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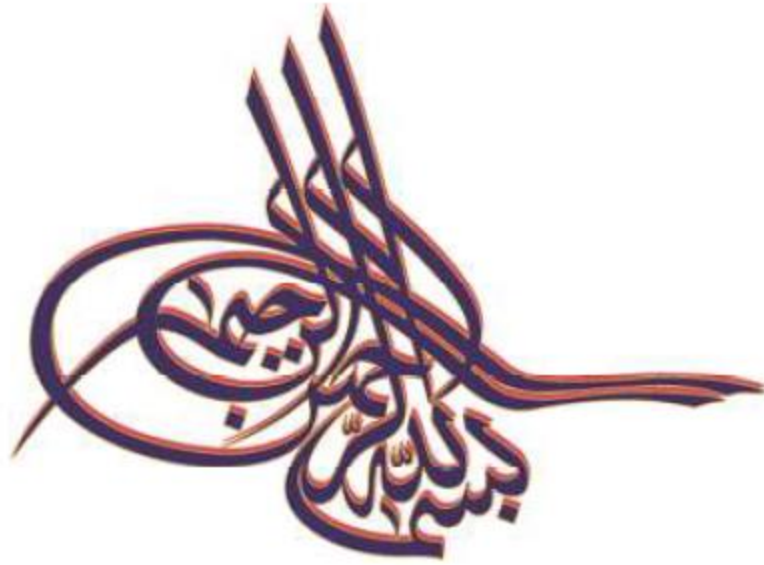
How do Mental Health Disorders Impact One's Moral and Legal Responsibilities?

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1© Jamaal Zarabozo. 2023. The author would like to thank all those who participated in his two-quarter course, "Mental Health and Legal Capacity" (2023). This author would also like to pay tribute to Shaikh Malik Badri (who passed away in 2021, may Allah have mercy on him), who in his visits to Colorado in the 1980s encouraged this author to delve into the study of Islam and psychology. Finally, this author would like to express his prayers for hope and mercy for all who are suffering from mental illness and their family and loved ones who are also experiencing these trials with them.

"الأراء في هذا البحث تعبر عن رأي الباحث وليس بالضرورة عن رأي أمجا"

Opinions in this research are solely those of the author and do not represent AMJA.



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1 PART I: INTRODUCTION

1.1 THE IMPORTANCE OF THE TOPIC

The recent pandemic perhaps heightened some people's awareness of mental health as, for some, the overwhelming changes to lifestyle brought about by the pandemic were challenging. In reality, though, questions of mental health should always be of concern. Mental health issues have always been present and can sometimes be very dangerous for the individual or for those around the individual.

Even without getting into the voluminous literature on the relationship between religion, religiosity, and good mental health,² one could identify many reasons why Islam (according to its belief system) in particular should have a positive impact on a person's mental health. Perhaps first and foremost is that the religion of Islam is perfectly consistent with the true nature and disposition of a human (a person's *fitrah*), upon which every human has been born.³ The concept of *tauheed* (pure monotheism) allows an individual to seek the pleasure of only one God, needing to follow only one consistent direction, as opposed to those who are chasing after multiple goals/gods, which are many times contradicting and impossible to all satisfy.⁴ Islam clearly defines a purpose and meaning to life, which has been found to be positively correlated with mental well-being.⁵ A Muslim need not seek (false) sources of strength, as in Islam one has a direct personal relationship with their God, Lord, and Creator and can turn to Him at any time for guidance and support.⁶ As opposed to liberalism and secularism (and their own definitions of "progress"), Islam gives humans "sound roots" and a firm belief to hold on to that need not be left behind every few years as society

2 It is not difficult to find studies that find a positive correlation between religiosity and good mental health. However, there is no question that empirical studies on the relationship between religion and mental health are going to be fraught with difficulties. The difficulties include: How does one identify religiosity within an individual? Simply by external practice or perhaps personal claims? How does one identify if individuals actually have a good grasp or knowledge of what a religion teaches? For example, this author has come across some "practicing" Muslims who state things like, "I don't believe that Allah gives me what I deserve," and this obviously leads one to wonder how much such individuals truly understand Islamic beliefs, as it is a fundamental belief that Allah commits no injustice to any human being.

3 The Prophet Muhammad (peace and blessings of Allah be upon him) has stated, "No child is born but upon Fitra (the natural disposition to know their Lord)." He then said, "Recite: The nature made by Allah in which He created man, there is no altering of Allah's nature; that is the right religion" [al-Room 30]. Recorded by Muslim.
<https://sunnah.com/muslim:2658d>.

4 Thus, Allah has said, "Allah presents an example: a man [i.e., slave] owned by quarreling partners and another belonging exclusively to one man - are they equal in comparison? Praise be to Allāh! But most of them do not know" (al-Zumar 29).

5 See, example, Joaquin Carcia-Alandete, "Does Meaning in Life Predict Psychological Well-Being? An Analysis Using the Spanish Versions of the Purpose-In-Life Test and the Ryff's Scales," *The European Journal of Counselling Psychology* (Vol. 3, No. 2, September 2014), pp. 89-98.

6 Allah has said, for example, "And when My servants ask you, [O Muhammad], concerning Me - indeed I am near. I respond to the invocation of the supplicant when he calls upon Me. So let them respond to Me [by obedience] and believe in Me that they may be [rightly] guided" [Al-Baqarah 186].

changes its understandings or whims.⁷ Additionally, Islam is also a religion of moderation,⁸ avoiding extremes which in themselves could be forms of mental health disorders.⁹ Finally, simply to keep this list short, Islamic theodicy provides an individual with a sound understanding of the trials and tribulations of this world, such that one realizes that there is a wisdom and purpose to every event and, as such, there is no absolute evil allowed by Allah in His Creation.¹⁰ These are just a few of many factors that come to mind that, at least theoretically, support the hypothesis that Islam should have a positive impact on one's mental health.

However, mental health issues have existed among Muslims since the time of the Prophet (peace and blessings of Allah be upon him). Thus, even with the positive impact of Islam, Muslims have never been immune from mental health disorders.¹¹ Thus, mental health disorders are definitely a type of trial that Allah inflicts upon both believers and non-believers, just like any other disease or trial of this world. Hence, it has always been necessary to have a fiqh related to mental health disorders.

At the same time, though, one could argue that knowledge of this fiqh is even more important and relevant today than it has been in the past. Today's world has been referred to as "the age of

7 Allah has said, "Have you not considered how Allah presents an example, [making] a good word like a good tree, whose root is firmly fixed and its branches [high] in the sky? It produces its fruit all the time, by permission of its Lord. And Allah presents examples for the people that perhaps they will be reminded. And the example of a bad word is like a bad tree, uprooted from the surface of the earth, not having any stability. Allah keeps firm those who believe, with the firm word, in worldly life and in the Hereafter. And Allah sends astray the wrongdoers. And Allah does what He wills" (Ibraaheem 24-27).

8 For texts related to this context balance and moderation in Islam and avoidance of extremism, see Abdul-Rahmaan al-Mutairi, *Religious Extremism in the Lives of Contemporary Muslims* (Denver, CO: Basheer Publications, 2001), pp. 67-73.

9 There is a change from the Diagnostic and Statistical Manual of Mental Disorders IV (DSM-IV) to the DSM-5. In the DSM-V, mental health is essentially viewed as a spectrum, where the two extremes would be seen as a disorder. In the DSM-IV, mental illness was more of an "either/or" phenomenon. Thus, for example, when it comes to focusing, one can either have issues focusing at all, which would be ADHD, or could become too focused, which would be OCD (Obsessive-Compulsive Disorder). Thus, avoiding of extremes is key. See, for example, Steven Buser and Leonard Cruz, *DSM-5 Insanely Simplified: Unlocking the Spectrums within DSM-5 and ICD 10* (Asheville, North Carolina: InnerQuest, 1014), pp. 44ff.

10 In a supplication, the Prophet (peace and blessings of Allah be upon him) stated, "[O Allah,] evil is not to be attributed to you." (Recorded by Muslim, Ahmad, Abu Dawood, al-Nasaaee, al-Tirmidhi and others.) <https://sunnah.com/muslim:771a>.

11 For some historical surveys, see Michael W. Dols, *Majnun: The Madman in Medieval Islamic Society* (Oxford, England: Clarendon Press, 1992), passim; Hanafy A. Youssef and Fatma A. Youssef, "Evidence for the existence of schizophrenia in medieval Islamic society," *History of Psychiatry* (VII, 1996); Ihsan al-Issa, "Mental Illness in Medieval Islamic Society," in Ihsan al-Isaa, ed., *al-Junun: Mental Illness in the Islamic World* (Madison, CN: International Universities Press, Inc., 2000), pp. 43-70. In addition to the above descriptive works, contemporary researchers have also noted how many early Muslim scholars identified and dealt with mental health disorders. Much of that medical research did make use of earlier Greek authorities, such as Galen, but the relationship between the Arabic medical sources and the Greek medical sources is a complicated one. Byson, for example, writes, "First, some scholars have seen the names of many prominent Greek authors such as Galen and Hippocrates and the names of their works mentioned in the Hawi [of al-Raazi], and they have tried to compare the texts in the Hawi directly with these Greek sources. As a result they have often been perplexed, or even disappointed, to find that the correspondence between the Hawi passages and the Greek texts is frequently at best quite loose, at worst indiscernible." Jennifer S. Bryson, "The Kitab al-Hawi of Razi (ca. 900 AD), Book One of the Hawi on Brain, Nerve, and Mental Disorders: studies in the transmission of medical texts from Greek into Arabic into Latin," (Ph.D. Dissertation, Yale University, 2000), p. 10.

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anxiety,¹² producing all sorts of unhealthy stress in one's life. This is understandable given that humanity seems to be living under the threat of a nuclear or environmental catastrophe. In the United States, gun violence seems to be uncontrolled.¹³ Advances in technology leading to information overload¹⁴ and the advent of social media¹⁵ have had significant impacts on mental health. Added to this must be the perceived hatred¹⁶ and division in American society, and its related culture wars. On top of all of that, recently there was a pandemic! This author assumes that one could probably add the level of secularity in people's lives, their lack of connection to God,¹⁷ their unfamiliarity with Allah's true religion, and materialism to the above as further harmful factors for one's mental health.

12 An interesting study on the interaction of anxiety (thus, mental health) and the pharmaceuticals (specifically Miltown and Valium), see Andrea Tone, *The Age of Anxiety: A History of America's Turbulent Affair with Tranquilizers* (New York, NY: Basic Books, 2009), *passim*.

13 In one week in April 2023, news media were reporting about: A youth who got shot for knocking on the wrong door; a person who got shot for driving down the wrong driveway; two people who got shot (even after apologizing) for mistakenly getting into the wrong car in a parking lot; a six-year-old girl and her parents who got shot because their basketball rolled into their neighbor's yard. According to <https://massshootingtracker.site/>, as of April 22, 2023, there have been 203 mass shootings in the United States, well over one a day. Allah only knows what kind of impact that must be having on people's mental well-being. Concerning the mental health impact of gun violence, see <https://www.nejm.org/doi/full/10.1056/NEJMp2209422>.

14 Woolfson notes how a writing in 1903 discussed the impact of the metropolis on an individual and then goes on from there to discuss possible negative impacts of information overload and some ways of dealing with it. Beverly Woolfson, "Information Overload: When Information Becomes Hazardous to Your Health," *Legal Information Management* (Vol. 12, No. 1, March 2012), *passim*.

15 According to [helpguide.org](https://www.helpguide.org), "Since it's a relatively new technology, there's little research to establish the long-term consequences, good or bad, of social media use. However, multiple studies have found a strong link between heavy social media and an increased risk for depression, anxiety, loneliness, self-harm, and even suicidal thoughts." (<https://www.helpguide.org/articles/mental-health/social-media-and-mental-health.htm>.) Ulvi, et al., found, "Results indicate that while social media can create a sense of community for the user, excessive and increased use of social media, particularly among those who are vulnerable, is correlated with depression and other mental health disorders." [See Ulvi, et al., "Social Media Use and Mental Health: A Global Analysis," *Epidemiologia* (Vol. 3, No. 1, 2022), p. 11.] Dr. Nisar, et al., surveyed 100 students from different schools in Karachi, Pakistan. They highlighted negative social problems, mental disturbances, and even physical health impacts resulting from social media. [See Saima Nasir, et al., "Impact of Social Media on General Health of Adolescent," *International Journal of Scientific Research Publications* (Vol. 10, No. 12), p. 581.] Maguire and Pellosmaa's research found, "Higher rates of depression, anxiety, and stress were positively correlated with more social media use and TikTok addiction. Younger individuals were also more likely to score higher on the social media scales. Females, as well as individuals with severe depression/anxiety/stress scored higher on social media use than males and individuals with normal levels; however, an interaction between gender and social media use was not found. Additionally, individuals with severe depression/anxiety/stress scored higher on TikTok addiction than individuals with normal levels." [See Maguire, Skylar L. and Pellosmaa, Hollie, "Depression, Anxiety, and Stress Severity Impact Social Media Use and TikTok Addiction" (Chancellor's Honors Program Projects, 2022), https://trace.tennessee.edu/utk_chanhonoproj/2511.] Much further research needs to be done. The discussion though needs to be very nuanced, as can be concluded from this work: Devan Rose, *The Social Media Debate: Unpacking the Social, Psychological, and Cultural Effects of Social Media* (New York, NY: Routledge, 2022), *passim*.

16 Social media has had an impact in this realm as well. In their study of India, Brazil, Myanmar and the UK, Banaji and Bhat noted, "Of the hundreds of messages we evaluated to build our typology...and to give context to our interviews, and the thousands we collected since beginning our work on social media and disinformation in 2018, most constitute hate speech, some are implicated in hate crimes, and many remained online for extended periods, despite being reported to platforms and/or to the police. Social media has become an important, sometimes the dominant, way for hundreds of millions of individuals to articulate their sense of self, construct their (racial, caste, gender, sexual, religious) identities, and address demands to politicians and corporations." Shakuntala Banaji and Ramnath Baht, *Social Media and Hate* (London, England: Routledge, 2022), p. 119.

17 Allah has said, "And whoever turns away from My remembrance - indeed, he will have a depressed life, and We will gather him on the Day of Resurrection blind" [Ta-ha: 124].

Thus, the prevalence of mental health illness in the United States may not come across as shocking. Figure 1 presents some of the data concerning mental health in the United States in 2019. It states that virtually 20% of all American adults experienced a mental illness in 2019.¹⁸ That is one out of every five people!

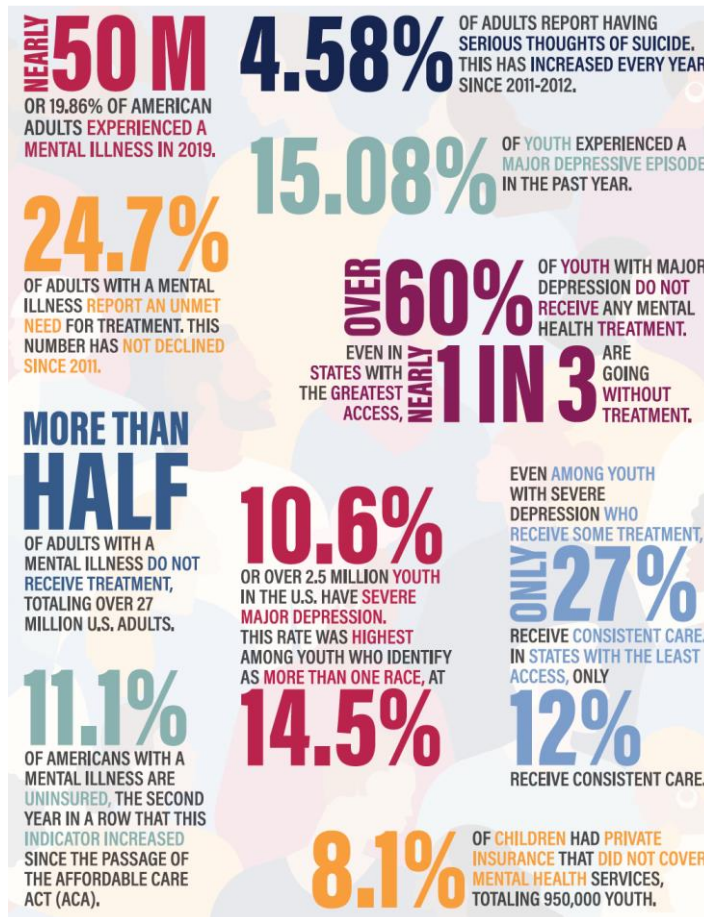


Figure 1. State of Mental Health in the United States. Source: Mental Health America, 2022 The State of Mental Health in America, p.

8.

The situation, it can be argued, is even more sensitive for young people. According to the OECD,

Half of all mental illnesses begin by the age of 14 and three-quarters by mid-20s (Kessler et al., 2007[10]), with anxiety and personality disorders sometimes beginning around age 11 (OECD, 2012[11]). Mental health problems represent the largest burden of disease among young people, and

18 As discussed later, what can be defined as a mental illness is a little bit of a tricky question.

mental ill-health is at least as prevalent among young people as among adults (OECD, 2015[12]). A survey across 10 countries found around one-quarter of young people had a mental disorder (OECD, 2012[11]).¹⁹

However, in particular, Muslim American youth of today may be more vulnerable to mental health issues. This is the case several reasons. Self-identity is considered important for one's overall mental health. This can be a challenge for any minority. Muslim American youth have to deal with what has been called hyphenated personalities (Muslim-Americans²⁰, Pakistani-American Muslims, and so on) and sometimes even need to develop tri-personalities (one for school/work, one for home and one's parents, one for the mosque and the expectations of the Muslim community). Added to this is the problem of Islamophobia (especially since 9-11) and microaggressions. It is a challenge for someone to be at ease when they are seen as "the problem." In addition to all of that, the dominant paradigm of "secular humanism," which one is exposed to from an early age, can be a direct challenge to one's religious beliefs, and thus cause a crisis in faith. It is also possible that in some cases a person could be afflicted with mental health issues—a type of trial from Allah, like economic or physical trials—that is the result of one's disobedience to Allah.²¹ Unfortunately, today's youth are exposed to and admittedly engaged in pornography,²² sexual immorality,²³ alcohol, illicit drug use and other clearly sinful behavior.²⁴ Given all of the above, one

19 OECD, "Children and Young People's Mental Health in the Digital Age (<https://www.oecd.org/els/health-systems/Children-and-Young-People-Mental-Health-in-the-Digital-Age.pdf>) p. 4.

20 There has even been debates as to whether such people are "Muslim Americans" or "American Muslims."

21 Many have asked this author the question: "How can I tell if the trial that I am going through is a punishment from Allah or simply Allah testing me to raise my rank?" That is not the truly important question. The truly important question is to understand how to react to the trial that one is facing. When one reacts correctly and positively, then every "trial" is transformed into a blessing for the individual.

22 One survey found that 59.23% of Muslim youth view pornography. See <https://www.thefyi.org/porn-findings/#:~:text=Do%20young%20Muslims%20watch%20porn,the%20Breaking%20Down%20Myths%20section>. Also see <https://www.soundvision.com/article/pornography-addiction-a-growing-problem-for-muslim-families-with-long-term-consequences>.

23 One survey of Canadian and American Muslim youth had 54.8% of them reporting to have had experience sexual intercourse while about two-thirds of them stating they have had sex prior to marriage. See Sobia Ali-Faisal, "What's Sex Got to Do with It? The Role of Sexual Experience in the Sexual Attitudes, and Sexual Guilt and Anxiety of Young Muslim Adults in Canada and the United States," (Journal of Muslim Mental Health ISSN1556-4908 Volume 10, Issue 2, 2016 <http://dx.doi.org/10.3998/jmmh.10381607.0010.202>). Also see the discussion in Nawal Q. Umar, "Let's Talk About Sex (Even Though We're Muslim) A Qualitative Research Proposal to Explore Parent-Teen Communication about Sexual and Reproductive Health in Muslim-American Families," (MPH Thesis: Columbia University, 2021), p. 6.

24 A general discussion of such "risk behaviors" is found in Sameera Ahmed, Wahiba Abu-Ras, and Cynthia L. Arfken, "Prevalence of Risk Behaviors among U.S. Muslim College Students," *Journal of Muslim Mental Health* (Volume 8, Issue 1, 2014), *passim*.

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should not be surprised that, for example, depression, anxiety, and even suicidal thoughts²⁵ are present among Muslim youth.²⁶

Perhaps nothing more needs to be said to highlight the seriousness of this topic. The big question though is whether the Muslim jurists and Imams can meet the challenges of such a phenomenon.

1.1.1 Meet “Nebil”

How to analyze and deal with a particular situation can definitely be challenging. In his Ph.D. dissertation, Zaid Adhami introduces the reader to “Nebil” (a pseudonym). Adhami discusses Nebil for many pages.²⁷ However, the crux of Nebil’s issues is caught in the following passage:

This newfound devotional commitment to living out religious teachings fixated in particular on ritual worship. This gradually evolved into an intense attentiveness to every minute detail of ritual performance (ṣalāh in particular), and anxiety about whether it was being performed correctly and thus being accepted by God. The attentiveness became obsessive, and the anxiety became debilitating, to the extent that every prayer became a site of severe psychic turmoil and pain. This was later diagnosed as symptoms of Obsessive-Compulsive Disorder (O.C.D.). Nebil’s struggles with ṣalāh played out in tandem with other threads of psychic pressure and instability, primarily in relation to his spiritual life. These threads came together as a downward spiral that led him to a psychological breakdown. Thus at the height of his experience of spiritual connection with God, Nebil was also undergoing an extreme psychological breakdown.

25 One study stated the following, “US Muslim adults were 2 times more likely to report a history of suicide attempt compared with respondents from other faith traditions, including atheists and agnostics. The proportion of US Muslim respondents who reported suicide attempts was larger than the proportion reported from Muslim-majority communities [sic]. Unlike other studies, self-reported level of religiosity was not a protective factor for reporting suicide attempts.” Awaad, et al., “Suicide Attempts of Muslims Compared With Other Religious Groups in the US,” (<https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2782161>). However, the methodology of that paper was highly criticized by Osman Umarji. His response can be found at: https://www.dropbox.com/s/4mowz2vu38npl57/Muslim%20Suicide%20Study%20Comments_JAMA.pdf?dl=0. At the same time, though, this author must mention that via anecdotal evidence from discussions with various Imams and Youth Coordinators, suicide and suicidal thoughts are definitely present among Muslim American youth and are topics that need to be addressed.

26 The Prophet (peace and blessings of Allah be upon him) stated, “Immorality never appears among a people to such an extent that they commit it openly, but plagues and diseases that were never known among the predecessors will spread among them.” <https://sunnah.com/ibnmajah:4019>. Recorded by ibn Maajah and al-Haakim, by al-Tabaraani in al-Ausit, and by al-Baihaqi in Shaab al-Imaan. It is graded hasan lighairih by Shuaib al-Arnaaoot, et al., and sahih by al-Albaani. See Shuaib al-Arnaaoot, footnotes to ibn Maajah al-Qazweeni, Sunan ibn Maajah (Damascus, Syria: Daar al-Risaalah al-Aalamiyyah, 2009), vol. 5, p. 150; Muhammad Naasir al-Deen al-Albaani, Silsilat al-Ahaadeeth al-Saheehah (Riyadh, Saudi Arabia: Maktabah al-Maarif, 1995), vol. 1, pp. 216f. There is no reason to assume that this hadith is not inclusive of new forms of mental illness.

27 Adhami specifically discussed Nebil’s case on pp. 382-397; after that, he moves on to an analysis and similar other cases. Zaid Adhami, “Faith with Doubt: American Muslims, Secularity, and the ‘Crisis of Faith’” (Ph.D. Dissertation, Duke University, 2017).

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After reaching the low-point of this downward spiral of psychological instability, Nebil found that he could no longer regularly perform ṣalāh. When he would try to pray or perform other practices of ritual devotion, he would feel an acute physical pain in his side, and relive the emotional anxiety of his experiences. As he came to understand it later, this was due to the trauma of these experiences being stored in muscle memory. While he desired to pray and would try, the experience was too painful and unsettling for him to be able to regularly do so.

After the psychological breakdown, Nebil began to engage with Jungian psychotherapy, through which he processed his experiences and began to heal. Through this process of therapy, he came to understand that the prolonged trauma of dealing with his father's mental illness was the fundamental source of his own psychological struggles. When Nebil became an adolescent, his father began to suffer from severe mental illness. For Nebil, this manifested itself most acutely in his father's extremely unpredictable mood swings. "He could turn on you any minute. Something very small and insignificant, he could explode and just get super angry." Nebil thus learned to constantly "walk on egg shells" around the house, because it was an "insecure environment" in which "chaos could come at any second." He never knew when his father would "flip out at totally irrational things." This led him to be in a constant state of perfectionism and anxiety, trying to anticipate what minor thing would provoke his father's next fit of "random rage." "It's almost like I was playing that out with my O.C.D. at some level, with this intense fear that something bad is going to happen if I don't comply."²⁸

Nebil expressed his frustration with ritual in particular, stating, "[It] is one of those things you feel you have to do. It's an obligation. I always have this tension with things I feel I'm not doing out of my own will, things I'm doing because I have to because someone else wants me to, or if I don't something bad will happen. That kind of thinking is a pet peeve for my nervous body. Because I feel trapped."²⁹

Adhami notes,

While in the previous two chapters [of his dissertation] we saw numerous examples of how devotional absorption can serve as the grounds of certainty and stability upon which people live out their faith commitments (particularly in the face of intellectual doubts), Nebil's story is an example of the opposite situation: devotional absorption itself leading to uncertainty, instability, and disillusionment. This is because absorption

²⁸ Adhami, pp. 395-396.

²⁹ Ibid., p. 397.

in this devotional form of life may not always "work" in the way that is expected.

What we have here is a case of what has been called "ritual failure".³⁰

Later, Adhami also states, "What we see in such experiences is that absorption in devotional practice at times fails to provide the desired outcomes, or in fact has undesired and unwelcome consequences. This can then produce deep feelings of disappointment, hurt, betrayal, frustration, failure, ambivalence, and dilemmas about the religious discourse that led to these undesired consequences."³¹

Finally, Adhami notes,

Nebil felt deeply betrayed by the religious system and discourse. He perceived the religious system to be deeply conflicting with his intuitive sense of right and wrong, given the way in which the expectations of that system are "out of touch" with his experiences, circumstances, and needs. "No scholar or imam that I've explained my situation to has ever told me that I don't have to pray." They would insist that "ṣalāh is still wājib [obligatory]." While he knew intuitively that this expectation could not be correct, he still couldn't "help but feel guilty" and "alienated from Islam" as a result, since he still felt bound by the authority of this discourse but couldn't fulfill the standards and obligations presented as God's will. He explained how with ṣalāh most centrally, but also with other experiences around the same time, he knew that what he "needed to do couldn't be justified by the law." His experiences thus left him with no clear framework—and thus deep uncertainty and ambivalence—about what it means to live out his commitment to Islam and God.³²

It would be very telling to do a survey of Imams and scholars throughout the United States to see how they would respond to Nebil's case. According to what was reported above, all the Imams told him that he must still pray. Would there be any Imam or scholar who would tell an individual like Nebil, "You are absolved from the prayer"? Would there be Imams or scholars who might seek to delve further into this individual's state and try to determine his understanding of Islam and his relationship to Allah? Would they also seek to ask how much he is involved in probable forbidden practices, as Adhami makes reference to his "occasional performance at hip-hop events"³³? Maybe

30 Ibid., p. 398.

31 Ibid., p. 401.

32 Ibid., pp. 404-405.

33 Ibid., p. 383.

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even ask what kinds of medication he may be taking.³⁴ It seems clear that some understanding of mental illness needs to be had by the Imam or scholar in order to deal with Nebil's situation appropriately.

The question of what are the responsibilities on Nebil's shoulders highlights the intersection between law and mental illness. In order for this intersection to be understood properly—and therefore applied properly—there must be a consistent and meaningful definition of “mental illness/disorder.” Without a precise definition, mental illness would almost be a meaningless concept for law.³⁵

1.2 Defining Mental Illness/Disorder

It is difficult to deal with a topic without first precisely conceptualizing it. Unfortunately, that may not be so simple in this case. In their textbook, Gray and Bjorklund stated, “[M]ental disorder has no really satisfying definition. It's a fuzzy concept. Everyone knows that, including the people who wrote DSM-5.”³⁶

The referred to DSM-5 is the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association (APA). Although it is not the only reference for classifying mental disorders,³⁷ in the United States, it is the leading authority on mental disorders.³⁸ The DSM-5 provides a definition of a mental disorder, but actually prefaces it by saying, “Although no definition can capture all aspects of all disorders in the range contained in DSM-5, the following elements are required.” Then it states the following:

A mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the

³⁴ Amazingly, depression and suicidal thoughts are side effects of over two hundred common drugs. See Julia Belluz, “Depression and Suicide Risk are Side Effects of more than 200 Common Drugs,” <https://www.vox.com/science-and-health/2018/6/14/17458726/depression-drugs-suicide-side-effect>.

³⁵ For as a good primer on the relationship between the definition and diagnosis of mental illness and the legal system in the United States, see Charles Scott, ed., *DSM-5 and the Law: Changes and Challenges* (Oxford, United Kingdom: Oxford University Press, 2015), passim.

³⁶ Peter Gray and David F. Bjorklund, *Psychology* (New York, NY: Worth Publishers, 2014, 7th Edition), p. 618.

³⁷ The World Health Organization (WHO) publishes the International Classification of Diseases (ICD). Chapter 5 of the ICD covers mental and behavioral disorders. It differs from the DSM in several ways. Since this paper is written in the United States, it will focus on the DSM. Concerning the differences between them, the interested reader may consult Steven Buser and Leonard Cruz, *DSM-5 Insanely Simplified: Unlocking the Spectrums within DSM-5 and ICD 10* (Asheville, North Carolina: InnerQuest, 1014); Peter Tyrer, “A Comparison of DSM and ICD Classifications of Mental Disorder,” *Advances in psychiatric treatment* (2014), vol. 20, 280–285.

³⁸ The power and influence of the DSM has been expressed by Horwitz: “Since publication of the manual's third edition in 1980, its diagnoses define what mental disorders are considered legitimate, how patients conceive of their problems, who receives government benefits, and which conditions psychotropic drugs target and insurance companies will pay to treat. They also delineate the curriculum that is taught to psychiatrists and other mental health professionals, the diagnoses that researchers and epidemiologists explore, and the psychic problems that public policies attempt to remedy.” Allan V. Horwitz, *DSM: A History of Psychiatry's Bible* (Baltimore, MD: John Hopkins University Press, 2021), p. ix.

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psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities. An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder. Socially deviant behavior (e.g., political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.³⁹

Gray and Bjorklund makes some interesting comments concerning this definition:

Although this definition provides a useful guideline for thinking about and identifying mental disorders, it is by nature ambiguous, open to a wide range of interpretations; and in some cases it seems to be contradicted by the descriptions of particular disorders in *DSM-5*...

Just how much distress or dysfunction must a syndrome entail to be considered "clinically significant"? As all behavior involves an interaction between the person and the environment, how can we tell whether the impairment is really within the person, rather than just in the environment? For example, in the case of someone living in poverty or experiencing discrimination, how can we tell if the person's actions are normal responses to those conditions or represent something more? When people claim that they are deliberately choosing to behave in a way that violates social norms and could behave normally if they wanted to, how do we know when to believe them?... These are tough questions that can never be answered strictly scientifically. The answers always represent human judgments, and they are always tinged by the social values and pragmatic concerns of those doing the judging.⁴⁰

Indeed, the DSM-5 "has attracted an enormous of criticism from, among others, feminists, gay activists, the anti-psychiatry movement,⁴¹ academics from various disciplines, and many

³⁹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders Fifth Edition DSM-5* (Washington, DC: American Psychiatric Publishing, 2013), p. 20.

⁴⁰ Gray and Bjorklund, *op cit.*, pp. 618-619.

⁴¹ It is not surprising that the anti-psychiatry movement would critique the DMS. Interestingly Thomas Szasz, a strong critic of the anti-psychiatry movement, is often attached to the movement through works of his like *The Myth of Medical Illness, Psychiatry: The Science of Lies and The Manufacture of Madness*. In his summary at the end of *The Myth of Mental Illness*, he writes, "1. Strictly speaking, disease or illness can affect only the body; hence, there can be no mental illness. 2. 'Mental illness' is a metaphor. Minds can be 'sick' only in the sense that jokes are 'sick' or economies are 'sick.' 3. Psychiatric diagnoses are stigmatizing labels, phrased to resemble medical diagnoses and applied to persons whose behavior annoys or offends others. 4..." Thomas Szasz, *The Myth of Medical Illness: Foundations of a Theory of Personal Conduct* (New York, NY: Perennial Library, 1974), p. 267. Note that he does leave the room open for brain diseases that can be diagnosed through physical testing. Definitely, Szasz is seen by some as something of an extremist—perhaps for good reason. For example, concerning schizophrenia, Szasz wrote, "[I]f there is no psychiatry, there can be no schizophrenics. In

psychiatrists."⁴² In addition, those who develop such manuals are humans, after all, and can be subject to all sorts of influences and even marketing techniques, making their conclusions not completely objective.⁴³

One cannot doubt the role of culture⁴⁴ and societal norms in the identification of mental disorder. In the APA definition quoted above, it refers to, "An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder." Changing standards of society can then make something which was once a mental illness into no longer

other words, the identity of an individual as schizophrenic depends on the existence of the social system of (institutional) psychiatry. Hence, if psychiatry is abolished, schizophrenics disappear. There assuredly remain persons who are incompetent, or self-absorbed, or who reject their 'real' roles, or who offend others in some other ways. But if there is no psychiatry, none of them can be schizophrenic. [Thomas Szasz, *Schizophrenia: the Sacred Symbol of Psychiatry* (Syracuse University Press, 1988), p. 136.] This led Fuller Torrey, "at one time deeply influenced by Szasz," to say, "His book on schizophrenia is one of the silliest books that you can find. It's absolutely absurd. The fact is that Szasz knows nothing about schizophrenia; has never treated people with it; has a private psychoanalytic practice in Syracuse and doesn't know what he is talking about." [Quoted in Rael Jean Isaac and Virginia Armat, *Madness in the Streets: How Psychiatry and the Law Abandoned the Mentally Ill* (New York, NY: The Free Press, 1990), p. 34.] With respect to the law, Isaac and Armat (pp. 33-34) also make the following important statement, "For Szasz mental illness is purely and simply a test case in human liberty. It is this orientation that has made Szasz such a favorite with the legal profession, which in the 1960s began to arrogate to itself the decision-making power that had belonged to psychiatrists. While Laing [a prominent member of the anti-psychiatry movement] is rarely quoted in the precedent-setting briefs and judicial decisions that effected this transfer of power, Szasz is quoted constantly and at length." For more about Szasz, see C. V. Haldipur, et al., eds., *Thomas Szasz: An Appraisal of His Legacy* (Oxford, United Kingdom: Oxford University Press, 2019), passim. For more on the anti-psychiatry movement, see Wikipedia, Anti-Psychiatry, <https://en.wikipedia.org/wiki/Anti-psychiatry>.

42 Horvitz, op cit., p. ix. The identifying and categorizing of mental disorders is recognized to be a difficult task. The WHO's ICD has also been criticized as well. See, for example, Rebeca Robles, et al., "Categories That Should Be Removed From Mental Disorders Classifications: Perspectives and Rationales of Clinicians From Eight Countries," <https://pubmed.ncbi.nlm.nih.gov/25534610/#:~:text=The%20categories%20most%20frequently%20recommended,way%20of%20being%20and%20behaving.>

43 In her Ph.D. dissertation, "Melancholy and the infinite treatments: An investigative study into the marketing of antidepressants," Rachel Williams stated, "In the 1990s the estimated prevalence of depression was two thousand times higher than in the 1960s (Leader 2008a; 2013). This astronomical rise in depression corresponded with the launch of blockbuster antidepressants released in the late 1980s: selective serotonin reuptake inhibitors (SSRIs). Perhaps the most well-known of these drugs is Prozac, which, as evidenced by the book and subsequent film *Prozac Nation*, became a pop culture phenomenon (Wurtzel 1994; Skjoldbjærg 2001). This thesis argues that the increase in depression diagnoses after Prozac hit the market is reflective of a broader narrative within the treatment area. Historically, what constitutes a pathological low mood has invariably been defined by those purporting to have a treatment. Indeed, the marketing of treatments routinely corresponds with diagnostic marketing. In contemporary societies, treatment is primarily defined and controlled by mammoth commercial entities: multinational corporations. The proposed solution is invariably pharmacological in the form of drugs such as Prozac...This research identifies evidence which suggests that the increase in depression diagnoses and antidepressant prescriptions is due, in part, to unethical marketing techniques, or, more specifically, covert marketing that targeted medics and charities. For example, doctors were flown to exotic islands by pharmaceutical companies, a charity was paid to covertly promote marketing messages..." [Rachel Williams, "Melancholy and the infinite treatments: An investigative study into the marketing of antidepressants," (Ph.D. Thesis, Cardiff University, 2018), Abstract.] Williams finished her Ph.D. in 2018. In the light of the recent opioid epidemic and role big pharma played, looking back her findings are consistent with more recent developments. For more about the pharmaceutical industry, although a bit dated, see Leonard J. Weber, *Profits before People? Ethical Standards and the Marketing of Prescription Drugs* (Bloomington, IN: Indiana University Press, 2006).

44 The DSM-5 marks the first attempt of the APA to incorporate culturally sensitive views. See American Psychological Association, "Cultural Concepts in DSM-5," https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM_Cultural-Concepts-in-DSM-5.pdf

being a mental illness and vice-versa. This makes one question how objective the classification of mental disorder has been.⁴⁵

Homosexuality is a classic example of "illness" changing with culture and not being simply about objective scientific or medical standards. Wikipedia summarizes the changes in the DSM concerning homosexuality:

Homosexuality was classified as a mental disorder in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) beginning with the first edition, published in 1952 by the American Psychiatric Association (APA). This classification was challenged by gay rights activists in the years following the 1969 Stonewall riots, and in December 1973, the APA board of trustees voted to declassify homosexuality as a mental disorder. In 1974, the DSM was updated and homosexuality was replaced with a new diagnostic code for individuals distressed by their homosexuality. Distress over one's sexual orientation remained in the manual, under different names, until the DSM-5 in 2013.⁴⁶

An opposite example is the interesting case of "shyness."⁴⁷ Perhaps it can be accepted that "social withdrawal" could be "associated with a host of negative outcomes, including negative self-worth, loneliness, depressive symptoms, internalizing problems, and peer rejection."⁴⁸ It has been argued that simply "shyness," much less than "social withdrawal," also leads to similar results of deficits in academic performance, social difficulties, can lead to neglect and rejection by peers, absence of quality friendships, and other harms.⁴⁹

45 Questioning the objectivity of the DSM—and looking at the impact of the pharmaceutical industry—is detailed in Stephen Lane, *Shyness: How Normal Behavior became a Sickness* (New Haven, CN: Yale University Press, 2007). Questions have also arisen concerning the financial ties of those behind the DSM. See, for example, Lisa Cosgrove and Harold J. Bursztajn, "Undue Pharmaceutical Influence on Psychiatric Practice," *Psychiatric Times* (Vol. 27, No. 5, 2010), passim; Lisa Cosgrove and Sheldon Krinsky, "A Comparison of DSM-IV and DSM-5 Panel Members' Financial Associations with Industry: A Pernicious Problem," *PLoS Med* (Vol. 9, No. 3, March 2012).

46 Wikipedia, "Homosexuality in the DSM," https://en.wikipedia.org/wiki/Homosexuality_in_the_DSM. Accessed April 24, 2023. Sarah Baughey-Gill, "When Gay Was Not Okay with the APA: A Historical Overview of Homosexuality and its Status as Mental Disorder," *Occam's Razor* (Vol. 1, Article 2, 2011), passim.

47 Some speakers have stated that the Islamic concept of hayaa (الحياء) is now listed in the DSM has a mental disorder. Definitely that is not completely true. The Islamic concept of hayaa keeps one from doing that which is odious or loathsome and is, therefore, not the same as "shyness." For more on the concept of hayaa, see this author's Commentary on the Forty Hadith of al-Nawawi (Denver, CO: Basheer Publications, 2008), vol. 1, pp. 665-667; Muhammad Ismail al-Muqaddim, *The Fiqh of Haya: Understanding the Islamic Concept of Modesty* (Riyadh, Saudi Arabia: International Islamic Publishing House, 2015), pp. 24-25.

48 Kenneth H. Rubin and Robert J. Coplan, "Social Withdrawal and Shyness in Childhood: History, Theories, Definitions, and Assessment," in Kenneth H. Rubin and Robert J. Coplan, eds., *The Development of Shyness and Social Withdrawal* (New York, NY: The Guilford Press, 2010), p. 5.

49 See Matthew P. Mychailyszyn, et al., "Treating Social Anxiety in Youth," in Kenneth H. Rubin and Robert J. Coplan, eds., *The Development of Shyness and Social Withdrawal* (New York, NY: The Guilford Press, 2010), p. 301.

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When such "shyness" becomes debilitating, it can be looked at as a disorder.⁵⁰ However, Lane argues that that is not quite what has happened with respect to this "mental disorder" and its treatment in the field. He states,

I will draw heavily on such material⁵¹ to assess the brief but fascinating history of Social Phobia/Social Anxiety Disorder, which, just a few years after being formally classified, became so widely diagnosed—especially in the United States—that *Psychology Today* dubbed it "the disorder of the decade" and the *Harvard Review of Psychiatry* determined that it had become "the third most-common psychiatric disorder [in the U.S.], behind only major depressive disorder and alcohol dependence" (Rettew 2000: 285). Two decades earlier, by contrast, the disorder did not formally exist.

As Social Phobia was classed as a mental illness at a time when the move had surprisingly little professional support among psychiatrists not serving on the DSM-III task force, my essay examines why the latter pushed for its inclusion... I also assess why Social Phobia was renamed "Social Anxiety Disorder" and why the threshold for diagnosing both it and Avoidant Personality Disorder was lowered dramatically in later editions of the *DSM* to include public-speaking anxiety and other routine fears usually seen as closer to social embarrassment than chronic phobia or acute anxiety. Social Anxiety Disorder is, I'll be arguing, a textbook example of how normal behavior and many human emotions, including grief and sadness, have been turned into disorders supposedly warranting the use of psychotropic medication (see Karp 1997, Harowitz and Wakefield 2007).

As millions of North Americans and Europeans have since taken antidepressant medication for SAD—in 2001 alone, 25 million new prescriptions were written in just the U.S. for the drug Paxil (Hawkins 1987: 241f.)—it is crucial to ask why the official symptoms of the disorder in one of the world's most-influential psychiatric manuals still include fear of public speaking, fear of hand-trembling while writing a check, and, amazingly, even dislike of eating alone in a restaurant. With the bar set so low that it includes such routine concerns, it is on the one hand unsurprising that so many people have been diagnosed with the condition. As two prominent Stanford psychologists recently determined, "nearly 50 % (48.7 % +/- 2 %)" of North Americans (and most other nations and groups) self-identify as shy or introverted around the world (Henderson and Zimbrado in press). Concern about the overlap between shyness and

⁵⁰ For example, suppose someone's social phobia is so great that he is not able to attend the Friday or Congregational Prayers.

⁵¹ That author is referring to the behind-the-scenes-material leading up to the composing of the DSM-III.

social anxiety even led the DSM-IV task force to add a warning to the 1994 edition, urging psychiatrists not to confuse the two phenomena.

On the other hand, the same task force not only retained in *DSM-IV* all prior symptoms of the disorder, but also managed to add to them.⁵²

The influence of culture and societal basis on the field can also be seen in the attitude towards gender identity disorder, which many today—due to, perhaps, a liberalism paradigm of a mandatory acceptance of one's personal autonomy and identity—would not be considered a disorder. In fact, in the Robles' article cited earlier about what disorders should be removed from the ICD, "The categories most frequently recommended for deletion were gender identity disorder, sexual dysfunction, and paraphilias, usually because clinicians viewed these categories as being based on stigmatization of a way of being and behaving."⁵³

1.2.1 A Differing Islamic Definition of Mental Disorder?

The above discussion leads to a very important question: Would a definition of "mental disorder" within an Islamic paradigm lead to any different results? Clearly the Islamic worldview is different from the modern secular worldview, including important questions such as the purpose of life and the nature of the soul.⁵⁴

52 Christopher Lane, "How Shyness Became an Illness and Other Cautionary Tales about the DSM," in Michael Dellwing and Martin Harbusch, eds., *Krankheitskonstruktionen und Krankheitstreiber: Die Renaissance der soziologischen Psychiatriekritik* (Springer VS, 2013), pp. 55-56. Not surprisingly, Mychailyszyn, et al., seem to lament the fact that of the shy children and adolescents, "Only a small minority has ever received any kind of counseling, and fewer still have received pharmacological intervention." Mychailyszyn, et al., op cit., p. 300.

53 Robles, et al., op cit., p. 267.

54 The idea of the soul is a very illuminating and relevant topic. It is interesting to note how some psychologists try to claim that they are studying something other than the "soul." For example, one researcher wrote, "It is strange that, although everyone speaks glibly of 'psychology,' which means the science of the psyche, many people are confused as to the meaning of the word 'psyche' or vaguely equate it with the word 'soul.' Yet 'psyche' has a much wider meaning than the 'soul,' the latter used, as it generally is, in the Christian sense of the word. Roughly, 'psyche' refers to everything inside, in contradistinction to the outside world. Formerly the inner human being was always equated with the conscious ego, but research during the last seventy or eighty years has predicated the existence of the unconscious, i.e., that a great deal exist in us that the ego does not know..." [Barbara Hannah, *Jung: His Life and Work* (Wilmette, IL: Chiron Publications, 1999), p. 68.] It seems that Hannah herself could possibly be accused of using the word "soul" rather glibly in the quote above. It is unknown to this author on what basis one can claim that something that exists "in us" is not part of or related to the soul, especially from an Islamic perspective on the soul. In fact, it is interesting to note that in the Larousse Dictionary of Beliefs and Religions [(Edinburgh: Larousse, 1995), p. 496] under "Islamic view of soul," one finds, "The word for the independent soul is nafs, which is equivalent to the Greek word psyche." According to Rassool, psychology has gone through four states. In the first stage it was defined as "the study of the soul or spirit." In the second period it was defined as the "study of the mind." In the third stage it was about the study of "mental life." Finally, in the fourth stage, it became "the study of human behaviour and experiences and the 'study of total behaviour' (consciousness and unconsciousness)." [See G. Hussein Rassool, *Islamic Psychology: Human Behaviour and Experience from an Islamic Perspective* (London, England: Routledge, 2021), p. 5.] The psychiatrist and physician M. Scott Peck shows that it is more than coincidence that the word "soul" is missing from the vocabulary of many modern researchers. In *Denial of the Soul*, he wrote, "The word 'soul' is probably in the vocabulary of every second-grader... Then why is it that [it] is not in the professional lexicon of psychiatrists, other mental health workers, students of the mind, and physicians in general? There are two reasons. One is that the concept of God inherent is in the concept of soul, and 'God talk' is virtually off-limits within these relatively secular professions. Religious though individuals in these professions might be personally, they would not want to offend their secular

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Irrational beliefs or actions have been traditionally tied to mental disorder.⁵⁵ From an Islamic perspective, though, what can be more irrational than witnessing the many signs and evidences that indicate that humans should worship God and then turn away from such worship. Thus, Allah repeatedly refers to such humans as not using their senses.⁵⁶

Islamic beliefs make it very clear that humans are made up of both a physical component and a spiritual component. It is recognized by all that one cannot live without taking care of the physical body. Unfortunately, many fail to recognize that one cannot truly live or live the life truly worth living without paying close attention to the spiritual component. Allah says,

يَا أَيُّهَا الَّذِينَ ءَامَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ إِذَا دَعَاكُمْ لِمَا يُحْيِيكُمْ

“O you who have believed, respond to Allah and to the Messenger when he calls you to that which gives you life.” [Al-Anfaal: 24]

مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أَنفَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيٰوةً طَيِّبَةً ۚ وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

colleagues. Nor, for that matter, would they care to lose their jobs. The fact is that to speak of God or the soul in their professional gatherings would be politically incorrect. The other reason is that these professionals properly have a test for intellectual rigor, and the soul is something that cannot be completely defined... Yet this impossibility of adequate definition is not the primary stumbling block. Psychiatrists have no difficulty including 'light,' 'love,' and 'consciousness' in their professional vocabulary. Their primary problem with the 'soul word' is the blatancy of its connection to God." [M. Scott Peck, *Denial of the Soul: Spiritual and Medical Perspectives on Euthanasia and Morality* (New York: Harmony Books, 1997), pp. 129-130.] That was written in 1997. It is possible matters have changed somewhat since then. For example, Rassool notes, "It was only in the past two decades that 'religious or spiritual problems' was introduced in the DSM-IV as a new diagnostic category that invited professionals to respect the patient's beliefs and rituals. It is argued that 'religiousness remains an important aspect of human life and it usually has a positive association with good mental health.'" G. Hossein Rassool, *Evil Eye, Jinn Possession, and Mental Health Issues: An Islamic Perspective* (London, England: Routledge, 2019), p. 24. See also Malik Badri's two short chapters, "Are all Schools of Western Psychology Soulless?" and "What about Soulless Schools of Western Psychology," in Malik Badri, *The Dilemma of Muslim Psychologists* (Kuala Lumpur, Malaysia: Islamic Book Trust, 2016), pp. 91-102.

55 An interesting review and challenge to some traditionally held concepts can be found in Valentina Cardella, "Rationality in Mental Disorders: Too Little or Too Much?" *European Journal of Analytic Philosophy* (Vol. 16, No. 2, 2020). She begins her paper (p. 13) with a quote from Rem Edwards in a 1981 paper, "What is meant by 'rational?' Whatever it is, mental disorders are shortcomings or departures from it, and only those disorders which involve the absence of it are to count as mental disorders." The gist of her argument is that the problem in mental disorders is not necessarily rationality but "deficits in social cognition, or common sense." She goes on to state (p. 30), "But when we pay close attention to schizophrenia and delusional disorder, the picture is very different, and, in some sense, exactly the opposite of what we could think. Those disorders show that, both in experimental settings and in everyday life, rationality and logic are fundamentally preserved, and used to compensate impairments in other areas, like common sense and social knowledge."

56 For example, Allah has said, "And We have certainly created for Hell many of the jinn and mankind. They have hearts with which they do not understand, they have eyes with which they do not see, and they have ears with which they do not hear. Those are like livestock; rather, they are more astray. It is they who are the heedless" [Al-A'raaf 179]. Allah also says, "And if you asked them, 'Who sends down rain from the sky and gives life thereby to the earth after its lifelessness?' they would surely say 'Allah.' Say, 'Praise to Allah'; but most of them do not reason" [Al-Ankaboot: 63]. Elsewhere, Allah says, "Indeed, the worst of living creatures in the sight of Allah are the deaf and dumb who do not use reason" [Al-Anfaal: 22]. Another verse states, "So have they not traveled through the earth and have hearts by which to reason and ears by which to hear? For indeed, it is not eyes that are blinded, but blinded are the hearts which are within the breasts" [Al-Hajj: 46], and numerous other verses.

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"Whoever does righteousness, whether male or female, while he is a believer - We will surely cause him to live a good life, and We will surely give them their reward [in the Hereafter] according to the best of what they used to do" [An-Nahl: 97]

The reality is that the soul will never be tranquil, content, and healthy unless it knows its Lord and has a sound relationship with Him. Allah has said,

الَّذِينَ ءَامَنُوا وَتَطْمَئِنُّ قُلُوبُهُمْ بِذِكْرِ اللَّهِ أَلَا بِذِكْرِ اللَّهِ تَطْمَئِنُّ الْقُلُوبُ

"Those who have believed and whose hearts are assured by the remembrance of Allah. Unquestionably, by the remembrance of Allah hearts are assured." [Ar-Ra'd: 28]

The psyche of the individual will definitely be harmed as a result of his spiritual disease of being negligent of Allah and turning away from Him:

وَمَنْ أَعْرَضَ عَن ذِكْرِي فَإِنَّ لَهُ مَعِيشَةً ضَنْكًا وَنَحْشُرُهُ يَوْمَ الْقِيَمَةِ أَعْمَى

"And whoever turns away from My remembrance - indeed, he will have a depressed life, and We will gather him on the Day of Resurrection blind." [Ta-ha: 124]

Of all of the different types of diseases, spiritual diseases are the most dangerous for the individual in both this life and the everlasting life of the Hereafter.

The above implies that the understanding of "sound mental health" is going to be unique to the Islamic worldview, just as it may also be unique to other worldviews as well. Thus, for example, Gill writes, "Muslim philosophers, Ibn-Hazm and Abu Hamid Mohammed Al-Ghazali (10th/11th century), defined ED [emotional distress] as distance from God, attributing the degree of physical and mental health as a function of one's proximity to Him."⁵⁷ This would further imply the possibility—or at least the presence at some level or in some cases—a different perspective on mental health illness or disorders as well. Although it is beyond the scope of this paper, definitely the understanding of some of the causes (such as spiritual disease) and some of the treatment for

57 Sana Gill, "Acknowledging the unseen: Muslim practitioners' understandings and processes of alleviating emotional distress with British Muslims" (Doctoral Thesis: Lancaster University, 2018), Part 2 p. 6.

such disorders will be uniquely Islamic. However, as commented on in more detail later, in general, some mental health disorders are akin to physical disorders and illness and need not interfere with one's true purpose of life and status as a servant of Allah.

This begs the question as to whether Muslim psychologists/psychiatrists have presented their own unique definition of "mental illness/disorder," especially one that would be meaningful with respect to the question of one's legal capacity. It is somewhat surprising to this author to find many contemporary Muslim researchers not positing such a definition.⁵⁸ In earlier Muslim fiqh works, as well, one usually does not find it defined. Al-Shaimaa explains this, "In my research, I did not find any of the classical Muslim jurists giving a definition for psychological illness. They did, however, discuss some of its manifestations and states when they discussed insanity and amentia. This is because it is a contemporary term."⁵⁹ She then quotes ibn Taimiyyah who stated that psychological disease, according to her, is, "a type of disease that afflicts the heart in which one's perceptions and intents are disturbed/spoiled."⁶⁰ However, this quote may not be in order here as ibn Taimiyyah was specifically discussing the diseases of the hearts, which are spiritual diseases that do not necessarily span all of the categories of mental illness or disorder.⁶¹

As just mentioned in a footnote, most contemporary writers on Islamic psychology focus on good mental health from an Islamic perspective. One cannot simply go from that to its negation and then essentially say that this is what mental illness/disorder is all about. (For example, a person may be observed to be overweight and it may be concluded that such is not "healthy," and yet at the same time the person may be completely free of any disease or illness.) There is plenty of good insight offered into the question mental health but still a sidestepping of presenting a final definition of mental illness that would be of value from a fiqhi/legal perspective. Thus, for example,

58 G. Hussein Rassool has perhaps written more on Islamic psychology than any other author. His works are extremely important and beneficial. However, this author does not recall nor did he find any passage in which Rassool actually defines "mental illness/disorder," neither from an Islamic perspective or any perspective. Similarly, Chapter 14 of Utz's book *Psychology from the Islamic Perspective* is entitled, "Abnormal Psychology and Mental Illness." The first subheading in the chapter is, "Defining Mental Illness," at which time the author goes into a discussion of grief, without ever giving a definition of mental illness. [See Aisha Utz, *Psychology from the Islamic Perspective* (Riyad, Saudi Arabia: International Islamic Publishing House, 2011), p. 273.] Even though the Khodayarifard, et al., discussion covers a number of pages, their emphasis is on "mental health" and not on mental diseases or disorder. (It is not so simply to go from one to assume the meaning of the other.) After mentioning the critiques of the DSM-5 and mentioning some of the aspects of positive psychology, they then discuss two trends of mental health among Muslim scholars, touching more on simply spiritual well-being as opposed to a secular understanding of mental health. [See Mohammad Khodayarifard, et al., *An Introduction to Islamic Psychology* (Leiden, the Netherlands: Brill Publishers, 2022), pp. 48-52.]

59 Qasooos Hafsah al-Shaimaa, *Ahkaam al-Mareedh al-Nafsi fi al-Fiqh al-Islaami: Baab al-Ibaadaat—Anamoodhajaa* (Master's Thesis, Universite Echahid Hamma Lakhdar, 2021-2022), p. 5. Interestingly enough, virtually the same statement is made in an earlier thesis: Jamaal Laafi, *Athar al-Maradh al-Nafsi fi Rafu al-Masooliyyah al-Janaaiyyah fi al-Fiqh al-Islaami* (Master's Thesis, al-Jaamia al-Islaamiyyah, Gaza, 2009), p. 27.

60 *Ibid.*, p. 5.

61 Ibn Taimiyyah's original quote comes from Ahmad ibn Taimiyyah, *Amraadh al-Quloob wa Shifaauhah* (Cairo, Egypt: al-Matbaah al-Salafiyyah, 1399 A.H.), p. 4. The quote is also found in Ahmad ibn Taimiyyah, *Majmoo al-Fataawaa Shaikh al-Islaam ibn Taimiyyah* (Madinah, Saudi Arabia: King Fahd Quran Complex, 1995), vol. 10, p. 93. Al-Shaimaa actually quoted this from a secondary source and may not have noticed the context in which ibn Taimiyyah made this statement.

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on the Khalil Center website, they start off by asking the questions, "What exactly *is* mental health and mental illness, and how do we understand them within an Islamic context?" Under this, one can find:

Question #1: What is Mental Health?

From an Islamic theological perspective, psycho-spiritual health is directly related to a human being's ability to actualize their primordial spiritual purpose. All human beings are created to tread a path that will ultimately ensure their salvation in the afterlife and their ability to acquire God's pleasure. Health is thus, from an Islamic theological perspective, indicated by an individual's successful ability to remain on this path of worship. Hence **any obstacles** that obstruct their ability to tread this path is seen as detrimental to human functioning and worthy of attention. This includes psychological, physical or emotional struggles that get in the way of our ability to worship Allāh freely. More specifically, a holistic perspective on psychological health must be multidimensional as it encompasses our overall health and well-being.⁶²

One can already notice an upcoming problem. Once again, the scope of the statement above is truly spiritual diseases. Unquestionably some mental disorders, like physical diseases, are in no way obstacles between an individual and his relationship with Allah and thus one can "actualize their primordial spiritual purpose."⁶³ Thus, when the question of what is a mental illness comes up, there is something of a disconnect between what was just stated and what is stated here:

Question #2: What is Mental Illness?

When our mental health is negatively affected for a significant amount of time, a mental illness can develop. It is an illness of our mind that impacts all areas of our health: emotional, mental, physical, social, and spiritual. A few triggers for mental illness are:

Experiencing trauma

Significant life changes

Family conflict and distress

Life stressors and/or lack of support and resources

Mental illness ranges in severity and symptoms. It can be non-clinical distress that all of us experience from time to time, or it can reach the clinical threshold (particularly when your overall mental health is neglected for too long). Additionally, it can manifest itself differently in people based on support systems, personal history, personality, genetics,

⁶² <https://khalilcenter.com/articles/mental-health-101>. The emphasis is in the original.

⁶³ In fact, in some Muslim societies they considered insane people to be true auliya or saints. It has even been stated that Allah may bring insanity to a person to save him from a strong trial he would not be able to withstand.

and other factors.

Some examples of mental illness are:

Anxiety

Depression

Obsessive Compulsive Disorder/*waswasa*

Phobias

Personality Disorders⁶⁴

Depending on the nature and possible sources of these illnesses, these may or may not be obstacles to fulfilling one's true purpose in life of being a dutiful servant of Allah.

Another promising discussion was found in *Applying Islamic Principles to Clinical Health Care: Introducing Traditional Islamically Integrated Psychotherapy*. Keshavarzi and Ali write,

In modern psychiatric practice disorder is viewed quite differently from the TIIP model. The Diagnostic and Statistical Manual of Mental Disorders (DSM) (American Psychiatric Association, 2013) and the International Classification of Disorders (ICD) restrict the notion of mental illness to significant impairment of social, occupational, or familial functioning and afford marginal attention to character flaws that lie beneath the clinical threshold. Hence DSM and ICD clinical terminologies do not equate with Islamic conceptions of optimal mental health and dysfunction, and fail to speak to the impact of disorder upon a patient's spiritual, non-clinical status.⁶⁵

After that robust beginning, the discourse once again fails to deliver what would be a meaningful definition of mental illness from a legal perspective.

A fundamental difference between an exclusively clinical conception of dysfunction and Islamic holistic health is that Islam does not restrict dysfunction solely to the temporal world or to clinical impairment. As outlined above, character flaws that adversely impact a patient's afterlife are also taken into consideration, as well as such character traits that lead to poor functioning, even before they may become significantly impairing. Within an Islamic framework, clinical treatments are in service of the larger Islamic ethos and hence not restricted to symptom reduction or restoration of normative worldly functioning. These afterlife considerations should impact the perspectives and clinical decision-making of practitioners, including their selection of interventions. For example,

⁶⁴ <https://khalilcenter.com/articles/mental-health-101>.

⁶⁵ Hooman Keshavarzi and Bilal Ali, "Foundations of Traditional Islamically Integrated Psychotherapy (TIIP)," in Hooman Keshavarzi, et al., eds., *Applying Islamic Principles to Clinical Mental Health Care: Introduction Traditional Islamic Integrated Psychotherapy* (New York, NY: Routledge, 2021), p. 21.

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while narcissistic traits may not meet the clinical threshold of narcissistic personality disorder, a practitioner using the TIIP model will nevertheless view the patient as suffering from spiritual pathological character flaws that may or may not merit treatment in a clinical setting.

The integrated Islamic therapist is ever aware of the prophetic warnings regarding the three spiritual "destroyers" (*muhlikāt*): "avarice (*shuḥḥ*) that is obeyed, material longing (*hawā*) that is complied with, and a man's admiration of himself (*i'jāb al-mar' bi nafsihī*)"...

Thus, while a TIIP practitioner is aware that certain levels of self-admiration are not socially debilitating or clinical in severity, they are also aware that spiritual masters warned that self-admiration leads one down the path of arrogance (*kibr*) and that arrogance is the root of a multitude of spiritual diseases.⁶⁶

That is all very important material for the question of *tazkiyah* or purification of the soul but offers very little for a legal framework, which is also a must from a Shareeah perspective.

Does all of the above imply that a specific Shareeah/fiqhi definition of "mental illness" would coincide with a "secular" definition of the term, which sometimes does occur, especially when it comes to medical or scientific issues.⁶⁷ That result may actually bring up more questions than it answers.

1.2.2 Deriving a Shareeah Definition of Mental Illness

The numerous contributions to the concept of mental health from an Islamic perspective are definitely needed and helpful. Unfortunately, they are not completely helpful when it comes to analyzing mental illness from a legal/fiqhi perspective. For example, the opposite of having truly sound mental health would be to have a spiritual disease (a disease in the heart), such as arrogance. Arrogance, though, is not going to have any relevance to the question of when or how a person may or not be held legally responsible for their actions. Of what is of greatest concern for the law are those illnesses—not the result of a person's wants or character—that influence the person's ability to think and therefore act properly (either on a long-term or temporary basis).

⁶⁶ Ibid., p. 21.

⁶⁷ The Shareeah meaning being the same as a "secular" meaning seems to be the leaning of al-Muhaizi. After presenting words like "maradh" and "nafs," and discussing them from both a lexical and Shareeah perspective, she then discusses "maradh nafsiyyah" by presenting simply "secular" definitions and then making some conclusions from them as to what he considers "mental illness" without any explicit discussion of whether the Shareeah terminology may differ from that. [See Khulood al-Muhaizi, *Ahkaam al-Mareedh al-Nafsi fi al-Fiqh al-Islaami* (Ph.D. Thesis, Muhammad ibn Saud Islamic University, 1432 A.H.), pp. 22-31. The same can be said for Laafi's conclusion for the meaning of mental illness. (Lafee, op cit., p. 28.)

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Even if one were to accept that the Shareeah definition of mental illness is the same as the lexical/medical definition of medical illness, that does not completely solve the problem. This is because, as Gray and Bjorklund mentioned, mental health and illness is a "fuzzy concept." The American Psychiatric Association and the World Health Organization have developed categories of mental illness. The two organizations differ from one another and are also both critiqued in the field.

Perhaps there are some commonalities that all could agree upon and which would also be acceptable as Shareeah standards. First would be the identifiable brain diseases, where some kinds of biological test, chemical test, biopsy, or necropsy would point to the existence of the disease, just like any other physical disease. A second category would be harder to identify and perhaps would not meet with complete agreement. In the literature, there is much discussion of the "four D's"⁶⁸: deviance, distress, dysfunction, and danger. Deviance would imply thoughts or behaviors that would be considered unacceptable by societal norms.⁶⁹ Distress is internal negative feelings. Dysfunction refers to the inability to perform daily functions; it would have to be "severe dysfunction" for it to be considered legally significant.⁷⁰ Danger refers to dangerous behavior either with respect to others or with respect to oneself. Most likely, mental states causing severe dysfunction and clear danger could be readily accepted under the category of mental illnesses affecting legal capacity. Deviance and distress may be too blurry of concepts to incorporate into the legal standard.

1.3 Conclusions to Part I

No one wants to be diagnosed with a mental illness. However, once diagnosed, someone may see that as an excuse for their behavior and actions. They might say to themselves, "Just like a person with a bad knee is excused from not performing prayer properly, I am excused when not behaving properly." This could be very dangerous for the person when they meet Allah. Hence, as precise a legal definition of mental illness is required for Islamic fiqh, as in some circumstances the hypothetical statement quoted may be true while in others it may not be true.

In an attempt to narrow down a definition of mental illness from a fiqh perspective, especially in the light of contemporary "secular" thought on mental illness, the following conclusions made here are very important:

⁶⁸ See, for example, Ronald J. Comer and Jonathan S. Comer, *Abnormal Psychology* (New York, NY: Worth Publishers, 2021), p. 2; Susan Nolen-Hoeksema, *Abnormal Psychology* (New York, NY: McGraw-Hill Education, 2020), p. 6.

⁶⁹ However, Nolen-Hoeksema includes under deviance: "Highly deviant behaviors, such as hearing voices when no one else is around, lead to judgments of abnormality." Nolen-Hoeksema, *op cit.*, p. 6.

⁷⁰ Cf., Charles Scott, *DSM-5 and the Law*, *op cit.*, p. 118.

First, from the Shareeah perspective, good mental health is a holistic concept that is tied to the concept of spiritual health and purification of the soul.⁷¹ However, spiritual diseases, as important they may be, are not exactly equivalent to mental diseases, especially not from a legal perspective. Hence, it is not sufficient to define good mental health from a Shareeah perspective without also defining mental illnesses from a Shareeah perspective. Mental illnesses can, at times, overlap with spiritual diseases or diseases of the heart but they are definitely not one and the same thing. In fact, forms of schizophrenia, depression, and obsessive-compulsive behavior may be entirely unrelated to one's spiritual well-being, as even a very pious individual could be afflicted with such diseases (in the same way that Prophets, for example, were afflicted with trials without any antecedent sins leading to those trials).

Second, in the DSM or ICD, one can find various types of mental disorders. It is important to recognize that what they have developed is not like the "physical sciences." There is dispute and warranted criticism over many of their "mental disorders." Thus, a diagnosis of mental diseases based on those referents need not necessarily be considered a mental disease.

Third, especially when considered from a Shareeah perspective, what is described today among mental health specialists as a mental illness may not be a mental illness at all. The culture of the

71 Historically speaking, the question of tazkiyah (purification of the soul) was mostly left to the Sufis. Since, psychology is so intimately related to the soul, many contemporary authors lean on Sufism for the cures to the diseases of the heart. Some are quite blatant while others rely a good deal on Sufi thought. See, for example, Ghena Ismail, "Islam, Sufism & Psychotherapy: In Search of Unifying Values and Epistemologies" (Ph.D. Dissertation: James Madison University, 2008); Faruk Aslan, "A Heart-Based Sufi Mindfulness Spiritual Practice Employing Self-Journeying" (Master's Thesis: Wilfrid Laurier University, 2014); S. Haque Nizamie, et al., "Sufism and Mental Health," *Indian Journal of Psychiatry* (Jan. 2013); Danny Sharara, "The Psychology of Self-Surrender: A Contemplative/Hermeneutic Study," (Ph.D. Thesis: Duquesne University, 2018); Laleh Bakhtiar, *God's Will be Done: Traditional Psychoethics and Personality Paradigm* (Chicago, IL: Kazi Publications, 1993); Baljit Singh, "The Growth of Human Self in Psychoanalysis: Transpersonal Psychology and Sufism" (Ph.D. Thesis, Panjab University, 2002); ad nauseum. Such reliance on Sufism can easily lead to errant concepts of the annihilation of the soul and monism, which are, in reality, as detrimental to one's spiritual health as other spiritual diseases. There are some contemporaries who emphasize that one must go back to earlier Sufism, that is, pre-Tariqah Sufism. In fact, there has even been a call to emphasize "Salafi Sufism," going back to the masters of the path before Sufism became so corrupted. This is a potentially very dangerous call. When speaking to an English-speaking audience and telling them to revert to Sufism—but the good kind of Sufism—how is that English-speaking audience supposed to locate that "good Sufism." When one turns to virtually any Tariqah today—and the author is speaking from personal and anecdotal experience—they will claim to be following the way of the Prophet (peace and blessings of Allah be upon him) and the early masters of the path—so then, that must be the good Sufism—even though they will adhere to concepts like the annihilation of the soul, the perfect human, and monism (such as in the Nizamie, et al., paper), which are detrimental to one's spiritual health like other spiritual diseases. Similarly, the literature in English on Sufism follows for the most part the later developments of Sufism and only slightly borrows from the earlier developments. The point is that the emphasis must be on Quranic purification of the soul or tazkiyah and not what has been called Sufism. At the very least, if a speaker wishes to recommend "good Sufism," they should specifically mention who or what writings fall under that category. Incidentally, it is true that this author is a critic of Sufism but that critical perspective has nothing to do with the point that is being made here. One can also examine the term "Salafi." In contemporary times, this term has been conflated with the views of many extremists (sometimes referred to as "Salafi-jihadists"). Now, if it were the case that the errant claims about Salafism so dominated the landscape that one could not find the true Salafism, then one would also have to abandon calling to Salafism or at least specifically mention what "Salafi" sources to refer to. However, al-hamdulillah, there are plenty of Salafis who refute the false claims of pseudo-Salafism, such that one can still easily locate the true Salafism. In this author's view, the same cannot be said with respect to Sufism, with very few contemporary Sufis refuting the false later beliefs of Sufism. For more on the question of purification of the soul or tazkiyah, see this author's *Purification of the Soul: Concept, Process and Means* (Denver, CO: Basheer Publications, 2002), *passim*.

Shareeah is different from the dominant culture today. Thus, what could be considered "normal" according to the Shareeah may be considered "abnormal" according to today's secular norms. The example of "shyness" was given earlier (perhaps not a perfect example). If one has a disdain for homosexuality, for example, a psychologist may conclude that this is a "phobia," which qualifies as a mental illness. Perhaps a better example is the case of Sophie Williams, a *niqab*-wearing British convert, who was told by her therapist, "So maybe one measure of the success of our sessions might be that you'll be comfortable taking it off in public."⁷²

Fourth, personal issues of grief or depression could, in some but not all cases, be the result of one's attitude towards Allah or ignorance concerning Allah. In such cases, from a legal perspective, they are more akin to spiritual diseases rather than mental diseases. The afflicted individuals are more in need of correcting/improving of their faith and purifying of their soul, rather than medical attention.

Fifth, there are some categories of medical illness that are "by consensus" medical illness, as they can be spotted or tested like other physical illness. This is a category that is of interest to the law, as it begs the question as to what extent such individuals should be held accountable when they are suffering from an ailment that impairs their judgment.

Sixth, there are other categories of "medical illness" for which there is no consensus. However, from the law's perspective, if a person is in a state that causes themselves severe dysfunction or clear danger, then most likely they are not mentally fit. Most likely also, their situation is the result of something beyond their control, which implies it is beyond what they should be held responsible for. The other two D's, deviance and distress, depending on how one defines them, probably do not meet the threshold of excuse from the law's perspective. And Allah alone knows best.

Seventh, mental disorders are a type of trial (*ibtillaa*) from Allah,⁷³ like other trials in this world, such as physical handicaps.⁷⁴ The disorder may not be the result of anything that the individual did and the afflicted individual could actually be from among the most devoted servants of Allah. The most important aspect is the proper response—with patience and forbearance. If the response is

72 Sophie Williams, "On Therapy," in Sabeena Akhtar, ed., *Cut From the Same Cloth? Muslim Women on Life in Britain* (Unbound, 2021), p. 19. Also see Tarek Younis, *The Muslim, State & Mind* (Los Angeles, CA: Sage Publications, 2024 (sic)), pp. 62-67.

73 In some cases, the trial is more on the caretaker than it is on the patient. An individual with advanced dementia will no longer be held accountable for his actions but that person's beloved ones and caretakers are now carrying the burden, and must do so with patience, compassion, and mercy. May Allah grant great rewards for those patient, dutiful, and merciful caregivers. On this point, also see, Amelia Hill, "Part of you dies as well': The toll of caring for loved ones with dementia," <https://www.theguardian.com/society/2023/may/08/toll-of-caring-for-loved-ones-with-dementia-alzheimers> .

74 This is not meaning to imply that mental illness is "just like any other illness." There are equal as types of *ibtillaa* (trials) but still differ in some qualitative ways. See Malla, et al., " 'Mental Illness is Just like any Other Illness': a critical examination of the statement and its impact on patient care and society," *Journal of Psychiatry and Neuroscience* (Vol. 40, No. 3, 2015), *passim*.

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proper, the trial transforms into a blessing in the Hereafter and, perhaps, in this world as well. In *Sahih al-Bukhari* is the hadith in which a woman comes to the Prophet (peace and blessings of Allah be upon him) to seek his prayers to cure her of epilepsy. The Prophet (peace and blessings of Allah be upon him) informed her,

إِنْ شِئْتَ صَبْرَتْ وَلَكَ الْجَنَّةُ وَإِنْ شِئْتَ دَعَوْتُ اللَّهَ أَنْ يُعَافِيَكَ

“If you wish, be patient and you will have (enter) Paradise; and if you wish, I will invoke Allah to cure you.” She accepted to be patient and only asked that she not become unclothed while having her seizures.⁷⁵

It is very sad to note that in many Muslim communities there is a stigma attached to those suffering with mental illness.⁷⁶ It is ironic to see Muslims stigmatizing people for a trial from Allah, not of their choice, and then many times holding in high esteem those individual who have chosen to disbelieve in Allah or not submit to Allah—these are the ones who deserve to be stigmatized due to their willingly blinding themselves to their Lord.

Finally, the scope and purpose of the law is different from that of the medical field. Thus, as Garcia stated about insanity, “Insanity is not a medical definition but a legal one.”⁷⁷ This difference shall be touched upon below while discuss insanity as a legal impediment.

⁷⁵ <https://sunnah.com/bukhari:5652>

⁷⁶ The stigma in the Muslim community has been well-documented. See, for example, Ayse Ciftci, et al., “Mental Health Stigma in the Muslim Community,” *Journal of Muslim Mental Health* (Vol. 7, No. 1, 2013); Monica Zolezzi, et al., “Stigma associated with mental illness and its treatment in the Arab culture: A systematic review,” *International Journal of Social Psychiatry* (2018); Habib Abdullah, “The Role of Self-Stigma in Seeking Mental Health Services in the Muslim American Community,” (Ph.D. Dissertation, Alliant International University, 2016).

⁷⁷ Ellen Garcia, *Should Schizophrenics be Allowed to Plea Insanity to Crimes* (Grin, 2011), p. 1.

2 PART II: LEGAL CAPACITY

Allah says,

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ

“And I did not create the jinn and mankind except to worship Me” [Al-Dhaariyaat: 56]

The purpose of a human is to worship—which is inclusive of submission—Allah. To be true to Allah, one must have a correct intention or purpose and also make sure that the action one is performing is a proper action. Allah says,

فَمَنْ كَانَ يَرْجُوا لِقَاءَ رَبِّهِ فَلْيَعْمَلْ عَمَلًا صَالِحًا وَلَا يُشْرِكْ بِعِبَادَةِ رَبِّهِ أَحَدًا

“So whoever would hope for the meeting with his Lord - let him do righteous work and not associate in the worship of his Lord anyone” [Al-Kahf: 110]

Individuals are to be held responsible for their actions. One's final reckoning—and it will be an absolutely just reckoning—will be with Allah who is the only one who actually knows whether a person truly intending good or not.

The Shareeah, though, is also a guidance for this worldly life: explaining to humans what they should be doing, what they must be doing (responsibilities), or what they should not be doing. Before that final reckoning, then, individuals can also be held responsible or called to account for some of their actions in this world as well.

However, the Shareeah is a moral and just law. Thus, important questions are answered concerning individual responsibility in either this world or the Hereafter: When can a human truly be held responsible for his actions? If a young child commits a wrong, is he sinful and should he be held accountable in a court of law? What if it were an adolescent or a teenager? What if it were an elderly person? What if it were an adult who, though, did not intend to the action that he did? What if it were an adult who, even though he is an adult, does not have the ability to understand the moral consequences of his actions?

At least when it comes to worldly regulations, any system of law, including the Islamic one, needs to answer these types of questions. From the earliest days, religions and philosophers have wrestled with questions of this nature. In Deuteronomy 19:1-13 there is reference to "refuge cities" where those who unintentionally killed others would be safe.⁷⁸ Among the Greeks, Aristotle said, "A person is morally responsible if, with knowledge of the circumstances, in the absence of external compulsion, he deliberately chooses to commit a specific act."⁷⁹ Thus, in the Anglo-American tradition, a crime has two components: the act performed was forbidden by the law (*actus reus*) and there was a guilty intent (*mens rea*).

Earlier mentioned was made of how the Islamic worldview is a unique one and hence sometimes may lead to different conclusions than "secular" psychology. One would expect the same to be true in the realm of law as well, as law is also influenced by worldview. For example, in liberalism, there is a strong influence on individual liberties and personal autonomy—even, it can be argued, at the expense of the needs of the individual himself or of society as a whole.⁸⁰

2.1 The Foundations of Legal Capacity in Islamic Law

One of the foundations of legal capacity in Islamic Law is the hadith of the Prophet (peace and blessings of Allah be upon him):

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الصَّغِيرِ حَتَّى يَبْلُغَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الْمُصَابِّ حَتَّى يُكْشَفَ عَنْهُ

"The pen has been raised from three: the young child until he reaches the age of puberty, the sleeping person until he awakens, and the one is afflicted [with a mental disorder] until he is relieved."⁸¹ This same hadith is also recorded with the wording,

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ، عَنِ الصَّبِيِّ حَتَّى يَبْلُغَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الْمَعْتُورِ حَتَّى يَبْرَأَ

"There are three (people) whose actions are not recorded: A boy till he reaches puberty, a sleeper till he awakes, a lunatic till he is restored to reason."

78 Marvin Prosono, "History of Forensic Psychiatry," in Richard Rosner, ed., *Principles & Practice of Forensic Psychiatry* (London, England: Hodder Arnold, 2003), p. 15.

79 Ibid.

80 On the mental health front, in today's secular, neoliberal framework, the conflict between individual liberties and society has been a difficult one to solve. See Isaac and Armat, op cit., passim; Phil Fennell, *Treatment without Consent: Law, Psychiatry and the Treatment of Mentally Disordered People Since 1845* (London, England: Routledge, 1996), passim.

81 With this wording, it is recorded by Ahmad on the authority of Ali ibn Abi Taalib. It was graded sahih lighairih by al-Arnaaoot, et al. See al-Arnaaoot, et al., *Musnad*, op cit., vol. 2, p. 254.

Another important narration is found in *Sunan Abi Dawood*:

عَنْ ابْنِ عَبَّاسٍ، قَالَ: أُتِيَ عُمَرُ بِمَجْنُونَةٍ قَدْ زَنَتْ، فَاسْتَشَارَ فِيهَا أَنَسًا، فَأَمَرَ بِهَا عُمَرُ أَنْ تُرْجَمَ، مَرَّ بِهَا عَلَى عَلِيِّ بْنِ أَبِي طَالِبٍ
رِضْوَانُ اللَّهِ عَلَيْهِ، فَقَالَ: مَا شَأْنُ هَذِهِ؟ قَالُوا: مَجْنُونَةٌ بِنِي فُلَانٍ زَنَتْ، فَأَمَرَ بِهَا عُمَرُ أَنْ تُرْجَمَ، قَالَ: فَقَالَ: ارْجِعُوا بِهَا، ثُمَّ أَتَاهُ،
فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ، أَمَا عَلِمْتَ " أَنَّ الْقَلَمَ قَدْ رُفِعَ عَنْ ثَلَاثَةٍ: عَنِ الْمَجْنُونِ حَتَّى يَبْرَأَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ
حَتَّى يَعْقِلَ؟ " قَالَ: بَلَى، قَالَ: فَمَا بَالُ هَذِهِ تُرْجَمُ؟ قَالَ: لَا شَيْءَ، قَالَ: فَأَرْسَلَهَا، قَالَ: فَأَرْسَلَهَا، قَالَ: فَجَعَلَ يُكَبِّرُ

Ibn Abbas said: A lunatic woman who had committed adultery was brought to Umar. He consulted the people and ordered that she should be stoned. Ali ibn AbuTalib passed by and said: What is the matter with this (woman)? They said: This is a lunatic woman belonging to a certain family. She has committed adultery. Umar has given orders that she should be stoned. He said: Take her back. He then came to him and said: Commander of the Faithful, do you not know that there are three people whose actions are not recorded: a lunatic till he is restored to reason, a sleeper till he awakes, and a boy till he reaches puberty? He said: Yes. He then asked: Why is it that this woman is being stoned? He said: There is nothing. He then said: Let her go. He (Umar) let her go and began to utter: Allah is most great.⁸²

(Other narrations contain the expression, “وَعَنِ الْمَغْتَوَةِ حَتَّى يَعْقِلَ” “from the *matooh* until he is able to reason”⁸³ and “وَعَنِ الْمَغْتَوَةِ حَتَّى يَبْرَأَ” “from the *matooh* until he recovers.”⁸⁴ This term *matooh* is explained later.)

The incident regarding Umar and Ali demonstrates that this hadith is not simply in relation to the Hereafter (that is, no sin is upon them as the pen has been lifted from recording their deeds) but it is also to be put into practice in this world. One can also conclude from that incident that if the

82 <https://sunnah.com/abudawud:4399>. This hadith is recorded by Abu Dawood and al-Nasaaee. According to al-Albaani and to al-Arnaaoot, it is sahih. See Muhammad Naasir al-Deen al-Albaani, *Irwaa al-Ghaleel fi Takhreej Ahaadeeth Manaar al-Sabeel* (Beirut, Lebanon: al-Maktab al-Islaami, 1985), vol. 2, pp. 4-7; Shuaib al-Arnaaoot and Muhammad Kaamil Qurah Balali, footnotes to Abu Daawood al-Sijistaani, *Sunan Abi Daawud* (Damascus, Syria: Daar al-Risaalah al-Alamiyyah, 2009), vol. 6, pp. 452-3. For a complete discussion of all of the various narrations from numerous Companions expressing essentially the same meaning, see Muhammad Naasir al-Deen al-Albaani, *Irwaa al-Ghaleel fi Takhreej Ahaadeeth Manaar al-Sabeel* (Beirut, Lebanon: al-Maktab al-Islaami, 1985), vol. 2, pp. 4-7; Jamaal al-Deen al-Zailaee, *Nasb al-Raayah li-Ahaadeeth al-Hidaayah* (Beirut, Lebanon: Muasassah al-Rayyaan, 1997), vol. 4, pp. 161-165.

83 Recorded by Ahmad and al-Tirmidhi. <https://sunnah.com/ahmad:956>; <https://sunnah.com/tirmidhi:1423>.

84 Recorded by Abu Dawood. <https://sunnah.com/abudawud:4402>.

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principle from this hadith is going to be applied in such a serious case as the *hadd* (prescribed punishment) for adultery, then, *a fortiori*, it must be applied to lesser cases as well. In Islamic Law, one will find the principle found in this hadith invoked in (a) ritual law or laws related to ritual acts of worship, (b) contract law, (c) family law, and (d) criminal law.

It should also be noted that there is nothing in the wording of the Prophet (peace and blessings of Allah be upon him) to indicate that the removal of responsibility is only with respect to these three specific cases. This leaves the door open to extending this principle to analogous cases, with the scholars have done. In fact, another hadith points to more cases:

إِنَّ اللَّهَ قَدْ نَجَّاهُ عَنْ أُمَّتِي الْخَطَأَ، وَالنَّسْيَانَ، وَمَا اسْتَكْرَهُوا عَلَيْهِ

"Allah has pardoned for my Nation [what is done] mistakenly, out of forgetfulness or under duress."⁸⁵ In addition, Allah has said,

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

"Allah does not charge a soul except [with that within] its capacity" [Al-Baqarah 286].

Based on the above verse and hadith, the legal theorists have developed details related to legal capacity from the Shareeah perspective. The results of their discussion are summarized in Figure 2.

85 With this wording, this hadith has been narrated through numerous chains and recorded by al-Tabaraani in al-Kabeer and al-Sagheer, al-Uqaili, al-Haakim, ibn Hibbaan, al-Daaraqutni and ibn Adi. See, respectively, Sulaimaan al-Tabaraani, Al-Mujam al-Kabeer (Cairo: Maktabah ibn Taimiyah, n.d.), vol. 2, p. 97 and vol. 11, pp. 133-134; Muhammad al-Uqaili, Kitaab al-Dhuafaa al-Kabeer (Beirut: Daar al-Kutub al-Ilmiyyah, 1984), vol. 4, p. 145; Abu Abdullah al-Haakim, al-Mustadrak ala al-Saheehain (Beirut: Daar al-Marifah, n.d.), vol. 2, p. 198; al-Ameer al-Faarisi, al-Ihsaan fi Taqreeb Saheeh ibn Hibbaan (Beirut: Muassasat al-Risaalah, 1988), vol. 16, p. 202; Ali al-Daaraqutni, Sunan al-Daaraqutni (Beirut: Aalim al-Kitaab, 1983), vol. 4, pp. 170-171; Abdullah ibn Adi, al-Kaamil fi Dhuafaa al-Rijaal (Beirut: Daar al-Fikr, 1984), vol. 3, p. 1172. For details on the exact wording and grading of the hadith, see this author's Commentary on the Forty Hadith of al-Nawawi, (Denver, CO: Basheer Publications, 1999), vol. 2, pp. 1183-1199. <https://sunnah.com/ibnmajah:2043>

Legally Responsible Individual in Islamic Law

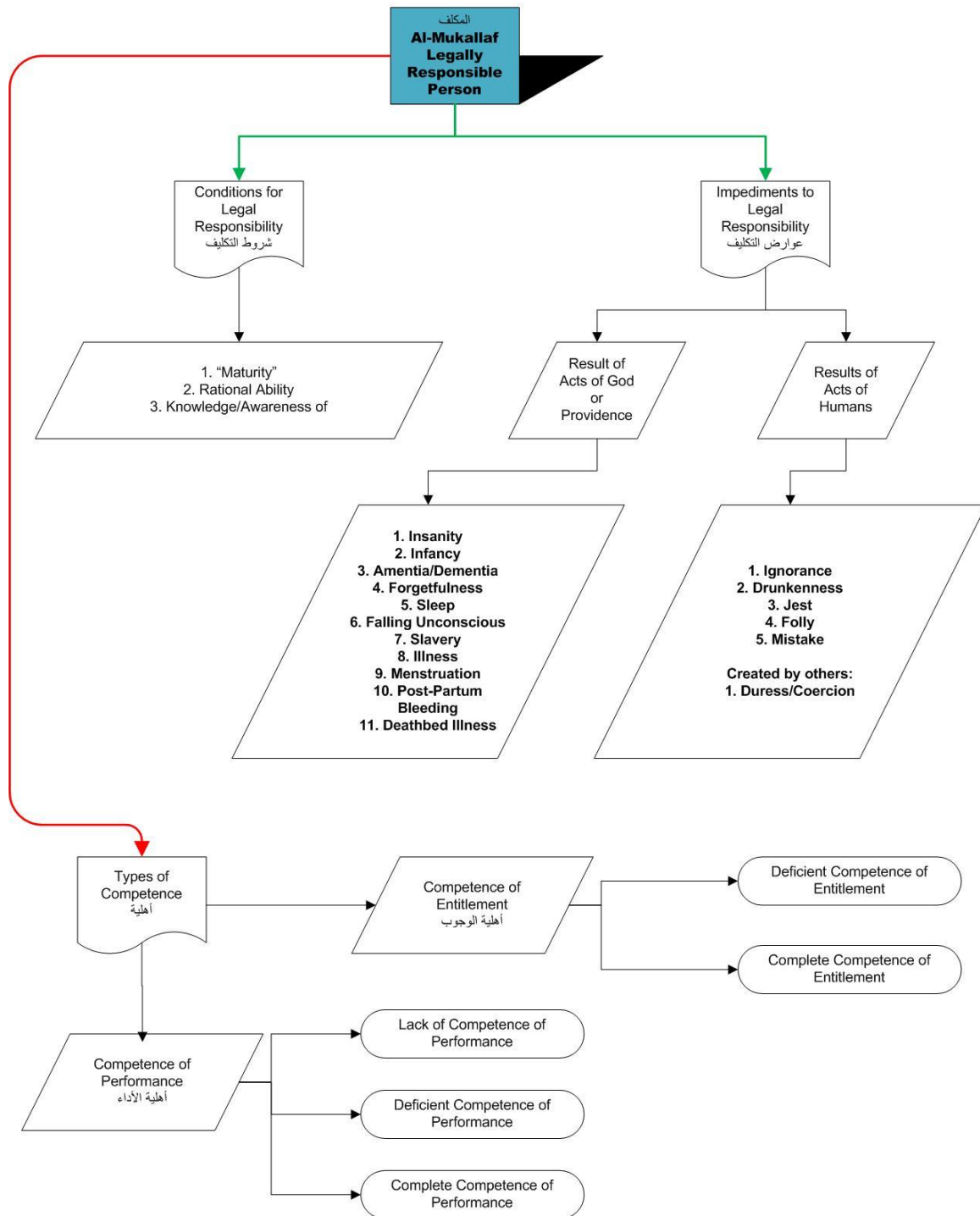


Figure 2. Islamic Law and Legal Capacity

2.1.1 Conditions for Legal Responsibility⁸⁶

There are three conditions for legal responsibility⁸⁷: (1) puberty or "maturity"; (2) rational ability; and (3) accessibility to knowledge or awareness of the law. All three of them essentially point to a common theme. When someone is too young to understand the ramifications of the actions that he or she may be doing, it would be unjust to hold them fully accountable for all their actions, as they could not truly distinguish between right and wrong. Similarly, if someone's rational ability is impaired, they cannot distinguish between right and wrong nor understand the moral ramifications of an act. The third condition of accessibility to knowledge (which is different from ignorance, the result of not doing one's due diligence) also interferes with one's moral choice—if an individual does not know whether an action is right or wrong, they cannot then choose to do what is right or wrong. Expecting them to do what is morally correct while lacking that information would be unjust.

The default for an adult who grew up Muslim in a Muslim society is that he is mature (understands the consequences of his actions), sane (rationally capable), and has access to Islamic knowledge and the law. Such a person is going to be, for the most part, completely responsible for their actions. However, there can be various circumstances or states in which that default or norm is not met. The legal theorists discuss those under the category of impediments to legal responsibility, which are discussed below.

According to Hanafi legal theorists, depending on the conditions for legal responsibility, individuals fall into different categories of "capacity" or "competence" (*ahliyyah*). One category is known as the "competence/capacity of entitlement" or, in other words, "receptive legal capacity" (*ahliyyah al-wujoob*). This type of capacity can be either complete or incomplete. An individual falls into the category of "entitlement" simply by being a human being. In other words, simply by being a human (even a fetus in the womb), an individual has some rights and can also be bestowed some entitlements, even if they are not capable of fulfilling responsibilities. For example, a day-old baby can inherit wealth and that property will belong to that baby. However, for the fetus, since there is the possibility of not living until birth, its capacity is considered "deficient" or "incomplete" (*naaqisah*), and this is true for the fetus only.

⁸⁶ The information provided in these sections can be found in virtually every book on Islamic legal theory that touches upon these topics. Hence, the information is virtually "public knowledge" and not in need of referring to specific sources. Some well-known differences of opinion on some issues will not be delved into here. Anything unique, even if slightly, does deserve to be annotated.

⁸⁷ These are the essential. Others that could be added that have some disputable aspects to them: (4) the requirement of Islam, and (5) capability (which is sometimes discussed in relation to the act not to the doer).

The second major category of capacity/competence is the capacity of "performance" (*ahiliyyah al-adaa*). This category can be further subdivided into three subcategories. A young child would fall under the category of "lack of competence of performance," because legally he is not truly able to undertake or fulfill responsibilities, even ritual acts of worship (in general). However, once a child reaches the age of seven,⁸⁸ he has reached the age of discernment (*al-tamyeez*), whereby he is not completely competent but he is able to fulfill some responsibilities.⁸⁹ After the individual reaches the age of puberty (or maturity), then they will be considered fully competent from the point of view of the law. This is the normal case for most adult humans, unless their capacity to act is met by specific impediments.

2.1.1.1 Deficient Competence of Performance

Due to the relevance to this paper, more comments need to be made about deficient competence of performance.

2.1.2 Impediments to Legal Responsibility

As just described, these "impediments" essentially intervene in one's ability to choose or act morally and/or rationally. Such intervention needs to be taken into consideration by the law before a decision can be made concerning responsibility or validity of a person's actions. These impediments are traditionally divided into two categories: "acts of God" and "human acts."

2.1.2.1 Impediments Resulting from the "Acts of God"

The impediments resulting from the "acts of God" are usually listed as the following eleven: (1) insanity, (2) infancy, (3) amentia/dementia, (4) forgetfulness, (5) sleep, (6) falling unconscious, (7) slavery, (8) illness, (9) menstruation, (10) post-partum bleeding, and (11) deathbed illness. It should be noted that in some of these cases, the actual impediments are very limited. For example,

⁸⁸ The age of seven is based on the hadith, "Teach the child to pray at the age of seven and beat him [if he does not pray] at the age of ten." Recorded by al-Tirmidhi, ibn Khuzaimah, al-Haakim, and al-Tabaraani. Graded sahih by al-Albaani. Muhammad Naasir al-Deen al-Albaani, *Sahih al-Jaami al-Sagheer* (Beirut, Lebanon: al-Maktab al-Islaami), vol. 2, p. 744. <https://sunnah.com/tirmidhi:407>.

⁸⁹ Acts of worship are considered valid from such youth, although not binding upon them. According to the Shafiees, dispositions, contracts, and transactions made by such youth will not be valid unless approved by their guardians. The Hanafis distinguish between entirely beneficial transactions (such as accepting a gift, which they will hold as lawful and binding), entirely harmful transactions (such as giving a gift, which they will void), and partially beneficial and partially harmful acts (such as a sales contract, which they would consider suspended). See Ahmad Hasan, *The Principles of Islamic Jurisprudence* (Islamabad, Pakistan: Islamic Research Institute, 1993), vol. 1, pp. 304-307.

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a menstruating woman is restricted from a small set of acts but is still fully capable of performing all other acts.⁹⁰

These impediments are referred to as "acts of God" because the individual was not directly the cause of the act or its impact and hence should not be held completely liable for their actions. For example, if a sleepwalker injures someone else while sleepwalking, they will not be sinful in front of Allah, they will not be considered a criminal, although they may be held financially liable for injury or damage to others.

Below is discussed in more detail the categories that seem most pertinent to the question of mental illness.

2.2 The Impediment of Insanity (الجنون)

Since the ability to reason is a main component of legal capacity, the loss of the ability to reason or insanity would absolve one from legal capacity and responsibility. This is mentioned by the Prophet (peace and blessings of Allah be upon him) in the hadith quoted earlier and there is a consensus of the scholars on this point. Thus, the vast majority of the legal theorists state that the insane person is not a legally responsible person (*mukallaf*).⁹¹

It is important to note that the legal theorists are not bound by any medical definition of the term, as the goal and purpose of the legal theorist may differ and thereby lead to different conceptions. In fact, currently, insanity is a legal term and is no longer in the vernacular of the psychiatrist/psychologist.⁹² Legal theorists are concerned about the impact on statements or actions and not, for example, the impact on stress or psychological well-being. Hence, jurists may

90 In fact, scholars do not completely agree to this list of eleven as "impediments," as some of the categories are more in the category of "hindrances in performing obligations" *مانع التكليف*. For the purposes of this paper, that distinction and debate will be ignored.

91 For the slight difference of opinion and the nature of the difference of opinion on this issue, see Abdul Kareem al-Namlah, *al-Muhadhdhab fi Ilm Usool al-Fiqh al-Muqaarin* (Riyadh, Saudi Arabia: Maktabah al-Rushd, 1999), vol. 1, pp. 332-334.

92 In the DSM-5 (op cit.) "insanity" is never mentioned. The only time "insanity" is mentioned in David Myers and C. Nathan DeWall's textbook *Psychology* (New York: Worth Publishers, 2020) is a quote in passing from Melville's Billy Bud, Sailor. Similarly, the word "insane" is mentioned only once in a historical reference. Similarly, "insanity" is not found at all and the word "insane" is mentioned only once in passing in Val Morrison and Paul Bennett, *An Introduction to Health Psychology* (Harlow, England: Pearson, 2016). As a final example, the words "insane" and "insanity" are only mentioned a couple of times in passing in Daniel Schacter, et al., *Psychology* (New York: Worth Publishers, 2019). However, one can still find the word "insanity" used throughout works related to law. For example, the word "insanity" is mentioned throughout Scott, op cit. Another example is Patricia Erickson and Steven Erickson, *Crime, Punishment, and Mental Illness* (New Brunswick, New Jersey: Rutgers University Press, 2008), in which one finds in the index, "insanity defense: case examples, 1-3, 23-25, 50-57, 67-68, 79-85, 96-97, 100-101, 109-111, 135-136... legal standards for, xi-xii, 1-4, 9, 11, 17, 55, 80-84, 88-103, 110-114, 142..."

not consider every type of "mental illness" as an impediment to abiding by the law.⁹³ Thus, various legal theorists have given their own definitions for the word *junoon*⁹⁴ ("insanity"). Although the definitions differ somewhat, they do carry a common thread: the lack of the ability to reason clearly, to intend properly, and to recognize right from wrong, leading to acts and statements that are abnormal.⁹⁵ For the most part, the jurists kept their definition or description very simple with what could be called a "low bar."

From a fiqh perspective, insanity could have been present since one's infancy or it could develop later in life. Similarly, it could be continuous or it could be intermittent, with an individual having bouts of insanity followed by periods of normalcy.⁹⁶ Based on these categories, there are some significant differing impacts on fiqh.

Continuous insanity, whether from infancy or later, removes all obligations related to ritual acts. If someone were insane since infancy and then somehow becomes sane some time in their adult years, they do not have to make up for any missed ritual acts of worship. They would be considered similar to a non-Muslim who converted to Islam and does not make up for any of his missed ritual acts during his days of disbelief. If intermittent insanity existed since infancy, there is a difference of opinion concerning its impact, whether it should absolve all responsibility, like the continuous insanity, or if it should be treated like temporary insanity that appeared after maturity, which is the next case below.⁹⁷

93 Concerning American law, Erickson and Erickson discuss adjudicative competence (competency to stand trial) and state, "Although competence to stand trial frequently concerns the 'mental state' of the defendant, it is a legal, not clinical decision. A judge rules on the issue of the defendant's fitness to proceed at trial... the determination of competence to stand trial is a complex issue that often finds criminal law and the behavioral sciences with opposing viewpoints concerning how to decide a defendant's competence to stand trial." Erickson and Erickson, *op cit.*, pp. 55-56.

94 It is interesting to note how different the words for "insanity" are in English and Arabic. The English word comes from Latin where the prefix "in" means without and "sane" means healthy—thus, not being in a health state of being. On the other hand, as Rassool (p. 48) noted, "Insanity in the Arabic language is called Junūn and the root meaning is 'hidden' or 'invisible.' The meaning infers that insanity is a form of possession from 'invisible' or 'hidden' spirits (Jinn or demons)." Cf., respectively, *The American Heritage Dictionary of the English Language* (Boston, MA: Houghton Mifflin Harcourt, 2016), p. 906; G. Hussein Rassool, *Evil Eye, Jinn Possession, and Mental Health Issues: An Islamic Perspective* (London, England: Routledge, 2019).

95 For a variety of definitions, see Husain al-Juboori, *Awaaridh al-Ahliyyah ind Ulamaa Usool al-Fiqh* (Makkah, Saudi Arabia: Umm al-Quraa University), p. 160. Abdul Qaadir al-Audah, a more contemporary source, includes "weak in ability to think" under his definition of majnoon (insane), noting that it is inclusive of the concept of al-ath (amentia/dementia) as well as other illnesses or psychological states leading to one not having complete cognizance. See Abdul Qaadir al-Audah, *al-Tashree al-Janaaee al-Islaami Muqaarinan bi al-Qaanoon al-Wadhaee* (Beirut, Lebanon: Daar al-Kutub al-Arabi, n.d.), vol. 1, p. 585.

96 The legal theorists do speak about types of insanity in which there is a hope for cure and those for which there is no hope for cure. This author is not completely convinced by the presentation but, more importantly, it does not have too much impact on fiqh. See al-Juboori, pp. 161-165.

97 According to Hasan (*op cit.*, p. 310), Abu Yoosuf considered that it absolved all responsibilities while Muhammad al-Hasan al-Shaibaani disagreed. [However, both Hasan and al-Juboori (*op cit.*, p. 165) note that some have attributed the opposite opinions to those two.] Al-Juboori (*op cit.*, p. 165) states that, according to al-Shafiee and Zufar, if a person becomes sane during a portion of Ramadhaan, they do not have to make up for the missed days, like the child who reaches puberty or the non-Muslim who embraces Islam in the midst of Ramadhaan.

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However, if one were sane and then had a temporary bout of insanity, the question arises as to whether one must make up the missed ritual act of worship, as in the case of sleep or forgetfulness, or was it the case that due to one's insanity was not actually addressed by the command in the first place. For those who say the ritual act needs to be made up, this making of the missed acts, though, is contingent on how "long" the temporary bout of insanity was. The question then revolves around what would be considered hardship,⁹⁸ and hence opinions vary. To illustrate this point one can take the parallel case of missing the prayers due to falling unconscious from fainting. On this point, one finds in the *Muwatta* of Imam Malik:

أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ أُغْمِيَ عَلَيْهِ فَذَهَبَ عَقْلُهُ فَلَمْ يَقْضِ الصَّلَاةَ

"Abdullah ibn Umar (may Allah be pleased with him) fainted and lost his senses and he did not make up his prayer."⁹⁹ Malik then stated, "We consider that that was because, and Allah knows best, the time [for the prayer] had passed. Someone who recovers within the time has to pray." In Malik's narration, there is no mention of how long ibn Umar was unconscious. In Muhammad al-Hasan al-Shaibaani's narration of the *Muwatta*, al-Shaibaani adds, "We follow this opinion if the person is unconscious for more than a day and night. If it is a day and night or less than that, he makes up his prayers." Hanafi views are that if a person missed five prayers (according to some) or six prayers (according to others), then that would be a hardship to make up and the person would be absolved of any responsibility to perform them.¹⁰⁰ Many of the narrations that Hanafis quote from ibn Umar say that he was unconscious for one day and did not make up his prayers. Those reports have weaknesses in their chains. However, there are other narrations from ibn Umar that he was unconscious for three days and did not make up his prayers. (Recorded with strong chains by al-Daraqutni and ibn al-Mundhir.) Other narrations in the *Musannaf* of ibn Abi Shaibah state that ibn Umar was unconscious for a month and did not make up his prayers. However, those have weak chains to them. There are narrations from Ammaar (may Allah be pleased with him) that he was of the opinion that the unconscious person must make up all of his missed prayers. Al-Shafiee and al-Baihaqi point out that those reports are not authentic. Based on what is accepted or rejected of these narrations, Imams Malik, al-Shafiee, and Ahmad—with some differences between

98 Al-Juboori, op cit., p. 166.

99 <https://sunnah.com/malik/1/24>

100 Al-Juboori, op cit., p. 166; Hasan, op cit, p. 310.

them¹⁰¹—say that the prayer, any number, is dropped if one is unconscious throughout its entire time.¹⁰²

The contractual and other statements of a continually insane person would be considered null and void by consensus. Thus, a sales agreement, marriage contract, or statement of divorce when pronounced by an insane person would have no legal effect. Such statements would be considered non-existent. The insane person will be under an interdiction or conservatorship (*al-hajr*). In this case, it does not matter if the contract entered into by an insane person were beneficial, harmful, or partially beneficial and harmful. Any and all contracts will be null and void.

Although an insane person cannot on his own enter into a marriage contract, it is possible for an insane person (male or female) to be married. If it is found to be in their best interest, such as due to their sexual desire or being taken care of, the conservator or guardian can marry off an insane person.¹⁰³

An insane person will not be resolved from responsibility if he damages other people's property. These actions are existent and cannot be completely overlooked. However, since no malicious intent was involved or there is doubt as to the existence of any true malicious intent, insane people will not be given the *hadd* punishments nor retribution (*qisaas*). This is true also for the act of illegal sexual intercourse, as indicated in a hadith.¹⁰⁴ If an insane person kills another person, he will not be put to death but he will be liable for the blood money.¹⁰⁵ Even, says al-Juboori, a discretionary punishment (*tazeer*) will not be applied on an insane person.¹⁰⁶

However, an interesting case arises with respect to the insane can contemporaneously be heard with respect to death row prisoners in the United States. Suppose someone committed a crime requiring the death penalty while sane yet, at the current time, the individual is no longer sane. Would it be fair, just, or meaningful to put an insane person to death? According to al-Shafiee and

101 For the details of this differences, see Ahmad Doodam, "Athar al-Junoon ala al-Ahkaam al-Fiqhiyyah fi al-Ibaadaat," Majallah al-Uloom al-Islaamiyyah (No. 10, 1423 A.H.), pp. 14-17; Hasaam al-Noori, "Athar al-Junoon fi al-Tasarrufaat al-Qauliyyah wa al-Filiyyah fi al-Shareeah al-Islaamiyyah (Master's Thesis: Kulliyah al-Najaah al-Wataniyyah, 2013), pp. 102-106.

102 Cf., Muhammad al-Hasan al-Shaibaani, Muwatta al-Imam Maalik bi-Riwaayah Muhammad ibn al-Hasan al-Shaibaani (Beirut, Lebanon: al-Maktabah al-Ilmiyyah, n.d.), vol. 1, p. 100; Saad ibn Naasir al-Shathari's footnotes to Abu Bakr ibn Abi Shaibah, al-Musannaf (Riyadh, Saudi Arabia: Daar Kunooz Ishbeeliyaa, 2015), vol. 4, pp. 440-442; Zakiriyya ibn Ghulaam Qaadir al-Baakistaani, Ma Sah min Athaar al-Sahaabah fi al-Fiqh (Beirut, Lebanon: Dar al-Khazaar, 2000), vol. 1, p. 519; Abu Bakr Ahmad al-Baihaqi, Marifah al-Sunan wa al-Aathaar (Karachi, Pakistan: Jaamiah al-Diraasaat al-Islaamiyyah, 1991), vol. 2, p. 219.

103 For more details on this point, see al-Juboori, pp. 181-183.

104 An individual approached the Prophet (peace and blessings of Allah be upon him) admitting to the crime of illegal sexual intercourse, wishing to be purified of his sin by receiving the hadd punishments. The Prophet (peace and blessings of Allah be upon him) explicitly asked him if he had a about of insanity. Recorded by al-Bukhari.

<https://sunnah.com/bukhari:7167>

105 Al-Juboori, op cit., p. 172.

106 Ibid., p. 174.

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Ahmad, the crime was committed with full intent and hence the punishment needs to be meted out, even given the person's new condition. Abu Hanifah, though, was of the opinion that now the penalty must be dropped, as the individual no longer has legal capacity.¹⁰⁷

Zakaat on one's wealth is something of a special case, since it involves both a ritual act of worship (requiring intention) as well as what is considered the rights of the poor and the needy, or a worship attached to one's wealth. The majority of the scholars¹⁰⁸ say that zakat is obligatory upon the wealth of the insane, with the guardian required to pay it from the wealth of the insane. Thus, the obligation of zakat follows the existence of the wealth. Their evidence includes the verse,

حُدِّ مِنْ أَمْوَالِهِمْ صَدَقَةٌ تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ

"Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them increase, and invoke [Allah 's blessings] upon them" [At-Tauba: 103].

The argument here is that everyone, including the insane, is in need of purification. The following hadith related to the analogous case of the orphan (who is not adult and therefore does not have the sound intention either) is often invoked as evidence,

«أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ خَطَبَ النَّاسَ فَقَالَ: «أَلَا مَنْ وَلِيَ يَتِيمًا لَهُ مَالٌ فَلْيَتَّجِرْ فِيهِ، وَلَا يَبْرُكْهُ حَتَّى تَأْكُلَهُ الصَّدَقَةُ»

The Prophet (peace and blessings of Allah be upon him) addressed the people and said, "As for one who is the guardian of an orphan who has wealth, then let him do business with it and not leave it until it becomes consumed by charity." (Recorded by al-Tirmidhi, al-Daaraqutni, and al-Baihaqi.)¹⁰⁹ Another narration states,

اتَّجِرُوا فِي أَمْوَالِ الْيَتَامَى، لَا تَأْكُلْهَا الزَّكَاةُ

107 See al-Juboori, op cit., p. 177.

108 This is the opinion of the Malikis, Shafiees, Hanbalis, and Dhahiris. It has also been narrated from a number of Companions, including Umar, Ali, Aishah, ibn Abbaas, and ibn Umar. Cf., al-Noori, op cit., p. 118.

109 <https://sunnah.com/tirmidhi:641>

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"Do business with the wealth of the orphans and do not allow zakat to consume it." (Recorded by al-Tabaraani.) However, these narrations are weak.¹¹⁰ These scholars also point to the generality of the Prophet's instructions to Muaadh when he sent him to Yemen,

فَاعْلَمَهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً فِي أَمْوَالِهِمْ تُؤْخَذُ مِنْ أَعْيَانِهِمْ وَتُرَدُّ عَلَى فُقَرَائِهِمْ

"Then teach them that Allah has made it obligatory for them to pay the Zakat from their property and it is to be taken from the wealthy among them and given to the poor." (Recorded by al-Bukhari.¹¹¹) The "rich" here does not distinguish between the wealthy who are insane or any others. Next, there is what could be called a "public interest" (*maslahah*) argument. One of the primary purposes of zakat is to meet the needs of the poor. For such purposes, it makes no difference if the zakat came from the wealth of the sane or insane. In either case, the wealth is still needed and beneficial.¹¹² (Note that since the zakat is going to be obligatory anyway, it does not matter if the insanity is permanent or temporary.)

The Hanafis say that there is no zakat on the wealth of the insane. First and foremost, they argue that zakat is an act of worship in need of intent, which the insane are not able to fulfill and, therefore, it is not an obligation upon them. They also quote the same verse,

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ

"Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them increase, and invoke [Allah 's blessings] upon them" [At-Tauba: 103].

Their argument from the verse is that the insane are absolved from sin and therefore they are actually not in need of purification, so the verse must not apply to them. In addition, the Hanafis quote the hadith mentioned earlier,

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الصَّغِيرِ حَتَّى يَبْلُغَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الْمُصَابِ حَتَّى يُكْشَفَ عَنْهُ

"The pen has been raised from three: the young child until he reaches the age of puberty, the sleeping person until he awakens, and the one is afflicted [with a mental disorder] until he is

110 See al-Albaani, Irwaa, op cit., vol. 3, pp. 258-260. Al-Tirmidhi himself pointed to the weakness in the chain.

111 <https://sunnah.com/bukhari:1395>.

112 Cf., al-Noori, op cit., pp. 118-121.

relieved."¹¹³ (One can clearly question the strength of this argument. Sinfulness is definitely removed but not all obligations, like damaging others' properties. Hence, zakat is more akin to the rights of others which are not dropped.)

They also argue based on "interest" (*maslahah*), but in this case it is the interest of the individual, the insane. The insane person's wealth may not be being invested or growing and, hence, zakat would be allowed to eat it up, even though the insane individual may need it.

The Hanafi position requires further detail concerning temporary insanity, since there is a condition for zakat that the wealth must be in a person's possession for an entire year. The Hanafis argue that if a person is insane for an entire year, there is no zakat on his wealth. However, according to al-Shaibaani, if he becomes sane at any time during a year, then he must pay the zakat for the entire year. For Abu Yusuf, if a person is sane for over half of the year the zakat to become obligatory upon him.¹¹⁴

In essence, an insane individual is left with only the competence of entitlement and not the competence of performance. He can still inherit, receive gifts, and own property, for example. However, ritual acts and commercial acts on his part would not be considered valid.

2.2.1.1 Further Comments on Interdiction/Conservatorship (al-Hajr)

The concept of *al-hajr* is straightforward. Al-Sherbeeni, representing the Shafiee school, has defined it simply as, "Being prohibited from engaging in wealth-related activities."¹¹⁵ Essentially, for their own benefit, the benefit of others, and the beneficial use of the resources that Allah has provided humans with, some people are prevented from disposing of their own property freely.

The basis for this legal practice is the Quran itself. Allah says,

¹¹³ With this wording, it is recorded by Ahmad on the authority of Ali ibn Abi Taalib. It was graded sahih lighairih by al-Arnaaoot, et al. See al-Arnaaoot, et al., *Musnad*, op cit., vol. 2, p. 254. On this point, the others are arguing that the zakat is actually obligatory on the wealth, so the raising of the pen is irrelevant here.

¹¹⁴ See al-Noori, op cit., p. 116. Al-Noori himself (p. 121) has an interesting compromise between the two views stated above. He argues that if the wealth of the insane is in the hands of a conservator who is investing and growing the wealth, then the majority opinion that zakat is obligatory should be followed. However, if that money is simply sitting somewhere and not growing, zakat would continually eat away at it, harming the interest of the insane. In which case, the Hanafi position of no zakat should be followed.

¹¹⁵ Ibn Qudaamah, of the Hanbalis, has virtually the same definition. Instead of "wealth-related activities," the Hanafis define the term in relation to "statement" (such as contracts) and add some other aspects to the definition. Malikis also have a more extended definition. By any definition, the end results are virtually the same. For more details, see Kuwait Ministry of Auqaaf and Religious Affairs, *al-Mausooah al-Fiqhiyyah al-Kuwaitiyyah* (Kuwait: Daar al-Salaasil), vol. 17, p. 84; Aishah Baayoosuf, "Al-Hajr Li-Maslahah al-Nafs wa al-Wali and Kaifiyyah Tasarufufu fi Mal Mahjoorih (Master's Thesis: Jaamiah Umm al-Quraa, 1983-1984), pp. 21-26; Aahid Abu al-Ataa, "Al-Hajr ala al-Sagheer wa al-Majnoon wa al-Safeeh wa Tatbeeqaatuhaa fi al-Muhaakim alShariyah fi Qitaa Ghaza (Master's thesis: al-Jaamiah al-Islamiyyah Ghaza, 2008), pp. 3-5.

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

“And do not give the weak-minded your property, which Allah has made a means of sustenance for you, but provide for them with it and clothe them and speak to them words of appropriate kindness” [An-Nisaa: 5]

This verse demonstrates the type of person to whom wealth should not be turned over to as well as the purpose behind this law. Allah then states in the next verse,

وَابْتَلُوا الْيَتَامَى حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَن يَكْبَرُوا
وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ وَكَفَىٰ بِاللَّهِ

حَسِيبًا

“And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgement, release their property to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant” [An-Nisaa: 6]

This verse indicates that both age as well as maturity or sound judgment need to be taken into consideration before an individual is allowed to deal freely with their own wealth. Allah has also said,

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَآكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْب كَاتِبٌ أَن يَكْتُبَ
كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسَ مِنْهُ شَيْئًا فَإِن كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا
أَوْ ضَعِيفًا أَوْ لَا يَسْطِيعُ أَن يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ

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"O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice." [Al-Baqarah: 282]

The latter part of the portion of the verse just quoted demonstrates who those who essentially unqualified to engage in such transactions must have someone else manage the transaction for them.

The concept of interdiction is also supported by the following hadith, which also supplies some interesting caveats:

عَنْ أَنَسِ بْنِ مَالِكٍ، أَنَّ رَجُلًا، عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَانَ يَبْتَاعُ وَفِي عَقْدَتِهِ ضَعْفٌ، فَأَتَى أَهْلَهُ نَبِيَّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالُوا: يَا نَبِيَّ اللَّهِ، احْجُرْ عَلَى فُلَانٍ، فَإِنَّهُ يَبْتَاعُ وَفِي عَقْدَتِهِ ضَعْفٌ، فَدَعَاهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَهَاهُ عَنِ الْبَيْعِ، فَقَالَ: يَا نَبِيَّ اللَّهِ، إِنِّي لَا أَصْبِرُ عَنِ الْبَيْعِ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "إِنْ كُنْتَ غَيْرَ تَارِكِ الْبَيْعِ، فَقُلْ: هَاءَ وَهَاءَ، وَلَا خِلَابَةَ"

Narrated Anas ibn Malik: During the time of the Messenger of Allah (ﷺ) a man used to buy (goods), and he was weak in his intellect. His people came to the Prophet of Allah (ﷺ) and said: Prophet of Allah, stop so-and-so (to make a bargain) for he buys (goods), but he is weak in his intellect. So the Prophet (ﷺ) called on him and forbade him to make a bargain. He said: Prophet of Allah, I cannot keep away myself from business transactions. Thereupon the Messenger of Allah (ﷺ) said: If you cannot give up making a bargain, then say: Take , and give, and there is no attempt to deceive.¹¹⁶

116 <https://sunnah.com/abudawud:3501>. Recorded by Ahmad, Abu Dawood and others. Graded sahih by al-Arnaaoot et al. See al-Arnaaoot et al., Musnad Ahmad, op cit., vol. 21, p. 10.

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In this hadith, the individual is clearly not deranged but more likely foolhardy in his actions. It has been argued that this hadith demonstrates that interdiction is not always obligatory.¹¹⁷ That is, there is some room for judicial discretion, especially if specific behavior can be incorporated to protect the individual—as other narrations have explained what is implied by the ending of the above hadith,

عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حَبَّانٍ، قَالَ: هُوَ جَدِّي مُنْقِدُ بْنُ عَمْرٍو وَكَانَ رَجُلًا قَدْ أَصَابَتْهُ أَمَةٌ فِي رَأْسِهِ فَكَسَّرَتْ لِسَانَهُ، وَكَانَ لَا يَدْعُ

عَلَى ذَلِكَ التَّجَارَةَ، وَكَانَ لَا يَزَالُ يُغْبَنُ، فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَذَكَرَ ذَلِكَ لَهُ فَقَالَ لَهُ: " إِذَا أَنْتَ بَايَعْتَ، فَقُلْ: لَا

خِلَابَةَ، ثُمَّ أَنْتَ فِي كُلِّ سَلْعَةٍ ابْتَعْتَهَا بِالْخِيَارِ ثَلَاثَ لَيَالٍ، فَإِنْ رَضِيتَ فَأَمْسِكْ، وَإِنْ سَخِطْتَ فَارْذُدْهَا عَلَى صَاحِبِهَا

It was narrated that Muhammad bin Yahya bin Habban said: "My grandfather was Munqidh bin 'Amr. He was a man who had suffered a head wound and lost the power of speech, but that did not stop him from engaging in trade. He was always being cheated, so he went to the Prophet (ﷺ) and told him about that. He said to him: 'When you buy something, say: "There should be no intention of cheating," and for every product you buy, you have the choice for three nights. If you are pleased with it, keep it, and if you are displeased then return it."¹¹⁸

It seems that the Companion Muaadh ibn Jabal (may Allah be pleased with him) was generous in business and as a result fell into a great deal of debt. This led to the Prophet (peace and blessings of Allah be upon him) seizing his well via an interdiction and selling off his property to pay his creditors, as described in the hadith,

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «حَجَرَ عَلَى مُعَاذِ بْنِ جَبَلٍ مَالَهُ، وَبَاعَهُ بِدَيْنٍ كَانَ عَلَيْهِ

The Prophet (peace and blessings of Allah be upon him) seized the wealth of Muaadh ibn Jabal [through interdiction] and sold it due to the debts upon him." However, there is some question as

117 Cf., Kuwait Ministry of Auqaaf and Religious Affairs, op cit., vol 17, p. 98; Dubyaan al-Dubyaan, al-Muaamalaat al-Maaliyyah Asaalah wa Muaasirah (Riyadh, Saudi Arabia: Maktabah al-Malik Fahd al-Wataniyyah, 1432 A.H.), vol. 2, p. 37. Although all scholars agree that interdiction is to be done with respect to the insane, Abu Hanifah and ibn Hazm alone argued that absolutely no interdiction is to be done with respect to the safih (the spendthrift or foolhardy in his actions). For their views, see Oussama Arabi, "The Interdiction of the Spendthrift (al-Safih): A Human Rights Debated in Classical Fiqh," Islamic Law and Society (Vol. 7, No. 3, 2000), pp. 309-322.

118 <https://sunnah.com/ibnmajah:2355>. Graded sahih by al-Albaani and by al-Arnaaoot, et al. See Muhammad Naasir al-Deen al-Albaani, Silsilat al-Ahaadeeth al-Saheehah (Riyadh, Saudi Arabia: Maktabah al-Maarif, 1996), vol. 6, pp. 881-884; al-Arnaaoot, et al., Sunan ibn Maajah, op cit., vol. 3, pp. 441-443.

to the acceptability of this narration and whether it has a connected or broken chain. Al-Albaani has declared it weak. It seems that the chain is *sahih* but also *mursal* (missing the final link to the Prophet (peace and blessings of Allah be upon him)), which would make it a weak hadith in the view of the scholars of hadith.¹¹⁹

2.2.1.2 Interdiction of the Insane is by Law

When someone is insane, they have lost all legal capacity, with its ramifications described above. (Although, of course, they still have the competence of entitlement.) The interdiction that is due to insanity is by law. In other words, it is not a personal option, family option, or even an option of the court. Once someone has been determined to be "insane," this rule kicks in.

However, some important questions have been posed by Gray and Bjorklund:

Who has the right to decide whether a person does or does not have a mental disorder: a psychiatrist (a medical doctor specializing in the field of mental disorders) or psychologist—or perhaps a court of law, or a health insurance administrator who must approve or not approve payment for therapy? Or should the decision be made by the person's family, or the person him- or herself? These are tough questions that can never be answered strictly scientifically. The answers always represent human judgments, and they are always tinged by the social values and pragmatic concerns of those doing the judging.¹²⁰

The questions posed in that passage hint to the differences between how the fiqh has traditionally perceived insanity and what mental health experts are discussing today. Al-Numay stated, "It is not necessary to get an approval from the judge for the interdiction of an insane person. This is so because when somebody is suffering from that affliction, his state is not obscured to anyone, so there is no need for any juristic ruling to either affirm or deny it, since it is clearly apparent."¹²¹ Thus, for the vast majority of scholars, this type of interdiction is not in need of a judicial order as long as it is obvious and known that an individual has lost his rational faculties.¹²² Again demonstrating the automatic nature of this ruling in the law, there seems to be widespread

¹¹⁹ Cf., al-Albaani, *Irwa'a*, op cit., vol. 5, pp. 260-262; Husain Sabahaitush, footnotes to Ahmad ibn Hajar al-Asqalaani, *al-Mutaalib al-Aaliyyah bi-Zawaaid al-Masaaneed al-Thamaaniyyah* (Riyadh, Saudi Arabia: Daar al-Aasimah, 1998), vol. 7, pp. 394-397.

¹²⁰ Gray and Bjorklund, op cit., pp. 618-619.

¹²¹ Muhammad ibn Abdul-Azeez al-Numay, *Al-Wilaayah ala al-Maal* (Riyadh, Saudi Arabia: Published by the author, 2012), p. 77.

¹²² Cf., Abu Muhammad Muwaffaq al-Deen ibn Qudaamah, *Al-Mughni* (Cairo: Maktabah al-Qaahirah, 1968), vol. 4, p. 343; Badr al-Deen al-Zarkashi, *al-Manthoor fi al-Qawaaid al-Fiqhiyyah* (Kuwait: Kuwait Ministry of Auqaaf, 1986), vol. 2, pp. 28-29; Jalaal al-Deen al-Suytooi, *Al-Ashbaah wa al-Nadhaair* (Beirut, Lebanon: Daar al-Kutub al-Ilmiyyah, 1990), p. 460; Various Ottoman scholars, *Majallah al-Ahkaam al-Adliyyah* (Karachi, Pakistan: Noor Muhammad, n.d.), p. 186.

agreement on the opposite as well: Once a person gains or regains his rational faculties, he now has full legal capacity with no need for a judicial decree.¹²³ According to al-Juboori, the Malikis, however, state that such interdiction requires a decree from either the parent, guardian, or judge.¹²⁴ Dols states that according to famed Khalil of the Maliki school, consensus of the community could also decree a person to be insane.¹²⁵

If someone has been continually insane since infancy, then all scholars agree that this principle of interdiction will be imposed. However, there is some difference of opinion concerning the individual who has bouts of insanity. In the Hanbali school, interdiction is imposed upon the one who has temporary bouts of insanity both during bouts of insanity as well as bouts of saneness. (Hence, they do not distinguish between those who have been permanently insane since infancy and those who experienced insanity later.) The Hanafis, Malikis, and Shafiees all say that the interdiction is only during the times of the bouts of insanity. Abu al-Ataa, in his Master's thesis, agrees with the Hanbali approach. While quoting the hadith mentioned earlier that the pen is raised from the insane until they become sane, they argue that the one who has bouts of insanity never become free of their ailment. (This is curious because it seems to contradict the explicit wording of the hadith.) Secondly, they argue that allowing transactions during bouts of sanity could lead to a great deal of evil, as people could claim that transactions were done when the person was of sound mind when in reality they were not.¹²⁶ That definitely could be problematic. However, in cases of dispute, a judge could probably rely on a couple of principles: The judge could first analyze the transaction and see if it were a rational one. Second, the principle of what is known by certain is not removed by doubt could be invoked—if the individual were known to be sane at a particular time before the transaction, then the burden of proof would be on those claiming that he was not sane at the time of the transaction, and vice-versa. And Allah alone knows best.

2.2.2 Dols' Observations

In Dols' book *Majnun: The Madman in Medieval Islamic Society*, he makes some conclusions that are worth noting. In his discussion of the Hanafi view, he notes, "There is no interest in the wide range of possible mental disturbances, from florid conditions to simple-mindedness."¹²⁷ With respect to ibn Rushd in *Bidaayah al-Mujtahid*, he notes, "[I]t is surprising that Ibn Rushd, a

123 Usaamah ibn Saeed al-Qahtani, et al., *Mausooah al-Ijmaa fi al-Fiqh al-Islami* (Riyadh, Saudi Arabia: Dar al-Fadheelah li-l-Nashr wa al-Tauzee, 2012), vol. 4, pp. 484-7. The authors note that although some have claimed no difference of opinion on this issue, they were not able to explicitly affirm that for the Maliki and Hanafi schools.

124 Al-Juboori, pp. 186-187. Dols, op cit., p. 438 also says that the Malikis require a judicial decree for declaring a person insane or declaring an insane person now lucid.

125 Dols, op cit., p. 438.

126 See Abu al-Ataa, op cit., pp. 71-72.

127 Dols, op cit., p. 437.

prominent physician and philosopher, does not mention the various forms of mental illness or its philosophical implications."¹²⁸ Later he writes,

[T]he jurists dealt with insanity in a brief, indirect, and often cursory manner; the legal notion of insanity is itself quite imprecise and ambiguous...There is a comparable brevity about insanity, a comparable failure to define it, and a comparable disregard of medical knowledge or expertise. From our point of view, this last point is most striking. Although there appears to be some recognition of mental disturbances as illnesses, medicine is virtually ignored in the Muslim legal discussions, although, as we have seen, the doctors created an elaborate explanation of mental illnesses. Even the vocabulary of the two disciplines is quite separate. And doctors are never mentioned as specialists in the determination of insanity. One reason for this disregard must be that, in general, sickness or physical infirmities are not a cause of legal incapacity in Islamic law.¹²⁹

What Dols is suggesting for the jurists is something of a slippery slope. There may have been a very good reason why the jurists did not delve into the world of the physicians on this topic. The category that is recognized by the law as insanity—which seemed to have been straightforward and obvious¹³⁰—may differ in many ways from complex manner in which physicians view mental disorders. As Garcia stated,

Insanity is not a medical definition but a legal one, thus, schizophrenics and insanity are not the same. Though schizophrenic is mental illness, it does not imply that a person suffering from schizophrenics is insane. As Bland and Orn (1986, p,126) explains, insanity entails mental illness as well as mental deficiencies, thus, there is a difficulty in precisely how to use a medical concept no [*sic*] a legal issue. The legal theories of mental illness as well as insanity raises issues in disagreement between what is known as legalistic criminology against what is known as scientific criminology: punishment verse treatment and prisons verse hospitals. This issue coils around a grey area involving law against science. The big problem with this kind of mental illness is the fact

128 Ibid., p. 438.

129 Ibid., pp. 451-2.

130 What Dols writes later does not seem to contradict what was stated above. He wrote (op cit., p. 452), "It might also be argued that the lack of interest of the Muslim jurists in insanity was because they considered insanity to be obvious and needed little elaboration. This would appear to be unlikely, for the Malikis clearly saw the necessity for a judge to decide whether or not to interdict an adult on the grounds of insanity. This decision might bring up all kinds of problems, none of which is explained in the fiqh books. Qualified witnesses might be called to testify to the sanity of an individual, and such testimony was a normal procedure in Islamic courts. In any case, the considerable difficulty in assessing legal incompetence appears to be the primary reason for the lack of definition in most legal systems; it allows this judgement to be made on a flexible, ad hoc basis. Thus, this fuzzy approach to insanity is probably based on the reasonable premise that there is no insanity in the sense of its being a unitary phenomenon; it was, and still is, a catch-all expression for various forms of unusual behaviour." Even if one school of fiqh requires a judge's decree, the judge is still seeking to establish something whose manifestation seems obvious to the community itself.

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that this is merely a theory. To the scientists, theories are their usual way of existence; however when you apply these theories to the model of law, these theories becomes fairly risky. By application of a shaky theory like mental illness in to law and allowing people with schizophrenic the legal system in real meaning will be clogging the justice wheels with the proverbial 'monkey wrench'.¹³¹

In other words, it is clearly understandable why the earlier Muslim jurists did not consider other types of mental disorders under the category of insanity as a legal impediment. That still leaves open the question as to whether other types of mental disorders should be categorized as a type of legal impediment. Historically speaking, it does not seem that Muslim culture considered other types of mental illness as tantamount to a legal form of insanity. Issa points out the following:

Similar to ancient physicians, Muslim physicians extensively discussed depression and melancholia, but the concept of psychosis was not formulated, even though both hallucinations and delusions were reported as symptoms of mental illness. It may be that psychotic behavior was more accepted in these societies and was less recognized as a mental illness by the general population. Even in present Muslim countries such as Turkey, vignettes of a paranoid psychotic and a simple schizophrenic were recognized as mental illness by only 10 percent of villagers and 15 percent of an urban sample (Ozturk and Volkan, 1977). In contrast, corresponding data from a small town in the Canadian prairies show that 70 percent noted that there was something wrong with the simple schizophrenic and 69 percent considered the paranoid schizophrenic as mentally ill (Cumming and Cumming, 1957). The presence of only severe cases in Islamic mental institutions suggests that various types of disturbed behavior is tolerated or dealt with outside the medical sphere. Of course, medical authorities may have been selective in reporting depression, which may have been more successfully treated by them than psychosis. It is also possible that hallucinatory behavior such as visions was accepted in medieval Islamic society and may not have been considered as mental illness (Al-Issa, 1995b).¹³²

In fact, Baayoosuf explicitly states that someone experiencing evil Satanic hallucinations, putting fear into him at all times, with his heart soaring, but his brain is fine, and otherwise he is sound is

¹³¹ Garcia, op cit., p. 1.

¹³² Ihsan al-Issa, "Mental Illness," op cit., p. 66.

not someone whose rational abilities has left him and he is to be treated with *ruqyah* (Quranic incantations) and seeking refuge in God.¹³³

A second general conclusion that Dols makes is,

As in Roman law, there was no interest in the causation of mental inability; what was important was the individual's legal capacity. This indifference to causes also extended to supermundane reasons for mental derangement; possession is never mentioned in the legal texts. Reason or the ability to understand is the essential condition for the existence of all judicial actions, and it is presumed to be lacking in the insane... Islamic law resembles more closely the position of Roman law on insanity: madness is simply an absence of understanding or reason. The Muslim jurists did not probe into questions of causation; it was irrelevant whether insanity was caused by the imbalance of the humours, malevolent demons, or God. Yet, the unreason of the madman goes to the very heart of Muslim life, for *niya*, intention or purpose, is a fundamental aspect of all legal actions and most ritual observations. *Niya* was believed to have its seat in the heart, the central organ of intellect and cognition—another indication of how far professional medicine was from religio-legal thought.¹³⁴

The jurists unanimously considered insanity as an impediment that “comes from God” and is not “man-made.” From that perspective, given the goal of legal theory, there is no need to delve into the cause of the insanity. The person has been rendered incapable of producing a sound intention and guided action and therefore he is void of legal capacity. That is a sufficient discussion from the law’s perspective.

Dols also highlights the perplexity of dealing with the insane from a legal perspective—a perplexity that one can see often today between advocates for the unhoused and the rest of society. He notes, “Sociologically, the indeterminacy of the law regarding insanity may be an expression of a strong reluctance both to debar members of a community from their rights and obligations and to assume responsibility for them... The aim of the law to protect both society and the individual explains the paradoxical status of the insane, one of both privilege and deprivation.”¹³⁵

2.2.3 Other Issues Concerning Insanity

133 Aishah Baayoosuf, “Al-Hajr Li-Maslahah al-Nafs wa al-Wali and Kaifiyyah Tasarufufu fi Mal Mahjoorih (Master’s Thesis: Jaamiah Umm al-Quraa, 1983-1984), p. 303.

134 Dols, op cit., p. 452-455.

135 Ibid., pp. 452-453.

Other issues concerning insanity as a legal impediment are discussed later. There is room to perhaps tweak this broad concept. Of utmost concern is that insanity itself, defined in the simplistic form above, does not seem to address all the issues related to mental illness.

2.3 The Impediment of Amentia/Dementia

The books on Islamic Legal theory also discuss *عته* (*'uth*, *'atah*) as a legal impediment. Essentially this refers to an individual who is extremely mentally challenged.¹³⁶ From a legal perspective, some—not all—autistic individuals would be put into this category as well, even if their case is not considered a type of intellectual disability.¹³⁷

Hasan has translated Sadr al-Shareeah's definition of this term as, "Idiocy (*'uth*) is the mental derangement of a person who is confused in his speech and speaks sometimes like sensible men and sometimes like lunatics."¹³⁸ Al-Juboori mentions the following as the difference between this impediment and the previous impediment of insanity: (1) The one suffering from amentia could be like a child who has some level of discernment (*tamyeez*) or like a child lacking discernment (like one younger than seven years old). On the other hand, the insane person is only like a child lacking any discernment. (2) Amentia refers to intellectual impairment while insanity refers to a complete loss of rational thinking. (3) Amentia is not accompanied with nervous agitation or confusion while these generally do afflict a person during bouts of insanity.¹³⁹ One could also add that those who are intellectually challenged (like young children) are not prone to violence or harming others while the insane can be prone to violence or harming others. Thus, al-Zailaei wrote, "The one with amentia has very little understanding, confused speech, and unsound actions."

136 Hasan (op cit., p. 313) has translated *'uth* as "idiocy." In the past, the terms "imbecile," "idiot," and "moron" were psychological classifications describing the level of a person's mental intelligence, as determined by IQ tests. See, for example, "The Clinical History of 'Moron,' 'Idiot,' and 'Imbecile,'" <https://www.merriam-webster.com/words-at-play/moron-idiot-imbecile-offensive-history>. These are no longer used in such a way and these terms are now usually considered offensive. Mental retardation is another expression that has fallen out of favor. Amentia is a broad term that simply means intellectual disability while dementia refers to impairment of intellectual ability which is the result of changes or damage to the brain over time. These two seem to be more "neutral" terms, and hence they have been chosen here.

137 Sohn writes, "The medical establishment once considered autism and intellectual disability to be virtually inseparable. In the 1980s, as much as 69 percent of people with an autism diagnosis also had a diagnosis of mental retardation. By 2014, the figure for a dual diagnosis — with mental retardation now called intellectual disability — had declined to 30 percent, as researchers had sharpened the diagnostic criteria for autism. These figures are fluid, however, because the line between autism and intellectual disability remains fuzzy: Doctors often mistake one condition for the other or diagnose just one of the two when both are present. Genetic overlap further blurs the picture. Most genes identified as autism genes also cause intellectual disability. And researchers face roadblocks to progress in making the demarcation, including a funding imbalance that favors autism research and the fact that it is often easier to study autistic people without intellectual disability than with it." Emily Sohn, "The blurred line between autism and intellectual disability," <https://www.spectrumnews.org/features/deep-dive/the-blurred-line-between-autism-and-intellectual-disability/>. Also see Audrey Thurm, et al., "State of the Field: Differentiating Intellectual Disability From Autism Spectrum Disorder," <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6683759/pdf/fpsy-10-00526.pdf>. For more on the differences between autism and mental retardation, also see "Autism and Mental Retardation: Are They the Same?" <https://plexusnc.com/autism-and-mental-retardation-are-they-the-same/>.

138 Hasan, op cit., p. 313.

139 Al-Juboori, p. 197.

However, he does not strike out at others or use abusive or foul speech like the insane person does.¹⁴⁰

According to al-Numay, the jurists, as opposed to the legal theorists, do not really distinguish between insanity and amentia, as they consider amentia a type of insanity. He says that, in reality, there is going to be very little difference between the two when it comes to issues such as interdiction or conservatorship.¹⁴¹

2.4 The Impediment of Illness—Traditionally, Physical not Mental Illness

Allah has said,

شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ هُدًى لِّلنَّاسِ وَبَيِّنَاتٍ مِّنَ الْهُدَىٰ وَالْفُرْقَانِ فَمَن شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ
وَمَن كَانَ مَرِيضًا أَوْ عَلَىٰ سَفَرٍ فَعِدَّةٌ مِّنْ أَيَّامٍ أُخَرَ يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ وَلِتُكْمِلُوا الْعِدَّةَ وَلِتُكَبِّرُوا
اللَّهَ عَلَىٰ مَا هَدَىٰكُمْ وَلَعَلَّكُمْ تَشْكُرُونَ

«The month of Ramadhan [is that] in which was revealed the Qur'an, a guidance for the people and clear proofs of guidance and criterion. So whoever sights [the new moon of] the month, let him fast it; and whoever is ill or on a journey - then an equal number of other days. Allah intends for you ease and does not intend for you hardship and [wants] for you to complete the period and to glorify Allah for that [to] which He has guided you; and perhaps you will be grateful» [Al-Baqarah

185]

Besides fasting, in other verses as well, Allah provides an exemption for those who are ill:

وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ وَلَا تَحْلِقُوا رُءُوسَكُمْ حَتَّىٰ يَبْلُغَ الْهَدْيُ مَحَلَّهُ فَمَن كَانَ
مِنْكُم مَّرِيضًا أَوْ بِهِ أَذًى مِّن رَّأْسِهِ فَفِدْيَةٌ مِّن صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ

«And complete the Hajj and 'umrah for Allah. But if you are prevented, then [offer] what can be obtained with ease of sacrificial animals. And do not shave your heads until the sacrificial animal

140 Fakhr al-Deen al-Zailaee, Tabyeen al-Haqaiq Sharh Kanz al-Daqaaiq (Cairo, Egypt: al-Matbaah al-Kubraa al-Ameeriyah, 1414 A.H.), vol. 2, p. 195.

141 Al-Numay, op cit., pp. 72-74.

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has reached its place of slaughter. And whoever among you is ill or has an ailment of the head [making shaving necessary must offer] a ransom of fasting [three days] or charity or sacrifice.»

[Al-Baqarah 196]

لَيْسَ عَلَى الضُّعَفَاءِ وَلَا عَلَى الْمَرْضَى وَلَا عَلَى الَّذِينَ لَا يَجِدُونَ مَا يُنْفِقُونَ حَرَجٌ إِذَا نَصَحُوا لِلَّهِ وَرَسُولِهِ مَا عَلَى الْمُحْسِنِينَ

مِنْ سَبِيلٍ وَاللَّهُ غَفُورٌ رَحِيمٌ

«There is not upon the weak or upon the ill or upon those who do not find anything to spend any discomfort when they are sincere to Allah and His Messenger. There is not upon the doers of good any cause [for blame]. And Allah is Forgiving and Merciful» [At-Taubah 91]

قُلْ لِلْمُخَلَّفِينَ مِنَ الْأَعْرَابِ سُدْعُونَ إِلَى قَوْمِ أُولِي الْأَرْبَاعِ شَدِيدٍ لِقَتْلِهِمْ إِنْ نَصَحُوا لِلَّهِ وَرَسُولِهِ مَا عَلَى الْمُحْسِنِينَ

وَأَنْ تَتَوَلَّوْا كَمَا تَوَلَّيْتُمْ مِنْ قَبْلُ يُعَذِّبْكُمْ عَذَابًا أَلِيمًا لَيْسَ عَلَى الْأَعْمَى حَرَجٌ وَلَا عَلَى الْأَعْرَجِ حَرَجٌ وَلَا عَلَى الْمَرِيضِ

حَرَجٌ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ وَمَنْ يَتَوَلَّ يُعَذِّبْهُ عَذَابًا أَلِيمًا

«Say to those who remained behind of the bedouins, "You will be called to [face] a people of great military might; you may fight them, or they will submit. So if you obey, Allah will give you a good reward; but if you turn away as you turned away before, He will punish you with a painful punishment." There is not upon the blind any guilt or upon the lame any guilt or upon the ill any guilt [for remaining behind]. And whoever obeys Allah and His Messenger - He will admit him to gardens beneath which rivers flow; but whoever turns away - He will punish him with a painful punishment» [Al-Fath 16-17]

The Prophet (peace and blessings of Allah be upon him) also said,

الْجُمُعَةُ حَقٌّ وَاجِبٌ عَلَى كُلِّ مُسْلِمٍ فِي جَمَاعَةٍ إِلَّا أَرْبَعَةً: عَبْدٌ مَمْلُوكٌ، أَوْ امْرَأَةٌ، أَوْ صَبِيٌّ، أَوْ مَرِيضٌ

"The Friday Prayer is a right and obligation upon every Muslim in the community except for four: a slave, a woman, a child [non-adult] or a sick person."¹⁴²

Hasan first quotes Baadhisaah's legal theorist definition of illness, "Illness is an unnatural condition in the human body by reason of which the physical, psychological and biological functions become faulty and unsound." Hasan then has the following explanation of this impediment:

It is noteworthy that lunacy, idiocy, fainting fit and forgetfulness are also diseases, but they are not included in this definition. By illness here is meant those diseases which do not disturb intelligence and volition. Hence the sickness under discussion does not destroy legal capacity but only cause mental as well as physical weakness.

The legal effect of illness is that it does not negate the capacity of obligation in respect of the rights of God and rights of men, nor does it destroy the capacity of expression (*ahliyyat al-'ibaarah*). The reason is that it does not impair the legal responsibility (*dhimmah*), reason (*'aql*) and power of speech. Therefore, the commands of the *Shariah* are addressed to him in respect of public rights, such as prayer and fasting, and private rights, such as divorce, emancipation of a slave, and sale and purchase of property. His conduct of acts and conduct of utterance are valid so as his disease is not fatal. During such illness no other persons, namely his heirs and creditors, has any concern with his property. No interdiction can be imposed on him on account of such illness. He is allowed to make a bequest of one-third of his property or to give his whole property to some person as a gift. Since sickness is a cause of disability, a sick person is required to perform obligatory rituals and acts of devotion by his ability that lies within his power. He is allowed to observe prayer while seated or by lying on a side or on the back. It is worth noting that a sickness from which a person afterwards recovers is regarded as perfect health, for by recovery it is clear that there was no right of any person to his property.¹⁴³

It is interesting to note that, as Dols was quoted earlier, Muslim civilization was aware of "mental illness" and one can find an elaborate discussion of it in some early medical works. However, when it came to law, there does not seem to be an appreciation of an illness that could somehow affect one's legal capacity while not being the same as insanity or temporary insanity. Hence, as described above and as found in numerous books on Islamic legal, illness does not impact an

¹⁴² Recorded by Abu Dawood. Considered sahih by al-Albaani. See al-Albaani, *Irwa*, op cit., vol. 3, p. 54. <https://sunnah.com/abudawud:1067>

¹⁴³ Hasan, op cit., pp. 322-323. Hasan's discussion was taken from al-Taqrer wa al-Tahbeen ala Jahreer al-Kalaam ibn al-Humaam.

individual's legal capacity. In fact, the only area in which there was concern or dispute over an ill person's actions were concerning those experiencing a deathbed illness. During a deathbed illness, one may perform an action simply to harm another's rights, such as divorce, and hence in that state sometimes one's legal capacity is considered limited.

In sum, although the impediment of illness sounds like it would be very relevant for the discussion of mental illness and legal capacity, the way it was traditionally dealt with makes it unrelated to mental illness.

2.5 The Impediment of Intoxication

Allah says,

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَقْرَبُوا الصَّلَاةَ وَأَنتُمْ سُكَرَىٰ حَتَّىٰ تَعْلَمُوا مَا تَقُولُونَ

«O you who have believed, do not approach prayer while you are intoxicated until you know what you are saying » [An-Nisaa: 43]

In the case of intoxication, the discussion moves from the impediments which are the result of "acts of God" to those which are the result of "acts of humans." The main difference between those two major categories is to what extent is an individual to be held accountable for a state that the individual himself actually caused, such as intoxication or drunkenness which was the result of intentionally drinking alcoholic beverages. However, this case is a bit more complicated, as it is possible for someone to be intoxicated without any fault of their own, such as when an individual consumed an alcoholic beverage thinking that it was non-alcoholic.¹⁴⁴

Intoxication is a state wherein a person loses one's rational capabilities as a result of a consumed intoxicant.¹⁴⁵ If the intoxication were accidental¹⁴⁶, wherein one thought they were consuming permissible non-alcoholic products, then, for the most part, the person will not be held responsible for the actions he committed while under the influence. (His transactions and dispositions will be

¹⁴⁴ One is reminded of a case wherein a father mistakenly gave his son "hard lemonade" at a Detroit Tigers baseball game, not realizing that it was alcohol. The child was taken by the police and put into protective custody. Eventually, the parents sued the baseball team and the case was settled. See <https://www.cbsnews.com/detroit/news/judge-settles-lawsuit-in-case-of-child-booze-at-detroit-tigers-game/>.

¹⁴⁵ For the different fiqh views on the exact definition of "intoxicated," see Zaid al-Wasees, "Ahkaam al-Sukraan fi al-Fiqh al-Isaami: Diraasah Fiqhiyyah Muqaaranah," Majallah Markaz al-Buhooth wa al-Diraasaat al-Isaamiyyah (vol. 37), pp. 676-678.

¹⁴⁶ The term chosen here is "accidental" instead of "unintentional." This is because many people intentionally consume alcohol but not with the intent of getting drunk. Thus, their drunkenness was unintentional but not, in a sense, accidental.

considered null and void and he will not be held criminally responsible for his actions. He will be financially responsible, however, if he causes injury or damage.)

It is possible that being in a state of intoxication is the result of doing something permissible. Accidental intoxication has already been mentioned. However, Hasan further mentions under the category of "intoxication caused by permissible means," "intoxication is caused by drugs taken medicinally such as opium or narcotic (*banj*), or by the use of preparations having the properties of food made from wheat, barley or honey."¹⁴⁷ In addition, one should note that there is some difference of opinion whether one can use alcohol for medicinal purposes.¹⁴⁸ In contemporary times, many drugs have possible psychotic side-effects.¹⁴⁹

The important point about those who accidentally became intoxicated or who became intoxicated as a result of permissible means is that they are to be treated like those whose legal capacity is impacted by "an act of God," not "an act of humans." In particular, they are treated like someone who has fallen unconscious. All dispositions, for example, when performed in such an intoxicated state will be null and void. The individual will make up any missed ritual acts of worship (given some of the differences of opinion alluded to earlier). He will be financially liable for damage or harm done to others and property but he will not be criminally liable.

Other than being a side effect of medication, it would seem intuitive that mental illness would fall under the category of the "acts of God." However, the situation may not be completely straightforward. Suppose hypothetically that a soldier intentionally and willingly murders an innocent family as a "war on terrorism." At one level, he knew it was wrong but he did it intentionally. Years later, he may be suffering from post-traumatic stress disorder (PTSD). Is this

147 Hasan, op cit., p. 341.

148 The vast majority of scholars say that it is forbidden to consume alcohol for medicinal purpose even in a state of necessity, due to a fairly explicit hadith on this question. Ibn Hazm and some others disagree. See Muhammad Ali al-Baar, al-Tadaawi bi-l-Muharramaat (Jeddah, Saudi Arabia: Daar al-Manaarah, 1995), pp. 17ff. According to al-Isaawi, the permissibility of consuming alcohol for medicinal purpose is also found in the Hanafi and Shafiee school, but it is considered the weaker opinion. See Ismaaeel al-Isaawi, "Al-Sukr Anwaahu wa Ahkaamuhu: Diraasah Muqaaranah fi Fiqh al-Jinaaee al-Islaami," Majallah Jaamiah al-Shaariqah lil-Uloom al-Shariyyah wa al-Qaanooniyyah (Vol. 5, No. 2, 2008), p. 109.

149 Although it is difficult to definitely establish the relationship between a drug and a possible side effect, the following drugs, for example, have been reported as having such adverse side effects. The side effects of didanosine include psychosis and mood disorder. The side effects of stavudine includes delirium and mood disorders. The side effects of zalcitabine include impaired concentration, delirium, and mood disorders. The side effects of zidovudine includes vivid dreams, psychotic symptoms, and delirium. Even an over the counter medicine such as ibuprofen has had side effects of hallucinations, psychosis and delirium. See Nora Turjanski and Geoffrey G. Lloyd, "Psychiatric side-effects of medications: recent development," *Advances in Psychiatric Treatment* (2005), vol. 11, p. 60 and p.68. Almost any contemporary drug can have dangerous side effects—but the physician or patient concludes that the risk of those side effects is outweighed by the benefits of the drugs. Turjanski and Lloyd conclude their paper by writing (p. 70, in the form of a multiple choice quiz): "The following statements are correct: (a) non-steroidal anti-inflammatories may induce psychiatric symptoms; (b) antihistamines may induce psychosis and delirium; ... (d) antibiotics can cause delirium; (e) antibacterials can induce depression." For the case of ibuprofen, for example, see Nachum Katz, et al., "Ibuprofen and Psychotic Exacerbation," <file:///C:/Users/admin/Downloads/appi.ajp.159.9.1606-a.pdf>; Charles Browning, "Nonsteroidal anti-inflammatory drugs and severe psychiatric," *International Journal of Psychiatry in Medicine* (Vol. 26, No. 1, 1996), passim. It is obvious, though, that these side effects are uncommon.

mental illness of his own doing or not? He may have never expected that he would suffer from PTSD as a result of his action—he may not have been aware that such would be a possibility—but does that render him free of responsibility for his action and consequent mental illness? There has also been shown that there is probably a link between cannabis and mental health issues (although perhaps more research is needed).¹⁵⁰ Jurists need to consider this question since there are sometimes separate consequences for the “acts of God” vis-à-vis the “acts of humans.”

The case of “non-accidental” intoxication is nuanced from a legal theory perspective. This is because the individual is no longer able to understand the law—a cornerstone of legal capacity—and he is also not able to act in a rational manner or in his own best interest. At the same time, he is the cause for the state that he is in. Scholars differed over which of these two aspects should take precedence when it comes to the acts of an intoxicated person.

According to one view, when intoxication is the direct result of willful prohibited acts, then the legal capacity of the individual is not affected, except in some cases. These scholars do not excuse such a person. Part of the logic behind this is to discourage individuals from putting themselves into such situations. The second view absolves the individual from the legal consequences of his statements and dispositions done while intoxicated since the person has basically lost his rational faculties. Hence, the scholars differ over whether transactions of a drunk are considered valid. They also differ over as to whether the divorce statement of a drunk person is considered valid.¹⁵¹ (In the case of divorce, the drunk is also bringing harm to others—his family—and hence some distinguishing between statements that bring harm to others, which would be considered void, and statements which only bring harm to the individual himself, which would be considered valid.) Similarly, they also differ in their treatment of the disposition and contracts that a drunk person enters into.¹⁵²

2.6 The Impediment of Coercion

The Messenger of Allah (peace and blessings of Allah be upon him) said,

¹⁵⁰“Cannabis (Marijuana) Research Report,” <https://nida.nih.gov/download/1380/cannabis-marijuana-research-report.pdf?v=7fc7d24c3dc120a03cf26348876bc1e4>, p. 15.

¹⁵¹ The scholars who say that the divorce takes place include Saeed ibn al-Musayyib, ibn Seereen, al-Zuhri, Hanafi school, Shafiee school, the stronger opinion among the Malikis and one view of the Hanbalis. Those who say that the divorce does not take place include Uthmaan ibn Affaan, ibn Abbaas, Umar ibn Abdul-Azeez, and one view of the Hanbalis. A view among the Malikis state that if a person is completely drunk, like an insane person, then the divorce does not take place; otherwise, it does. Hudhaifah Ghunaimaan, “Talaq al-Sukraan” (Master’s Thesis: Jaamiah al-Quds, 2013), pp. 7-9. See the entirety of that work for more details and an analysis of the evidence for each view.

¹⁵² Those who consider the contracts and dispositions to be valid include the Hanafis. Those who do not consider such contracts valid include the Malikis. The Shafiee and Hanbali scholars are divided on this issue, some saying the contracts are valid and the others saying they are void. For more details and evidence, see al-Wasees, op cit., pp. 690-692.

إِنَّ اللَّهَ تَجَاوَزَ عَنْ أُمَّتِي الْخَطَأَ وَالنَّسْيَانَ وَمَا اسْتَكْرَهُوا عَلَيْهِ

"Allah has pardoned for my Nation [what is done] mistakenly, out of forgetfulness or under duress."¹⁵³ Coercion is a situation where a person is forced by others to do a specific act. Although it is in the category of the "acts of humans," the one who is compelled to act will, in general, be considered free of sin and responsibility. In this case, it is not the actual doer who should be held responsible but the one who is compelling the person to act.

This could be related to the question of mental health and legal capacity in one very specific way. One of the contentious debates concerning mental health these days is the individual's "human right" or "liberty" to refuse treatment. In other words, can they be coerced by law (the society) to receive treatment. In fact, Brendan Kelly's book that touches upon this topic is entitled *Dignity, Mental Health and Human Rights: Coercion and the Law*.¹⁵⁴

Given that the Islamic worldview differs greatly from the contemporary humanist liberal worldview, the question of compelling mentally ill people to receive treatment or medication may also be responding to differently.¹⁵⁵ However, it is an established principle in the Shareeah that an individual is not to be given medical treatment without his or her consent. A fatwa on islamqa.info responds to the following question,

153 With this wording, this hadith has been narrated through numerous chains and recorded by al-Tabaraani in al-Kabeer and al-Sagheer, al-Uqaili, al-Haakim, ibn Hibbaan, al-Daaraqutni and ibn Adi. See, respectively, Sulaimaan al-Tabaraani, Al-Mujam al-Kabeer (Cairo: Maktabah ibn Taimiyah, n.d.), vol. 2, p. 97 and vol. 11, pp. 133-134; Muhammad al-Uqaili, Kitaab al-Dhuafaa al-Kabeer (Beirut: Daar al-Kutub al-Ilmiyyah, 1984), vol. 4, p. 145; Abu Abdullah al-Haakim, al-Mustadrak ala al-Saheehain (Beirut: Daar al-Marifah, n.d.), vol. 2, p. 198; al-Ameer al-Faarisi, al-Ihsaan fi Taqreeb Saheeh ibn Hibbaan (Beirut: Muassasat al-Risaalah, 1988), vol. 16, p. 202; Ali al-Daaraqutni, Sunan al-Daaraqutni (Beirut: Aalim al-Kitaab, 1983), vol. 4, pp. 170-171; Abdullah ibn Adi, al-Kaamil fi Dhuafaa al-Rijaal (Beirut: Daar al-Fikr, 1984), vol. 3, p. 1172. For details on the exact wording and grading of the hadith, see this author's Commentary on the Forty Hadith of al-Nawawi, (Denver, CO: Basheer Publications, 1999), vol. 2, pp. 1183-1199.

154 The book is focused on England and Ireland. To highlight his discussion, he juxtaposes two centuries. Two centuries ago in Ireland, the mentally ill would be put into a small room with a ceiling too low for the person to stand up in, with their food dropped to them, until they eventually die. Fast forward two centuries to central London, a man with schizophrenia is found dead in his dirty, damp, and freezing apartment, a true squalor. The deceased's brother said, "Even an animal couldn't life like that." [Brendan Kelly, *Dignity, Mental Health and Human Rights: Coercion and the Law* (Surrey, England: Ashgate, 2015), p. 163. Like so many other things in secular "humanist" society, if such human concerns are left simply to the law—and God, religion, and faith-based morality are taken out of the picture—results like the above, in this author's opinion, do not seem shocking.

155 The contemporary secular dilemma is well-articulated by Larry Goston: "To most of us a human right suggests some permanence: for example, the right not to use medicine for political purposes. But even this human right presupposes a moral choice between two opposing objectives, i.e. restricting the practice of medicine for the benefit of the individual is more important than using the medical profession to achieve political or social objectives. The moral choice is not as clear in other mental health matters for much depends upon what individual interest is intended to be protected: a person's health and wellbeing, or his self-determination and liberty. The human right would be framed quite differently depending upon the value chosen. In the former case emphasis would be placed upon facilitating access to care without legal encumbrance. (This assumes that treatment and care are always beneficial and that there should be no encumbrance.) In the latter case, the usual legal controls - both substantive and procedural - against unjustified confinement or coercion would be guaranteed." [Larry Goston, "Human Rights in Mental Health," in Martin Roth and Robert Bluglass, *Psychiatry, Human Rights and the Law* (Cambridge, England: Cambridge University Press, 2009), pp. 148-149.

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Is it permissible to give my mother psychiatric medicine, because she is very hot-tempered. My mother has had three strokes, so she cannot speak or walk, and her bad temper is unbearable, so we have no choice but to give her tranquilizers. They have a strong effect on her, so she sleeps all the time, and her color turned pale, and she has a poor appetite. Are we sinning for doing that? Please not that if we leave her without medication, no one would be able to put up with her bad temper or be able to look after her.

The response was as follows,

If the patient is an adult of sound mind, it is not permissible to give him medicine without his knowledge, unless it is thought most likely that he will die without the medicine, or will be harmed greatly.

That is because, in principle, taking medicine is permissible or recommended (mustahabb), so the patient has the right to refrain and should not be forced to take it. If it is thought most likely that he will die if he does not take the medicine, or that not taking it will result in clear harm, or damage of a limb or faculty, then taking the medicine becomes obligatory, and it is permissible to give it to him without his knowledge, because of the obligation to protect life and the prohibition on destroying it. Allah, may He be exalted, says (interpretation of the meaning): {And do not kill yourselves [or one another]} [an-Nisa' 4:29]. This may be understood from the statements of some of the jurists with regard to forcing the patient to take medicine if there is a fear that he may die.

It says in *al-Darar al-Bahiyyah fi Sharh al-Bahjah al-Wardiyyah* (2/78): It says in *ar-Rawdah*: It is disliked (makruh) to force him to take the medicine. End quote. What appears to be the case is that this applies in the case when it is not known and is not thought that not taking the medicine will lead to his death, as was said about taking medicine. End quote.

If it is permissible to force the patient to take medicine, then [giving it to him without his knowledge] may come under the same ruling, or it may be better to give it to him without his knowledge. The Islamic Fiqh Council adopted the view that it is obligatory to administer medical treatment if not doing so will lead to loss of life or limb, or lead to incapacity, or the harm of the sickness may be transmitted to others, as in the case of contagious diseases. End quote from *Majallat Majma' al-Fiqh al-Islami* (issue no. 7, vol. 3, p.729)...

Based on that, so long as your mother is conscious and of sound mind, and this medicine only calms her down and she will not die if she does not take it, you do not

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have the right to give it to her except with her permission.

If it has negative side-effects that outweigh the hoped-for benefits, it is not permissible for her to take it, because the Prophet (blessings and peace of Allah be upon him) said: "There should be neither harming nor reciprocating harm." Narrated by Ahmad (2865) and Ibn Majah (2341); classed as sahih by al-Albani in *Sahih Ibn Majah*.

If you find a remedy that will calm her bad temper and will not lead to any harmful side effects, then there is nothing wrong with using it, so long as it is with her permission... You should bear with patience what your mother does, treat her kindly, offer a lot of supplication for her, and try to convince her to see the doctor and take whatever medicine he prescribes.

We ask Allah to grant her healing and well-being, and to avert harm from her.

And Allah knows best.¹⁵⁶

Note that in the response they make the point that the individual is of "sound mind." If the person is insane, consent will still be required; however, the consent will come from the guardian. Where exactly does mental illness fall concerning this question has yet to be discussed in this paper. It does seem, though, that if a person is a threat to others, the principles of Islamic law (the law of necessity, the goals of the Shareeah) would allow society to require that individual to receive "treatment" or "care" to protect others from his harm.¹⁵⁷

2.7 Beyond the Standard Texts on Islamic Theory

The above discussion concerning impediments to legal capacity is based on the traditional discussion that one would find in the books of Islamic legal theory. The categories that the scholars mentioned do not necessarily span all the legal impediments alluded to in the Shareeah. It seems that there are other "mental states" that also can be impediments from the law's perspective—at least to some extent. Thus, ibn al-Qayyim, while discussing the divorce pronounced in a state of anger, wrote, "The Shareeah principle is that psychological impediments¹⁵⁸ (العوارض النفسية) have a

¹⁵⁶ <https://islamqa.info/en/answers/286408/ruling-on-giving-medicine-to-the-patient-without-his-knowledge>

¹⁵⁷ Although beyond the scope of this paper, another important dilemma relates to compelling an individual who is schizophrenic to take medication while he is standing trial for a murder which took place while he was mentally ill. Forcing the individual to take medications may make him look very "normal" to the jurors and hence bias their decision away from not guilty due to insanity. This issue is discussed in detail, with juror testing of different scenarios, in Bethany Stasiak, "Juror Decision-Making in an Insanity Defense Murder Trial of an Involuntarily Medicated Schizophrenic Defendant," (Ph.D. Dissertation, Boston University, 2004), passim.

¹⁵⁸ It should be noted that ibn al-Qayyim's usage of this exact expression was almost completely unique to him and hard to find in any other classical works. He was predated by ibn Rushd al-Hafeed who died in 595 A.H. The expression was also used by al-Khafaaji who died in 1069 A.H., al-Aloosi who died in 1270 A.H., and al-Qasimi who died in 1332 A.H. They all used this term just once or twice. See respectively Abu al-Waleed ibn Rushd al-Hafeed, *Al-Dharoori fi Usool al-Fiqh Au Mukhtasr al-Mustasfaa* (Beirut, Lebanon: Daar al-Gharb al-Islaami, 1994), p. 142; Shihaab al-Deen al-Khafaaji, *Haashiyah al-Shihaab ala Tafseer al-Baidhaawi* (Beirut, Lebanon: Daar Saadir, n.d.), vol. 4, p. 76; Shihaab al-Deen Mahmood al-Aloosi,

legal impact with respect to statements—disregarding them, considering them, applying them, nullifying them. These are like the impediments of forgetfulness, error, coercion, intoxication, insanity, fear, depression, heedlessness, and confusion. Thus, from among these, a statement may be applied while from another it would not be applied. Similarly, in one state one may be excused while in another state one is not excused.”¹⁵⁹ However, although this term or concept has been rarely explicitly mentioned or referred to, Ali al-Zabeedi has demonstratively demonstrated in his master's thesis that psychological states and emotions can indeed be recognized by the law as impediments. In particular, al-Zabeedi discusses among his many topics anger, fear, shame, hunger and thirst, drowsiness, desire, passion, longing, and many others.¹⁶⁰

2.8 The Impediment of Anger

The Prophet (peace and blessings of Allah be upon him) has addressed the issue of anger in numerous hadith.¹⁶¹ Controlling one's anger is one of the salient qualities of an Islamic personality.¹⁶² However, the law does recognize that sometimes people do not control their anger nor their actions when angry. On top of that, anger is tied into several mental disorders. In the DSM 5, one can find anger or intense anger mentioned as a key criterion for intermittent explosive disorder, oppositional defiant disorder, disruptive mood dysregulation disorder, borderline personality disorder, and bipolar disorder. In addition, it is mentioned as an associated feature for many disorders, such as schizophrenia. Indeed, entire books are written about “anger disorders.” This could imply that under these circumstance, the acting out of anger itself is not the result of a shortcoming of the individual or something that he could control.

However, the obvious question that arises here: Since everyone experiences anger at one time or another, what is meant by this term “anger” with respect to medicine and law? What kind or level of anger could possibly be an impediment to legal capacity? What type of anger would qualify as a “disorder”? Definitely, not all anger is bad or blameworthy. The Prophet (peace and blessings of

Rooh al-Maani fi Tafseer al-Quran al-Adheem wa al-Sabi al-Mathaani (Beirut, Lebanon: Daar al-Kutub al-Ilmiyyah, 1415 A.H.), vol. 4, p. 170; and Jamaal al-Deen al-Qasimi, Mahaasan al-Taweel (Beirut, Lebanon: Daar al-Kutub al-Ilmiyyah, 1418 A.H.), vol. 4, p. 389.

¹⁵⁹ Muhammad ibn Qayyim al-Jauziyyah, Ighaathah al-Luhfaan fi Hukum Talaaq al-Ghadhbaan (Beirut, Lebanon: al-Maktab al-Islami, 1988), p. 55.

¹⁶⁰ See Ali al-Zabeedi, “Athar al-Awaaridh al-Nafsiyyah fi al-Ahkaam al-Fiqhiyyah,” (Master's Thesis: 1427 A.H.), passim.

¹⁶¹ This author has written on the concept of anger in some detail. See Zarabozo, Commentary, op cit., vol. 1, pp. 543-554.

¹⁶² This important quality of controlling one's anger or not getting angry may very well be under appreciated. There is definitely a cost to society resulting from anger and acting out one's anger. Although written in 1999 and definitely in need of updating, on this point see Jane Middleton-Moz, Boiling Point: The High Cost of Unhealthy Anger to Individuals and Society (Deerfield Beach, FL: Health Communications, Inc., 1999), passim. Needless to say, mass shootings in particular have risen quite a bit since the writing of that book. She also discusses road rage and other phenomenon.

Allah be upon him) would get angry for the sake of Allah, not for personal reasons.¹⁶³ It has also been argued that anger is a natural defense needed by humans to ward off danger or enemies.¹⁶⁴ Perhaps "good anger" can also be described as a "rational anger."

Anger is perhaps one of those feelings that everyone knows what it is but whose definition may be difficult to put into words. The famous Arabic dictionary *al-Qaamoos* simply defines it as the opposite of *al-ridhaa* (being pleased).¹⁶⁵ Although the word "anger" is sometimes used in the literature interchangeably with terms like aggression, hostility, hate, and irritability¹⁶⁶, this author feels that most people can and do distinguish between those states. Similarly, in general, most people also recognize the triggers of their anger, which often are "frustration; threats to autonomy, authority, or reputation; disrespect and insult; norm or rule violation; and a sense of injustice."¹⁶⁷

The important here, of course, is whether anger—which is so prominent in several mental disorders—is taken into consideration in any way by the law as an impediment to legal capacity. Keshavarzi and Keshavarzi noted,

Cognition serves as a meaning-making lens that impacts the interpretation of environmental sensory inputs. This interplay between healthy emotional expression and cognitive regulation of emotion is the process of attempting to achieve balance. Islamic scholars have recognized that an imbalance leading to intense unregulated emotions can disrupt reasoning and decision-making. They conclude that individuals making high-stakes decisions, particularly those in authority positions, should not make these decisions while their reasoning may be impaired by a heightened degree of anger. They have deduced this from the *Ḥadīth* of the Prophet (peace and blessings be upon him) where he states "Let the judge not pass judgement over individuals when he is in a state of anger" (Muslim, 2017, book 30 *Ḥadīth* 21), and have generalized this to apply to all emotions.¹⁶⁸

163 For the occasions in which the Prophet (peace and blessings of Allah be upon him) got angry, see Bilal al-Roohaani, "Mawaatn Ghadhab al-Nabi Salla Allaahu Alaihi wa Sallam fi al-Sunnah al-Nabawiyyah (fi al-Kutub al-Tisah) Jaman wa Takhreejaa wa Diraasah," *Majallah al-Diraasaat al-Ijtimaaiyyah* (No. 48, April-June 2016), *passim*.

164 See the quote from Taqi Uthmani in Hooman Keshavarzi and Sara Keshavarzi, "Emotionally Oriented Psychotherapy," in Keshavarzi, *op cit.*, p. 174.

165 For a good summary of definitions in Arabic see Abdul Rahman al-Hamood, *Minhaj al-Islaami fi Ilaaj al-Ghadhab* (self-published), pp. 11-12.

166 Cf., Raymond DiGuiseppe and Raymond Chip Tafrate, *Understanding Anger Disorders* (Oxford, England: Oxford University Press, 2007), p. 18. The authors then spend a number of pages (pp. 19f) discussing various attempts to define anger, leading up to their statement (p. 22), "Although an agreed-upon definition of anger has been hard to pin down, definitional clarity has important implications for assessment and treatment."

167 Michael Potegal, et al., eds. *International Handbook of Anger: Constituent and Concomitant Biological, Psychological, and Social Processes* (New York, NY: Springer, 2010), p. 3.

168 Hooman Keshavarzi and Sara Keshavarzi, "Emotionally Oriented Psychotherapy," in Keshavarzi, *op cit.*, p. 176.

The example that those authors highlighted is based on the hadith, which they quoted, from *Sahih Muslim*:

لَا يَفْضِيَنَّ حَكْمَ بَيْنِ اثْنَيْنِ وَهُوَ غَضْبَانٌ

“A judge should not judge between two persons while he is in an angry mood.” (Recorded by al-Bukhari and Muslim.¹⁶⁹) Al-Nawawi makes an interesting statement,

A *mufti* [religious scholar] should not give a ruling while his behavior is being altered, his heart is preoccupied and he is prevented from pondering, such as when he is angry, hungry, thirsty, depressed, overcome with joy, sleepy, bored, disturbed, having a painful illness, needing to go to the bathroom, or any other situation where his heart is preoccupied and he will not be able to remain within the limits of what is just. If he does so sometimes and he sees that he has not deviated from what is correct, then it is permissible, although it is taking a risk.¹⁷⁰

The scholars agree that it is wrong for a judge to make a decision while he is in that state. From a legal theory perspective, one must ask whether this hadith is one of prohibition or disapproval. Furthermore, one would then have to ask that if a judge did make a decision while angered, would that decision be considered valid. Although the vast majority state that this hadith only indicates disapproval, there are those who say that the hadith implies prohibition. A third set of scholars make a differentiation between mild anger and intense anger. The thinking of the third set of scholars is that mild anger does not interfere with one's rational abilities while intense anger can. The wording of the hadith also supports this last view in that the word for anger in this hadith is in the intensive form.

Based on the above text and difference of opinion, some scholars even say that if the judge were to make a ruling while angered, his ruling would be null and void. Others have argued that his ruling would be valid but he has either done something forbidden or disliked in the law. Al-Zabeedi argues that for the benefit of the smooth working of the law, the judgment will be enforced, as otherwise people will try to overrule judges' decisions based on the claim that the judge was angered.¹⁷¹ Of course, if a judge determines that due to his anger, he has made a wrong decision, he must retract that decision and enforce what is correct. Furthermore, this author believes that all

169 <https://sunnah.com/bukhari:7158>.

170 Yahya al-Nawawi, *al-Majmoo Sharh al-Muhadhib* (Beirut, Lebanon: Daar al-Fikr), vol. 1, p. 46.

171 Al-Zabeedi, *op cit.*, pp. 140-141. The above discussion is based on al-Zabeedi's entire discussion of the issue on pp. 129-141.

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scholars would agree that if a judge was so enraged such that it is clear that he is not thinking rationally, his ruling should not be considered valid.

Another important arena in which the legal impediment of anger appears is related to the pronouncement of divorce. It would not be expected that a husband would divorce his wife when he is completely pleased with her. Hence, there must be some aspect of dislike and unhappiness—often associated with anger—accompanying any divorce. However, a hadith states,

قَالَ أَبُو دَاوُدَ الْغَلَّاقُ: أَظُنُّهُ فِي الْغَضَبِ لَا طَلَّاقَ، وَلَا عَتَاقَ فِي غَلَّاقٍ¹⁷²

“There is no divorce or emancipation [of a slave] during *ghalaaq*.” Abu Dawood [the recorder of the hadith] stated, “I think *ghalaaq* means anger.”¹⁷³ Although there is a difference of opinion concerning both the authenticity¹⁷⁴ as well as the meaning of this hadith¹⁷⁵, the dispute over a divorce pronounced while in a state of anger is well-known. One approach to the question of a divorce stated while one is angered has been taken by ibn al-Qayyim, who wrote a complete work on this topic.¹⁷⁶ Ibn al-Qayyim argues,

Anger is of three types:

1 – That which is not so intense as to affect a person’s mind or rational thinking; he knows what he is saying and what he means. There is no dispute that in this case divorce, manumission and contracts are valid.

2 – Where his anger reaches such a limit that he no longer knows what he is doing or saying. There is no dispute that in this situation divorce does not take place. If his anger is so intense that he does not know what he is saying, there is no doubt that none of his words should be implemented in this case. The words of the mukallif (adult of sound mind) are only to be implemented if he knows what he is saying and what it means, and if the speaker really means that.

3 – The kind of anger that falls between the two categories mentioned above, where the anger goes beyond the ordinary level but not so far as to make him behave like a

172 Most of the narrations of this hadith have the word *إغلاق*. However, the above is from Abu Dawood and is his wording. Additionally, there seems to be some difference as to whether it should be pronounced *ghilaaq* or *ghalaaq*.

173 <https://sunnah.com/abudawud:2193>.

174 The majority of the scholars definitely consider this a weak hadith.

175 The interpretations for the terms *ighlaaq* or *ghalaaq* range from duress to anger to insanity. Ibn Taimiyyah argued that *ighlaaq* refers to the door to knowledge and intent being closed, which is what the lexical meaning could imply. He says that therefore it is inclusive of amentia, insanity, intoxication, duress, and intense anger in which one does not know what one is saying. In all of those cases, the door to rational thought is closed and hence the divorce is not the result of intent and knowledge. Ibn Taimiyyah is quoted in Muhammad ibn Abi Bakr ibn Qayyim al-Jauziyyah, *Tahdheeb Sunan Abi Dawood wa Eidhaah Illalih wa Mushkilaatih* (Riyadh, Saudi Arabia: Daar Ataa’at al-Ilm, 2019), vol. 1, p. 524.

176 Entitled *Ighaathah al-Luhfaan fi Hukum Talaaq al-Ghadhbaan*.

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madman. This is an area of scholarly differences of opinion. The shar'i evidence indicates that divorce, manumission and contracts in such cases are not valid, and this is a kind of *ighlaaq* as the imams explained.¹⁷⁷

Perhaps one of the strongest arguments that anger must be considered in some cases an impediment to legal capacity comes from the verse related to the Prophet Musa (peace and blessings of Allah be upon him),

وَلَمَّا رَجَعَ مُوسَىٰ إِلَىٰ قَوْمِهِ غَضْبَانَ أَسِفًا قَالَ بِئْسَمَا خَلَفْتُمُونِي مِنْ بَعْدِي أَعَجِلْتُمْ أَمْرَ رَبِّكُمْ وَأَلْقَى الْأَلْوَابَ وَأَخَذَ بِرَأْسِ أَخِيهِ يَجُرُّهُ إِلَيْهِ قَالَ ابْنَ أُمَّ إِنَّ الْقَوْمَ اسْتَضَعُّوْنِي وَكَادُوا يَقْتُلُونَنِي فَلَا تُشْمِتْ بِيَ الْأَعْدَاءَ وَلَا تَجْعَلْنِي مَعَ الْقَوْمِ الظَّالِمِينَ

"And when Moses returned to his people, angry and grieved, he said, "How wretched is that by which you have replaced me after [my departure]. Were you impatient over the matter of your Lord?" And he threw down the tablets and seized his brother by [the hair of] his head, pulling him toward him. [Aaron] said, 'O son of my mother, indeed the people oppressed me and were about to kill me, so let not the enemies rejoice over me and do not place me among the wrongdoing people.'" [Al-A'raaf 150]

As ibn al-Qayyim notes, Musa's casting down of the tablets was not of his rational choice nor was it beneficial for the Tribe of Israel. It was the result of an anger—albeit a justified one—that made him lose control of his will and hence he was forgiven by Allah.¹⁷⁸

The importance of recognizing the impact of anger even reaches the prayer. Some scholars have stated that it is disliked to pray when one is in a state of anger. This argument as formed as an analogy based on the hadith narrated by Aishah and recorded by Muslim,

لَا صَلَاةَ بِحَضْرَةِ الطَّعَامِ، وَلَا هُوَ يُدَافِعُهُ الْأَخْبَتَانِ

"No prayer can be (rightly said) when the food is there (before the worshipper), or when he is prompted by the call of nature."¹⁷⁹ Thus, the Hanbalis in particular state that it is disliked to pray

177 This translation of ibn al-Qayyim's words was taken from <https://islamqa.info/en/answers/45174/ruling-on-divorce-at-a-moment-of-anger>.

178 Muhammad ibn Qayyim al-Jauziyyah, *Ighaathah al-Luhfaan fi Hukum Talaaq al-Ghadhbaan* (Beirut, Lebanon: al-Maktab al-Islami, 1988), p. 34.

179 <https://sunnah.com/muslim:560a>.

when one is so angry that they cannot concentrate on the prayer. However, the scholars state that if the time for the prayer is about to finish, then one will have to pray in whatever state they are in.¹⁸⁰

In sum, anger, in particular, the "irrational" anger—which is closely related to numerous medical disorders—is something that can impact a person's legal capacity, although it is not something explicitly pointed out as a category in the books on Islamic legal theory.

2.9 The Impediment of Fear

Anxiety disorders and phobias are common mental disorders and are clearly related to fear. Reading through the DSM 5 one can see that anxiety and fear are considered core features of disorders such as generalized anxiety disorder, panic disorder, and specific phobias. However, panic attacks and anxiety also exist with many other disorders, such as schizophrenia, adjustment disorder, bipolar I mania, and so on. Once again, although fear is not mentioned in the major books on Islamic legal theory as an impediment to legal capacity, there is enough evidence that indicates that it does in some cases impact legal rulings.

Shareeah scholars have essentially defined fear as the expectation of something harmful to occur or the loss of something beloved. That definition is closer to the word "anxiety" in English than fear, since it does not refer to the presence of danger. Ateef, however, adds that the *khauf* or fear must also be inclusive of harm or danger that one is presently facing.¹⁸¹ Ateef's definition and explanation of his definition shows that fear is the psychological or physical effect that occurs as the result of expecting harm to occur presently or in the future.¹⁸²

Ateef writes that fear can be divided into three categories: (1) Obligatory fear: this includes the fear of Allah, leading one to obey Him and to refrain from disobeying him; it also includes fear from whatever is going to bring harm to one's life, honor, wealth, or limbs. (2) Forbidden fear: this includes the fear of other than Allah which leads one to fail to perform the obligatory deeds or to do forbidden acts; this category is also inclusive of fear that is based on mere superstition. (3) Permissible fear: this includes the fear of those things or people that normally could bring about harm, such as the fear of lions, spiders, tyrants, and so forth.¹⁸³

¹⁸⁰ Cf., al-Zabeedi, op cit., p. 42.

¹⁸¹ Cf., Ibraaheem Ateef, *Athaar al-Khauf fi al-Fiqh al-Islaami* (Riyadh, Saudi Arabia: Maktabah al-Rushd, 2000), vol. 1, p. 27.

¹⁸² Ibid., vol. 1, p. 28.

¹⁸³ Ibid., vol. 1, p. 34.

In relation to different types of acts, fear includes fear of loss of life, bodily injury, becoming ill or having one's illness increase in severity, harm to one's family, loss of wealth, missing one's traveling party, failing to perform a religious obligation, being forced to do something forbidden, of being accused of something whose corresponding circumstances one could not bear,¹⁸⁴ and even *fitnah* (a trial or test) with respect to one's faith.¹⁸⁵

As Ateef¹⁸⁶ and al-Zabeedi¹⁸⁷ demonstrate, fear can alter rulings in virtually every realm of fiqh, including even impacting business transactions.¹⁸⁸ In fact, there is even a form of prayer known as the "prayer of fear," in which the workings of the prayer have been changed due to being in a state of fear. Take, for another example, the case of not having water in one's house and therefore having to go out to search for water for the sake of ritual purification. The default in such a case is that if there is reason to believe that water is to be found, it is obligatory to seek it. However, if it is the case that one fears for one's life—due to the presence of an enemy or predatory animals—then this obligation is dropped, as per the agreement of the scholars. This is because the preservation of life takes precedence over this form of ritual purification. It is sufficient to know or suspect that the cause of the danger is present.¹⁸⁹

Another example concerns the Friday Prayer.¹⁹⁰ Many scholars mention that if anyone has reason to fear something harmful may happen as a result of attending the Friday Prayer, he is exempted from attending the Prayer. For example, Al-Sayid Sabiq wrote, "[Among those exempted from the Friday Prayer is] one who is in debt and cannot repay his debt and therefore fears that he will be imprisoned, and one who fears that he will be harmed by an oppressive ruler."¹⁹¹ This is based on the following hadith:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ سَمِعَ الْمُتَأَدِّبِي فَلَمْ يَمْنَعْهُ مِنْ اتِّبَاعِهِ عُذْرٌ فَلَا صَلَاةَ لَهُ» قَالُوا: وَمَا الْعُذْرُ؟ قَالَ: «خَوْفٌ،

«أَوْ مَرَضٌ»

184 Ibid., vol. 1, p. 28-29.

185 Al-Zabeedi, pp. 223-224, mentions this last one as one of the reasons for not attending the Friday or Congregational Prayers.

186 Ateef, op cit., passim.

187 Al-Zabeedi, op cit., pp. 142-273.

188 See al-Zabeedi, op cit., pp. 266-274; Ateef, op cit., vol. 1, pp. 395-516.

189 Al-Zabeedi, op cit., p. 149.

190 This paragraph is taken from the author's *The Friday Prayer Part I: The Fiqh* (Ann Arbor, MI: IANA Books, 1998), pp. 30-31.

191 Al-Sayid Sabiq, *Fiqh al-Sunnah* (Indianapolis: American Trust Publications, 1989), vol. 2, p. 132.

"Whoever hears the call to prayer and does not respond, there will be no prayer for him unless he has an excuse." The people asked, "What is an excuse?" The Prophet (peace be upon him) said, "Fear or illness." (Recorded by al-Haakim, Abu Dawood¹⁹² and others.) But this hadith, according to many hadith scholars, is a weak hadith.¹⁹³ Hence, there is no explicit evidence for the claim that if someone is in fear, he need not attend the Friday Prayer. Perhaps this is why ibn Rushd and al-Kasaani did not mention this group of people as being possibly exempted from the Friday Prayer.¹⁹⁴ In fact, in another work, ibn Rushd, states that there is agreement that such people are not exempted from the Friday Prayer.¹⁹⁵

With respect to the question of mental illness, al-Zabeedi states something of extreme relevance. He says that a person may fear something that has no reality to it. He gives the example of a coward who may be afraid to travel at night or walk by himself. He says that this type of fear is not taken into consideration by many of the jurists. For example, in the case mentioned above, they would not consider this type of fear an excuse for not going out to seek water. He states that they lay down the condition for "fear" that it would be a fear that similar other people would also fear under the same circumstances. Furthermore, he says, that some even put a condition that one must be certain or the reasoning must be preponderant that one will experience what one fears, in addition to the cause of fear being present.¹⁹⁶ This approach could be very problematic when it comes to dealing with people with phobias. Al-Zabidi goes on to say that what the jurists have stated is consistent with the goals and wisdom of Islamic Law. Among the noble goals on the Law is to develop individuals who are strong and confident, not cowardly and fearful. However, one must also say that for the one whose cowardliness and phobia is severe, to the point that he might even lose his mind, then, in this case, his fear is harmful to him. In that case, it must be taken into consideration as it is harmful and it is obligatory to try to prevent harm and, in addition, in such a case there will be evils that will outweigh any benefits. And Allah knows best.¹⁹⁷ This point that al-Zabeedi makes is, obviously, very significant with respect to the interaction with those having various mental illnesses. For people with phobias, those fears are real, certain, and dangerous to them. Hence, the fiqh rulings for these individuals would have to reflect that. In fact, al-Muhaiza

192 <https://sunnah.com/abudawud:551>

193 Although al-Nawawi called this hadith sahih, it seems that it is a weak hadith. See al-Albaani, Irwa, vol. 2, p. 336; Muhammad ibn Ismail al-Sanani, Subul al-Salaam, (Cairo: Maktabah al-Jamhuriyah al-Arabiya, 1977) vol. 2, p. 34; Muhammad al-Adheemabadi, Aun al-Mabood Sharh Sunan Abi Dawud (Cairo: Maktaba ibn Taimiya, 1987), vol. 2, p. 256.

194 See Abu al-Walid ibn Rushd, Bidayat al-Mujtahid wa Nihayat al-Muqtasid (Beirut: Dar I-Qalam, 1988), vol. 1, pp. 159-160; Abu Bakr al-Kasaani, Badaai al-Sanaai fi Tarteeb al-Sharaai (Beirut: Dar al-Kutub al-Ilmiyah, 1986), vol. 1, p. 258.

195 Abu al-Waleed ibn Rushd, Muqaddimah ibn Rushd, on the margin of Sahnun ibn Said, al-Mudawwanah al-Kubra (Beirut: Dar al-Fikr, 1986), vol. 1, p. 148.

196 Al-Zabeedi, op cit., p. 152.

197 Al-Zabeedi, op cit., pp. 152-3.

explicitly concludes that it is permissible for one who has a strong phobia of open places (agoraphobia) to make *tayammum* (dry ablution) instead of going out to seek water.¹⁹⁸

2.10 Preliminary Conclusions about Legal Capacity

The impediments to legal capacity which one finds in Islamic legal theory are derived from the Quran and Sunnah. Obviously, there is no verse or hadith that lays out all the impediments to legal capacity. The categories usually stated are the result of the efforts of the scholars. What they derived was excellent. The only problem is that the categories that they mention definitely do not span the entire set of possible legal impediments. Furthermore, in the books of Islamic legal theory, there does not seem to be much room to accommodate mental illness within the scope of impediments to legal capacity. The only category that would seem to incorporate them would be "insanity." That certainly would be unjust to classify everyone with a mental illness as insane, especially given all the legal implications of that declaration. The famed Hanbali scholar ibn Aqeel was once asked by a person who immersed himself into a pool of water numerous times and he still doubted whether or not the water had reached all of the parts of his body. Ibn Aqeel told him, "Go, for the obligation of the prayer has been dropped from you." Upon being asked about that, he quoted the hadith,

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الصَّغِيرِ حَتَّى يَبْلُغَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الْمُصَابِّ حَتَّى يُكْشَفَ عَنْهُ

"The pen has been raised from three: the young child until he reaches the age of puberty, the sleeping person until he awakens, and the one is afflicted [with a mental disorder] until he is relieved."¹⁹⁹ Then he said, "Whoever immerses himself in water a number of times while doubting that the water has reached his entire body is insane."²⁰⁰

But what does it mean to treat such a person as insane? Suppose while waiting for ibn Aqeel's response, this person had entered into a business contract. Should that contract be null and void? Is he indeed to be considered insane overall by the law, due to which interdiction kicks in? If he is ruled to be insane, then absolutely none of his transactions, acts of worship, or other deeds would be considered valid. Or is this a passing state of insanity, meaning he is insane only with respect to his religious rituals, having what is known as scrupulosity? Why did ibn Aqeel tell him that the prayer obligation was dropped from him? Perhaps, he should have told the person that the

198 Al-Muhaiza, op cit., p. 99.

199 With this wording, it is recorded by Ahmad on the authority of Ali ibn Abi Taalib. It was graded sahih lighairih by al-Arnaaoot, et al. See al-Arnaaoot, et al., Musnad, op cit., vol. 2, p. 254.

200 Quoted by Muhammad ibn Abr Bakr ibn Qayyim al-Jauziyyah, Ighaathah al-Luhfaan fi Masaayid al-Shaitaan (Riyadh, Saudi Arabia: Daar Ataa'at al-Ilm, 2019), vol. 1, pp. 233-4.

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obligatory of insuring that no spot is missed during purification is dropped from him. He can perform the act of purification and then not worry about whether it was complete. As far as ibn Aqeel may have known, this individual perhaps did not have any bouts of OCD (obsessive-compulsive disorder) or scrupulosity when it came to the prayer itself. Thus, he could have easily prayed, perhaps. This suggestion seems to be much more consistent with the guidance of the Prophet (peace and blessings of Allah be upon him) who said,

وَإِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأَتُوا مِنْهُ مَا اسْتَطَعْتُمْ

“If I order you to do something, then do of it as much as you can.”²⁰¹

Today, it is known that individuals can go through very specific bouts of mental illnesses. An individual who has extreme social phobia may not be able to go out in public to attend the Friday Prayer, yet at the same time there is nothing preventing such a person from performing completely rational business decisions working from home. How can this possibly fit into the traditional way of looking at insanity and the other legal impediments? In fact, earlier the reader was introduced to “Nabil.” While explaining his situation, he seems perfectly lucid, intelligent, and mature—meeting all the qualifications of legal capacity. Perhaps the Imams whom he had asked about the prayer saw him as a sane person and hence told him that he had no choice but to pray. In the traditional model of legal impediments, one may be forced into a 0 or 1 evaluation of insanity. If the complete insanity (even if it is considered temporary) does not seem to be present, the individual must be sane. If the individual is not insane, the Imam cannot find any other impediment to excuse him from the prayer.

If such a binary approach to insanity is taken, which some would consider the only true impediment concerning mental illness, it can lead to some extreme results. Recently, a fellow Muslim had a stroke. After the stroke, there was clear brain damage with intermittent periods of somewhat lucid thought; thus, it was clear that was not mentally competent in any legal sense of the word. He was also in a wheelchair. His family would make ablution for him and then wheel him to the lines of the prayer, although it was clear that he did not fathom what was going on in the prayer. At one point in time, he started to detest his family making ablutions for him and he was adamant that he did not want it. This led to lots of fights and tension. The family was adamant that he must make ablution and he was equally adamant that he did not want it. At no point did the family consider that in his state of mind, even the prayers were not obligatory upon him, not to

201 Recorded by al-Bukhari. <https://sunnah.com/bukhari:7288>

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speak of the ablution. Interestingly, though, the family knew enough to keep him away from their money and financial issues—as they could not trust his mental state.

Furthermore, one must also be careful not to consider everything that is nowadays called a mental illness or disorder a legitimate legal impediment from the Shareeah perspective. First, as described earlier, there are differences over what qualifies as a medical illness. Second, it is even possible that what is described as a mental illness is not an illness at all from the Shareeah's perspective. Third, the mental illness may exist but it may have no or little impact on the individual's rational capabilities.

In the literature, two writings have categorized the different types of mental illness and their impacts on legal capacity.

2.10.1 Al-Shaimaa's Categorization

According to Qusoos al-Shaimah the distribution among the categories is as follows:

- (1) Mental Illnesses that Void One's Legal Capacity. These are the ones that have a complete impact on mental capability and render the person incapable of discerning things. These would include advanced dementia, sever manic episodes, mental retardation, or acute schizophrenia. This person will have the same ruling as an insane person. If a person suffers from temporary bouts of such disorders, they will be considered insane during those times and sane at other times.
- (2) Mental Illnesses that Partially Diminish One's Legal Capacity: An example of this nature would be obsessive-compulsive disorder (OCD) or scrupulosity. Some such individuals may even realize that their obsession is not rational but they cannot fight it. Thus, only under certain circumstances is that person's will and rational ability compromised. During those occasions in which the individual cannot overcome his affliction, he would be considered like an individual acting in response to coercion, with all its relevant fiqh implications.
- (3) Mental Illnesses that do Not Impact One's Legal Capacity: The third category would include disorders such as sleep disorders or sexual disorders. These disorders do not impact a person's rational abilities nor the ability to commit willful actions. For this person, there is no impact on legal capacity and all their transactions will be considered.

Al-Shaimaa sums up her approach by saying that if a disorder leads to a person losing the ability to have free choice and discernment, they will fall under the category of insane with all its ramifications. If the loss of such abilities is partial, they will fall under the category of amentia. If

the disorder does not actually impact an individual's rational choices, all his actions will be considered valid. In the end, it will have to be a specialist in mental disorders to determine where a person lies.²⁰²

It is interesting to note how al-Shaimaa in the end goes back to the standard breakdown of legal impediments as found in the traditional works of legal theory.

2.10.2 Al-Muhaiza's Categorization

Al-Muhaiza states that in most cases a person's rational abilities are only sometimes compromised due to mental illness. It is only on sparse occasions that the person has his rational abilities impaired. During those rare occasions, though, the person's mental capabilities are compromised, so therefore their legal capacity will be impacted. Then she also divides the impact of mental disorders on legal capacity into three categories:²⁰³

(1) Mental Illnesses that Void One's Legal Capacity.

- a. This would include advanced dementia. In the advanced stages, memory and rational ability are lost, so legal capacity is also voided. Severe manic episodes are also included in this category. In such cases, a person loses their ability to think rationally and decide accordingly. This, she says, falls under the category of continual insanity in the terminology of the jurists.
- b. She also mentions severe mental retardation in this category.
- c. Severe schizophrenic episodes are also mentioned in this category as they interfere with one's judgment. She puts this into the category of non-continuous insanity according to the categorization of the jurists.
- d. The final member she mentions of this category is paranoid personality disorder. This disorder brings about paranoid delusions that completely cloud a person's ability to think rationally. However, at other times, the person is completely rational. She says that this falls under "what is known among the jurists as 'partial insanity' (الجنون الجزئي), which refers to the person who loses his senses concerning some things but is perfectly rational concerning other things."²⁰⁴ This author is compelled to make a few comments here. The expression that she refers to, "partial insanity," has, as far as this author knows, only been used by the relatively

²⁰² Qasoos al-Shaimaa, *Ahkaam al-Mareedh al-Nafsi fi al-Fiqh al-Islaami* (Master's Thesis: Jaamiah al-Shaheed Hamah Likhidhr, 2021-2022), pp. 23-24.

²⁰³ See al-Muhaiza, *op cit.*, pp. 66-71.

²⁰⁴ Al-Muhaiza, *op cit.*, p. 68.

recent Abdul Qadir al-Audah in his book *al-Tashree al-Janaae al-Isaami*.²⁰⁵ The other authors that she refers to in referring to her previous footnote neither use this term nor describe what this term would allude to. Hence, it is wrong to say that this is the terminology of the jurists. In addition to that, although it is a very useful concept, the concept itself is not truly found in the books on Islamic legal theory—one is either permanently insane or has bouts of insanity (lasting a month or a year, and so on) but there is no concept of one is insane when it comes to this issue or time and sane concerning everything else or all other times.

(2) Mental Illnesses that Partially Diminish One's Legal Capacity:

- a. In this category, al-Muhaiza includes chronic depression. In this condition many times a person loses the desire and will to act. This impacts their ability to willfully fulfill and choose acts. Thus, it partially impacts one's legal capacity. It is necessary to examine it on a case-by-case basis.
- b. She also includes OCD or scrupulosity in this category. The impact of this disorder takes a person's will and choice out of their control. It can devastate the individual and make him very weak, thus impacting legal capacity.
- c. Social phobia is also placed in this category. The fear that such a person has is completely out of the control and will of the individual. There is no doubt, she says, that this diminishes legal capacity.
- d. Next she mentions bouts of hysteria. Internal psychological stress causes physiological impairments, including not being able to speak or see. This is never the intention of the individual and it definitely impacts their ability to choose. Hence, the legal capacity is diminished.

(3) Mental Illnesses that Do Not Impact One's Legal Capacity:

- a. Somatic symptom and related physical disorders are the first one mentioned in this category. With this disorder, psychological stress leads to acute feelings of pain, fatigue, and physical exhaustion. At the same time, though, this condition does not seem to be affects one's rational abilities and hence it has no impact on legal capacity.
- b. Sexual performance disorders also fall into this category as they do not impact a person's reasoning abilities. The author also notes that sexual deviations would also fall into this category of not impacting legal responsibility, as the people of Lut

205 Al-Audah, op cit., vol. 1, p. 586.

(peace and blessings of Allah be upon him) were destroyed since their legal capacity was not affected by the desires that they had.

- c. The last disorders mentioned in this category are sleep disorders. Al-Muhaiza says that these do not impact one's legal capacity. However, she adds that sleep walking needs its own research and discussion.

After explaining the above categories, al-Muhaiza states that the decision to declare an ill person no longer legally capable is a juristic decision. The medical professional should make a report and then leave it to the judge to determine legal capacity. This is concerning all non-worship-related items. As for worship-related items, the medical specialist should determine what is best given the specifics of the case. She also notes that one not rely on only one diagnosis, especially as the religiousness and states of individuals are different.

2.11 Conclusions to Part II: Legal Capacity

Both the categorizations of impediments to legal capacity as found in the books of Islamic legal theory as well as the understanding of "insanity" are the results of important juristic reasoning throughout Muslim history. After the discussion above, this author believes that no one can doubt that although the impediments to legal capacity they mention are the main ones or are illustrative of the key ones, they definitely do not span the entirety of what the Shareeah takes into consideration. The words of ibn al-Qayyim were quoted earlier: "The Shareeah principle is that psychological impediments (العوارض النفسية) have a legal impact with respect to statements—disregarding them, considering them, applying them, nullifying them. These are like the impediments of forgetfulness, error, coercion, intoxication, insanity, fear, depression, heedlessness, and confusion. Thus, from these, a statement may be applied while from another it would not be applied. Similarly, in one state one may be excused while in another state one is not excused."²⁰⁶ The examples discussed above demonstrate that ibn al-Qayyim was indeed correct.

The understanding or treatment of "insanity" is also very important. Perhaps with the presence of various possible treatments today, more traditionally classified "insane" people can live "normal" lives. However, that does not mean that under no circumstances would the law consider that individual "insane" from a legal perspective. The classical fiqh seems to imply that there are only the two choices: continual insanity or temporary insanity. Restricting matters to only those two choices may no longer be appropriate today. It seems that there needs to be some acceptance of

²⁰⁶ Muhammad ibn Qayyim al-Jauziyyah, *Ighaathah al-Luhfaan fi Hukum Talaaq al-Ghadhbaan* (Beirut, Lebanon: al-Maktab al-Islami, 1988), p. 55.

what al-Audah called "partial insanity" or, what could be called, "domain specific 'insanity.'"²⁰⁷ There also needs to be a more robust discussion and acceptance of a concept of "quasi-insanity." This is a concept that the jurists have actually always accepted. An example of this nature is the man who becomes so enraged with anger that he pronounces a divorce without realizing that he had done so. The jurists have discussed whether that pronouncement is valid—even given his "insane" state—but they have not put forth the idea that that individual is insane over all, meaning interdiction should be implemented. Those who are suffering from OCD or scrupulosity may only have mental health issues with respect to very few realms, such as some aspects of purification and some aspects related to the prayer. Outside of those issues, they have no signs of any "mental issues."

Furthermore, as seen in the categorization of al-Shaimaa and al-Muhaiza, one must distinguish between mental illnesses that truly impact a person's ability to think rationally and act accordingly from those that do not do so or do so in only a limited sense. These distinguishing factors will determine to what extent a person's legal capacity has been impacted by their mental illness.

When it comes to ritual law, a more comprehensive approach seems to be warranted. The whole goal of the ritual acts is to bring the individual closer to Allah—and they are not to put an individual through a state in which he could experience a faith crisis. There is a well-known legal maxim that states magnanimity is the founding principle when it comes to dealing with "the rights of Allah" (حقوق الله مبنية على المسامحة).²⁰⁸ In a recent class this author taught, the author was surprised by those who insisted that the one who, when lacking water to make ablution and had a fear of open spaces, was still required to go out and find water rather than resort to making *tayammum*. That sort of traumatic experience could remain with the individual for the rest of their lives and clearly impact their relationship with Allah. No doubt one must avoid the scenario described in the well-known hadith:

²⁰⁷ The author would like to thank Br. Iman Sadreddin for suggesting this term.

²⁰⁸ For a discussion of this legal maxim, see Badr al-Deen al-Zarkashi, *al-Manthoor fi al-Qawaa'id al-Fiqhiyyah* (Kuwait: Wizaarah al-Auqaaf al-Kuwaitiyyah, 1985), vol. 2, pp. 59-60; Abdul Rahmaan al-Abdul Lateef, *Al-Qawaa'id wa al-Dhawaabit al-Fiqhiyyah al-Mutadhaminah lil-Taiseer* (Madinah, Saudi Arabia: al-Jaamiah al-Islamiyyah, 2003), pp. 257-266.

عَنْ جَابِرٍ قَالَ: خَرَجْنَا فِي سَفَرٍ فَأَصَابَ رَجُلًا مِّنَّا حَجْرٌ فَشَجَّهَ فِي رَأْسِهِ، ثُمَّ احْتَلَمَ فَسَأَلَ أَصْحَابَهُ فَقَالَ: هَلْ مَجِدُونَ لِي رُخْصَةً فِي

التَّيْمُمِ؟ فَقَالُوا: مَا نَجِدُ لَكَ رُخْصَةً وَأَنْتَ تَقْدِرُ عَلَى الْمَاءِ فَاغْتَسَلَ فَمَاتَ، فَلَمَّا قَدِمْنَا عَلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أُخْبِرَ بِذَلِكَ

فَقَالَ: «قَتَلُوهُ قَتَلَهُمُ اللَّهُ أَلَا سَأَلُوا إِذْ لَمْ يَعْلَمُوا فَإِنَّمَا شِفَاءُ الْعِيِّ السُّؤَالُ

“Jabir said: We set out on a journey. One of our people was hurt by a stone, that injured his head. He then had a sexual dream. He asked his fellow travelers: Do you find a concession for me to perform *tayammum*? They said: We do not find any concession for you while you can use water. He took a bath and died. When we came to the Prophet (ﷺ), the incident was reported to him. He said: They killed him, may Allah kill them! Could they not ask when they did not know? The cure for ignorance is inquiry.”²⁰⁹ Especially if an individual recognizes he has a problem or has been diagnosed with an illness and is currently seeking treatment and help, the last thing that individual may need for their faith are rulings that do not take into consideration their situation (while they are striving to help themselves) and which could scar them for life.

According to the same maxim, the approach to contract and marriage law will be stricter (حقوق العباد) (مبنية على المشاحة والمطالبة).²¹⁰ Society requires stability in these issues. Someone who is usually “normal” but suffers from great mood swings, for example, may sell off items out of anger or purchase items out of extreme joy. Civil society would be disrupted if contracts could easily be voided simply by individuals claiming that they were not in a sound state of mind at the time. The burden of proof in this realm would be on the one who claims he is suffering from mental illness. That would require, most likely, first, a judgement from medical specialists and then, second, a declaration from a judge, to make it legally binding. Some type of conservatorship or interdiction may be called for and would have to be dealt with on a case-by-case basis for different individuals. This conservatorship would then be made public for others to be aware of the situation.

With respect to criminal law, the general principle is not to apply the *hadd* punishments in the presence of any reasonable doubt (ادروا الحدود بالشبهات). For this reason, if someone is so mentally ill that he is considered comparable to an insane person, the *hadd* punishment will not be implemented in his case. Again, the burden of proof will be on the one claiming that they were

209 <https://sunnah.com/abudawud:336>. Recorded with this wording by Abu Dawood. Graded hasan by al-Albaani. The slightly different narration by Ahmad is also graded hasan by al-Arnaoot, et al. There is a portion at the end of Abu Dawood's narration (not quoted above) which is considered weak. See Muhammad Naasir al-Deen al-Albaani, Saheeh Sunan Abi Dawood (Riyadh, Saudi Arabia: Maktabah al-Maarif, 1998), Vol. 1, p. 101; al-Arnaoot, et al., Musnad, op cit., vol. 5, p. 173.

210 Cf., al-Abdul Lateef, op cit., pp. 258f.

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impaired by mental illness and, as such, should not receive the *hadd* punishment. With respect to *qisaas* or the law of retribution, where the principle of dropping due to any doubt is not quite the same, Laafi writes that it will be up to the judge to determine whether this should be meted out or not. In addition, the judge is also free to lay out discretionary punishments (*tazeer*) depending on the judge's determination of the level of legal capacity of the individual. Under all circumstances, though, the individual will be financially responsible for the harm committed to others.²¹¹

Mental illness is a type of *ibtalaa* or trial from Allah. As a result of it, special rulings may be invoked for such individuals, which makes them akin to people in states of necessity. As such, an individual should not become complacent or use that situation as an excuse not to strive to worship Allah. They should seek solutions and treatments to their illness, if and when feasible, to move from applying exemptions to applying norms. Included among the treatment can be spiritual development, whereby Allah may bless the individual and remove the trial from them, just like spiritual development, prayers and supplications can help cure physical diseases. Additionally, one cannot take a mental illness as an excuse for any type of behavior, even when the individual is fully conscious that such behavior is wrong.

On this final point, Malik Badri did receive a question which, in this author's view, is very tricky or delicate to respond to. A Muslimah from Malaysia asked, "How does one determine if someone has a borderline personality disorder or this person is just following his desires? Are personality disorders mental illnesses or are they a result of people not following Allah's commands?" Badri's response was,

The area of personality disorders and that of sociopathy and psychopathy are areas that are not clearly demarcated in abnormal and clinical psychology. Though they are not considered as psychotic or mental disorders they are looked at as disorders that are very difficult to treat. Some psychiatrists believe that some of these disorders are untreatable. Some theories propagate that they are biologically determined and accordingly they cannot be treated with psychotherapeutic intervention. However, these views are greatly influenced by the fact that modern psychiatry has neglected the moral concept of evil in human behavior thereby downgrading human responsibility. Behaviors that were considered immoral and sinful actions of yesterday are today secularized and watered down to become pathological behaviors influenced by early childhood upbringing, environmental conditions or biological etiologies. Furthermore, modern psychology and psychiatry denies the spiritual dimension in helping people with such

211 Cf., al-Laafi, op cit., p. 110.

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disorders. So, they have readily accepted the biological and inherited predisposition in causing personality disorders. This supposed biological explanation is useful in saving psychologists from admitting their failure in treating such persons.

However, the experiences of many people who were thought to have suffered from untreatable or very difficult to treat personality disorders such as the so called borderline personality disorder and who have eventually undergone a spiritual conversion have quickly improved. This clearly disconfirmed psychiatry's tag of untreatable developmental or biological diagnoses. I knew a few persons whose 'disorder' fitted neatly into the symptomatology of borderline personality disorder such as hostility, impulsivity and extreme change of mood who became well-mannered citizens after they had a religious or spiritual conversion such as being influenced by Sufi healers. The most convincing evidence in this respect came from the movement of the Black Muslims of America. Many imprisoned African Americans who had been diagnosed as psychopaths, delinquents, hardened criminals, and personality disordered diametrically changed into peaceful spiritually inspired persons after they converted to Islam. Several heroine and alcohol abusers among them were helped by their previously addicted Muslim brothers. They achieved sobriety. During the last century, a number of professionals who studied this phenomenal change in black Muslims urged psychologists to study it in order to reformulate these psychiatric labels.

So I believe my sister that many of the so called personality disordered people who go against the teachings of their religion and their cultural ethical mores in order to immediately satisfy their selfish desires should not only be considered as psychiatric patients but also as selfish persons who cannot resist the temptation of immediate gratification of their hedonistic lifestyle.²¹²

3 PART III: CASE STUDY: SCHIZOPHRENIA

There is a need for a compendium of Islamic rulings related to various mental illnesses. For some mental illnesses, it is relatively easy to come across numerous fatwaas. Such is the case with obsessive-compulsive disorder or scrupulosity, as that is a disorder which has been recognized for centuries now. One can also find numerous fatwaas related to depression. However, fatwaas concerning schizophrenia and bipolar disorder, for example, are much less common to come by. Due to time and space limitations, the goal of this case study section is a modest one: some of the found fatwaas concerning schizophrenia will be presented and discussed. As to be expected, the fatwaas do run the gamut of ritual law, family law, contract law, and criminal law.

3.1 What is Schizophrenia?

212 Malik Badri, *Cyber-Counseling for Muslim Clients* (Kuala Lumpur, Malaysia: The Other Press, 2015), pp. 103-105.

The National Institutes of Health states that, "Schizophrenia is a serious mental illness that affects how a person thinks, feels, and behaves. People with schizophrenia may seem like they have lost touch with reality, which can be distressing for them and for their family and friends."²¹³

Schizophrenia is not extremely rare. According to WHO, among adults, it has been estimated to afflict in every 222 people or 0.45%.²¹⁴

According to the DSM 5, the diagnostic criteria for schizophrenia is as follows:

A. Two (or more) of the following, each present for a significant portion of time during a 1 -month period (or less if successfully treated). At least one of these must be (1), (2), or (3):

1. Delusions.
2. Hallucinations.
3. Disorganized speech (e.g., frequent derailment or incoherence).
4. Grossly disorganized or catatonic behavior.
5. Negative symptoms (i.e., diminished emotional expression or avolition).

B. For a significant portion of the time since the onset of the disturbance, level of functioning in one or more major areas, such as work, interpersonal relations, or self-care, is markedly below the level achieved prior to the onset (or when the onset is in childhood or adolescence, there is failure to achieve expected level of interpersonal, academic, or occupational functioning).

C. Continuous signs of the disturbance persist for at least 6 months...

E. The disturbance is not attributable to the physiological effects of a substance (e.g., a drug of abuse, a medication) or another medical condition.²¹⁵

They describe delusions as "fixed beliefs that are not amenable to change in light of conflicting evidence. Their content may include a variety of themes (e.g., persecutory, referential, somatic, religious, grandiose)."²¹⁶ Hallucinations are "perception-like experiences that occur without an external stimulus. They are vivid and clear, with the full force and impact of normal perceptions, and not under voluntary control. They may occur in any sensory modality, but auditory

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<https://www.nimh.nih.gov/health/topics/schizophrenia#:~:text=Schizophrenia%20is%20a%20serious%20mental,for%20the%20family%20and%20friends>

²¹⁴<https://www.who.int/news-room/fact-sheets/detail/schizophrenia#:~:text=Schizophrenia%20affects%20approximately%2024%20million,as%20many%20other%20mental%20disorders>

²¹⁵ American Psychiatric Association, DSM 5, op cit., p. 99.

²¹⁶ Ibid., p. 87.

hallucinations are the most common in schizophrenia and related disorders. Auditory hallucinations are usually experienced as voices, whether familiar or unfamiliar, that are perceived as distinct from the individual's own thoughts."²¹⁷ Negative symptoms

account for a substantial portion of the morbidity associated with schizophrenia but are less prominent in other psychotic disorders. Two negative symptoms are particularly prominent in schizophrenia: diminished emotional expression and avolition. *Diminished emotional expression* includes reductions in the expression of emotions in the face, eye contact, intonation of speech (prosody), and movements of the hand, head, and face that normally give an emotional emphasis to speech. *Avolition* is a decrease in motivated self-initiated purposeful activities. The individual may sit for long periods of time and show little interest in participating in work or social activities. Other negative symptoms include alogia, anhedonia, and asociality. *Alogia* is manifested by diminished speech output. *Anhedonia* is the decreased ability to experience pleasure from positive stimuli or a degradation in the recollection of pleasure previously experienced. *Asociality* refers to the apparent lack of interest in social interactions and may be associated with avolition, but it can also be a manifestation of limited opportunities for social interactions.²¹⁸

Unfortunately, there is often a stigma attached to schizophrenia, in particular, as it is often associated with violent or criminal behavior.²¹⁹ The reality, though is also that "[m]any people who receive treatment can engage in school or work, achieve independence, and enjoy personal relationships."²²⁰ Farrell presents two cases of individuals who experienced very difficult times but through treatment have been able to adjust and live productive lives.²²¹

3.1.1 The Danger of Misdiagnosis and Extremes

One of the most alarming aspects related to schizophrenia is the high rate of suicide or suicide attempts associated with schizophrenia. About 5% of schizophrenics die from suicide while about 20% of schizophrenics attempt suicide.²²² Thus, a delay in diagnosing schizophrenia or

²¹⁷ Ibid., p. 87.

²¹⁸ Ibid., p. 88.

²¹⁹ For statistics on this point, see <https://www.singlecare.com/blog/news/schizophrenia-statistics/#schizophrenia-prevalence>.

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<https://www.nimh.nih.gov/health/topics/schizophrenia#:~:text=Schizophrenia%20is%20a%20serious%20mental,for%20the%20family%20and%20friends>

²²¹ Michael Farrell, *Controversies in Schizophrenia: Issues, Causes, and Treatment* (New York, NY: Routledge, 2023), pp. 2-3.

²²² <https://www.singlecare.com/blog/news/schizophrenia-statistics/#schizophrenia-prevalence>

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misdiagnosing it can be very dangerous. However, from this author's anecdotal evidence, it is usually the case that once Imams or scholars are told about "hearing voices," they immediately think—and sometimes insist—that it must be and can only be jinn. If this is a misdiagnosis—and it is actually schizophrenia and not jinn—it can lead to disastrous results, even a crisis in faith, as the Imams can make the situation worse for the suffering individual whose correct diagnosis is usually delayed believing that the Imam has the cure. This author is aware of cases where even though the known signs of the presence of jinn were not there, the Imams continued to insist that the problem was only jinn and can be handled through Quranic reading alone.

At the same time, there is also another extreme: where the possibility of jinn involvement is always denied and insisting that the problem must be only a psychological or physiological issue. Malik Badri has commented on this problem at length, writing,

In general, some of those who are considered possessed by traditional healers as being possessed by evil spirits are the ones who are diagnosed by psychiatrists as suffering from schizophrenia or mania. The diagnostic term "schizophrenia" is a very ambiguous label and psychiatrists stick it on anybody who exhibits the symptoms of delusions or false beliefs or who suffers from hallucinations in which he/she sees things that are not really there or hears voices from invisible beings. In my study I listened to Muslim healers who strongly criticized this broad classification of mental illness. They say that to consider anybody schizophrenic only because he/she sees things and hears voices, is like a doctor who says that all patients who have fever, headache and nausea must be suffering from malaria. Since a high fever and headache can be caused by so many illnesses, to stick to one diagnosis is neither rational nor scientific. The same applies, as these healers argue, to the concept of schizophrenia. In fact, medically hallucinations can be caused by disorders other than the accepted biochemical imbalance in the brain such as alcoholic poisoning, dementia, delirium or some other reasons. So why can we not have an open mind to also consider a spiritual cause in the diagnosis of mental illness?

The traditional healers also claim that the main evidence for the biochemical theory of schizophrenia is that patients improve when they are given the prescribed drug or by receiving electroconvulsive therapy, but they also argue that at least a quarter or more of them do not improve. They are permanently kept in mental hospitals as chronic schizophrenics. These healers argue that if improvement is the evidence, then they have a number of cases of chronic schizophrenics who responded to their therapy in a much shorter time...

In May 2001 a very interesting conference was held in Dammam, Saudi Arabia in which psychiatrists and well-known traditional Muslim healers discussed the value of *ruqaiyyah* (prayer for therapeutic purposes as well as exorcism of jinn possession). I took part in this conference and

I was happy to see western-trained Arab psychiatrists accepting the possibility of jinn possession and showing their readiness to cooperate with Muslim healers by referring to them as those who do not benefit from their modern psychiatric therapy. Therefore, as Muslims, we should not dismiss the possibility of jinn possession. We have in the traditions of our prophet (peace and blessings of Allah be upon him) and the biography of early Muslim physicians much evidence to the therapeutic benefit of reading verses from the Holy Qur'an as a form of exorcism. We should be open minded in accepting the physical as well as the spiritual aspects of human nature.²²³

3.2 A Survey of Fatwaas Related to Schizophrenia

3.2.1 Schizophrenia and legal capacity

On the website seekersguidance.org, the following question was presented, "I have schizophrenia as diagnosed by a doctor who is not Muslim. Am I held responsible in terms of prayer, fasting etc.?" The question was responded to by Shaikh Salman Younas, and approved by Faraz Rabbani. The response contains the following:

We ask Allah to grant you health, well-being, and the strength to cope with this test. It is not possible to give a definite answer without knowing and observing the details of your condition, especially in light of the fact that schizophrenia is a spectrum disorder. Generally speaking, being sane and in control of one's rational faculties, as well as being able to understand the message of God, are conditions for moral responsibility. Someone who is not sane or suffers from deficits in cognitive abilities that renders him unable to understand and carry out divine commands is not under any responsibility to fulfill these commands.

If an individual suffers this condition on a temporary basis, scholars state that he will not be morally responsible for that temporary period. Thus, someone suffering from schizophrenia may find himself not morally responsible for long stretches of time, while he may be obliged at other times, i.e. when his symptoms subside and are not as severe, to perform his daily obligations.

One should note, however, that this is the legal ruling on the matter. From a broader perspective, we recognize that God is infinitely merciful. He is not an entity merely checking off requirements given to us in an exam. God knows the struggles people are undergoing, the challenges we face, the hardship, that we slip sometimes and succeed

223 Badri, *Cyber-Counseling*, op cit., pp. 21-23.

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on other occasions, etc., and He approaches and judges us accordingly.

Suffering in this world may seem like an eternity, but it will pass and eventually the door to actual eternity will be opened, and it is here that our suffering will, in the words of one of our teachers, "dwindle to nothing before the next [world] not only quantitatively, because of its eternity, but qualitatively because of its nature." The Prophet, blessings and peace be upon him, described this saying:

The person who had the most pleasing life in this world, of any of the people of hell, will be summoned on Resurrection Day and utterly plunged into the hellfire, then asked, 'O human being, have you ever beheld any good at all; have you ever felt a single joy?' and he will say, 'No by God, my Lord.' And the most miserable sufferer in this world, of any of the people of paradise, will be summoned and utterly plunged into paradise, then asked, 'O human being, have you ever seen any bad at all; have you ever experienced a single misery?' and he will say, 'No by God, my Lord: I have never seen any bad or suffered a single misery.' (Muslim)

All we are tasked to do is try our best in the situation we find ourselves in and in the little time we are given. One should not lose hope. We should continue striving as best as we can and continue turning to God.

Finally, in your case, I would advise you to connect with family, local scholars, members of the community, and mental-health professionals in your area. Having people around one who care and encourage us to live our lives meaningfully is important because it gives us the strength to persevere. Given the stigma surrounding your condition, this may seem challenging and intimidating, but finding a trusted group of people who support you will be invaluable and necessary.²²⁴

3.2.2 Schizophrenia and Medications for Mental Illness

An important question for any schizophrenic regards the permissibility of taking medications for such illnesses. Some medications can greatly alter one's biological or physiological behavior, to the point that some might think that it is tantamount to changing the creation of Allah. A question of this nature related to schizophrenia in particular was put to islamqa.info. The response included the following:

Medical treatment is allowed in Islam in general terms, and is not regarded as changing the creation of Allaah. The ruling among the scholars is that it is either permitted (mubaah) or recommended (mustahabb). The Hanafis and Maalikis are of the view that

²²⁴ <https://seekersguidance.org/answers/general-counsel/schizophrenia-fiqh-ruling/>

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medical treatment is permitted, and the Shaafa'is and some Hanbalis are of the view that it is mustahabb. The view of most of the Hanbalis is that it is better not to do it. Ahmad ibn Hanbal narrated that Anas (may Allaah be pleased with him) said: The Messenger of Allaah (peace and blessings of Allaah be upon him) said: "When Allaah created the disease, He also created the cure, so seek the cure." Narrated by Ahmad, 12186; classed as hasan by al-Albaani in al-Silsilah al-Saheehah, 1633...

It makes no difference with regard to medical treatment whether the sickness is physical, mental or nervous. The word da' (disease, sickness) in the ahaadeeth is general in meaning and includes all kinds of sickness.

Shaykh 'Abd al-'Azeez ibn Baaz (may Allaah have mercy on him) said:

It is permissible to treat sickness according to scholarly consensus. The Muslim may go to a doctor for internal sickness, injuries, nervous problems and so on, for him to diagnose his sickness and treat it appropriately, using medicines that are permitted according to Islam, according to his medical knowledge, because this comes under the heading of taking the usual means, and it does not contradict the idea of putting one's trust in Allaah. Allaah has sent down the disease and He has sent down the cure; those who know it know it, and those who do not know it do not know it, but Allaah does not put the healing for His slaves in something that He has forbidden to them.

It is not permissible for a sick person to go to the soothsayers or fortunetellers who claim to have knowledge of the unseen, in order to find out from them what his sickness is. Nor is it permissible for him to believe what they tell him, for they speak without knowledge or they summon the jinn to ask their help in doing what they want to do. The ruling on these people is that they are kaafirs who are misguided, if they claim to have knowledge of the unseen...

Majmoo' Fataawa al-Shaykh Ibn Baaz, 3/274

Although it is permissible to use physical medicine, the sick person should also look for spiritual remedies as prescribed in Islam, in which Allaah has put the cure for both physical and mental illness, such as ruqyah as prescribed in Islam, in which Qur'aan or words narrated in the Sunnah are recited.

The scholars of the Standing Committee said, answering a similar question:

Trust in Allaah and think positively of Him; delegate your affairs to Him, and do not despair of His mercy, bounty and kindness, for He has not sent down any disease but He has also sent down the cure. You should take the means and continue to consult specialist doctors who have knowledge of disease and its treatment. Recite Soorat al-Ikhlaas, Soorat al-Falaq and Soorat al-Naas over yourself three times, and blow into

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your hands after each time, and wipe your face and whatever you can reach of your body. Do that repeatedly night and day and when going to sleep. Also recite over yourself Soorat al-Faatihah at any time of night or day, and recite Aayat al-Kursiy when you lie in your bed at night. These are the best ruqyahs with which a person may treat himself and protect himself from evil. Call upon Allaah by reciting the du'aa' for one who is in distress, and say:

"Laa ilaaha ill-Allaah al-'Azeem al-Haleem, laa ilaaha ill-Allaah rabb al-'arsh il-'azeem, laa ilaaha ill-Allaah rabb al-samawaati wa rabb al-ard wa rabb al-'arsh il-'azeem (There is no god but Allaah, the All-Mighty, the Forbearing, there is no god but Allaah, the Lord of the mighty Throne, there is no god but Allaah, Lord of the heavens, Lord of the earth, and Lord of the mighty Throne)."

Also treat yourself with the ruqyah of the Messenger of Allaah (peace and blessings of Allaah be upon him):

Allaahumma Rabb an-naas, mudhhib al-ba's ishfi anta al-Shaafi, laa shaafiya illa anta, shifaa'an laa yughaadir saqaman (O Allaah, Lord of mankind, the One Who relieves hardship, grant healing, for there is no healer but You, a healing that leaves no trace of sickness).

And recite other dhikrs and ruqyahs and du'aa's which are mentioned in the books of hadeeth, and which are mentioned by al-Nawawi in *Riyaadh al-Saaliheen* and *Kitaab al-Adhkaar*.

Fataawa al-Lajnah al-Daa'imah, 1/297

We ask Allaah, the Lord of mankind, to take away your pain, and to heal you of what you are suffering. We urge you to be patient and to seek reward with Allaah for what has befallen you, and we hope that Allaah will reward you and relieve you of your distress.²²⁵

3.2.3 Schizophrenia and Forced Medical Treatment

In his work *Forensic Psychiatry in Islamic Jurisprudence*, Kutaiba Chaleby put the following question to the judge Shaikh Salih al-Lehaidan:

A twenty-five-year-old, diagnosed with schizophrenia (a mental disorder that can lead to insanity), is in a confused, dazed state, rarely leaving the house, unable to care for his wife and children but mostly able to take care of his own immediate personal needs. He responded very well to treatment in the past, to the extent that he became a

225 <https://islamqa.info/en/answers/69766/there-is-nothing-wrong-with-taking-medication-for-mental-illness>

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responsible person, able to support his family. He only regressed or relapsed when he thought he was so well that he did not need treatment any more. This patient is unable to recognize that he is ill and in need of treatment because of his mental illness. Though sometimes unable to take care of himself, he is not a danger to himself or others... Can a member of his family give consent to have him treated in a hospital against his will? Does any member of his family have more right to give such consent than any other?

Al-Lehaidan's response was,

As I understand it, I do not see that he should be put in a hospital. However, if that were necessary, the one responsible for giving consent for his admission would be the next sane adult relative according to the line of inheritance. If the condition was serious, and there was a fear for the patient's welfare (for example, by his neglecting his personal health) or a fear of his hurting other people - God has stated in the Qur' an: "... and do not be thrown by your own hands towards ruin ..." (2:195). That command applies to the patient; it also applies to the patient's clan. So, the clan should look after its member, who is mentally ill.

Chaleby added the following comment,

The answer clarifies the Islamic position on involuntary treatment of the mentally ill. His being a danger or not, to himself or others, is not the decisive consideration as regards committing the patient for treatment. The need for treatment is a duty. It is also the duty of the family or the whole clan or tribe, if necessary. The Shaykh apparently did not see the need for hospitalization in this case, probably because he thought the condition might be treatable on an out-patient basis. However, he did make it clear that patient's needs of treatment are enough reason to commit him, in order to avert deterioration due to lack of care.²²⁶

This question probably needs much more elaboration. The individual seems to be described as lapsing back into "a confused, dazed state, rarely leaving the house, unable to care for his wife and children but mostly able to take care of his own immediate personal needs." If this were the case, it is probably true that the individual himself does not have the ability to make the best or proper decision for himself, in which case a guardian is required to make such a decision. Who makes

²²⁶ Kutaiba Chaleby, *Forensic Psychiatry in Islamic Jurisprudence* (Herndon, VA: The International Institute of Islamic Thought, 2001), pp. 119-120.

those decisions when the family, clan, or tribe or not available or incapable of making such a decision is yet another important ethical question that requires the response of Islamic scholars.

3.2.4 Schizophrenia and Suicide

As mentioned, suicide is a serious concern for any schizophrenic. At the same time, suicide is a major sin. In fact, the Prophet (peace and blessings of Allah be upon him) refrained from performing the funeral prayer for the individuals who committed suicide, although he allowed his Companions to do so.²²⁷ As such, one can find some fatwaas concerning a Muslim who was diagnosed with schizophrenia and then committed suicide.

Mufti Ebrahim Desai was asked about whether the schizophrenic (receiving treatment) who committed suicide will be held responsible for that act. Desai responded, "The condition of such a person is best known by Allah. In principle, if such a person's mental status of mind was completely astray and reached a state of insanity then he/she will be excused, Inshallah."²²⁸

In response to a similar question, islamqa.info provided a much more detailed response. Among the points made in this ruling are the following: "Whatever befalls a Muslim of physical disease, such as cancer, or mental disease such as depression that he cannot bear, that does not make it permissible for him to kill himself." It then goes on to say,

A Muslim may be affected by mental or physical illness that affects his mind to such a great extent that he does not know what he is saying or doing. If this results in him killing himself, he will not be with the sinners who have fallen into the major sin of suicide. Rather he will be excused because there was an impediment to his being accountable, namely his loss of reason.

Based on that, if what happened to your family friend of post-traumatic distress affected her mind, and she did not know what she was saying or doing, then she comes under the ruling on those who are affected by insanity, and she will be excused and not regarded as sinning by having killed herself, because the Pen has been lifted and her bad deeds are not recorded when that is the case.

However, it ends on a more ominous note, "But if that psychological pressure on your family friend did not affect her mind and it was no more than psychological pressure, and she knew what she was saying and doing at that time, and was able to distinguish between good and bad, and

²²⁷ For more details concerning this, see <https://islamqa.info/en/answers/70363/ruling-on-suicide-and-on-offering-the-funeral-prayer-and-praying-for-one-who-has-committed-suicide>.

²²⁸ https://www.askimam.org/public/question_detail/15223

between right and wrong, then she is not excused for killing herself; rather she is accountable for her actions. We ask Allah to forgive her, to comfort her family in their loss and to reward them for it."²²⁹

The reality is that Allah is the final Judge—and He is the Judge who is aware of all and never commits any injustice. For humans, it is sufficient to note that suicide is not an act of apostasy that takes one out of the fold of Islam. Hence, the individual should be given a proper burial and forgiveness should still be sought for them. There is no reason not to hope that either the individual was completely absolved from responsibility due to their mental illness or, if that were not the case, that Allah may still bestow His bounty on the individual, especially as others pray continue to pray for them.

3.2.5 Schizophrenia and the Requirement of Prayers

An important question from islamqa.info reads, "Are those who suffer from mental disorders such as schizophrenia no longer accountable for prayer and other obligatory duties?" After going into some detail concerning the nature of schizophrenia, the response states,

Based on the above discussion on the definition of accountability from an Islamic point of view, what makes a person qualified to be accountable, and what is expected of him, and based on what we have discussed about the nature of this illness and its symptoms and impact, we think that the person who is affected by it does not meet the conditions of accountability, especially in the chronic, later stages of the illness. However, when he is in a phase in which he has self-awareness and is able to control his actions and his thinking, he is accountable and must comply with the commands and prohibitions of Allah. What we have said above has to do with duties towards Allah, may He be exalted, such as prayer, fasting and Hajj. However, with regard to duties towards other people, he is liable for any damage he may cause to their property, and he is required to give zakaah on his wealth, because these are obligatory duties for which it is not stipulated that one should be accountable for them to be obligatory.²³⁰

Perhaps a few comments should be added here. Allah is not in need of humans worshipping Him. The ritual acts of worship are meant to be acts of submission while also being acts that are purifying and bringing an individual closer to Allah. Earlier the reader was introduced to "Nabil" who experienced pain when praying. If, somehow, the prayer actually negatively impacts the person's

²²⁹ <https://islamqa.info/en/answers/146375/she-became-mentally-ill-then-she-killed-herself-is-she-regarded-as-having-committed-suicide>

²³⁰ <https://islamqa.info/en/answers/132519/facts-about-schizophrenia-is-the-sufferer-still-accountable>

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relationship with Allah, it would defeat its purpose to say that it is obligatory. At the same time, there could be pure hypocrites out there who simply do not want to pray, and come up with all sorts of devices to get out of the prayer. These people are harming themselves while at the same time they are not fooling Allah. Allah knows what is in their hearts and whether they are suffering or simply looking for an excuse out of an obligation. If a person seems to be sincerely receiving treatment and is negatively impacted by the prayer—while perhaps able to do other acts of worship—it seems that it would behoove the scholar to consider that the obligation of the prayer may be dropped from this individual. Again, if he is trying to deceive people, in the long-run, he will not be deceiving Allah and he will meet his proper fate.

3.2.6 Schizophrenia, the Side Effect of Medication, and Combining Prayers

Medications are well-known to have various side effects. In one question posted on islamqa.info, an individual with schizophrenia was given medication that has led to urinary incontinence and passing lots of gas. The individual was saying that this caused a hardship with respect to making ablution five times a day for prayers and that, instead, the person only made ablution three times a day, by combining the Noon and Afternoon prayers together and the Sunset and Night prayers together. The response was that making ablution five times a day was not such a hardship that the individual would be excused to pray only three times a day instead of five. The response added that combining prayers in which there is no valid excuse to do so is a major sin. However, the response also mentioned that if there were true hardship from the medication, it would be permissible to combine the Noon and Afternoon prayers and the Sunset and Night prayers.²³¹

Some medications may have an almost absolute numbing effect on the individual, making it difficult for them to have the energy and wherewithal to perform the prayers. Such individuals may be closer to being asleep even though they are awake. Perhaps—and Allah knows best—they need to pray only after the heavy effects of their medication wear off and they have the energy and alertness to perform the prayer.

3.2.7 Schizophrenia and Duaa or Prayers Against Oneself

²³¹ <https://islamqa.info/ar/answers/384511/%D9%85%D8%B5%D8%A7%D8%A8%D8%A9-%D8%A8%D8%A7%D9%86%D9%81%D8%B5%D8%A7%D9%85-%D9%88%D8%AA%D8%AA%D9%86%D8%A7%D9%88%D9%84-%D8%AF%D9%88%D8%A7%D8%A1-%D9%8A%D9%88%D8%AF%D9%8A-%D9%84%D9%84%D8%AA%D8%A8%D9%88%D9%84-%D8%A7%D9%84%D9%85%D9%81%D8%B1%D8%B7-%D9%81%D9%87%D9%84-%D9%84%D9%87%D8%A7-%D8%A7%D9%84%D8%AC%D9%85%D8%B9-%D8%A8%D9%8A%D9%86-%D8%A7%D9%84%D8%B8%D9%87%D8%B1%D9%8A%D9%86-%D9%88%D8%A7%D9%84%D8%B9%D8%B4%D8%A7%D8%A1%D9%8A%D9%86>

Islamweb.net received the following question, "What is the fate in the afterlife of a person if he was suffering from severe schizophrenia but did not know that, and in frustration and depression says prayer or prays to God to send him to hell in the afterlife... then he gets diagnosed for the disease gets treated for a number of years and gets a lot better and remembers what he had said and realizes what a terrible mistake he has made." The response is detailed but a portion of it states:

[S]chizophrenia is a form of insanity. So, if a schizophrenic supplicates Allaah against himself, his supplications are not accepted because he is not mindful of what he is saying. Verily, Allaah is All-Merciful and does not accept the supplications of an insane person against himself. Allaah is the most Merciful to His slaves, even more Merciful to them than their own mothers.

Moreover, Muslim scholars underlined that when a sane person supplicates Allaah against himself, his supplications are considered vain talk and are most likely rejected...

Ibn Katheer رحمه الله said, "Allaah, The Exalted, informs us of His forbearance and kindness towards His slaves that He rejects their supplications against themselves, their wealth, or their children while in a state of anger and dissatisfaction and that He knows that they do not actually wish ill for themselves or their loved ones. Therefore, Allaah does not accept such supplications out of His kindness and mercy as He answers people's supplications when they implore Him to bless them, their wealth, and children. This is why Allaah, The Exalted, says (what means): {And if Allaah was to hasten for the people the evil [they invoke] as He hastens for them the good, their term would have been ended for them...} [Quran 10:11]."²³²

3.2.8 The Schizophrenic and Marriage

As earlier mentioned, many can get their schizophrenia under control and lead "normal" lives. Of course, they may still face bouts of their illness on occasion. Marriage is considered part of normalcy. This brings up the important question of the possibility of marriage for those suffering from schizophrenia. This question was also addressed at islamqa.info:

The person who has schizophrenia can get married, so long as he informs the woman he wants to marry about his illness. That is because every sickness or fault that may have an impact on married life or may put the wife off must be disclosed and it is haraam to conceal it.

Insanity is one of the defects that render the marriage contract null and void according

²³² <https://www.islamweb.net/en/fatwa/242443/the-supplications-of-a-mentally-disturbed-person-against-himself-are-not-accepted>

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to the majority of fuqaha'. If the woman is not aware of it at the time of the marriage contract, then she comes to learn of it afterwards, she has the right to annul the marriage...

Ibn al-Qayyim (may Allah have mercy on him) said: The analogy is that in the case of any defect which puts one spouse off the other, and means that the aims of marriage, such as compassion and love, cannot be attained, the option to annul must be given... [Shaykh Saalih al-Fawzaan stated:] each spouse must tell the other of any physical defects that he or she has before marriage, because this comes under the heading of honesty and because it is more likely to bring about harmony between them and ward off disputes, and so that each of them will enter into marriage with the other with full disclosure. It is not permissible to deceive and conceal...

To sum up: the one who is affected by insanity or any other disease may get married on condition that he informs the one he wants to marry of his sickness.²³³

3.2.9 Schizophrenia and the Statement of Divorce

As discussed above, it is permissible for a person suffering from schizophrenia to get married. That being said, there is the possibility of a schizophrenic pronouncing the statement of divorce for his wife. In one fatwaa, Mohammed Tosir Miah addressed this issue, "For talaq [statement of divorce] to occur, one of the conditions is that the person issuing the talaq must be sane and mature. Schizophrenia leads to a person's mind and intellect becoming unbalanced and obscured. Such a person's talaq is ineffective and not valid."²³⁴ In this fatwaa, Miah is essentially considering schizophrenia insanity. However, it could definitely be the case that a schizophrenic person pronounces divorce while he is very much sane.

A fatwaa found in islamqa.info provides more detailed and necessary information. This fatwaa ties pronouncing divorce due to schizophrenia into the concept of coercion—wherein one feels compelled by one's disease to pronounce the divorce. After discussing how a divorce stated under coercion is not valid, the fatwaa continues,

Coercion includes being compelled, not being able to think properly, and losing willpower. This happens to the one who is affected by *waswaas* (OCD) sometimes, and to the one who has been bewitched, and to some of those who suffer from depression, in such a way that one of them may divorce his wife by compulsion, without choosing or wanting to do so; rather he finds himself pushed or compelled to divorce his wife, and

²³³ <https://islamqa.info/en/answers/144242/can-a-person-with-schizophrenia-get-married>

²³⁴ <https://daruliftabirmingham.co.uk/home/5116/>

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he cannot relax until he speaks of it. In such a case the divorce does not count as such.

Ibn al-Qayyim (may Allah have mercy on him) said: Our shaykh, Ibn Taymiyah, said: Coercion means one is no longer aware of what he is saying and is unable to form an intention. That includes divorce issued by one who is mentally deficient, insane or drunk, one who is forced to do that, and one who is so angry that he does not know what he is saying, because in all of these cases the door has been closed to awareness and intention. Divorce only counts as such if it is issued by one who intends, knowingly, to do that...

Based on that, if you spoke the word of divorce, understanding it and aware of its impact, and intended to separate from your wife, then this is a divorce that counts as such.

But if you uttered it without realising, under the pressure of your illness and distress, then it does not count as such.

Even if we assume that divorce took place, you have the option of taking your wife back if her `iddah has not yet ended, or you can make a new marriage contract with her, fulfilling the necessary conditions, if she agrees to that and if this was the first or second talaq.

We should point out that if a person divorces his wife three times or more (at one time) by saying "You are thrice divorced" or "You are divorced, you are divorced, you are divorced," this is to be counted as a single divorce according to the more correct opinion. The same applies if he issues a divorce, then issues another divorce before taking back his wife; this is to be counted as a single divorce, according to the more correct opinion, whether it was on a single occasion or on several occasions, because divorce cannot take place except after doing the marriage contract or after taking back the wife.²³⁵

3.2.10 Schizophrenia as a Cause for Divorce

A fatwaa in the Arabic section of islamqa.info discusses the question of whether a husband developing schizophrenia can be a cause for annulment or seeking a dissolution of a marriage. The fatwaa starts off by stating that if the husband is inflicted with insanity or schizophrenia, the marriage does not become void simply due to that. However, the wife now has the right to seek an annulment (*faskh*) or request a divorce. Ibn Uthaimen is then quoted as saying that if a "defect"

²³⁵ <https://islamqa.info/en/answers/183691/talaq-of-one-who-is-mentally-ill>

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occurs after the commencement and if that defect is not transitive, there is then, according to some scholars, no option for annulment, just like the buyer would not have an option to return an item that was sound when purchased and then a defect developed later. Ibn Uthaimen said that such a view could be possible concerning some defects but with respect to other defects there should be no difference of opinion concerning the option for annulment. He says that if a woman is not allotted such an option, it would be problematic, as she would then be forced to say with an insane husband, fearing for herself and her children. He said that such is not an acceptable outcome in the merciful Shareeah. Ibn Uthaimen then says that some defects are not harmful and thus there is no need for the option of annulment if they come up after the marriage contract.

After quoting the above from ibn Uthaimen, the fatwaa goes on to say, first, that seeking of an annulment in the presence of insanity cannot be delayed. Delaying that request is a sign of acceptance and then once something is accepted, annulment cannot be sought later. However, secondly, divorce could still be sought due to harm, such as the insane person not having sexual relations with her, not supporting her, or transgressing against her. Thirdly, it states that if the woman was not aware that she could seek an annulment, then her acceptance of the situation does not nullify her right to annulment, as it was out of ignorance that she remained with the husband.²³⁶ Although that first point is well known and established, it could also be somewhat unfair to the wife, as it may be difficult in the early days for someone to figure out how difficult life is going to be with such an individual, especially if their disease progresses. Perhaps there could be some leeway there is the wife claims that she was ignorant of what it truly meant to accept the husband in that state. And Allah alone knows best.

3.2.11 Schizophrenia and Criminal Law

In *Forensic Psychiatry in Islamic Jurisprudence*, Kutaiba Chaleby discusses the intersection of mental illness and criminal law. In the appendix of the book, Chaleby presents a number of hypothetical and real cases to the judge Shaikh Salih al-Lehaidan, wherein al-Lehaidan replies with fatwaas for those cases. A number of those cases are related to schizophrenia. Some of those will be discussed here.

²³⁶ <https://islamqa.info/ar/answers/264546/%D8%A7%D8%B5%D9%8A%D8%A8-%D8%B2%D9%88%D8%AC%D9%87%D8%A7-%D8%A8%D8%A7%D9%84%D8%AC%D9%86%D9%88%D9%86-%D8%A7%D9%88-%D8%A8%D8%A7%D9%84%D8%B4%D9%8A%D8%B2%D9%88%D9%81%D8%B1%D9%8A%D9%86%D9%8A%D8%A7-%D9%88%D8%AA%D8%B9%D9%8A%D8%B4-%D9%81%D9%8A-%D8%A8%D9%84%D8%AF-%D8%BA%D9%8A%D8%B1-%D8%A7%D8%B3%D9%84%D8%A7%D9%85%D9%8A-%D9%81%D9%87%D9%84-%D9%84%D9%87%D8%A7-%D8%A7%D9%84%D8%B7%D9%84%D8%A7%D9%82-%D8%A7%D9%88-%D8%A7%D9%84%D9%81%D8%B3%D8%AE>

3.2.11.1 Schizophrenia and Criminal Law Case #1:

Chaleby presents the following case:

A thirty-year-old schizophrenic was put in a mental institution for treatment of a recent regression in his condition in which he suffered intense hallucinations and delusions. He had started to believe that he was a holy one who was charged with rescuing humanity from evil people. He chased those evil ones in public places, particularly banks. He focused on banks because he was convinced that people attending such evil places that function on the basis of usury must be evil. He was committed to the mental institution before he could carry out any assault. He decided to run away. He climbed a fence at night, knowing that he could be stopped by the security men if he tried to leave by the gate. However, as he went over the fence, he was seen by a guard who fought with him. In order to avoid being detected the man actually killed the guard. He got away, only to be caught by the police shortly afterwards. He denied the fact that he had killed the guard and made up stories to evade the facts. He was put back in the hospital.

What is important here is that man is known to be schizophrenic, and that his delusions about having to attack people who do business in banks are related directly to his illness. Had he killed someone identified within his delusion as an evil one, his crime would have been directly attributable to his mental disorder. But he killed the guard for a reason not connected to his delusions. He also knew that his action was legally wrong and he actually denied what he had done...

Is the man to be held not responsible for his crime because he is mentally ill and ruled as insane? Or should he be held responsible because, in spite of his mental illness, he was aware that killing the guard was a crime punishable by law. He also knew that the guard was not among the evil people his delusions impelled him to pursue.

Answer

Schizophrenia, as I understand it, is of different kinds. It was not clear which one this was. To my knowledge there are at least two general classes, the inherited and the acquired. If the kind this patient is suffering from is inherited, my judgement is that the sentence should be minimized.

If his illness is acquired, as caused by bad upbringing, poor parenting, abuse, or if it came from some reading matter - whoever had a share in causing this condition should

share in the punishment. The patient's ruling should be reviewed regularly, i.e. to identify what type of schizophrenia it might appear to be.²³⁷

Chaleby comments, "The fact that the accused involved in the crime is insane did not affect the judgment that, being responsible, he should be sentenced for the particular act. So we can safely infer that the mere existence of mental illness does not automatically exempt a patient from criminal responsibility."²³⁸

In this author's view, the idea of trying to trace the causers of schizophrenia and hold them legally responsible is extremely problematic. Attempting to discover the causers would be nothing but conjecture and speculation. Thus, it would be strange that that would meet any legal bar for holding them responsible. As Watson wrote, "Schizophrenia is a serious neurological disorder arising from a complex mix of genetic and environmental factors, with events such as childhood trauma or viral infections likely playing a role, amplifying someone's risk of experiencing its symptoms of delusional or disordered thinking later in life." She also writes, "Research also suggests four out of five cases of schizophrenia can be traced back to genes inherited from the child's parents, with more recent studies adding to the list of known genetic links. Yet that still leaves roughly 20 percent of cases without an obvious basis in inheritance." Of those remaining 20 percent, recent research has shown that some of them at least are the result of somatic mutations, meaning that they are not inherited from the parents but arise after in the embryo.²³⁹ This could imply that people who are predisposed to schizophrenia may react to events that could bring on their disease while the "causers" perhaps did not do too much out of the norm for society. Again, from a legal perspective, it seems it would be very difficult to hold them legally culpable. And Allah alone knows best.

3.2.11.2 Schizophrenia and Criminal Law Case #2:

Another illuminating case from Chaleby's book is the following:

Zayd is a twenty-four-year-old man, diagnosed as schizophrenic four years ago and under almost continuous treatment since then. Schizophrenia is a disorder that can be associated with insanity. He suffered from delusions in which he became convinced that his parents were evil and his mortal enemies. He was under treatment in Egypt when he made a decision to kill his parents who were, at that time, living in Kuwait. He planned

237 Chaleby, op cit., pp. 120-121.

238 Ibid., p. 121.

239 Clare Watson, "The Seeds of Schizophrenia Could Be Planted in The Very Earliest Moments of Life," <https://www.sciencealert.com/the-seeds-of-schizophrenia-could-be-planted-in-the-very-earliest-moments-of-life>.

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to go to Kuwait under an assumed name on a false passport so that no-one would suspect that he had left Egypt. He had worked out that, as there would be no evidence in his original passport documenting his departure, he would have a perfect alibi. He then did go to Kuwait as he planned and ended up killing his parents there. However, he was arrested shortly after the crime, before he could return to Egypt.

During the trial the prosecution argued that his mental illness could not be a reason to acquit Zayd by reason of insanity because, in spite of his mental illness, he was well able to recognize that what he was doing was wrong, and because he had premeditated and planned the crime with the aim of avoiding detection. Zayd's defense lawyer argued from medical reports and expert testimony that Zayd was severely mentally ill and that his criminal behavior was prompted by his delusions...

Which of the two arguments is more likely to be accepted? Is Zayd guilty because of his full awareness of the legal wrongfulness of his act? Or is he not guilty because the insanity rule is applicable in his case?

Answer

In this question as in some previous questions the statement that "Schizophrenia is a disorder that might lead to state of insanity" is somewhat confusing and makes me hesitate to answer those questions. As far as I know, schizophrenia is of four kinds. To give the appropriate ruling, the kinds of schizophrenia and their consequences need to be carefully identified. Generalities put someone in my position in need of a lot of time to discuss the case thoroughly.

Should the accused in question be allowed the insanity defense? You have clarified that he was aware of what he was doing, and of the kind of action it was. As I see it, schizophrenia is different in different people according to how severe the delusions are, the sensitivity of the individual, and the nature of the compulsive actions associated with it. It is of two classes; inherited and acquired. The former is most serious because, unlike the latter, all the known characteristics of the state are there. If the accused has the inherited type, then he might get the insanity defense and should get a lighter sentence.

If he is suffering from the other form of schizophrenia, then he should be sentenced like any other person.²⁴⁰

After the above, Chalebi then comments,

240 Chalebi, op cit., pp. 123-4.

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This example was derived from a real case presented in a California court. The accused was found guilty in spite of documented mental illness and the fact that his action was the product of a delusion. The guilty decision was based on his detailed awareness of the criminality of his act and the clever methods he used to escape detection. Shaykh al-Lebaidan makes a strong point of whether the condition was inherited or not. In reality, psychiatrists are unable to make the clinical distinction between the two. Also, the issue of partial responsibility arises here; it is one that merits much further reflection and debate.²⁴¹

This example highlights some of the perplexities in dealing with the question of insanity or mental illness and criminal responsibility. From a contemporary mental illness perspective, it is clear that sometimes individuals with mental illness can understand the wrongness of what they are doing. How much does this need to be taken into consideration when punishing an individual for a crime may need to be determined on a case-by-case basis. As Chalebi pointed out, also, to distinguish between an inherited or acquired form of schizophrenia is not practical and seems to be too subjective to use as a measure for punishment. And Allah alone knows best.

3.2.11.3 Schizophrenia and Criminal Law Case #3:

Chalebi presents a case of a schizophrenic drug addict who continues to use drugs after diagnosis and who has been suffering from delusions. In order to get drugs, he robbed a pharmacy and was arrested. His lawyer wanted him found not guilty due to insanity. However,

The prosecution argued that his mental illness was totally unrelated to the nature of the crime he committed, namely theft. Being mentally ill is not an excuse because the accused had used drugs habitually long before the onset of his mental illness...

Which of the claims is right? The man really is mentally ill and could be called insane, but his criminal action had nothing to do with, and did not stem from, his mental illness.

Answer

To say he "could be called insane" does not sufficiently identify the condition. The answer is limited to the amount of information: If it was medically proven, even with 50% reliability, that the accused was mentally disturbed during his action, he should get a lighter punishment, and he cannot have his hand amputated according to the *hadd* punishment for theft because of the element of doubt.

He should then be sent for compulsory treatment but the request for such commitment should come from the guardian, next of kin or his clan.

241 Ibid., p. 124.

I do not see any relationship between the nature of his crime and his mental illness, but the state of insanity is a factor in reducing the sentence.²⁴²

Chalebi commented,

In secular law this person would most likely be found guilty. The secular law makes the distinction between the existence of mental illness and the nature of the crime. In this case, the crime is totally independent of the nature of the mental illness of the accused who is then expected to carry full legal responsibility for it. Shaykh al-Lehaidan again raises the possibility of giving a lighter sentence. The fact of mental illness put a shadow of doubt on the degree of culpability so that the *hadd* could not be applied. The issue of partial responsibility is again raised in this example.²⁴³

3.2.12 Conclusions to the Case Study

One can see from the above contemporary fatwaas that contemporary scholars are making a conscious effort to be aware of the realities of mental illness and to incorporate them correctly into their fiqh conclusions. Further research and fatwaas are called for while the compilation of a compendium of such fatwaas covering a wide range of mental illnesses would be very helpful for both Imams and the general public.

3.3 Conclusions

Mental illness is a "fuzzy" concept. In the mental health field, there is much debate as to what constitutes a mental disorder and what is not a mental disorder. Muslim scholars and professionals need to be aware of this reality. Not everything that passes as a mental illness in contemporary thought may be considered so from an Islamic perspective or from an Islamic legal perspective. Indeed, Islam may even uphold some values that contemporary secular society may consider outside of the "norms." Thus, being diagnosed today with a mental illness is definitely not a pass that would excuse any type of behavior. At the same time, though, mental illness is and always has been a reality.

Mental illness is a type of trial (*ibtialaa*) that Allah inflicts upon certain individual according to His Divine Decree and Wisdom. Contemporaneously and in the past, at least in some forms, it has been universally accepted as a reality. Muslim physicians in the past did highlight various forms of mental illness. At the same time, though, the interplay between physicians and legal theorists

²⁴² Chalebi, op cit., pp. 124-125.

²⁴³ Ibid., pp. 125-126. Chalebi presented other cases of schizophrenia as well but the above is sufficient for this paper.

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seemed to have been rather restricted. These two continue to be independent fields of study, but no one can deny that there is some intersection between them (such as the entire field of forensic psychiatry). When discussing barriers to legal capacity, legal theorists discussed several relevant topics, such as insanity, amentia/dementia, coercion, and the like. However, especially with contemporary understandings, there may be a need to expand the legal understanding to include other categories that are clearly recognized in fiqh, such as anger, fear, depression, and others.

This author has concluded that the concept "insanity"—which today in Western thought is a legal concept—needs to be expanded to properly span all the possible mental states by which individuals can be characterized. In particular, this author suggests introducing two new concepts—although sometimes in the fiqh works one can find some semblance to them—"domain-specific insanity," and "quasi-insanity." In many cases related to specific forms of mental illness, these are more suitable than simply a binary permanent insanity or temporary insanity, as is found in the standard works on legal capacity in Islamic law.

And Allah alone knows best.