must be blocked. The second is that which rarely leads to harm. This is not blocked. The third is that which leads to harm a lot such that most likely it will lead to it. This category is differed upon in terms of if they should be blocked, with al-Shāṭibī choosing they are to be. The fourth is that which leads to harm a lot, but it does not reach the level of most likely leading to it. This is also a differed upon category. al-Shāṭibī places khalwah in this category.[42]

Ibn al-Rifʿah divided means into three categories. The first is that which certainly leads to the impermissible, and this is impermissible. The second is that which certainly does not reach the impermissible, but it is mixed with that which does. The third category is that which has the possibility of reaching or not reaching, and it is of varying levels. He mentions the last two categories are ones of differing.[43]

al-Ṣāwī also divided them into three: that which it is agreed upon to not block them, that which it is agreed upon to block them, and that which is differed upon such as looking at a foreign woman and speaking to her.[44]

In general, blocking the means is agreed upon by the scholars.[45] They are in agreement regarding the means that certainly lead to that which is prohibited and those that rarely do. Similarly, that which most likely leads to harm is also agreed upon, in general, with differences still occurring amongst the scholars. That which often leads to harm but not at the level of most likely happening is the category of differing as well between by the scholars. [46] Even if theoretically they differed over blocking the means, practically they all applied it, but at different levels.[47] Thus, that which leads to

40 al-Zarkashī, *al-Baḥr al-Muḥīṭ*, 1st ed. (Dār al-Kutubī, 1994), 8:90; al-Shawkānī, *Irshād al-Fuḥūl*, 1st ed. (Dār al-Kitāb al-ʿArabī, 1999), 2:194.

41 Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn ʿAn Rabb al-ʿĀlamīn*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1991), 3:109-110 onwards.

42 al-Shāṭibī, *al-Muwāfaqāt*, 1st ed. (Dār Ibn ʿAffān, 1997), 3:54 onwards, 77 onwards.

43 al-Shawkānī, *Irshād al-Fuḥūl*, 1st ed. (Dār al-Kitāb al-ʿArabī, 1999), 2:196.

44 al-Sawi, *Hashiyat al-Sawi Ala al-Sharh al-Saghir*, (Dar al-Ma'arif, ND), 3:116.

45 al-Shāṭibī, *al-Muwāfaqāt*, 1st ed. (Dār Ibn ʿAffān, 1997), 5:184-186; al-Shāṭibī, *al-Iʿtiṣām* (Saudi Arabia, Dār Ibn ʿAffān, 1992), 1:509 onwards; al-Qarāfī, *al-Dhakhīrah*, 1st ed. (Beirut: Dār al-Gharb al-Islāmī, 1994), 1:152-153; al-Qarāfī, *Sharḥ Tanqīh al-Fuṣūl*, 1st ed. (Sharikat al-Ṭibāʿah al-Fanniyyah al-Muttaḥidah, 1973), 448-449; al-Aṭṭār, *Ḥāshiyat al-ʿAṭṭār ʿAlā Sharḥ al-Maḥallī ʿAlā Jamʿ al-Jawāmiʿ* (Dār al-Kutub al-ʿIlmiyyah, ND), 2:399; al-Qarāfī, *al-Furūq* (Ālam al-Kutub, ND), 2:33, 43.

46 Ibn ʿAbd al-Salām, al-ʿIzz, *Qawāʿid al-Aḥkām* (Cairo: Maktabat al-Kulliyyāt al-Azhariyyah, 1991), 1:100.

47 See for example: al-Mardāwī, *al-Taḥbīr* (Riyadh: Maktabat al-Rushd, 2000), 8:3831-3833; al-Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍah*, 1st ed. (Beirut: Muʾassasat al-Risālah, 1987), 2:140, 3:214, 3:240; al-Ṭūfī, *al-Ishārāt al-Ilāhiyyah*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2005), 64, 262; Ibn ʿAqīl, *al-Wāḍiḥ Fī Uṣūl al-Fiqh*, 1st ed. (Beirut: Muʾassasat al-Risālah, 1999); 2:75-77; al-Zarīrānī, *Īḍāḥ al-dalāʾil* (Saudi Arabia, Dār Ibn al-Jawzī, 2010), 211; Ibn al-Najjār, *Sharḥ al-Kawkab al-Munīr*, 2nd ed. (Riyadh: Obekan, 1997) , 4:434; al-Qarāfī, *Sharḥ Tanqīh al-Fuṣūl*, 1st ed. (Sharikat al-Ṭibāʿah al-Fanniyyah al-Muttaḥidah, 1973), 448-450; al-Shāṭibī, *al-Muwāfaqāt*, 1st ed. (Dār Ibn ʿAffān, 1997), 3:85, 528, 4:358, 5:177-178, 182-185, 186-187, 287; al-Zarkashī, *al-Baḥr al-Muḥīṭ*, 1st ed. (Dār al-Kutubī, 1994), 8:90; See however the differing of Ibn Ḥazm and his usage of continuity of ruling, or *istiṣḥāb* instead: Ibn Ḥazm. *al-Iḥkām Fī Uṣūl al-Aḥkām*, (Beirut: Dār al-Āfāq al-Jadīdah, ND), 6:2 onward. He does however block the means that certainly lead to the impermissible.

what is not allowed a lot, either to the level of being most likely, or not, is the area where differing occurs. In these areas, the Mālikīs and Ḥanbalīs block the means, whereas the Shāfi īs do not. The Ḥanafīs took a middle position.[48] This difference goes back to the difference regarding whether the intent should be considered as is done by those in the first camp, or just the outer picture as is done by the second camp, as can be seen by how the scholars divided means. It also goes back to differing over weighing the benefits and harms.

That which is prohibited due to blocking the means is made permissible due to a need and preponderant benefit which outweigh the harms. While scholars differed in their application of this, what is chosen is that this is applicable in this scenario as will be mentioned.[49] The default for that which is a reason for fitnah is that it is not allowed due to blocking the means to harm if it is not opposed by a preponderant benefit. Thus, it is legislated for one to look at a woman for marriage due to need for example.[50] [51]Some scholars allowed looking for marriage even with desire.[52]

Additionally, some jurists said that khalwah is lifted with a barrier, such as being in two separate rooms of a house with one door. This is similar to discussing over the phone or social media where they are physically separated and it is possible for the communication to lead them to meet. Similar to this is some jurists allowing a couple who were irrevocably divorced to sleep in the same place if there is a barrier between them if the man is not an evil person. Other scholars did not think that a barrier was enough, such as when some scholars discussed if a man separated from his wife should fulfill the dowry of teaching her Qurʾān alone from behind a veil or not. Discussing this, some scholars mentioned an important factor: previous emotional attachment is a threat for leading to the ḥarām, which is something we have seen with people who end having feelings for another after speaking.[53]

The jurists were also cautious regarding the opposite genders speaking, even when it came to giving and returning the salām, and responding to the one who sneezed and responding back. Even sending a messenger to give one's salām to another person was discussed if allowed between the genders.[54] Thus, joining between what was said concerning blocking the means and what scholars said concerning khalwah and gender interactions, takhrīj can be made on this issue of online communication.

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48 See for example: al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 2nd ed. (Dār al-Kutub al-ʿIlmiyyah, 1986), 3:187-190, 4:190, 176, 5:198-199; al-Buhūtī, *Kashshāf al-Qināʿ* (Dar al-Kutub alʿ Ilmiyyah, ND), 3:181-182, 5:94-96; al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, 3rd ed. (Dār al-Fikr , 1992), 3:469, 4:254; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 4:268; al-Shāfiʿī, *al-ʾUmm* (Beirut: Dār al-Maʿrifah, 1990), 3:38, 75, 5:85-86, 7:313; ʾIbn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qahirah, 1968), 4:132-133 onward, 168, 5:408; al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1st ed. (Dār al-Bashāʾir al-ʾIslāmiyyah, 2010), 6:391; al-Shawkānī, *ʾIrshād al-Fuḥūl*, 1st ed. (Dār al-Kitāb al-ʿArabī, 1999), 2:195-196; ʾIbn ʿAbd al-Barr, *al-ʾIstidhkār*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000), 6:270-273; al-Ramlī, *Nihāyat al-Muḥtāj* (Beirut: Dar al-Fikr, 1984), 3:463; Ibn al-Humām, *Fatḥ al-Qadīr* (Beirut: Dār al-Fikr, ND), 6:435; ʾIbn Taymiyyah, *Majmūʿ al-Fatāwā* (Saudi Arabia: Mujammaʿ al-Malik Fahd, 1995), 29:30-32; al-Zurqānī, *Sharḥ al-Zurqānī* (Beirut: Dar al-Kutub alʿ Ilmiyyah, 2002), 5:175 onward, 520; al-Sawi, *Hashiyat al-Sawi Ala al-Sharh al-Saghir*, (Dar al-Ma'arif, ND), 3:116 onward; al-Dusūqī, *Ḥāshiyat Dusūqī ʿAla al-Sharḥ al-Kabīr* (Dār al-Fikr, ND), 3:76 onwards;
ʾIbn Rushd*, al-Bayān wa al-Taḥṣīl*, 2nd ed. (Beirut: Dār al-Gharb alʾ Islāmī, 1988), 9:394-396, 18:613-614; al-Manjūr, *Sharḥ al-Manhaj* (Dārʿ Abdullāh al-Shinqīṭī, ND), 2:493; al-Shirbīnī, *Mughnī al-Muḥtāj* (Dār al-Kutub alʿ Ilmiyyah, 1994), 4:300-301; al-Nawawī, *al-Majmūʿ* (Dār al-Fikr, ND), 4:374; ʾIbn al-Qayyim, *ʾIʿlām al-Muwaqqiʿīn ʿAn Rabb al-ʿĀlamīn*, 1st ed. (Beirut: Dār al-Kutub alʿ Ilmiyyah, 1991), 2:109.

49 Going into detail showing the ways the different scholars apply or do not apply this principle would be too lengthy for the brevity of this paper.

50 Looking at a woman will be discussed in the latter section on online pictures.

51 ʾIbn Taymiyyah, *Majmūʿ al-Fatāwā* (Saudi Arabia: Mujammaʿ al-Malik Fahd, 1995), 15:418-420; 29:49; 23:186, 214, 22:298; ʾIbn al-Qayyim, *ʾIʿlām al-Muwaqqiʿīn ʿAn Rabb al-ʿĀlamīn*, 1st ed. (Beirut: Dār al-Kutub alʿ Ilmiyyah, 1991), 2:107-109, 3:109-110, 118, 130; Ibn al-Qayyim, *Zād al-Maʿād*, 27th ed. (Beirut: Muʾassasat al-Risālah, 1994), 2:223, 3:427-428.

52 See for example: ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 1:407, 6:370.

53 al-Shirbīnī, *Mughnī al-Muḥtāj* (Dār al-Kutub alʿ Ilmiyyah, 1994), 4:394.

54 See for example: ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 6:369; ʾIbn Mufliḥ, *alʾ-Ādāb al-Sharʿiyyah* (Dārʿ Ālam al-Kutub, ND), 1:332-334; : al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 9:223-226.

### 4.1.2 Seclusion over the Internet

From what was mentioned, it can be said that speaking over the internet is not considered khalwah according to the definitions cited. Also, as was cited, speaking between the two genders without a need is something scholars were wary about. It was also shown that a preponderant need and benefit is given precedence over that which may lead to the impermissible. Thus, it would be allowed for a man and women to speak over the phone or the internet in order to get married as long as the known Islamic etiquettes of gender interaction are observed. If the speaking leads to emotional or physical attachment that brings about fear of improper interaction taking place and the like, then the ruling would change accordingly. As was discussed, there are far means and close means and levels in between. The closer they are to the impermissibly the stricter the ruling, and vice versa. This is clear when looking at the various scenarios of seclusion the scholars discussed. When there is a higher chance of it leading it to the impermissible they were stricter, and when it was less likely they be more flexible. That is why at times a scenario will be ḥarām and other times it will be disliked, etc. as can be seen in their rulings. Scholars will also differ on the same scenario with some being more cautious than others.[55] Speaking over the internet is a farther means than looking, and the latter was allowed due to needs and benefits in the Divine Law. Thus, speaking for marriage over the internet would be allowed as long as the need and preponderant benefit outweigh the harms. When that changes, then the ruling would as well. If one is able to find others to be in this conversation with them so that they are not speaking alone this should be done.

## 4.2 Women Posting Pictures Online

The default in terms of a woman posting pictures on social media is that it should not be done, and the ruling would differ at times from being prohibited, and at times it would not reach that level. A woman who is not wearing ḥijāb or wearing an improper ḥijāb, it would not be permissible to post her picture, as improper dress is sinful alone, let alone spreading it amongst many others online. If, however, the dress was proper, then either this woman follows the opinion that her face must be covered, or she follows the opinion that it is not a requirement. If she follows the opinion that covering the face is merely recommended, then it would still not be permissible according to some scholars for men to look at her, and she would be aiding them in looking.[56] The scholars discussed the ruling of a man looking at a woman without desire, with some saying that it is impermissible even without desire. Even according to the opinions that would allow her to expose her face, and do not prohibit looking at her without desire, the Sharīʿah did not intend for women to post her face for countless men to see twenty four hours a day, with many people out there possibly saving her photo, sharing it with others, and the like. There is a difference between this and between exposing your face when leaving the house to take care of your needs. The Sharīʿah encourages her to keep away from the eyes of men, as is evident in various rulings concerning women, and thus posting public pictures

55 The scholars discussed many different scenarios of being secluded. For example: the seclusion of a man with an old woman, with more than one woman, the seclusion of a woman with more than one man, being secluded with someone who has preventatives from having intercourse, the genders being alone in prayer or having more than one gender with one of the other only, and more. See scenarios in sources cited.

56 The scholars discussed the ruling of looking at that which is impermissible. See for example: al-Begermī, *Ḥāshiyat al-Begermīʿ Alā al-Khaṭīb*, (Dār al-Fikr, 1995), 2:261; See the comments of al-Shirwānī: al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 10:221; al-Dusūqī, *Ḥāshiyat Dusūqīʿ Ala al-Sharḥ al-Kabīr* (Dār al-Fikr, ND), 2:338; ʾIbn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qahirah, 1968), 7:283; al-ʿAdawī, *Ḥāshiyat al-ʿAdawīʿ Alā Kifāyat al-Ṭālib al-Rabbānī* (Beirut: Dār al-Fikr, 1994), 2:460. The scholars also discussed the issue of whether looking at a picture or reflection is the same as seeing the person. See for example: al-Shirwānī: al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 3:372, See also the Ḥāshiyah of al-Shirwānī; al-Buhūtī, *Kashshāf al-Qināʿ* (Dar al-Kutub alʿ Ilmiyyah, ND), 5:313; Ibn al-Humām, *Fatḥ al-Qadīr* (Beirut: Dār al-Fikr, ND), 3:224; Ibnʿ Arafah, *al-Mukhtaṣar al-Fiqhī*, 1st ed. (Muʾassasat Khalafʾ Aḥmad, 2014), 3:366; al-Begermī, *Ḥāshiyat al-Begermīʿ Alā al-Khaṭīb*, (Dār al-Fikr, 1995), 3:372; al-Bakrī,ʾlʿānat al-Ṭālibīn, 1st ed. (Dār al-Fikr, 1997), 3:301; : al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 7:192; al-Ramlī; al-Ramlī, Nihāyat al-Muḥtāj (Beirut: Dar al-Fikr, 1984), 6:186; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 3:34, 6:372.

would go against the purposes of the Sharīʿah. This is especially the case in times of fitnah, where even the scholars who allowed exposing the face said it should be covered in such times. If the woman does follow the opinion where she covers her face, if she exposes her eyes then also there would be a discussion regarding whether it would be allowed to look at her or not, and again this would not be in line with the divine purposes of the Sharīʿah. If she does not expose anything, then there is no point in posting her picture online.[57]

However, would this be allowed if the intention was to introduce one's self online so that a suitor may notice her? This would take the same ruling as showing your picture to all men online as outlined above, and this would not fall under what was discussed in the last section regarding benefits being given precedence, for not every benefit supersedes that which is not allowed due to blocking the means. If there was a particular suitor who wanted to see a photo, then this would be allowed as long as they did not share it with others and the Islamic etiquettes of dress code in the picture, not describing how a woman looks like to others, etc. are observed.

# 4.3 Posting Caricatures/Emojis of a Person Online

## 4.3.1 Picture Making

When discussing pictures, scholars discussed pictures of that which have a soul (including full body pictures of these beings, deficient pictures such as not having a head, body part, half a body, or with disfigured features, and producing full body pictures on material that lasts and those that do not last, and making toys for children), that which do not have a soul (including that which in animate, and that which is inanimate, whether found in nature or manmade), if the pictures are statues, flat, have a shadow or not, sewed, respected or disrespected, and most relevant for this issue: imaginary beings.[58] They also discussed rulings for various usages for the above types of pictures, and rulings based on the location of these pictures.[59]

57 For detailed rulings and differences concerning looking at women see for example: ʾIbn Taymiyyah, *Majmūʿ al-Fatāwā* (Saudi Arabia: Mujammaʿ al-Malik Fahd, 1995), 15:418-420, 22:109-111; ʾIbn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qahirah, 1968), 7:96-97,102 al-Nawawī, *al-Minhāj Sharḥ Ṣaḥīḥ Muslim*, 2nd ed. (Beirut: Dārʾ Iḥyāʾ al-Turāth al-ʿArabī, 1972), 14:139; al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 7:192-194; al-Haytamī, *al-Fatāwā al-Kubrā* (al-Maktabah alʾ Islāmiyyah, ND), 1:199-200; al-Mardāwī, *al-ʾInṣāf*, 1st ed. (Cairo: Hajar Publishing, 1995), 20:55-58; al-Dusūqī, *Ḥāshiyat Dusūqī ʿAla al-Sharḥ al-Kabīr* (Dār al-Fikr, ND),1:214; ʾIbn Nujaym, *al-Baḥr al-Rāʾiq*, 2nd ed. (Dār al-Kitāb alʾ Islāmī, ND), 1:284; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 1:406; al-Mawṣulī, *al-Ikhtiyār Li Taʿlīl al-Mukhtār*, (Cairo: Maṭbaʿat al-Ḥalabī, 1937), 4:156; al-Bābartī, *al-Ināyah Sharḥ al-Hidāyah* (Dār al-Fikr, ND), 10:24-25; Abd al-Ghannī, *al-Lubāb Fī Sharḥ al-Kitāb* (Beirut: al-Maktabah al-ʿIlmiyyah, ND), 4:162; al-Qayrawānī, *al-Fawākih al-Dawānī* (Dār al-Fikr, 1995), 2:277; al-Ṣāwī, *Ḥāshiyat al-Ṣāwī Alā al-Sharḥ al-Ṣaghīr*, (Dar al-Ma'arif, ND), 1:289; al-Gharnāṭī, *al-Tāj wa al-Iklīl*, 1st ed. (Dār al-Kutub al-ʿIlmiyyah, 1994), 2:181; al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, 3rd ed. (Dār al-Fikr , 1992), 1:499-500; al-Anṣārī, Zakariyyah, *ʾAsnā al-Maṭālib* (Dār al-Kitāb al-Islāmī, ND), 3:110; Ibn Mufliḥ, *al-Ādāb al-Sharʿiyyah* (Dārʿ Ālam al-Kutub, ND), 1:280.

58 A similar issue related to imaginary pictures is thinking of imaginary images. This is also related to the previous section on images of women. See for example: ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 6:372-373; Ibn al-Ḥājj, *al-Madkhal* (Dār al-Turāth, ND), 2:194-195; ʾIbn Mufliḥ, *al-Ādāb al-Sharʿiyyah* (Dārʿ Ālam al-Kutub, ND), 1:98; al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 3:380-381; al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 7:205-206; al-Irāqī, *Ṭarḥ al-Tathrīb* (al-Maṭbaʿah al-Miṣriyyah al-Qadīmah, ND), 2:19.

59 Find these rulings in for example: al-Munāwī, *al-Fayd al-Qadīr*, 1st ed. (Egypt: al-Maktabah al-Tijāriyyah al-Kubrā, 1937); Ulaysh, *Minaḥ al-Jalīl* (Beirut: Dar al-Fikr, 1989); al-ʿAdawī, *Ḥāshiyat al-ʿAdawī ʿAlā al-Kharashī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1997); al-Mardāwī, *al-ʾInṣāf*, 1st ed. (Cairo: Hajar Publishing, 1995); al-ʿAdawī, *Ḥāshiyat al-ʿAdawī ʿAlā Kifāyat al-Ṭālib al-Rabbānī* (Beirut: Dār al-Fikr, 1994), 2:460; al-Ṭaḥāwī, *Sharḥ Maʿānī al-ʾĀthār*, 1st ed. (Dārʿ Ālam al-Kutub, 1994); al-Nawawī, *al-Minhāj Sharḥ Ṣaḥīḥ Muslim*, 2nd ed. (Beirut: Dārʾ Iḥyāʾ al-Turāth al-ʿArabī, 1972); ʾIbn Mufliḥ, *al-Ādāb al-Sharʿiyyah* (Dārʿ Ālam al-Kutub, ND); ʾIbn Ḥajar, *Fatḥ al-Bārī* (Beirut: Dār al-Maʿrifah, 1959); al-Qārī, *Mirqāh al-Mafātīḥ*, 1st ed. (Beirut: Dār al-Fikr, 2002); ʾIbn ʿAbd al-Barr, *al-ʾIstidhkār*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000); al-Bakrī,*ʾIʿānat al-Ṭālibīn*, 1st ed. (Dār al-Fikr, 1997); al-ʿAynī, *ʿUmdat al-Qārī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2001); al-ʿAynī, *al-Bināyah Fī Sharḥ al-Hidāyah*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000); al-Sawi, *Hashiyat al-Sawi Ala al-Sharh al-*

## 4.3.2 Imaginary Images as Drawing

As for imaginary beings, the Shāfi īs explicitly mention the ruling on such pictures, like those of a horse with wings and the like. The relied upon position in their school is that imaginary beings which would have a soul would take the same ruling as drawing a real being with a soul. Another opinion in the school is that of permissibility. The Ḥanbalīs and some Ḥanafīs did not allow pictures at all for that which has a soul, and thus apparently would include imaginary beings with a soul in this ruling. The Ḥanbalīs did, however, allow a being that had a head and a non-animal body. For the Mālikīs, what is apparent is that imaginary flat pictures would fall under the rulings they mentioned for pictures of that which have a soul in general, which they divided into types. Flat pictures which do not have a shadow which are made to be respected are disliked. If it is made for that which is disrespected, then it is khilāf al-ʾawlā.

Even if the pictures of these digital images are small like profile pictures and thumbnails on social media applications, then some of the scholars explicitly mentioned that the ruling would still be the same even if the picture was small (what the Ḥanafīs mentioned regarding overlooking small pictures is regarding prayer and not producing the picture), while this is understood from the general statements of other scholars. The Ḥanbalīs, included in the last group, mentioned the general ruling would apply as long as the features of the face are clear, even if they can only be seen with scrutiny. Thus they did not allow drawing on a ring even though this would be a small picture.[60]

## 4.3.3 Caricatures and Emojis

Regarding cartoon characters, emojis, "avatars," and the like that take an original photo and then adds changes to it, these are similar to a person who looks into a mirror that they have drawn changes on which thus changes the original reflection, or one who looks into a pond and makes changes to the water to change the original reflection, or looking into a convex or concave mirror which changes how one looks. What could be said about some of these cases is that this is makrūh as it goes against the dignity of human beings and deforms their created state and mocks them. Nonetheless, making analogy of this to drawing by the hand is problematic.

However, drawing these pictures from scratch, and not by using original photographs, would be impermissible even if they are not as detailed as the real beings.[61] Digital drawing with the hand at the computer or electronic device would take the same ruling as drawing by hand as the same effective causes would apply.

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*Saghir*, (Dar al-Ma'arif, ND); Ibn al-ʿArabī, *Sharḥ al-Tirmidhī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, ND); ʾIbn Rajab also has a book on rings that discusses some of these issues.

60 al-Shirbīnī, *Mughnī al-Muḥtāj* (Dār al-Kutub alʿ- Ilmiyyah, 1994), 4:409; al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983), 7:432. See also the marginalia of al-Shirwānī and Ibn Qasim; alʾ-Anṣārī, Zakariyyah, *ʾAsnā al-Maṭālib* (Dār al-Kitāb alʾ-Islāmī, ND), 3:225-226, See also see the Ḥashiyah of al-Ramlī; al-Ramlī, Nihāyat al-Muḥtāj (Beirut: Dar al-Fikr, 1984),ʾ Ibn Nujaym, *al-Baḥr al-Rāʾiq*, 2nd ed. (Dār al-Kitāb alʾ-Islāmī, ND), 2:29-31; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 1:647-650; al-Buhūtī, *Kashshāf al-Qināʿ* (Dar al-Kutub alʿ- Ilmiyyah, ND), 1:279-280; ʾIbn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qahirah, 1968),7:272 -283; al-Māwardī, *al-Ḥāwī al-Kabīr*, 1st ed. (Beirut: Dār al-Kutub alʿ-Ilmiyyah, 1999), 9:565.

61 From the effective causes for prohibiting picture making as mentioned by the jurists: rivaling the creation of Allah, imitating those who worshipped idols and pictures, that these pictures could be taken to be over-revered, and that they prevent the angels from entering where they are. See sources cited at the beginning of the section. For a discussion on multiple effective causes, see for example: al-Mardāwī, al-Taḥbīr (Riyadh: Maktabat al-Rushd, 2000), 3250-3260.

# 5 SECTION FOUR: ONLINE INTERACTIONS BETWEEN SPOUSES, RELATIVES, AND FRIENDS

## 5.1 Video Calling

While modern technology is beneficial in allowing family members to communicate with each other with picture and sound from all around the world, the reality of such technology is that there is a fear one's video and audio calls could be monitored. This is especially pertinent for women speaking to their husbands, maḥrams, or Muslim female friends without ḥijāb from the privacy of her home. There is the chance that a foreign man could be monitoring and thus see her. However, one is not sure if one is being monitored or not, and it could very well be that there is a low chance of this actually happening.

### 5.1.1 Women Entering the Bathhouse

From the legal issues that were discussed by classical scholars that are related to the issue at hand, i.e. scenarios where there is fear that Muslim women could be seen without proper dress, is the issue of women entering bathhouses. Scholars differed concerning this matter, but generally were cautious due to the fear of a woman's ʿawrah being seen or her seeing the ʿawrah of others, and because there is to be exaggeration in making sure women are not exposed. Some scholars said that it would not be allowed for women to enter a bathhouse unless there was an excuse or necessity. Others said it was disliked. Other scholars said it would be allowed as long as no one saw their ʿawrah and they did not see the ʿawrah of others, while some scholars said it would be allowed if she was used to entering bathhouses and there would be difficulty in leaving them. There were also scholars who adjusted the ruling based on the possibility of falling into the impermissible. They said that it would be allowed to enter into bathhouses if they would be safe from falling into the ḥarām of seeing or being seen, and some said if most likely they will not fall into the ḥarām. If they fear they will then it would be disliked, and if they know they will then it would be impermissible. Some scholars added that it could be said: it would be ḥarām if they think that most likely they will fall into the impermissible. Other details/positions were mentioned as well by scholars.[62]

### 5.1.2 Awrah of a Muslimah in Front of Non-Muslim Women

Another issue that is related to the one at hand since it deals with the fear of a Muslim woman being exposed is the issue of how a Muslim woman is to dress in front of a non-Muslim woman. This is a differed upon issue. Some scholars did not allow a non-Muslim woman to see a Muslim woman the way a Muslim woman can, due to the fear that she may describe her physically to a man.[63] Thus, the fear of exposure led them to take precaution in dress.

*Therefore:*[64]

62 See for example: ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 2nd ed. (Beirut: Dār al-Fikr, 1992), 6:51-52; *al-Fatāwā al-Hindiyyah*, 2nd ed. (Dār al-Fikr, 1893), 5:363;ʾ Ibn Juzayy, *al-Qawānīn al-Fiqhiyyah* (NP, ND), 289; alʾ-Anṣārī, Zakariyyah, *ʾAsnā al-Maṭālib* (Dār al-Kitāb alʾ-Islāmī, ND), 1:72; ʾIbn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qahirah, 1968), 1:169-170; ;ʾ Ibn Mufliḥ, *alʾ-Ādāb al-Sharʿiyyah* (Dārʿ Ālam al-Kutub, ND), 3:321; ; al-Buhūtī, *Kashshāf al-Qināʿ* (Dar al-Kutub alʾ- Ilmiyyah, ND), 1:158-159; al-Zurqānī, Sharḥ al-Zurqānī, (Beirut: Dar al-Kutub alʾ-Ilmiyyah, 2002), 7:81, See also the Ḥāshiyah of al-Banānī.

63 See for example: al-Qurṭubī, *Tafsīr al-Qurṭubī*, 2nd ed. (Cairo: Dār al-Kutub al-Miṣriyyah, 1964), 12:233; al-Haytamī, *Tuḥfat al-Muḥtāj* (al-Maktabah al-Tijāriyyah al-Kubrā, 1983); 7:200; ʾIbn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qahirah, 1968), 7:105-106.

64 When it comes to sending photos, sending pictures without proper dress or sending nude pictures to the spouse is an issue that involves other topics that would need to be discussed: the ruling on photography, the ruling on being nude in front of the spouse, the fear of the photos being lost, and the ruling on being nude while alone to take the photos. Due to the brevity of the paper only video chatting without ḥijāb was discussed.

It can be said that: if a woman knows that someone else who is not allowed to see her is watching her video call, then it would be impermissible to conduct a video call without ḥijāb. If likely someone else is watching then it could be said that it would be impermissible to not be in ḥijāb, and it could be said that it is disliked. If they know they are not being watched then it would be allowed, and the same could be said for if most likely they are not being watched. As for not allowing this at all due to the off chance that they may be seen based on the position that does not allow Muslim women to be seen by non-Muslim women due to the chance that they may describe them, it seems, and Allah knows best, that this far fear would not need to be taken into consideration, for non-Muslim women would enter upon the wives of the Prophet peace be upon him and they did not veil due to this, nor were they ordered to do so. In any case, if a woman takes precaution and always dresses properly while on video calls then this would be good. Muslims should return to experts in the field of telecommunications and the like to make sure that they are using secure and safe applications, and to evaluate if there really is a fear of being watched or not.

# 6 CONCLUSION:

This was a summary of a humble attempt to do takhrīj for a few contemporary issues pertaining to family law and technology. It is essential for the student of knowledge to return to the sources cited in this paper to grasp the various opinions and details on these matters which could not be mentioned due to the page limit requirement. Due to brevity, opinions of contemporary scholars were not mentioned, but the student of knowledge should be aware of them and the opinions of contemporary fiqh councils. It is my hope that this paper gives a glimpse at how classical legal scholarship can be used to address new legal issues, and how the Divine Law is suitable for every time and place.

May Allah accept from us, and make our deeds a proof for us and not against us on the day that we meet Him. May His peace and blessings be upon His last and final messenger, and upon his family, companions, and those who follow in their footsteps until the end of time.

And Allah the Exalted knows best.