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Muslim providers prescribing forbidden drugs for non-Muslims

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"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 INTRODUCTION

In the name of Allah, and praise be to Allah. We praise Him, seek His assistance, and ask for His forgiveness. We seek refuge with Allah from the evils of our own souls. Whoever Allah guides, no one can misguide, and whoever He misguides, there is no guide for them. I bear witness that there is no god but Allah and I bear witness that Muhammad is His servant and messenger. He conveyed the message from his Lord and fully communicated it. He clarified the laws of our religion in all aspects of life to the extent that the People of the Book envied us for his clarification. May Allah's blessings and peace be upon him, his family, his companions, and those who follow his guidance until the Day of Judgment. To proceed,

The issue of a Muslim treating a non-Muslim is not new, and vice versa. The field of medicine is a shared human endeavor that should not be limited by religious, ethnic, or other boundaries. Muslims and non-Muslims have always treated each other. However, in Muslim countries, it was more common for non-Muslims to treat Muslims. Hence, we don't find detailed discussions by scholars on the rules of a Muslim treating non-Muslims. One reason for this might also be that illness leads to easing of some rules and that many scholars permit using forbidden medicines or most of them when there are no alternatives. Surgical practices in their time were not as they are now. Moreover, many of our jurists do not consider the religion of the patient to be consequential in what is permissible for the doctor to practice, because they consider non-Muslims to be addressed by the detailed practical rulings of Sharia (furū').

In our current era, there are many Muslim doctors in non-Muslim countries treating non-Muslims. The United States is one of the countries where this phenomenon is most apparent. Furthermore, there have emerged, in our time, types of surgeries and medical treatments that were previously unknown.

I was asked to write a paper on the ruling regarding a Muslim doctor prescribing forbidden medicines and treatments to non-Muslims to present at the annual conference of the Assembly of Muslim Jurists of America, and I obliged.

I believe the considerations for this ruling can be summarized as follows: Are non-Muslims bound by the detailed practical rulings of Sharia (furū')? Is it permissible to assist them in sin? What are the guidelines for such assistance and the means to evil to be blocked? Does the abode wherein the act transpires influence these rulings? And do necessity, widespread hardship, and difficulty in avoidance play a role? I have divided the paper into six sections: an introduction and five topics. Here are the titles:

1. What are the forbidden medicines and treatments, and what is the nature of their prohibition?
2. Are non-Muslims bound by the detailed rulings of Sharia law, and is it permissible to assist them in sin?
3. Does the abode wherein the act transpires influence the rulings?
4. Do necessity, widespread hardship, and difficulty in avoidance play a role?
5. What are the rulings in different applications?

I have opted to faithfully present the utterances of esteemed scholars in their original text, laying it at the reader's fingertips. For it is possible that the bearer of knowledge may convey it to one with greater understanding.

Allah is the one to be implored for granting us sincerity and guidance!

2 FIRST TOPIC: WHAT ARE THE FORBIDDEN TREATMENTS, AND WHAT TYPE OF PROHIBITION?

Here, I mention a summary of my research titled "The Ruling on Using Narcotics in Treatment,"¹ which provides details about the general ruling of treating with prohibited substances.

Scholars have unanimously agreed that it's not permissible to treat with prohibited and impure substances in general when there's a permissible alternative available.² They almost agree that treating with pure wine is never permissible.³

However, they differ in the specifics of treating with prohibited substances. The ḥanafī scholars allow treatment with impure and prohibited substances if it's known to be curative, and no alternative is available. They understand the prohibition in the hadith in light of specific ailments for which non-prohibited cures are known or that the prohibition becomes non-applicable when in need.⁴

The Mālikī scholars, however, generalize the prohibition for all impure and forbidden substances, whether mixed or pure, whether consumed or topically applied, except for topical applications where leaving them might result in death.⁵

The Shāfi'ī scholars forbid intoxicants but permit the use of other impure and prohibited substances.⁶ As for what is subsumed in another medicine, it's permissible by their consensus if no alternative is available.⁷

As for the ḥanbalī scholars, they prohibit all forbidden and repulsive substances, like the urine of animals whose meat can be consumed, except for camels. They permit poisonous medicine if it's mostly safe and using prohibited or impure substances without consuming or drinking them.⁸ They

¹ Ḥukm isti mā'l al-mukhadirāt fi al-tadāwī [The ruling on using narcotics for medical treatment]. Al-buḥūth wal dirāsāt al-shar'iyyah (Cairo), July 2013.

² See: al-Majmū' Sharḥ al-Muhadhdhab, al-Nawawī (Bayrūt: Dār al-Fikr, 1997), v. 9, p. 45; Ṭabyīn al-Ḥaqqā'iq Sharḥ Kanz al-Daqqā'iq, al-Zaila'ī (Cairo: Dār al-Kitāb al-Islāmī, 1313 AH), v. 6, p. 33.

³ Iktilāf al-A'imma al-'Ulamā', Yahyā ibn Ḥubayrah (Beirut: Dār al-Kutub al-'Ilmiyah), v. 2, p. 296; Al-Mabsūt, al-Sarakhsī (Beirut: Dār al-Ma'rifah), v. 14, p. 56; al-Majmū' Sharḥ al-Muhadhdhab, Yahyā ibn Sharaf al-Nawawī, v. 9, p. 45; Ḥāshiyah I'ānat al-Tālibīn, al-Dimyā'ī (Beirut: Dār al-Fikr), v. 4, p. 156.

⁴ Ṭabyīn al-Ḥaqqā'iq Sharḥ Kanz al-Daqqā'iq, al-Zaila'ī, v. 6, p. 33; Majma' al-Anhur, Shaykhī Zādah (Beirut: Dār al-Kutub al-'Ilmiyah), v. 4, p. 224; Durar al-Ḥukkām Sharḥ Majallat al-Aḥkām, 'Alī Ḥaydar (Beirut: Dār al-Kutub al-'Ilmiyah), v. 4, p. 7.

⁵ Ḥāshiyat al-'Adawī 'alā Sharḥ Kifāyat al-Tālib al-Rabbānī, 'Alī al-ṣa'dī al-'Adawī (Beirut: Dār al-Fikr), v. 2, p. 642; Sharḥ Mukhtaṣar Khalīl li al-Kharashī, by Muḥammad ibn 'Abd Allāh al-Kharashī (Beirut: Dār al-Fikr), v. 8, p. 109.

⁶ Mughnī al-Muḥtāj ilā Ma'rifah Ma'ānī Alfāz al-Minhāj, by Muḥammad al-Khaṭīb al-Shirbīnī (Beirut: Dār al-Fikr), v. 5, p. 518.

⁷ Asnā al-Maṭālib fi Sharḥ Rawḍ al-Tālib, by Zakariyā al-Anṣārī (Cairo: Dār al-Kitāb al-Islāmī), v. 4, p. 159.

⁸ Al-Furū' wa Taṣḥīḥ al-Furū', al-Mardāwī (Beirut: Dār al-Kitāb al-'Ilmī), v. 2, p.132.

also explicitly state – in contradiction to the Shāfi'ī view⁹ – that treating by listening to prohibited music is forbidden, based on the general prohibition by the Prophet ﷺ.¹⁰

Some scholars have explicitly stated that treatment is a necessity, and these permit anything beneficial for the patient, including wine, which is against the apparent implication of the hadiths prohibiting it.¹¹

Is the type of narcotics used in medicine considered the same as wine?

This is answered in my previously mentioned research, and its summary is as follows:

Modern medicine has proven that narcotics cause serious diseases, and the adage by Kulaib of Wa'il applies to their therapeutic use: "Seeking refuge with 'Amr during distress is like seeking refuge from the coal with fire." The point here is distinguishing coal from fire, which is to be done by the experts, who in this context are the doctors, and they are the ones who use these drugs to treat certain ailments. The correct view is to differentiate between the intoxication resulting from the consumption of wine and the state resulting from the use of narcotics. The latter does not include the same exhilaration, stimulation, and wildness found in the former. Therefore, these narcotics are prohibited by consensus due to impairing the mind, causing fatigue, and harm, but they are not considered wine. Consequently, it is permissible to use them for treatment in their pure form. However, it's advisable to mix them with other analgesics to avoid stricter controversy, since using mixtures with wine, for those who stick to considering them as wine, is lesser than using pure wine, and a vast group of scholars holds this view.

All of the above discussion was about the ruling of treating with impure and forbidden medicines, and the matter therein is controversial as we have seen, except for pure wine. Even though there is some disagreement concerning it, the vast majority of scholars have concurred on its prohibition, and this is supported by evidence. However, with the advancement of medical technology, other types of treatments have emerged. Some are controversial, like certain cosmetic procedures and abortion before ensoulment. Others are definitively forbidden, such as gender reassignment surgeries for healthy individuals and abortion after the soul is breathed into the fetus when there's

⁹ Tuḥfat al-Muḥtāj fī Sharḥ al-Minhāj, Aḥmad ibn Muḥammad ibn 'Alī ibn Ḥajar al-Haytamī, (Cairo: al-Maktaba al-Tijāriya al-Kubrā), v. 10, p. 219: "Yes, if two credible doctors affirm that the only remedy for a patient's ailment is listening to the 'Oud (a musical instrument), one can act upon their advice. Thus, it becomes permissible for him to listen to it, just as it becomes permissible to treat oneself with impure substances containing alcohol."

¹⁰ Kashshāf al-Qinā' an al-Iqnā', Maṣū'ib ibn Yūnus al-Buhūṭī, (Ministry of Justice in KSA, 2008 AD), v. 4, p. 9: "(And it is forbidden) to seek cure with what is prohibited, whether by eating, drinking, or even a sound of amusement, such as listening to forbidden songs; based on the general statement of the Prophet (pbuh): 'Do not seek healing with what is unlawful.'"

¹¹ al-Muḥallā bi al-Āthār, 'Alī ibn Aḥmad ibn Sa'īd ibn Ḥazm (Beirut: Dār al-Fikr), v. 6, p. 225: "We have mentioned in the 'Book of What is Permissible to Eat and What is Prohibited' from this compilation, the permissibility of wine for someone who is compelled to it, based on the statement of the Almighty: 'He has explained to you in detail what is forbidden to you, except under compulsion' [Al-An'am: 119]. So, there's no need to repeat it."

no risk to the mother. Some are contentious due to external factors, like the fertilization of a woman's egg with the sperm of a man other than her husband.

3 THE SECOND TOPIC: ARE NON-MUSLIMS ADDRESSED BY THE DETAILED RULINGS OF SHARIA (FURŪ‘)? AND IS IT PERMISSIBLE TO ASSIST THEM IN COMMITTING SINS?

This is a significant issue in Islamic jurisprudence that warrants thorough investigation, especially for those who frequently interact with non-Muslims, such as Muslim minorities living outside Muslim-majority countries. There are six opinions on this matter:

1. Non-Muslims are addressed by the furū‘ of Sharia.
2. Non-Muslims are not addressed by the furū‘ of Sharia.
3. Non-Muslims are addressed, but it pertains to punishment in the Hereafter, not a demand of conformity in this world.
4. Non-Muslims are addressed by prohibitions but not by commands.
5. Non-Muslims are addressed only by commands, not by prohibitions.
6. Apostates are addressed, but not original non-believers.

The question posed is complex, and although there's a separation between its components, it's clear that those who believe non-Muslims are addressed by the furū‘ of Sharia would find it more restrictive for Muslims to engage in transactions that may aid non-Muslims in sinning. For better clarity, we can identify three main directions in the answer:

1. **Yes, non-Muslims are addressed by the furū‘ of Sharia, and it is not permissible to assist them in sin.**

This is the majority opinion among the Mālikī, Shāfi‘ī, Ḥanbalī, and some Ḥanafī scholars.

2. **No, non-Muslims are not addressed by the furū‘ of Sharia.** This group allows Muslims much of what their opponents consider aiding in sin, as long as the Muslim isn't directly involved in the prohibited act.

This is the position of the majority of Ḥanafī scholars. Some Mālikī, Shāfi‘ī, and Ḥanbalī scholars also lean towards this in their discussions of legal principles, but they rarely apply it

to certain rulings.

3. Yes, non-Muslims are addressed by the furū' of Sharia, but it pertains to punishment in the Hereafter, not a demand of conformity in this world. The difference between this group and the other groups regarding the addressing is subtle. Those in the first group in favor of the addressing don't demand that non-Muslims observe religious rituals. However, this third group emphasizes the lack of demand of conformity and strike a balance between the two previous groups, allowing Muslims some of what the second group permits and prohibiting some of it.

This view was held by Imam Taqiyy al-Dīn Ibn Taymiyyah and was endorsed by a group of scholars.

And this is a presentation of their opinions and their evidences.

3.1 The first group: The non-believers are addressed by the detailed practical rulings (furū') of the Sharia, and it is not permissible to assist them in sins

The ones who adopted this stance: The Shāfi'iyyah and the Ḥanābilah in the most authentic view, and it's also the understanding of Mālik and most of his followers, and it's the view of the Iraqis among the Ḥanafīyyah.¹²

The main evidences of this group are:

- The saying of Allah Almighty: "What has caused you to enter Hell?" They will say: "We were not of those who prayed." [Al-Muddaththir: 42-43] And His saying: "Indeed, he did not believe in Allah, the Most Great, nor did he urge the feeding of the needy." [Al-Ḥāqqah: 33-34]

The significance of these verses is that they are punished for abandoning these practices, such as prayer and charity. There are many other verses that blame them for neglecting obligatory acts and committing prohibitions.¹³

- The statement of the Prophet ﷺ: "Whoever does good deeds in Islam will not be taken to account for what he did in pre-Islamic times, and whoever does evil in Islam will be taken to account for his former and later deeds." This was narrated by Al-Bukhārī and Muslim from the hadith of Ibn

¹² Al-Mawsū'ah al-Fiqhiyah al-Kuwaytiyah, (Kuwait: Ministry of Awqāf and Islamic Affairs, 1427 AH), v. 20, p. 35.

¹³ Al-Intiṣār li-l-Qur'ān, Muḥammad ibn al-Ṭayyib al-Bāqillānī, (Amman: Dār al-Fath & Beirut: Dār Ibn Ḥazm), v. 2, p. 731; Al-Fuṣūl fi al-Uṣūl, Aḥmad ibn 'Alī al-Jaṣṣāṣ (Kuwait: Wizārat al-Awqāf al-Kuwaytiyya), v. 2, p. 159.

Mas'ūd. The hadith indicates holding them accountable for what they did during their disbelief.

- The statement of the Prophet ﷺ: "I have been commanded to fight the people until they testify that there's no deity but Allah and that Muhammad is the Messenger of Allah, establish the prayer, and pay the zakāh. If they do that, their blood and property are safe from me, except for the requirements of Islam. Their account is with Allah." Narrated by Al-Bukhārī and Muslim from Ibn 'Umar and Abū Hurayrah. Imam Al-Khaṭṭābī (rA) said: "This hadith is an argument for those who believe that non-believers are addressed with the obligations of prayer, zakāh, and other acts of worship. This is because if they are fought against for [not performing] prayer and zakāh, then it is understood that they are addressed by them."¹⁴
- They said that disbelief doesn't qualify for relief by lifting obligations.¹⁵ The Ḥanafīyyah replied (as will be mentioned later) that it's not a matter of relief.
- The punishment for adultery and theft is applied to the dhimmis (non-Muslims living under Islamic rule) as a penalty for their actions.¹⁶ Some might argue that this is outside the scope of the debate, but the majority may object to the differentiation.
- They responded to objections, saying: "If someone says: 'How can they be addressed with these obligations, yet their performance of them isn't valid before embracing Islam?' The answer is: They have been given the way to perform them by first embracing Islam. Similarly, someone in a state of impurity cannot perform prayer while impure, but the obligation doesn't drop; they can purify themselves first. In the same way, a non-believer has the path to hold onto Islamic laws by first embracing faith. If someone says: 'If they were addressed with these obligations, it wouldn't be permissible to let them abandon them, like Muslims,' the answer is: They are addressed with faith by everyone, and they have been allowed to abandon it in exchange for jizyah (a tax levied on non-Muslims under Islamic rule); the same applies to Islamic laws."¹⁷

And here are some of their texts regarding this matter and their applications.

Abū Bakr al-Jassās al-Hanafī said, "The unbelievers are obligated by the laws of Islam and its rulings, just as they are obligated to embrace Islam."¹⁸

¹⁴ Ma'ālim al-Sunan, Abū Sulaymān al-Khaṭṭābī (Aleppo: al-Maṭba'a al-Ilmiyyah, 1932 AD), v. 02, p. 10.

¹⁵ Tamhīd al-Fuṣūl fi al-Uṣūl, Abū Bakr al-Sarakhsī (Hyderabad: Committee for the Revival of Nu'mānī Knowledge), v. 01, p. 74.

¹⁶ Al-Fuṣūl fi al-Uṣūl, Ahmad ibn 'Alī al-Jassās (Kuwait: Wizārat al-Awqāf al-Kuwaytiyya), v. 2, p. 160.

¹⁷ Ibid

¹⁸ Ibid v. 2 p. 159

Thus, the ḥanafīs are not unanimous in this regard, even if the prevalent view among them is that the non-Muslims are not addressed by *furū'*.

As for the Mālikīyyah, they mention a difference of opinion regarding the address to the non-believer (*kāfir*) and elaborate on it. In *Al-Tawdīh fī Sharḥ Mukhtaṣar Ibn al-Ḥājjib*: "If he [the slave] trades on behalf of the master and he is Christian, it is not permissible for his master to allow him to trade in alcohol (*khamr*) and the like. If he trades for himself, there are two views on the permissibility of enabling him: because if he trades for his master, he is like his agent, and hence, it is not permissible for his master to allow him to purchase alcohol and the like. But if he trades for himself and deals with the Ahl al-Dhimma, there are two opinions which Al-Lakhmī discussed: Are they addressed by the *furū'* of the Sharia, so it is not permissible, or are they not addressed, thus it is permissible? The debate also centers on the notion: if one has the power to own, is he considered an owner or not? Al-Lakhmī mentions: Ibn 'Umar, may Allah be pleased with both of them, had a Christian slave who sold wine; when he died, he inherited from him."¹⁹

However, the predominant view among them, and on which their application rests, is addressing them. In *Mawāhib al-Jalīl*, it's mentioned: "Ibn Rushd stated in *Al-Bayān* that the employment of a Muslim by a Christian or a Jew is of four types: permissible, disliked, barred, and ḥarām.

1. Permissible: For a Muslim to work for him in his own house, like craftsmen [like the tailor and the carder] serving the public.
2. Disliked: To have full control over all his work without being fully under his authority, like being a *muqāriḍ* (a type of financial agreement) or a *musāqi* (party to a watering contract).
3. Barred: Hiring oneself in a job where he is under the full authority of another, like a domestic worker in his house, and hiring a woman to nurse his daughter in his house, and the like. If these are discovered, they are invalidated; if they go unnoticed, they pass, and the wage is due.
4. Ḥarām: To hire oneself for tasks that are inherently impermissible, like producing wine or herding pigs. This is void before the work begins, and if it passes unnoticed, the wage should be donated to the needy."²⁰

In "Al-Tabṣira" by al-Lakhmī, there is a detailed and well-presented distinction regarding the

¹⁹ Al-Tawdīh fī Sharḥ al-Mukhtaṣar al-Farī li Ibn al-Ḥājjib, Khalīl ibn Ishāq, (Casablanca: Markaz Najībūyah li al-Makhtūṭāt wa Khidmat al-Turāth), v. 06, p. 252.

²⁰ Mawāhib al-Jalīl fī Sharḥ Mukhtaṣar Khalīl, al-Ḥaṭṭāb al-Ru'aynī (Beirut: Dār al-Fikr), v. 05, p. 419.

degrees of prohibition. He (rA) said:

"From 'Al-Mudawwana', Mālik said: 'I do not like that a man rents his house to someone who uses it as a church, nor sells it to someone who makes it a church. He should not sell his livestock to a polytheist who slaughters it for his festival, nor should he rent his shop to someone who sells wine in it, nor should he lease himself or his beast for transporting wine. If he does so, there's no wage for him, and the ruling regarding it, whether he takes the money or not, is akin to what I described to you regarding the price of wine; he considered it equivalent to selling wine.'"

And it was mentioned in "Al-'Utbiyyah": "If one rents out his beast to someone who would ride it to the church, or sold his livestock to a Christian to slaughter it for his festival, the deal has passed, and it's not to be revoked. And if he rented his shop to someone who sells wine in it, or his grapes to someone who would press it into wine, the contract is nullified. If it goes unnoticed, it passes without revocation. He permitted the collection of the price... Sheikh Abū al-Ḥassan said: 'The least serious among these matters is renting out a beast to someone who would ride it to the church, and selling the sheep for the festival, followed by selling grapes to someone who would press them into wine, and selling a house to someone who uses it as a church, then renting a shop to someone selling wine in it, and similarly, the house to someone who would make it a church, then leasing oneself to someone who carries wine for him or tends to his pigs, and this last is the most severe.'"²¹

And what is apparent from the discourse of the Mālikī scholars is that:

1. The direct involvement of a Muslim in prohibited actions, such as carrying wine and tending pigs, is forbidden among them. They are not entitled to compensation. They have disagreed on receiving the payment from the disbeliever and donating it if the task was completed or abandoning it. They favored the first opinion, which is the choice of Ibn al-Qāsim.²²
2. The second level, which they referred to as restriction without absolute taḥrīm, is what is forbidden to block the means to potential evil, as the Mālikīs and Ḥanbalīs uphold this principle, or what seems degrading for the Muslim by serving the disbeliever in his home. They annul the contract, but they have differed on the permissibility of taking the payment after performing the task. The correct view is that he is entitled to the payment, but "if his wages were for carrying a specified jar of oil for ten, and it becomes clear that it was wine,

²¹ Al-Tabṣīrah, al-Lakhmī (Qatar: Ministry of Awqāf and Islamic Affairs, 2011), v. 10, p. 4966.

²² Al-Tawḍīḥ fi Sharḥ al-Mukhtaṣar al-Farī li Ibn al-Hājib, Khalīl ibn Ishāq, v. 7, p. 169.

he should donate the excess value of carrying the wine over the specified compensation."²³

3. The third level they referred to as dislikeable is the one where they considered the concept of the Muslim degrading himself by serving the non-Muslim in such a way that the non-Muslim has complete control over his work without being under his full authority (as a servant), such as being a partner in a muḍārabah contract (profit-sharing partnership) or a musāqī (party to a watering contract). They have permitted the payment in this case.

4. They allowed a Muslim to work for a non-Muslim in the Muslim's house, like a tailor who works for the people, and the work of a doctor is similar to this.

As for the Shāfi'īs, the matter among them, even if there is some disagreement, is settled based on their being addressed and the prohibition of supporting them. In "Tuḥfat al-Muḥtāj", it is said: "... because they are accountable for the detailed practical rulings (furū'), and it they are not condemned for their abandonment, like major disbelief, due to the benefits of empowering them in our land by the jizya so that they may convert to Islam, or feel secure. ... The Sharia has come with the idea of leaving them undisturbed. The difference is that affirmation obliges the loss of inviting them to the faith, unlike leaving them undisturbed, as it simply delays punishment to the Hereafter. End of quote. And since that [building churches] is a sin even for them, al-Subkī ruled that it is not permissible for a ruler to grant them permission for it, nor for a Muslim to support them in it, nor to lease himself to work in it. If it is presented to us, we annul it."²⁴

An-Nawawī clarifies the difference between addressing (mukhāṭabah) and demanding (muḥālabah) and points to their agreement on not demanding and the disagreement in addressing. He says: "As for the original disbeliever, our companions have agreed in the books of the furū' that he is not obligated to pray, pay zakāt, fast, perform Hajj, and other furū' of Islam. As for the books of fundamentals (Uṣūl), the majority of them say he is addressed regarding the furū' just as he is addressed regarding the essence of faith. Some said he is not addressed concerning the furū', and others said he is addressed regarding what is prohibited like the prohibition of fornication, theft, wine, usury, and their likes and not what is obligatory like prayer. The correct opinion is the first, and it doesn't contradict their statement in the furū' because the intended here is different from the intended there. Their intent in the books of furū' is that they are not demanded these in this world with their disbelief, and if one of them converts to Islam, he is not obliged to make up for the past, and they (those who accepted Islam) are not subjected to punishment in the Hereafter; Their

²³ Al-Mukhtasar al-Fiqhī, Ibn 'Arafah, (Dubai: Khalaf Ahmad al-Khabtūr Charitable Foundation), v. 8, p. 204.

²⁴ Tuḥfat al-Muḥtāj, Ibn Ḥajar al-Haytamī, v. 9, p. 259.

intent in the books of fundamentals is that they (the kuffār) are punished for them in the Hereafter in addition to the punishment of disbelief."²⁵

As for the Ḥanābilah, there is disagreement among them concerning the principles and their applications. However, the predominant view is that they are addressed by the furū' of the Sharia and that it is not permissible to assist them in sinful acts. Ibn al-Laḥḥām, may Allah have mercy upon him, provided a detailed elucidation in which he said: "The unbelievers are unequivocally addressed with faith. And regarding the furū' of Islam, the authentic view from Ahmad [i.e., Imam Ahmad ibn Ḥanbal] is that they are addressed. In another narration, they are not addressed with commands but are addressed with prohibitions. Some of our scholars have also relayed a narration that they are not addressed with any of the furū', neither the commands nor the prohibitions.

Having established this: is there a practical consequence of the disagreement in this world, or is the sole purpose behind them being addressed—if we affirm it—an increased punishment in the Hereafter? Most scholars of legal principles (usūliyyūn) maintain that its only practical consequence is an increased punishment in the Hereafter. However, some argue there's a practical effect in this world. What becomes evident is that basing the furū' related to the unbelievers on this foundational disagreement doesn't appear to be consistent [in the madhhab].

Certain issues related to unbelievers have been based by some on whether they are bound by the furū':

The first: A Muslim husband does not force the dhimmī wife to perform the ritual bath after menstruation; he can have intercourse with her without it.²⁶ This might be based on the stance that they are not addressed by the furū'...

The fourth: Is it permissible for a non-Muslim to wear silk? The established opinion in the madhhab is that it's not permissible. Some scholars have based this on the foundational principle. However, Abū al-ʿAbbās Ibn Taymiyyah opted for its permissibility.

The sixth: Should the People of the Pact (dhimmīs) be prohibited from openly eating and drinking during the daytime in Ramadan? The established view in the madhhab is that they should be prevented from doing so. This stance might be based on the view that they are bound by the furū'."

²⁵ Al-Majmū' Sharḥ al-Muhadhdhab, al-Nawawī, v. 3, p. 4.

²⁶ "It is the less favored opinion among the later scholars. However, she is not obligated to perform the purification ritual after sexual intercourse (ghusl al-janābah). In 'al-Tanqīḥ al-Mushbi' fi taḥrīr aḥkām al-Muqni' (page 374): a mature Muslim woman is obligated to perform the purification ritual after sexual intercourse, and he has the authority to oblige a non-Muslim woman to perform the purification ritual after menstruation (ghusl ḥayd) and postnatal bleeding, but according to a variant report from him: no."

The ḥanbalīs have another derivation (tafri') on this issue, which is related to the practice of usury (riba) between a Muslim and a ḥarbī (a member of a community that is at war with the Muslims) in Dār al-ḥarb (the abode of war). In "Ma'ūnat Ūlī al-Nuhā" it is mentioned:

"(Usury is prohibited in the land of war); due to the general evidence from the Qur'an and Sunnah, and because the land of war is similar to the land of baghy (rebellion); since the Imam has no authority over it (even if it's between a Muslim and a ḥarbī) where the Muslim takes a profit from the ḥarbī. This is due to what has been previously mentioned and due to the explicit statement of the Imam [Ahmad] prohibiting it unconditionally. On the other hand, it's narrated from him [Ahmad] that it's not prohibited between a Muslim and a ḥarbī when there's no pact of security between them; based on what has been narrated by Makḥūl as a Marfū' narration: "There's no riba between a Muslim and the people of war in the land of war". A rebuttal to this is that this narration is of unknown authenticity and cannot override the clear prohibition indicated by the Qur'an and Sunnah."²⁷

In the case of a Muslim being hired by a dhimmī, if it's for work within the dhimmah (per job hire), the established opinion (madhhab) is that it's unequivocally permissible. If it's for permissible work, excluding servitude, for a known duration, there are two narrations, with the established opinion being its permissibility. If it's for servitude, there are two narrations, and the established opinion is prohibition, in agreement with the Mālikīs and in contrast to the Ḥanafīs and the Shāfi'īs in their updated view. If it's for a disliked action, then it's disliked, and if it's for a prohibited action, then it's impermissible.

In "Kashshāf al-Qinā'", it is mentioned: "(There's no harm in digging a grave for a dhimmī for a fee), just as there's no harm in building a house for him for a fee. (It's disliked) for a Muslim to bury a dhimmī (if) he's buried within a (nāwūs) because it involves assisting in something that is disliked. Nāwūs is a stone that is carved out and in which the deceased is placed."²⁸

In "Al-Inṣāf", it is mentioned:

"The hiring of a Muslim for a dhimmī is permissible if the employment pertains to tasks within the dhimmah [such as tailoring a garment or dying it], with no known dispute. This is explicitly stated [by Ahmad] in the narration of Al-Athram. Ibn al-Jawzī stated in "al-Madhhab": it is permissible based on explicit narration...

²⁷ Tajrīd al-Qawā'id wa al-Fawā'id al-Uṣūliyyah, Abū al-Ḥasan 'Alā' al-Dīn Ibn al-Laḥḥām al-Ba'ī (Kuwait: Rakā'iz for Publication and Distribution), p. 29.

²⁸ Kashshāf al-Qinā', al-Buhūtī, v. 9, p. 62.

Regarding the permissibility of hiring him for work other than service for a known duration, there are two narrations. Both were mentioned in "Al-Furū'" and "An-Naẓm": the first: it is permissible; and this is the established opinion (madhhab)... the second: it is not permissible and not valid.

As for hiring him for his service, it is not valid based on the more accurate opinion in the madhhab, and this is explicitly mentioned in the narration of Al-Athram... However, another opinion permits it."²⁹

It is not permissible to sell to non-Muslims what is prohibited, such as impure oils. However, there is a disagreement on this:

In 'Al-Sharḥ al-Kabir', Imam Ibn Abi Umar (rA) says:

"It is not permissible to sell impure oils' as per the apparent statement of Ahmad ؒ because consuming it is forbidden, and no disagreement is known about it. This is based on the Hadith where the Prophet ﷺ was asked about a rat that dies in fat and he said: 'If it is liquid, do not approach it' – from the Musnad. And if something is forbidden, then its sale is not permissible, based on the Prophet's ﷺ saying: 'When Allah forbids something, its price (i.e., profit from it) is also forbidden.' Furthermore, because it's impure, its sale isn't allowed, drawing an analogy from the fat of a dead animal.

However, there's another report from him [Ahmad] that says: it's permissible to sell it to an unbeliever who knows of its impurity, because he believes it's permissible and deems its consumption lawful. This is based on the narration from Abu Musa: 'Use it making dough *and sell it, but do not sell it to a Muslim and inform him [the buyer] of its state.*' But the correct view is the first one due to the Prophet's ﷺ saying: '*Allah cursed the Jews; fats were forbidden to them, so they melted them (and sold them) and consumed its price. When Allah forbids something, its price is also forbidden.*' (Agreed upon). Additionally, because it's not allowed to sell it to a Muslim, it's also not permissible to sell it to an unbeliever just like alcohol and pork; even though they consider it lawful, it's not allowed to sell it to them. Since it is impure oil, its sale isn't permissible to an unbeliever, drawing an analogy from the fat of a dead animal. Our Sheikh [Al-Muwaffaq] said: it's permissible to give it to an unbeliever as ransom to free a Muslim, if the unbeliever knows of its impurity. This is because it's not a 'sale' in reality; rather it's using it to rescue a Muslim."³⁰

It is not permissible according to the Ḥanbalī scholars to sell grapes to someone from the People of

²⁹ al-Insāf fī Ma'rifat al-Rājiḥ min al-Khilāf, 'Alā' al-Dīn 'Alī ibn Sulaymān al-Mardāwī (Cairo: Hījr for Printing), v. 14, p. 316.

³⁰ Al-Sharḥ al-Kabīr 'alā Matn al-Muqni', 'Abd al-Raḥmān ibn Abī 'Umar ibn Qudāmah al-Maqdisī, (Beirut: Dār al-Kitāb al-'Arabī), v. 4, p. 14.

the Book (Ahl al-Dhimmah) who will make it into wine. As stated in *Kashshāf al-Qinā'*: "(It is not valid to sell) what is intended for prohibited use, such as grapes and ' - 'juice for those who make it into wine.' Likewise for raisins and similar items. Even if the sale of these items is to a dhimmi who intends to make it into wine; because they are addressed with the *furū'* of Shariah. There is also no (permissible) sale of weapons, and the like, during times of civil strife, or to enemies, or to highway robbers, especially if the seller knows this about the buyer, even based on circumstantial evidence. This is because of the Almighty's saying: {**And do not cooperate in sin and aggression**}.³¹ In fact, Ahmad disliked that a man leases himself to oversee the vineyards of Christians. He said; because the purpose of that is making wine, unless one knows that it will be sold for other than wine, then there's no harm."³²

In fact, it is not valid to sell wine, even if it is between two dhimmis. As mentioned in *Kashshāf al-Qinā'*: '(And it is not) valid to sell (the milk of a man)' so he does not bear responsibility for its spoiling. '(Nor) is the sale of wine permissible, even if both' - meaning: the two parties in the transaction - '(are dhimmis).' This is based on the narration of Jabir, who said: 'I heard the Messenger of Allah ﷺ say: "**Indeed, Allah and His Messenger have forbidden the sale of wine, dead meat, pigs, and idols.**"' Agreed upon."³³

However, if they sold it, according to the Ḥanbalīs, it is permissible for us to take its price in the value of a sale or a lease. As mentioned in *Kashshāf al-Qinā'*: '(It is permissible to take the price of wine and pig) as a form of *jizya* or *kharāj* (a land tax) if they took on the responsibility of selling them and receiving the price - 'because it is from their wealth which we recognize them owning, like their clothes.' It was mentioned in *Aḥkām al-Dhimmah*: 'And if they gave it in the price of a sale, lease, loan, guarantee, or in exchange for something damaged, it is permissible for the Muslim to take it, and it becomes wholesome for him.'"³⁴

According to the Ḥanbalīs, it is also not permissible for us to assist them in a sin that is established upon them, even if we don't consider it a sin. In *Sharḥ al-Muntahā* by al-Buhūtī, it is mentioned: '(And it is forbidden for us to feed them)' - referring to the Jews - '(any form of) fat' that is forbidden for them 'from our slaughter due to the continuation of its prohibition' on them, specifically based on the clear text that establishes its prohibition upon them in our Book. Thus, feeding them from it is leading them to sin, just as feeding a Muslim something that is forbidden

³¹ *Kashshāf al-Qinā'* 'an al-Iqnā', al-Buhūtī, v. 7, p. 373.

³² *Al-Furū' wa Taṣḥīb al-Furū'*, 'Alā' al-Dīn 'Alī ibn Sulaymān al-Mardāwī (Beirut: Mu'assasah al-Risālah & Riyadh: Dār al-Mu'ayyid), v. 4, p. 119.

³³ *Kashshāf al-Qinā'*, al-Buhūtī, v. 7, p. 313.

³⁴ *Kashshāf al-Qinā'*, al-Buhūtī, v. 7, p. 238.

for him is. '(However, our slaughter is lawful for them, despite their belief in its prohibition)' based on the verse: {*And your food is lawful for them*} [Al-Mā'idah 5:5]."³⁵

According to the ḥanbalīs, it is not permissible to sell a house to them if they will sell alcohol in it, or turn it into a church, or lease it to someone who would make it a place of fire worship, or a church, or sell alcohol therein. If none of these conditions are present, is it permissible to sell the house even if he knows about the sins they commit in it? There are two opinions on this, and the correct one is that it is permissible but disliked.

In "Al-Furū'", it says: "The statement: 'If a Muslim sells or leases his house to an unbeliever,' Al-Marroudhi conveyed: 'It should not be sold, for they would ring the church bell in it and erect crosses!' He found that grave and stressed upon it... Abu Bakr Abdul Aziz said: 'There's no difference between selling and leasing; if selling is prohibited, so is leasing...'. Ibn Abi Musa said: 'Ahmad disliked selling his house to a dhimmi who would commit disbelief in it and commit forbidden acts, considering them permissible. If he did, the sale would not be invalidated.' This is also the view of Al-Āmidī, who emphasized the dislike without outright prohibition. Based on what preceded from the words of Al-Khallāl and his companion, it indicates that it's forbidden, as stated by our sheikh [Ibn Taymiyyah]. Al-Qāḍī said: 'It is not permissible to lease his house or property to someone who would turn it into a place of fire worship, or a church, or sell alcohol in it.' Our sheikh stated: 'Al-Qāḍī prohibited leasing it to someone known to sell alcohol in it, basing this on a text from Ahmad. This implies that the prohibition in his view, in these two scenarios, is one of taḥrīm. The apparent discourse from those who did not specify this issue, like the Sheikh and others, indicate permissibility.' I conclude by saying: This (permissibility) is the correct view, but it is disliked."³⁶

It is not permissible to lease oneself for carrying carrion or alcohol according to the madhhab, even though there is a narration that deems it valid but dislikes the consumption of its wage. As mentioned in 'Al-Mubdi': 'It is not permissible to lease (or hire oneself) for the purpose of carrying carrion or alcohol. And from him [i.e., another report from Ahmad]: it is valid, but the consumption of its wage is disliked.'"³⁷

Regarding the partnership with a dhimmī, it is mentioned in the "Edicts of Ahmad and Ishāq ibn Rāhawayh": "I asked: 'Can a Muslim enter into partnership with a Jew or a Christian?' He replied:

³⁵ Daqā'iq Ūlī al-Nuhā li Sharḥ al-Muntahā, al-Buhūtī (Beirut: Ālam al-Kutub), v. 3, p. 423.

³⁶ Al-Furū' wa Tashīḥ al-Furū', al-Mardāwī, v. 4, p. 119.

³⁷ Al-Mubdi' fi Sharḥ al-Muqni', by Ibrāhīm ibn Muflīḥ (Beirut: Dār al-Kutub al-Ilmiyah), v. 4, p. 416.

'If the Muslim handles the buying and selling.'³⁸ And this is, as mentioned in other places, so that the dhimmī does not engage in ribā or prohibited sales.

From this, it is clear that the [Ḥanbalī] madhhab emphasizes addressing non-Muslims with the furū' of Islamic law and the impermissibility of assisting them in any prohibited actions, or hiring oneself out for a prohibited task, or selling them something that is prohibited, or anything that leads to such, or leasing something that assists them in it. However, there have been disagreements in many of these issues as we have pointed out.

3.2 The second group: The non-believers are not addressed by the detailed practical rulings (furū') of the Sharia

Those who advocate for this viewpoint are mainly from the Ḥanafī madhhab. However, as we have pointed out, disagreements exist within all the Islamic legal schools. This viewpoint is also held by some scholars of the Mālikī, Ḥanbalī, and even the Shāfi'ī schools.

To elucidate the Ḥanafī position fairly, it's essential to begin by stating that everyone, without exception, agrees that non-Muslims are addressed concerning faith (belief in Islam). The dispute arises concerning the furū' of Sharia. From this, there were some exceptions where the scholars of this group concurred with the majority in addressing non-Muslims, including:

1. "They are addressed with the ordained punishments, and thus, such punishments are enforced upon the dhimmis when their conditions are met."³⁹
2. "The directives concerning transactions also apply to them because these directives have worldly implications... The contract of 'dhimmah' (protection) aims at the commitment to the rulings of the Muslims in matters related to transactions."⁴⁰
3. "In terms of accountability in the Hereafter, because the basis for this directive is the belief in obligation and fulfillment. Yet, they deny the obligation based on their beliefs, and this denial from them is equivalent to denying the oneness of God (Tawḥīd)."⁴¹

However, they are held accountable for not acknowledging, not for not performing. It is stated in "Uṣūl al-Sarakhsī":

"This is what is meant by the saying of Allah, {[Woe to the polytheists who do not give zakat](#)},

³⁸ Masā'il al-Imām Aḥmad ibn Ḥanbalī wa Ishāq ibn Rāhuwayh, by Ishāq ibn Manṣūr al-Kawsaj (Madinah: Deanship of Scientific Research, Islamic University of Madinah), v. 6, p. 2819.

³⁹ Tamhīd al-Fuṣūl fi al-Uṣūl, Abū Bakr al-Sarakhsī (Hyderabad: Committee for the Revival of Nu mānī Knowledge), v. 01, p. 73.

⁴⁰ Ibid

⁴¹ Ibid

meaning they do not acknowledge it."⁴²

From this, it becomes clear that according to the majority of the Ḥanafī school, non-Muslims are not addressed concerning fulfillment regarding specific personal commands and prohibitions.

Their most important evidences are:

- The actions (like prayer, fasting, and giving zakat) are neither valid nor accepted from unbelievers. If they were addressed by these commandments, then their execution of these acts would be valid. However, it is widely recognized that if an unbeliever offers Islamic prayers, his prayers are not valid; if he fasts, his fasting is not valid; and if he gives zakat, his charity is not accepted. Allah the Exalted says: "And We shall turn to whatever deeds they did, and We shall make such deeds as scattered floating particles of dust" [Al-Furqan:23]. And He also says, "Indeed, it has been revealed to you, as it was to those before you: If you ascribe a partner to Allah, your work will fail, and you will surely be among the losers" [Az-Zumar:65]. The majority has responded to this line of argument, as we mentioned before.
- "When the Prophet ﷺ sent Mu'ādh to Yemen, he said, 'Invite them to bear witness that there is no deity but Allah. If they respond to this, then inform them that Allah has made it obligatory upon them to observe five daily prayers...'" Al-Sarakhsi commented: "This specifies that the obligation of performing religious duties is contingent upon responding to the invitation to the foundation of the religion."⁴³
- He said: "The evidence for this, from a conceptual standpoint, is that the command to perform acts of worship is so that the performer may attain reward in the Hereafter as a decree from Allah Almighty (as He has promised in His unambiguous revelation). However, the disbeliever is not eligible for the reward of worship as a punishment for his disbelief, decreed by Allah Almighty... If it's established that the disbeliever is ineligible for what is sought through performance, the ineligibility for performance itself becomes evident. Without eligibility, the obligation of performance cannot be established. This differentiates the address concerning faith, for through performance (by acceptance of faith), one becomes eligible for what Allah has promised the believers."⁴⁴
- They responded to the majority's objection that not addressing [non-believers with religious

⁴² Ibid, v. 01, p. 74.

⁴³ Ibid, v. 01, p. 76.

⁴⁴ Ibid, v. 01, p. 76.

obligations] is a form of leniency and that disbelief shouldn't be a reason for it. They said: "The statement that an unbeliever isn't eligible to strive for his own salvation, unless he believes, doesn't constitute leniency towards him. This is analogous to a slave's effort to provide a compensation through which he seeks his own emancipation. If the master relinquishes this demand from him when he is incapable of repaying in the form of emancipation, it doesn't mean he's being lenient. For the humiliation and subjugation of slavery that remains upon him is more grievous than the harm of demanding repayment... [Similarly,] when a doctor asks a patient to take medicine, hoping for his recovery, it is out of concern, not harm. But if the doctor loses hope of the patient's recovery and stops insisting on the medicine, it doesn't mean he's being lenient. Rather, it's compelling the patient to something more painful than the side effects of the medicine, which is the suffering that comes with the progression of the illness. Similarly, here, the fact that non-believers aren't addressed to observe religious duties doesn't imply leniency towards them. Instead, it signifies the enormity of their sin and punishment they insist on through their polytheism (shirk). And Allah knows best."⁴⁵

- Al-Sarakhsi mentioned some people's argument which revolves around a principle that is disagreed upon between the Ḥanafis and the majority. He says, "According to them [Shāfi'īs and the majority], the religious rites are intrinsic to faith, and since [non-believers] are addressed with faith, they are therefore addressed with the religious rites." However, according to us [Ḥanafis], religious rites are not intrinsic to faith, and while [non-believers] are addressed with faith, they aren't addressed with the observance of the religious rites which are built upon faith, unless they believe." But Al-Sarkhasi responded to this by saying: "This argument is weak as well because [non-believers] are indeed addressed with punishments and [the rulings of] transactions, and none of these [items] are intrinsically related to faith either."⁴⁶

- They responded to the majority's evidence from the Qur'an and Sunnah by interpreting it as a rebuke against them for their denial and rejection of these commands and prohibitions. In Imam al-Māturīdī's interpretation of the verse of God Almighty saying ([Woe to the idolaters who do not give zakat](#)), "the problem arises: Why does the verse specifically condemn the idolater who does not give zakat, and denies the Hereafter, when damnation could be applied to any idolater regardless of whether they give zakat or believe in the Hereafter? Some interpreters say the meaning is: '[Woe to the polytheists who do not believe in giving zakāt, and do not believe in the Hereafter.](#)' He made a particular mention of those to refer to different reasons for disbelief: Some

⁴⁵ Ibid, v. 01, p. 78.

⁴⁶ Ibid, v. 01, p. 75.

disbelieve because they are stingy with their wealth, leading them to deny zakat and refrain from giving it; others disbelieve due to their denial of the recompense of deeds, which makes them deny the Hereafter; while others may reject faith due to rejecting subservience to others who are beneath them or like them in worldly matters, causing them to reject the message of prophethood and other varying causes that lead them to disbelief and misguidance. Another interpretation suggests that the verse's reference to zakat does not concern the obligatory alms on wealth, but rather the purification of the soul; as if it's saying: Woe to the idolaters who neither know nor listen to that which would purify their souls and ennoble them and rectify their deeds and make them entitled to the reward of the Hereafter. Thus, it's a warning against those who do not do so. Both of these interpretations counter the suggestion that unbelievers are addressed with the religious obligations based on the apparent understanding of the verse; given that they are warned against not giving zakāt, and zakāt is among the religious obligations."⁴⁷

However, the disagreement between the Ḥanafī school and the majority did not remain confined to foundational principles but extended to the derived rulings. If you are mindful of the majority's branching rules based on the foundational principle, here are some of the specific derivations according to the Hanafi perspective. Imam al-Kāsānī, the Ḥanafī scholar – Ḥanafī Allah have mercy on him – says in 'Al- Badā'i': 'If he forcibly takes wine or pork from a dhimmī and then it perishes in his (the ghāṣib) possession, he is liable, regardless of whether he is a dhimmī or a Muslim. However, if he is a dhimmī, he owes an equivalent amount for the wine, and the value for the pork. But if he is a Muslim, he owes the value for both the wine and the pork."⁴⁸

They find it permissible to rent out houses so they can be used, in situations like ours, as churches or shops for selling wine. In Ibn 'Ābidīn's Ḥāshiyah: "(And) it is permissible (to rent a house in Sawād al-Kufa) i.e., its villages (and not in other places, according to the most correct opinion). As for cities and villages other than al-Kufa, it is not permissible due to the prevailing of Islamic symbols in them. He specified Sawād al-Kufa because the majority of its residents are dhimmīs. (The house can be used for a fire temple, a church, a synagogue, or wine can be sold in it).' The two [companions, i.e., Abu Yusuf and Muhammad al- Shaybānī] stated it is not appropriate because it is aiding them in committing sin."⁴⁹

They also permit the carrying of wine for a dhimmi and the herding of pigs and the building of their churches. In the Ḥāshiyah of Ibn 'Ābidīn: "(And) it is permissible to build a church and (carrying

⁴⁷ Ta'wīlāt Ahl al-Sunnah, by Abū Maṣū'ir al-Māturīdī (Beirut: Dār al-Kutub al-Ilmiyah), v. 9, p. 60.

⁴⁸ **Bada'i al-ṣanā'i fi Tartīb al-Sharā'i**, 'Ala' al-Dīn Abu Bakr ibn Mas'ud al-Kasani (Beirut: Dar al-Kutub al-Ilmiyah), v. 7, p. 147.

⁴⁹ Ḥāshiyat Radd al-Muḥtār 'alā al-Durr al-Mukhtār by Ibn 'Ābidīn (Cairo: Maktabah Muṣṭafā al-Bābī al-Ḥalabī), v. 6, p. 392.

wine of a dhimmi) by himself or his beast (for a wage)."⁵⁰ And in it: "Based on this disagreement, if he was hired to transport wine on it [his beast], or he hired himself to herd pigs for him, the wage is permissible according to him [Abū Ḥanīfah], and it's disliked according to them (aṣ-ṣāhibān: two companions)."⁵¹

They further clarify the issue in "Al-Hidāyah" and respond to objections by saying: "For one who carries wine for a dhimmī, he is permitted to take payment for it according to Abū Ḥanīfah. However, Abū Yūsuf and Muḥammad say: it is disliked for him to do so' because it is aiding in sin. And it has been authentically reported that the Prophet ﷺ cursed ten people in relation to wine, including the one who carries it and the one it is carried to. And in support of Abū Ḥanīfah's view [it can be argued] that the sin is in its consumption, which is an action performed by a willful actor. Drinking is not a necessary consequence of carrying it nor is it intended by it. The hadith can be interpreted as referring to carrying with the intention of committing the sin."⁵²

The Ḥanafīs, like the Shāfi'īs, reject the principle of 'sadd al-dharā'i' (blocking the means to evil) in Legal Principles, and they do not broadly apply it to the derivation of furū'. Therefore, in their view, the sale of grapes to someone who might make wine out of them is not prohibited. However, they make a distinction between selling to a Muslim and selling to a non-Muslim. In the "Ḥāshiyah" of Ibn 'Ābidīn, it says: '(And) it is permitted (to sell juice) of grapes to someone who it is known (will turn it into wine) because the sin does not arise from the thing itself, but after its transformation. Some have said it is disliked because it is aiding in sin. The author [of the main text to which Ibn 'Ābidīn added his marginalia] quoted from al-Sirāj and "al-Mushkilāt" that the word "to someone" means to a non-Muslim. As for selling it to a Muslim, it is disliked. A similar view is mentioned in "al-Jawharah", al-Bāqānī, and others. Al-Quhustānī added, attributing to "al-Khāniyah", that it is disliked by consensus."⁵³

However, the Ḥanafīs make an exception for things by which the sin is committed directly. In the "Ḥāshiyah" of Ibn 'Ābidīn, it says: '(Unlike the sale of a beardless boy to someone who will commit sodomy with him, or the sale of weapons to the people of sedition) because the sin arises from the thing itself. Moreover, the undesirability regarding the matter of the young boy is explicitly mentioned in the sales section of al-Khāniyah and others, and the author adopted this view, contrary to what is in al-Zayla'ī and al-'Aynī, although he acknowledged it in the section on rebels.

⁵⁰ Ibid, v. 6, p. 391

⁵¹ Ibid

⁵² Al-Hidāyah fi Sharḥ Bidāyat al-Mubtadī by 'Alī ibn Abī Bakr ibn 'Abd al-Jalīl al-Marghinānī (Beirut: Dār Iḥyā' al-Turāth al-'Arabī), v. 4, p. 378.

⁵³ Ḥāshiyah Radd al-Muhtār by Ibn 'Ābidīn, v. 6, p. 391.

I say: We previously mentioned, attributed to al-Nahr, that if a sin arises directly from (or subsists in) something, its sale is prohibitively disliked, otherwise, it's disliked out of caution (tanzeehan)."⁵⁴

This is a good exception and a regulating criterion for assisting in sin and aggression according to the Ḥanafīs. They do not extensively apply the concept of blocking the means (sadd al-dharā'i'). Anything that stands between a person's action and the occurrence of sin, which is an action of a willful choosing agent, makes the first action not prohibited in their view unless the sin occurs by or subsists in the very thing sold, or the original action or sale assists in causing harm to others, like selling a beardless boy to someone who will commit sodomy with him, or selling weapons to people of sedition.

The truth is that the different derivations of the Ḥanafīs originate from two foundational principles in their jurisprudence:

1. The belief that non-Muslims are not addressed by the furū' of Islamic law.
2. Not operating on the basis of blocking the means (sadd al-dharā'i'), even though, a more accurate description might be that they narrow down the scope of the principle which is established and more utilized by the Mālikīs and Ḥanbalīs.

3.3 The third group: Yes, non-Muslims are addressed by the furū' of Sharia, but it pertains to punishment in the Hereafter, not a demand of conformity in this world

The proponent of this view is Imam Ibn Taymiyyah, and a group followed him. We have previously clarified that this opinion doesn't differ much from the rest of those who assert the addressing of non-believers by the furū' of Sharia. Both groups do not compel the non-believers to perform acts of worship. However, this group emphasizes this meaning and takes a middle stance between the two previous groups: they permit the Muslim some of what those who say the non-believers are not addressed permit, and they prohibit some of it.

Their evidences for the non-Muslims being addressed are the evidences of the jumhūr. And their evidences for what they lean towards regarding the permissibility of certain transactions with them, which are not permissible with Muslims, are numerous. Among these evidences are:

In ṣaḥīḥ al-Bukhārī and ṣaḥīḥ Muslim, it is narrated from 'Abdullāh ibn 'Umar رضي الله عنه that 'Umar ibn Al-Khaṭṭāb رضي الله عنه saw a silken robe (ḥulla) near the door of the mosque and said, "O Messenger of Allah! If

⁵⁴ Ibid

you bought this and wore it on the day of Jumu'ah and when delegations come to you, it would be great." The Messenger of Allah ﷺ replied, "Only he who has no share in the Hereafter would wear this." Later, similar robes were given to the Messenger of Allah ﷺ, and he gave one of them to 'Umar ibn Al-Khaṭṭāb ؓ. 'Umar said, "O Messenger of Allah, you have given me this robe to wear, but you had said about the robe of 'Uṭārid' [the name of the seller] what you said." The Messenger of Allah ﷺ replied, "I did not give it to you to wear." 'Umar ibn Al-Khaṭṭāb ؓ then gave it to one of his brothers in Makkah who was a polytheist."

If it is argued that giving him the robe doesn't necessarily mean permitting him to wear it, this argument would be extremely weak. Imam Al-'Irāqī said in 'Ṭarḥ at-Taḥrīb': ".. One might say: Gifting silk to a Muslim doesn't necessarily mean he will wear it because of his commitment to the religious ruling, unlike the non-believer. His disbelief would lead him to wear it, as he does not hold the belief in its prohibition, and he has nothing preventing him from doing so. If it wasn't permissible for him to wear it, then he wouldn't be assisted in that sin by gifting it to him."⁵⁵

It is known that the non-Muslims used to enter his ﷺ masjid, and it is not permissible for someone in a state of major sexual impurity (junub) to do so, yet they were not prevented.

One can argue for this view (even though Imam Abu al-'Abbas did not use this as evidence) based on the fact that it has not been relayed to us that husbands and masters would prevent their wives and slaves from eating during the daytime of Ramadan.

In "Al-Amwāl" by Abū 'Ubayd, it is reported from Suwayd bin Ghafalah that Bilāl ؓ said to 'Umar bin Al-Khaṭṭāb ؓ: "Your workers are taking wine and pigs in the tax." 'Umar replied, "Do not take them from them, but allow them to sell them, and you can take from the price."⁵⁶ If they were Muslims, it wouldn't be permissible to take zakāt or anything else from wealth that is ḥarām.

Many of those who believe in addressing the rulings to non-Muslims make distinctions in the verdicts.

- Al-Khaṭīb Al-Shirbīnī says: "(And) it is not permissible to hire a Muslim woman (who is menstruating), post-childbirth, or having prolonged bleeding to serve by herself in a masjid, even if there's assurance against contamination, even though we permit crossing. This is because the service requires staying or repeated visits, and she is prohibited from it. As for the disbelieving woman, if there's assurance against contamination, it is most likely valid, as said

⁵⁵ Ṭarḥ al-Taḥrīb fī Sharḥ al-Taḥrīb by Zayn al-Dīn al-'Irāqī (Beirut: Dār Iḥyā' al-Turāth al-'Arabī), v. 3, p. 237.

⁵⁶ Kitāb al-Amwāl by Abū 'Ubayd al-Qāsim ibn Sallām ibn 'Abd Allāh al-Harawī al-Baghdādī (Beirut: Dār al-Fikr), p. 62.

by Al-Adhra'ī, based on the more valid opinion of allowing an unbeliever in a state of major impurity to stay in the masjid; because she does not believe in its prohibition."⁵⁷

- Ibn Rushd the grandfather says: "Selling grapes to someone among the Muslims who will squeeze it into wine is more severe than selling it to the Christians since it has been said about the Christian that he is not addressed by the Islamic laws except after accepting Islam. So, based on this opinion, when a Muslim sells his grapes to a Christian, he is not aiding in a sin."⁵⁸
- In "Al-Sharḥ al-Kabīr," Imam Ibn Abi 'Umar says: "(It is not permissible to sell impure oils)... Our Sheikh [Al-Muwaffaq] said it is permissible to hand it over to an unbeliever to free a Muslim, if the disbeliever knows of its impurity, because it's not technically a sale, but rather a rescue of the Muslim with it."⁵⁹
- o Aḥmad has stated, in the narration of Abū al-Naḍr, regarding one who carries wine, pig, or carrion for a Christian: "I dislike eating from its compensation, but the carrier is still entitled to his wage. And if it was for a Muslim, it is more severely disliked."⁶⁰

For these evidences, Imam Ibn Taymiyyah affirms the permissibility of certain transactions with non-Muslims and does not limit them only to the silk garment due to the text, but rather draws analogies from it: "Sheikh Taqī al-Dīn [Ibn Taymiyyah] said: 'It is permissible to sell silk to an unbeliever and for him to wear it; because 'Umar sent what the Prophet ﷺ gave him to his pagan brother, as narrated by Aḥmad, Al-Bukhārī, and Muslim. Our Sheikh [Taqīyy al-Dīn] said: 'By analogy, it is permissible to sell gold and silver utensils to unbelievers. Additionally, if their sale to them is permissible, then their manufacture for the purpose of selling to them is also permissible, as well as crafting them for them for a wage.'"⁶¹

However, he prohibits the sale of wine, and even the sale of grapes to those who make wine from them. He says: "Indeed, he [Imam Ahmad] has explicitly stated that it is not permissible to sell grapes, juice, dadhi (a type of drink), and the like, to those who use them to make the forbidden type of wine which is disputed. For a man is not allowed to assist anyone in committing a sin against God, even if the assistant does not believe it to be a sin, such as assisting unbelievers with wine."⁶²

⁵⁷ Mughnī al-Muḥtāj ilā Ma rifat Ma'āni Alfāz al-Minhāj, al-Khaṭīb al-Shirbīnī (Beirut: Dār al-Kutub al- 'Ilmiyyah), v. 3, p. 449.

⁵⁸ Al-Bayān wal-Taḥṣīl by Abu al-Walīd Muḥammad ibn Aḥmad ibn Rushd, (Beirut: Dār al-Gharb al-Islāmī), p. 614, vol. 18.

⁵⁹ Al-Sharḥ al-Kabīr 'alā Matn al-Muqni', Ibn Abī 'Umar, v. 4, p. 14.

⁶⁰ Taqīb Fatāwā wa Rasā'il Shaykh al-Islām Ibn Taymiyyah, Aḥmad ibn Nāṣir al-Ṭayyār (Riyadh: Dār Ibn al-Jawzi), v. 4, p. 164.

⁶¹ Al-Mustadrak 'alā Majmū' Fatāwā Shaykh al-Islām ibn Taymiyyah. Compiled and published by Muḥammad ibn 'Abd al-Raḥmān ibn Qāsīm, v. 3, p. 73.

⁶² Al-Fatāwā al-Kubrā by Ibn Taymiyya, Taqī al-Dīn Abū al-'Abbās Aḥmad ibn 'Abd al-Ḥalīm, (Dār al-Kutub al- 'Ilmiyyah, Beirut, 1st edition, 1408 H - 1987 AD), v. 3, p. 368.

You even find him emphasizing on blocking the means to evil. Ibn Mufliḥ says: 'It is not valid to sell something intended for the forbidden, like juice to one who makes wine from it, if definitively known, as reported by al-Jamā'ah. And it's said: or highly suspected. And our Sheikh [Ibn Taymiyyah] chose this [viewpoint].'"⁶³

And you find him clarifying the reason for permissibility at times and the reason for prohibition. He says: 'Selling silk to unbelievers; the tradition of 'Umar رضي الله عنه indicates its permissibility; in contrast to selling wine. This is because silk is not prohibited absolutely. And by analogy, selling gold and silver vessels to them; and if selling to them is permitted, then making them for selling to them is allowed, as well as crafting them for them for a wage.'"⁶⁴

Therefore, his consideration is that what is intrinsically prohibited, like wine, is not permissible to be sold, carried, or even to sell its source ingredient, even if it is lawful, to block the means leading to it and to cut off the paths to sin. However, he allows things like silk clothing and gold for men, and similar to it what is prohibited for something external to it.

What seems apparent to me is the moderate stance that prevents a Muslim from directly engaging in what's prohibited, and this is a point of consensus. Similarly, aiding others in matters inherently forbidden, upon which there is agreement regarding its prohibition, is disallowed if such assistance is intentional or direct. As for matters that are disputed, and those that are not categorically prohibited but are forbidden for factors extraneous to them, there's no restriction for everything leading to it from the Muslim's standpoint. Likewise, if the assistance isn't intentional or direct, for being overly strict in blocking potential means to veil can cause significant hardship and difficulty for Muslims in the lands of Islam, let alone in other lands.

The criterion for the forbidden aiding in sin and aggression has been a subject of lengthy research and discussions among the members of the Assembly of Muslim Jurists of America (AMJA) during its fifth session, which took place in Bahrain in the year 1428H. The essence of their conclusion was that aiding in sin and aggression falls into four categories:

1. **Direct and Intentional Aid:** Such as someone who gives another person alcohol with the intention of helping him drink it.
2. **Direct but Unintentional Aid:** This includes selling prohibited items that have no permissible use, if there's no intention to aid them in their prohibited use.
3. **Indirect and Intentional Aid:** Like someone who gives another a dirham to buy alcohol

⁶³ Al-Furū' wa Tashīḥ al-Furū', al-Mardāwī, v. 6, p. 169.

⁶⁴ Al-Mustadrak 'alā Majmū' Fatāwā Shaykh al-Islam ibn Taymiyyah, v. 4, p. 5.

with it. This category also includes causing death indirectly.

4. Neither Direct nor Intentional: Such as selling items that can be used both in permissible and prohibited ways without the intention of aiding the user in the prohibited use. An example is someone giving another person a dirham not for buying alcohol; if the receiver buys and drinks alcohol with it, there's no sin on the giver, as long as he did not intend to aid in the prohibited act. This category also includes buying, selling, renting to non-believers and sinful Muslims, and donating money to them.

AMJA's decision was to prohibit the first three types and permit the fourth type, which is neither direct nor intentional.

4 THE THIRD TOPIC: DOES THE ABODE WHEREIN THE ACT TRANSPIRES INFLUENCE THE RULINGS?

Do the rulings vary depending on the territory? This is a significant issue, and we need to address it here, even if we're unable to exhaustively explore it. However, we say that some rulings of Islam don't apply outside the lands of Islam, mainly due to the inability to implement them, and because the authority of Islamic judiciary doesn't extend to these areas. But, do some transactional rulings differ for individual Muslims? This is a matter of disagreement. The majority believes they do not differ, while the Ḥanafīyah believe they sometimes do, thus they permit flawed contracts in these situations.

The most significant evidences of the Ḥanafīyah are:

- A mursal report from Makḥūl from the Prophet ﷺ saying: "There is no usury between Muslims and the people of Dār al-ḥarb in Dār al-ḥarb." As is mentioned in 'Al-Mabsūṭ' by Al-Sarakhsī.⁶⁵ But in 'Al-Umm': "No usury between the people of war."⁶⁶ Ibn al-Mundhir states: "They have differed on the sale of one dirham for two dirhams with the people of war. A group said that this is not permissible, this is the opinion of Al-Awzā'ī, Al-Shāfi'ī, Ishāq ibn Rāhawayh, Ya'qūb. Ya'qūb said: Abu Ḥanīfah only permitted this because some of our elders related from Makḥūl, from the Prophet ﷺ that he said, "No usury between the people of war." Aḥmad ibn Ḥanbalī disliked this. Abu Bakr [ibn al-Mundhir] said: Just as Al-Awzā'ī and Al-Shāfi'ī have said, I also say; because the Prophet ﷺ abolished the usury of the Jāhiliyyah (pre-Islamic era of ignorance) and prohibited

⁶⁵ Al-Mustadrak 'alā Majmū' Fatāwā Shaykh al-Islam ibn Taymiyah, v. 4, p. 5.

⁶⁶ Al-Umm, Muḥammad ibn Idrīs al-Shāfi'ī, (Beirut: Dār al-Fikr), v. 7, p. 379.

usury in general."⁶⁷ Ibn Qudāmah in 'Al-Mughnī' stated: "Their report is mursal and its authenticity is not known. It is possible that he intended to prohibit it [i.e., 'no usury' would mean there must not be...]."⁶⁸

- They also used the evidence of the betting story of Abū Bakr with the pagans. In 'Al-Mabsūṭ', Muhammad said: "It reached us that Abū Bakr As-ṣiddīq ؓ, before the migration, when Allah revealed {Alif, Lam, Meem. The Romans have been defeated} [Ar-Rūm:1-2], the pagans of Quraish said to him ... Would you like to bet with us such that we place a stake between us and you? If the Romans are victorious, you take our stake, and if Persia wins, we take yours. Abū Bakr ؓ agreed to this. He then went to the Prophet ﷺ and informed him. The Prophet ﷺ said: "Go to them, increase the stake and extend the period." Abū Bakr ؓ did so. The Romans were victorious over Persia. They sent a message to Abū Bakr saying: Come and take your stake. He went and took it, then went to the Prophet ﷺ with it, who ordered him to consume it. Now, gambling is not permissible among the Muslims, but the Messenger of Allah ﷺ allowed it between Abū Bakr ؓ, who was a Muslim, and the pagan Quraish because it was in Mecca, in Dār ash-Shirk (the abode of polytheism), where the rulings of Muslims do not apply."⁶⁹

- They also used as evidence that the "Messenger of Allah ﷺ wrestled Rukānah for sheep." The core of this story was narrated by Abu Dawood and Al-Tirmidhi based on a hadith from Abu al-Hassan al-'Asqalani, but it doesn't mention sheep. Al-Tirmidhi said it is gharīb⁷⁰, and its chain is not established. The story involving the sheep is mentioned in mursal⁷¹ reports of Abu Dawood and others from Sa'īd bin Jubayr and others from Ibn 'Abbās ؓ and Abu 'Umāmah ؓ. The chains of these narrations were deemed weak by al-Hāfiz Ibn Hajar in "Talkhīṣ al-Ḥabīr", so refer to it.⁷²

The opponent might argue that the prohibitions mentioned in the previous two stories that took place in Mecca and have differences in their rulings of prohibition; saying they are permissible (especially the racing in the hadith of Rukānah) is an opinion of a group of scholars. Even if we accept its prohibition, to assert that these incidents happened after the taḥrīm is challenging.

- They also drew evidence from what was mentioned about Ibn 'Abbās ؓ and others, that the

⁶⁷ Al-Awsat fi al-Sunan wa al-Ijmā' wa al-Ikhtilāf by Abū Bakr Muḥammad ibn Ibrāhīm ibn al-Mundhir, (Riyadh: Dār Ṭaybah), v. 11, p. 236.

⁶⁸ Al-Mughnī by Muwaffaq al-Dīn 'Abdullāh ibn Ahmad ibn Qudāmah al-Maqdisī, (Riyadh: Dār 'Ālam al-Kutub), v. 6, p. 99.

⁶⁹ Al-Mabsūṭ, al-Sarakhsī, v. 14, p. 57;

⁷⁰ When part or all of the text is transmitted by only one narrator.

⁷¹ When a successor narrates directly from the Prophet Muhammad ﷺ without mentioning the saḥābī.

⁷² Al-Talkhīṣ al-Ḥabīr by Abū al-Faḍl Ahmad ibn 'Alī ibn Muḥammad ibn Hajar al-'Asqalānī, (Dār al-Kutub al-'Ilmiyah), v. 4, p. 397.

Messenger of Allah ﷺ said in his sermon: "Every usury from the Jāhiliyyah is annulled, and the first usury to be annulled is the usury of al-'Abbās bin 'Abd al-Muṭṭalib." They said: "This is because after al-'Abbās ﷺ embraced Islam, he returned to Mecca and engaged in usurious transactions. His actions would have not been hidden from the Messenger of Allah ﷺ, and since he did not prohibit him, this indicates its permissibility. However, the annulled usury was what was not yet collected until the conquest (of Mecca). This is our opinion, and in this regard, the verse was revealed: {But if you repent, you may have your principal}."⁷³

In their argument, there's a matter to consider: Al-'Abbās ﷺ had usury transactions before his Islam. It's possible that this was the uncollected usury being annulled. Although this is a weak possibility, but it still can weaken their evidence.

In response to their evidence, Ibn Qudāmah says: "Our evidence is Allah's saying: "{But Allah has permitted trade and has forbidden interest (usury)}" [Al-Baqarah: 275] ... and His messenger's saying "Whoever gives more or takes more has indulged in usury" is general, and so are the rest of the hadiths. Because what is prohibited in the land of Islam is also prohibited in the land of war, such as usury between Muslims. Their report is *mursal*, and we don't know its authenticity. It's possible that he intended to prohibit it, and it is not permissible to abandon what the Quran has forbidden and what the Sunnah supports widely, and there is consensus on its prohibition, based on an unknown report which isn't mentioned in any *ṣaḥīḥ* or *musnad* or any trusted book, and it is still considered *mursal*. And it's possible that by saying "no usury" he meant prohibiting it, as in the saying: "{... no obscenity, nor wickedness, nor wrangling during the Hajj}" [Al-Baqarah: 197]. And what they mentioned about its permissibility with a *ḥarbī* is nullified because also when he enters the land of Islam, his wealth becomes lawful except what is protected by a pledge of safety [yet usury with him is forbidden by agreement]."⁷⁴

Some respond to their arguments by citing God's words about some Jews deeming usury permissible with non-Jews: "{That is because they say, 'We have no duty towards the unlettered (Gentiles),' and they tell lies about God, and they know it}" [Aal-E-Imran: 75]. The Ḥanafis can counter with the argument that they prohibit usury with the *dhimmi* but allow it with a *ḥarbī* because he is a combatant, not due to religious differences. A counter-argument to this is that a Muslim is considered protected in their lands, thus their wealth is protected. The Ḥanafī response to this is that this protection prevents him from taking it forcibly or deceitfully, but if it is taken

⁷³ Al-Mabsūṭ, al-Sarakhsī, v. 14, p. 57;

⁷⁴ Al-Mughnī by Muwaffaq al-Dīn 'Abdullāh ibn Ahmad ibn Qudāmah al-Maqdisī, (Riyadh: Dār 'Ālam al-Kutub), v. 6, p. 99.

willingly, there's no harm.

Certainly, the principle adopted by the Ḥanafīs has many ramifications. In 'Al-Mabsūṭ', it states: "If a Muslim enters the territory of war (Dār al-Ḥarb) under a pact of security... and if he trades with them, such as selling one dirham for two dirhams, either in cash or on credit, or trades with them in wine, swine, or dead meat, there is no problem with that according to the opinion of Abu Ḥanīfah and Muhammad (rA). However, none of that is permissible according to the opinion of Abu Yusuf (rA). This is because a Muslim is bound by the rulings of Islam wherever he is, and one of the rulings of Islam is the prohibition of this kind of transaction. Don't you see that if he conducted such transactions with those who have been granted security in our lands, it would not be permissible? Thus, the same applies in the territory of war. Their [Abu Ḥanīfah and Muhammad's] opinion is that this involves taking the wealth of the disbeliever with his full consent. The essence of this is that their wealth is fundamentally permissible [for Muslims to take], except that he [the Muslim] guarantees not to betray them. So he seeks their consent with these [invalid contracts] to avoid betrayal, then he takes their wealth based on its fundamental permissibility and not by the consideration of the [invalid] contract. This differs from those granted security in our lands; their wealth becomes protected by the security agreement, so it's not permissible for him to take it based on the principle of permissibility. Taking [wealth] through these invalid contracts is forbidden."⁷⁵

I have no doubt based on their juristic derivation and construction of these rulings, that if they were valid in the "Dār al-Ḥarb" (the Abode of War) during their times in which the binary division was understandable (and they were not in my view, as I adhere to the opinion of the majority), they are absolutely not applicable in our current circumstances. For the countries that are signatories to the United Nations charter must undoubtedly be approached with a different set of considerations. Muslims in these countries have settled, and they possess the same rights as all other citizens. They have become a part of its social contract. Anyone who reads the aforementioned statement of Imam Al-Sarakhsi will find it challenging to apply it to our current situation. I would like to cite here an eloquent statement by Sheikh Salah Al-Sawi, which serves as a caution against the outcomes of this approach. He said – may Allah protect him – in an article titled "Are Invalid Contracts Permissible in a Non-Muslim Society:

"... Among this is their position allowing new Muslims in these lands to deal with usury, both in taking and giving, as long as they have not migrated. This is whether the interaction is

⁷⁵ Al-Mabsūṭ, al-Sarakhsi, v. 10, p. 95;

among their fellow new Muslims or with the rest of the non-Muslims. This is because, according to them, the concept of 'iṣmah (or protection) is initially tied to the abode. Ibn 'Abidin has pointed to this in "al-Ḥāshiyah", saying: "It is known from what the author mentioned and justified that for those who embraced Islam there and did not migrate, usury does not become established between them either." It is clear that migration is, in most general cases nowadays, not feasible. So, they practice a religion throughout their lives without recognizing the prohibition of usury.

... How can the duty of conveying (Islamic teachings) in these societies be achieved while adopting this position? It's evident that the Muslim outside the Islamic lands has a noble mission, which is to preserve Islam among its followers and to invite non-Muslims to it. Preserving Islam among its followers necessitates calling them to adhere to the guidance of the Quran and Sunnah and avoiding anything contrary to them ... Inviting non-Muslims to Islam can be through one's actions as it can be through one's words ... How can we invite non-Muslims to Islam or even introduce it to them while Muslims own stores selling alcohol and pork, and participate in their dissemination in these societies, then tell people that we follow a religion that permits its followers good things and forbids them bad things ... whatever the juristic foundations for this leniency are?

The discussions of our jurists, whether from the Hanafi school or others, about the "Dār al-Ḥarb" and the permissibility of dealing with invalid contracts therein, must be considered in their social, political, and historical contexts. Muslims in the past did not permanently settle in non-Muslim lands and establish their worship places and Islamic institutions there ... Within this perspective, our scholars' stance on the issue of naturalization has changed. It no longer carries the implications that led some jurists in the past to declare that one who naturalizes is apostate!

... Opening this door will pave the way for laxity and evasion of religious duties ... People might gradually move from permitting invalid contracts in monetary matters to permitting them in matters of intimacy ... Additionally, when something is permitted, the means leading to it are also allowed. So, if selling alcohol and pork is permissible, then striving to own them for sale becomes permissible. Thus, there's no harm for a Muslim to own a pig farm or an alcohol production factory ... Consequently, I don't think a just scholar would approve of such a jurisprudential path in light of all these contemporary changes, no matter how much consideration this position may be given!"

In summary, the issue of 'dār' is a profound one. Eminent contemporary scholars have had extensive research on it. Whether you adhere to the binary division or accept another, there's no

doubt that realities have changed. It is indeed injustice to both knowledge and religion to quote from books without considering the changing circumstances and the resultant modifications in underlying premises and the impact of that on the ascertainment of the effective causes of rulings in various realities (tahqīq al-manāṭāt).

If it's established that 'dār' doesn't make what's forbidden permissible, then is there any significance to the concept of 'dār'? Yes, as we've indicated, the authority of Islamic jurisprudence doesn't extend to such territories. Non-Muslims in these regions are allowed practices they wouldn't be permitted in Dar al-Islam. In "Nihāyat al-Maṭlab": "If the agreement is such that the ownership of buildings in the town and its plots are theirs, and they're not prevented from ringing church bells, displaying alcohol and pigs in such a town, it's by their laws. Even if Muslims mix with them, they don't have the right to object. The town, in general and in detail, is like the home of a dhimmi in Muslim lands. It's clear that it's not necessary - and in fact, not permissible - to inquire about what they engage in within their homes... The villages of the Levant were peacefully opened with the condition that they belong to their people. They used to display their church bells during the time of Mu'āwiyah, and a well-known story ensued about that."⁷⁶

And hence, the Hanafis distinguished between the sale of a house to be used as a church in the villages of Kufa and elsewhere, due to the difference between lands where the banner of Islam is prominent and others. It wasn't for individual Muslims to act against the contracts and conditions that their rulers had established.

There are distinctions in the realization of legal premises (tahqīq al-manāṭāt) in a reality that is vastly different from the situation in the lands of Islam. Ibn Al-Mulaqqin says: 'The scholars disliked that a Muslim man leases himself to a non-Muslim in either Dār al-Ḥarb (or Dar Al-Islam. I have previously mentioned that it is forbidden; because it involves humiliation and inferiority unless necessitated by pressing needs, in which case we do not prohibit it, as long as it does not bring harm to the Muslim or involve something that is not permissible, such as producing alcoholic beverages, tending to pigs, manufacturing weapons, or similar tasks. As for in Dar Al-Islam, God has sufficed Muslims with serving their own fellow Muslims, making them not need to resort to serving non-Muslims.'⁷⁷

Ibn al-Qayyim said:

"A section on the change and variation of religious verdicts (fatwa) according to the changes in

⁷⁶ Nihāyat al-Matlub fi Darāyat al-Madhhab by 'Abd al-Malik ibn 'Abd Allāh al-Juwaynī, (Dār al-Minhāj), v. 18, p. 51.

⁷⁷ Al-Tawḍīḥ li Sharḥ al-Jāmi' al-Ṣaḥīḥ by Sirāj al-Dīn 'Umar ibn 'Alī, Ibn al-Mulaqqan, (Damascus: Dār al-Nawādir), v. 15, p. 74.

times, places, conditions, intentions, and customs."⁷⁸

Without a doubt, changes in location and the accompanying changes in circumstances and customs must have an impact on the issuance of religious rulings (fatwa). This has been established by the consensus of authoritative scholars. The suspension of Islamic legal penalties in a land of war (Dār al-Ḥarb) falls under this category. In relation to this, Imam Ibn Taymiyyah mentioned about not differing from non-Muslims in their apparent customs [such as attire] in their own land. He (rA) said: "Similarly, today, if a Muslim is in a land of war or a non-war land of disbelief, he is not obligated to outwardly oppose their ways due to the potential harm that may come upon him. In fact, it might be recommended, or even obligatory, for a man to sometimes participate in their apparent customs if there is a religious benefit in doing so."⁷⁹ The assessment of potential harm and benefit is left to the jurists in their deliberations on specific issues.

5 THE FOURTH TOPIC: DO NECESSITY, WIDESPREAD HARDSHIP, AND DIFFICULTY IN AVOIDANCE PLAY A ROLE?

There is no room here to discuss the validity of these principles and the scope of their operation. As for their validity, there is practically no dispute about it, but the contention lies in the scope of their operation. What we aim to establish here is that these principles apply to our topic. Even if the territory (dār) does not have an effect on the prohibition of forbidden things according to the preferred opinion, it is a place where non-Islamic laws prevail. In such a place, Muslims need to be present in various industries, some of which are more exposed to the prohibited than others. Medicine and working in the healthcare field in general are among those industries that Muslims resort to because they believe it is a safe space.

What if there are, or become, prohibited practices imposed on doctors? Should they abandon medicine? This might be commendable sometimes for certain individuals who wish to follow the path of Bishr al-Ḥāfī – may God be pleased with him – but is it possible for the majority? To which professions would they flee? And which professions are free from ambiguities or prohibitions? Imam al-Juwaynī – may God have mercy on him – says: "If people were to patiently abstain from fulfilling their need and exceeded them to only seek the necessities, they would all perish. For the harm that ensues when the entirety refrains from pursuing needs is similar to the harm when an individual refrains from pursuing dire necessities. Comprehend this, and you will be rightly

⁷⁸ I'lām al-Muwqqi'īn 'an Rabb al-'Ālāmin by Muḥammad ibn Abī Bakr ibn Ayyūb, Ibn al-Qayyim, (Riyadh: Dār Ibn al-Jawzī), v. 4, p. 337.

⁷⁹ Iqtidā' al-ṣirāṭ al-Mustaqīm li Mukhālafat Aṣḥāb al-Jahīm by Taqī al-Dīn Aḥmad ibn 'Abd al-Ḥalīm ibn Taymiyyah, (Beirut: Dār 'Ālam al-Kutub), v. 1, p. 53.

guided."⁸⁰ He also estimates that defining 'need' is challenging, saying: 'And it's not possible for us to produce a term about 'need' that specifies it precisely.'⁸¹

Imam al-Shāḥibī says, "As for the 'ḥājīyāt' (needs), their meaning is that there is a requirement for them in terms of bringing ease and alleviating constraints, which often lead to hardship and difficulty due to the absence of what is sought. Thus, if these needs aren't considered, it results in hardship and difficulty for the individuals addressed by taklīf as a whole, but does not reach the level of corruption in public affairs [that ensues from abandoning dire necessities]."⁸²

The statement of the two Imams, Al-Suyūṭī and Ibn Nujaym, "The need (al-ḥājah) takes the place of necessity (al-ḍarūrah), whether it is general or specific," requires further clarification. There is no basis for equating a specific need with a specific necessity unless the intended meaning of the specific necessity is that it does not encompass the entire Ummah. Imam Al-Shāfi'ī said: "Whoever is in need of dividing something, it is not permissible for him due to need what isn't permissible in its origin. And what is forbidden doesn't become lawful due to need, except in cases of necessity out of fear of loss of life."⁸³

Approaching this topic without clear guidelines is where many contemporaries stumble. It's as if al-Ṭufī (rA) addresses us with his saying: "It is not permissible for a mujtahid that every time he perceives a taḥsīnīyah or ḥājīyah interest, he takes it into consideration and bases rulings upon it unless he finds a precedent of its kind to support it."⁸⁴

Sheikh al-Zarqā (rA) clarifies the meaning of "ḥājah" (need) and says: "And the ḥājah is the situation that calls for facilitation or easement in order to achieve the intended purpose. It is below 'ḍarūrah' (necessity) in this regard, even though the ruling established for it remains constant, and the ruling for the ḍarūrah is temporary, as previously mentioned."⁸⁵

So, he establishes that the ruling concerning it is continuous, but does it, like necessity ('ḍarūrah'), remove all prohibitions? There is a long-standing difference of opinion on this matter. The apparent statement of al-Suyūṭī and Ibn Nujaym suggests that it does, but no one actually claims this, even if they differ in the scope of its impact. Many scholars have tried to define it, among them Sheikh

⁸⁰ Ghiyāth al-Ummah fi Iltiyāth al-zulam by 'Abd al-Malik ibn 'Abdullāh al-Juwaynī, (Maktaba Imam al-Haramayn), p. 479.

⁸¹ Ibid

⁸² Al-Muwāfaqāt by Abū Ishāq Ibrāhīm ibn Mūsā ibn Muḥammad al-Shāḥibī, (Cairo: Dār Ibn 'Affān, Cairo), p. 21, vol. 2.

⁸³ Al-Umm, Muḥammad ibn Idrīs al-Shāfi'ī, v. 3, p. 28.

⁸⁴ Sharḥ Mukhtaṣar al-Rawḍah by Najm al-Dīn Sulaymān ibn 'Abd al-Qawī al-Ṭufī, (Cairo: Mu'assasat al-Risālah), p. 207, vol. 3.

⁸⁵ Sharḥ al-Qawā'id al-Fiqhiyyah by Aḥmad ibn al-Sheikh Muḥammad al-Zarqā, (Damascus: Dār al-Qalam), p. 209.

al-Zarqā who specified it under the following conditions:

1. "The legitimization of the ruling is added to the need ('ḥājah') when it appears to go against analogy ('qiyās').
2. What is permissible due to the need is only permissible in what has been textually mentioned as permissible, or practiced, or where nothing of the sort has been mentioned, but there isn't any specific text prohibiting it, and it has an equivalent in the Sharia with which it can be associated.
3. Or there was no textual evidence allowing it or practice, nor any text prohibiting it, nor was there an allowable equivalent in the Sharia to associate it with, but it contained benefit and utility ('maṣlaḥah')."⁸⁶

Among the most precise descriptions I have read regarding the concept of need ('ḥājah') is what Sheikh 'Abdullāh bin Bayyah mentioned. He said: "In short, the difference between necessity ('ḍarūrah') and need ('ḥājah') manifests in three levels: the level of hardship, the level of prohibition, and the level of evidence. As for necessity, it is at the highest level of hardship or importance, while need is at a moderate level. The prohibition that is lifted by necessity is a strong prohibition that falls into the highest degrees of prohibition either because its harm is strong or because it intrinsically involves harm; it is the prohibition of objectives. Meanwhile, the need lifts a prohibition of a lesser degree because it might be the prohibition of means. As for the level of evidence, the evidence whose ruling is lifted by necessity might be a clear text from the Qur'an, Hadith, or other sources. However, the evidence that need addresses is, in general, a weak generality that is specified, an analogy that is not extended onto the case of need, or a principle from which exceptions can be made."⁸⁷

However, these examples do not fully capture the meaning implied by al- Imāmāyn al-Juwaynī and al-Shāṭibī, nor do they encapsulate the intention of al- Imāmāyn al-Suyūṭī and Ibn Nujaym.

Let us pose a hypothetical. Assume, for the sake of argument, that higher education in intricate specializations, such as medicine and engineering and the like, cannot be achieved save through ribawī (interest-bearing) loans. Is it then permitted? By Allah, yes, for forbidding it would dictate the barring of the majority of Muslims from advanced education in its varied degrees. And in that lies a profound detriment to the people. Since taṣawwūrāt (conceptualizations) precede taṣdīqāt (assents), he who does not fathom the distinction between education at MIT and other eminent

⁸⁶ Ibid, p. 210

⁸⁷ "From his articles titled "The Craft of Fatwa and Jurisprudence of Minorities" on the Islam Today website."

universities compared to local faculties, and does not grasp the importance of advanced education and intricate specializations, and does not comprehend that education is the pillar of nations' renaissance and might, particularly in our times, such a person will not discern the necessity to facilitate its means for the progeny of the Muslims.

Then, let us consider another example. Suppose that doctors were mandated to prescribe medications for patients desiring what they term "merciful death," and the doctors had no choice but to do so. Do we then obligate them to abandon their profession? What if they were to leave it? Are there professions free from prohibitions, and can they accommodate all Muslims? And if you were to say, "Then let them emigrate", would all the Muslim minorities emigrate? And to where? And do those lands they emigrate to not have their own problems?

We recognize the danger of expanding the category of 'needs' to the level of 'necessities'. However, sometimes public dire needs may be considered on par with individual necessities. Assessing this requires profound knowledge and a detailed understanding of reality. Therefore, in our age, it is appropriate that most of the ijihad regarding these issues be collective, in the form of juristic councils and fatwa bodies that bring together scholars of Sharia and experts familiar with contemporary realities.

Indeed, if necessity and dire public need, widespread hardship, and difficulty in avoidance can render certain prohibitions permissible, then all the more reason they justify adhering to what we deem as the weaker opinion. If there is significant hardship concerning a particular issue, it is permissible for the jurist to adopt the Hanafi position on the issue of assisting in sin. Whenever there's an intermediary act between a Muslim's action and the actual sin, and that act is based on free choice, then it can be permitted. However, if the initial action directly results in the sin, or involves selling the very item by which the sin occurs, or assists in causing harm to others, then more caution should be exercised, and the matter should be prohibited or referred to reliable scholarly bodies for further deliberations.

In summary, in the medical field, if there's a genuine need that's not based on mere speculation, then it can have the following implications:

1. Giving precedence to a weak opinion of one of the respected jurists, as long as its weakness isn't severe.
2. Permitting a prohibition provided the following conditions are met:
 - It isn't established by a definitive and explicit text in both its transmission and implication.
 - It pertains to prohibitions of means rather than those of objectives.
 - The difficulty resulting from avoiding the prohibition exceeds the usual hardships associated

with religious obligations and isn't just slightly more than them, or causes undue hardship for the general public, even if only in one country. In such cases, that dire need might have the strength of a necessity in permitting what's prohibited.

6 THE FIFTH TOPIC: WHAT ARE THE RULINGS IN DIFFERENT APPLICATIONS?

In revisiting the preferred position in the second topic and considering the dispensation from the third and fourth topics, it appears to me—and Allah knows best— that the following is permissible in medical practice outside the lands of Muslims, with non-Muslim patients:

Debated Matters: For any issue that has notable disagreement among the scholars of Islam, it's not obligatory to impose on non-Muslim patients what we consider more reliable. Based on the prior discussions, this implies:

1. Every impure medicine—with the exception of pure wine (al-khamr al-şirfa)—is permissible for a Muslim doctor to prescribe to a non-Muslim.
2. The prescription of alcohol-based mixtures is permissible.
3. The prescription of narcotics, marijuana, and the like is allowable as long as legal regulations are adhered to and recognized professional standards are maintained.
4. Treating with music therapy is permissible.
5. All cosmetic surgeries where there's disagreement are permissible.
6. Abortion is permissible before the soul is breathed into the fetus, which according to the majority of scholars, is at 120 days.

Matters Not Universally Prohibited: For what isn't categorically prohibited in every situation, examples include:

1. Tubal ligation is permissible in certain situations, so it's allowable when requested by the patient.
2. Preventive surgeries are permissible to those who request them due to varying perspectives on assessing benefits and harms.
3. In-vitro fertilization using an egg and sperm from individuals who aren't legally married, given the difficulty in ensuring compliance and the inability to verify the legitimacy of their relationship. Even some Muslims don't officially register their marriages, and in-vitro fertilization is occasionally permissible, so there's no inherent sin like, for example, removing a healthy organ without a valid reason.

Prohibitions:

1. Lying to or misleading the patient, such as encouraging them to undergo gender transition without any physiological abnormality or to continue in a forbidden relationship.
2. Altering Allah's creation or amputating a healthy organ without a valid reason, which includes gender transition surgeries for physically healthy individuals.
3. Prescribing pure wine (al-khamr al-ṣirfa), as this isn't medicine in either religious or medical perspectives.
4. Assisting in what's called "euthanasia."
5. Direct involvement in a prohibited action; if alcohol use were forbidden, it wouldn't be permissible for a Muslim to cleanse wounds with it. However, the correct opinion is its permissibility for both Muslims and non-Muslims.

Some of these prohibitions may be allowed due to necessities or public needs, based on a specific edict from a scholarly council. For instance, consider a situation where a Muslim is compelled to prescribe medication for someone who has attempted to hasten their own death, and there is no alternative to this prescription without causing severe harm to the physician. (Currently, this is not the situation in North America; even in Canada, doctors can refuse on religious or conscientious grounds.) The reason public need might permit such actions when they arise is because the inherent sin is in consuming the medication, which is a chosen action by the individual, and the harm doesn't extend beyond that individual. This is akin to Imam Abu Ḥanīfah's (rA) permission for carrying wine, given that the actual sin lies in drinking it, which is a willful act by the choosing consumer. This view is valid – barring the explicit prohibitions concerning carrying it – for those who don't broadly apply 'sadd al-dharā'i', especially when dealing with non-Muslims. If the government enforces such a mandate, and escaping this obligation is not possible, then the notion of intending to aid in sin by the prescribing physician might not be operative in these coercive circumstances. If one argues that it's like selling weapons to militants and bandits, we would respond that the difference lies in the fact that the latter group uses these weapons to harm others.

Note that the purpose here is discussion, not issuing a religious verdict, as previously emphasized that such matters should be addressed through collective ijtihād. And Allah knows best.

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