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Artificial Intelligence and Legal Personhood in Islamic Law:

Liability, Juridical Agency, and the Limits of Constructed Personality

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AI Information Reviewed by Amin Ahmad

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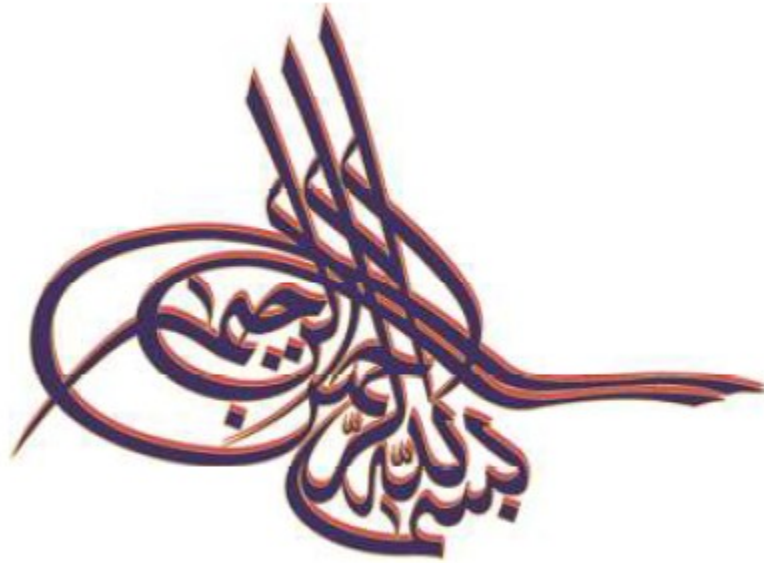


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Abstract

This paper examines the emerging questions of artificial intelligence, legal personhood, and liability through the framework of classical Islamic legal theory. While contemporary discussions surrounding AI often focus on technological ethics or digital spaces, this study shifts the focus toward the jurisprudential implications of increasingly autonomous AI systems and the extent to which they may be analogized to recognized forms of constructed or representative legal personhood in the Islamic legal tradition. The paper investigates a range of classical examples discussed by jurists, including mosques, charitable endowments (*awqāf*), the *bayt al-māl*, the imamate and political authority, public institutions, and certain financial partnerships and contractual arrangements. Through an analysis of these discussions, the study explores how premodern jurists conceptualized legal capacity, ownership, liability, representation, and juridical independence in entities that were not natural persons.

Building upon these precedents, the paper analyzes whether contemporary AI systems and autonomous robots may be understood within similar legal categories, or whether they remain merely instruments whose actions are entirely attributable to human agents. Particular attention is given to the question of liability for harm caused by AI systems, including the extent to which responsibility may fall upon programmers, owners, users, corporations, or the AI system itself. The study further examines the limits of analogy between AI and classical juridical constructs, arguing that although some madhhab precedents recognized a number of functional legal personalities, these entities were generally tied to human interests, public benefit, or collective ownership rather than independent moral agency.

The paper also addresses questions of institutional representation and liability arising from the actions of AI systems in light of classical agency doctrine, examining how the principles governing *wakālah*, *ijārah*, and public deputation bear upon the attribution of responsibility in technologically mediated contexts.

By combining classical jurisprudential analysis with contemporary technological developments, this study seeks to contribute to the growing field of Islamic AI ethics while also revisiting broader questions of legal personality, moral accountability, and the adaptability of madhhab precedent to emerging technologies.

Keywords: Islamic Law; Artificial Intelligence; Legal Personality; Juridical Agency; Liability; Uṣūl al-Fiqh

Introduction

The emergence of artificial intelligence has generated some of the most significant legal, ethical, and philosophical questions of the modern era. Systems capable of learning, generating content, making recommendations, and increasingly operating with limited human supervision now influence fields as diverse as medicine, transportation, finance, education, governance, and warfare. As technological developments continue to blur the distinction between human decision-making and machine-assisted action, legal systems throughout the world are confronted with fundamental questions concerning responsibility, agency, liability, and legal personhood. Who bears responsibility when an autonomous system causes harm? Can artificial intelligence ever become a legal subject rather than merely a legal object? Should increasingly autonomous systems be treated solely as tools, or do they require new juridical categories?

These questions have become even more pressing within the broader context of transhumanism and human enhancement. Contemporary developments in artificial intelligence, neural interfaces, robotics, genetic engineering, and biotechnology increasingly challenge traditional understandings of human nature, cognition, embodiment, and autonomy. Discussions that were once confined to speculative philosophy have become practical concerns as societies confront the possibility of machines performing tasks previously regarded as uniquely human, and as technological enhancement increasingly blurs the boundaries between the human being and the technologies upon which modern life depends.

While much of the contemporary literature approaches these questions through the frameworks of secular legal theory, philosophy of mind, or technological ethics, Islamic legal theory possesses its own sophisticated conceptual vocabulary through which such developments may be analyzed. Classical Muslim jurists devoted extensive attention to questions of legal personality, delegated authority, liability, representation, causation, collective ownership, and institutional legal capacity. Although they did not confront artificial intelligence in its modern form, they developed complex discussions regarding entities that lacked natural personhood yet nonetheless possessed legal effects, including mosques, charitable endowments (*awqāf*), public treasuries (*bayt al-māl*), political offices, collective institutions, and other forms of juridical construction. Likewise, jurists examined questions of liability arising from delegated action, trained animals, physicians, craftsmen, slaves, and other forms of mediated agency that bear important similarities to contemporary discussions surrounding autonomous systems.

At the center of these debates lies the relationship between *dhimma*, *ahliyyah*, and *al-shakṣiyyah al-ma'nawiyyah*. Classical jurists carefully distinguished between moral accountability and legal attribution, between the capacity to bear obligations and the capacity to perform legal acts, and between natural and constructed forms of legal personality. These distinctions are of critical importance when assessing contemporary claims that artificial intelligence may one day warrant recognition as an independent legal person. They also provide an important framework for evaluating liability in situations where harmful outcomes arise through increasingly autonomous technological systems.

Beyond questions of legal personality and liability, artificial intelligence raises broader concerns regarding human relationships, social structures, and moral development. The rapid growth of conversational AI, virtual companions, emotionally responsive chatbots, and humanoid robotics has created new forms of human-machine interaction that increasingly resemble interpersonal relationships. Such developments invite consideration not only of what is legally permissible, but also of the long-term social and ethical consequences of replacing or supplementing human relationships with artificial ones. Here, the classical doctrine of *sadd al-dharā'ī* provides a valuable framework for evaluating

technologies whose harms may emerge indirectly through gradual social and psychological effects rather than through immediate and obvious violations.

This study argues that some madhhab precedents possess a coherent internal methodology capable of addressing these emerging technological realities without requiring the abandonment of its foundational legal principles. The classical legal tradition contains conceptual tools that allow for the analysis of artificial intelligence, legal personality, liability, and technologically mediated relationships while preserving the centrality of the human moral subject. By examining the doctrines of *al-shakhṣiyyah al-ma'nawiyyah*, *dhimmah*, *ahliyyah*, causation, liability, and public benefit, this paper seeks to demonstrate both the adaptability of Islamic legal theory and the continuing relevance of its jurisprudential categories in an age increasingly shaped by artificial intelligence.

The paper proceeds by first situating contemporary debates concerning artificial intelligence and transhumanism within broader ethical and legal discussions. It then examines the concept of *al-shakhṣiyyah al-ma'nawiyyah* and its foundations within classical Islamic jurisprudence, followed by an analysis of *dhimmah* and *ahliyyah* as the basis of legal capacity and personhood. The study subsequently investigates the jurisprudence of liability, causation, and delegated agency, before assessing the extent to which these doctrines may be applied to contemporary AI systems. Together, these discussions aim to provide a principled framework for understanding one of the most consequential technological developments of the modern world.

Al-Shakhsiyyah Al-Ma'nawiyyah in Modern Contexts

The expression *al-shakhṣ al-ma'nawī* ("the juridical/immaterial person") is a relatively recent term in modern legal discourse and entered Arabic legal usage through modern law. It does not appear as a technical label in the classical fiqh literature. The question for Islamic legal theory, however, is not whether the *term* existed, but whether the conceptual function it denotes, i.e., the attribution of rights and obligations to a non-natural entity, was recognized in classical jurisprudence under other conceptual frames.

Contemporary Muslim jurists differed in their treatment of what is now referred to as *al-shakhsiyyah al-ma'nawiyyah*. Some contemporary jurists explicitly employed this or closely related terminology, while others rejected the attribution of legal personality altogether. Among those who did not recognize it as a distinct concept, some described the arrangement as a *dhimmah* without an owner, others avoided assigning it any specific designation, and others framed it in terms of ownership (*milk*). A further group of jurists characterized such arrangements as the possession of usufruct (*milk al-manfa'ah*) by those entitled to benefit, while maintaining that the underlying asset itself was not owned by any particular person. Still others refrained from specifying the owner of the asset altogether, while nonetheless acknowledging that the property had exited the ownership of its original owner without entering into the ownership of any other individual. Despite the diversity of terminology and conceptual framing, these discussions revolve around a single underlying question: how to account, within the framework of madhhab precedent, for entities or arrangements that bear rights, obligations, or dedicated assets independent of any specific natural person. In substance, all of these approaches engage, explicitly or implicitly, with the concept later systematized as *al-shakhsiyyah al-ma'nawiyyah*.

Because classical jurists did not formulate a discrete technical definition under this terminology, contemporary Islamic legal scholarship has largely relied on modern legal theory to define *al-shakhsiyyah al-ma'nawiyyah*. A contemporary definition that can be given is an entity that has a representative, arises from the association of persons or wealth for a specific lawful purpose, and possesses an independent legal capacity (*dhimmah*), rendering it capable of bearing obligations and enforcing rights. Within this modern conceptualization, "juridical personhood" emerges in at least two common forms:

1. A grouping of persons: when individuals form an organization or company for a defined purpose, a new entity arises from them that becomes separate and independent from the continuing existence of each member. The entity persists despite membership changes, and legal acts are attributed to the entity rather than to the personal estates (*dhimam*) of its members.
2. A grouping of wealth: when wealth is gathered and permanently detached from the personal *dhimmah* of those who contributed it, set aside for an enduring purpose such that it is no longer treated as remaining within their financial liability, then the collected wealth is treated as belonging to a new "owner" in law. This produces an entity that is independent not only from the founders but also from the changing identities of beneficiaries.

In both cases, the resulting entity is not a natural person but a *shakhṣ ma'nawī*: it is not embodied and not directly perceivable, yet it is treated as having a distinct juridical identity. It can own property, enter into contracts, incur debts, and be owed debts. In this operational sense, it resembles the natural person, particularly insofar as it possesses a distinct financial locus: a *dhimmah* specific to it, not mixed with the *dhimam* of the natural persons who formed it or who benefit from it. From this definition, it becomes clear that *al-shakhsiyyah al-ma'nawiyyah* is constituted by a set of foundational components. Some of

these components are essential conditions for the emergence of juridical personhood, while others function as organizing features rather than strict prerequisites.

First, there must exist a substrate of real persons or wealth. This constitutes the material basis of juridical personality and the very reason for its existence. A juridical person cannot arise *ex nihilo*; it must be grounded in tangible persons or assets, even though the resulting legal personality is distinct from and not reducible to those persons or assets. Second, the juridical person must be oriented toward a defined objective that delineates the scope of its activity. This objective must be legally recognized and permissible, for if the purpose is impermissible, the establishment of the juridical personality itself would be invalid. Moreover, the objective must be possible to realize; there is no legal rationale for establishing a juridical entity aimed at achieving that which is inherently unattainable. Third, the purpose of the juridical personality is generally to serve the benefit of more than one individual, whether a defined group or the public at large. That said, shared benefit is not an absolute condition. Juridical personality may still arise in cases where the immediate beneficiary is a single individual, such as certain endowments (*waqf*) in which the donor is one person, or in the case of a single-person company. Nevertheless, as a general rule, most juridical personalities emerge from collective rather than individual contexts. Fourth, the objective of the juridical personality must possess a degree of continuity and durability. A short-term or one-time objective that is fulfilled through a single act does not ordinarily justify the establishment of a separate juridical personality.¹ Juridical personhood presupposes an ongoing legal existence oriented toward sustained activity. Finally, among the essential components of juridical personality is the existence of a human representative who acts on its behalf. Because a juridical person lacks physical presence and volitional capacity, it necessarily operates through a representative who administers its affairs and gives effect to its legal rights and obligations. The role and scope of this representation will be addressed in the following discussion.

When examined in light of classical Islamic jurisprudence, many of the paradigmatic examples of *al-shakhṣiyyah al-i'tibāriyyah* do not depend on governmental recognition for their existence. The state itself, once established and accepted by the polity, functions as a juridical person without requiring an external act of recognition. Similarly, endowments (*awqāf*) acquire their juridical status upon valid establishment, not upon registration or judicial decree, according to the majority of jurists. The primary exception historically cited is the position of Abū Ḥanīfah, who conditioned the binding effect of a *waqf* on judicial adjudication. This position is explained in detail in *Fatḥ al-Qadīr*, where it is stated that “Abū Ḥanīfah held that the ownership of the founder does not transfer from the *waqf* unless a judge rules to that effect.”² Accordingly, Abū Ḥanīfah understood the *waqf*, prior to judicial enforcement, as a form of charitable allocation of usufruct rather than a binding transfer of ownership. Judicial intervention was therefore required for the *waqf* to become legally operative and irreversible. By contrast, Abū Yūsuf held that ownership transfers by the mere pronouncement of *waqf*, while Muḥammad ibn al-Ḥasan required the additional step of appointing a trustee and delivering the property to him. Despite these internal Ḥanafī nuances, the dominant position outside the school, and even among later Ḥanafīs, was that judicial recognition is not constitutive of the *waqf*’s existence.

¹ Amin Ahmad said: A contemporary example of a one-time, though not short-term, objective fulfilled through a juridical personality is an SPV established to invest in a company.

² قَالَ أَبُو حَنِيفَةَ: لَا يَزُولُ مِلْكُ الْوَاقِفِ عَنِ الْوَقْفِ إِلَّا أَنْ يَحْكُمَ بِهِ حَاكِمٌ...

Kamāl al-Dīn Ibn al-Humām, *Sharḥ Fatḥ al-Qadīr ‘alā al-Hidāyah* (Cairo: Sharikat Maktabat wa-Maṭba‘at Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādih, 1st ed., 1389/1970), 6:203.

This majority position is explicit in Mālikī, Shāfi‘ī, and ḥanbalī sources. In *al-Sharḥ al-Kabīr* of al-Dardīr, it is stated that waqf is established through evidence, public notoriety, or inscription, without reference to judicial decree: “A waqf is established through legal testimony, widespread public recognition among the people, and written documentation.”³ Likewise, in *al-Ḥawā al-Kabīr*, al-Māwardī states unequivocally: “Once a person establishes a waqf, ownership immediately leaves him by virtue of the waqf itself, and the endowment becomes binding...Its validity does not depend upon physical transfer of possession nor upon judicial decree. This is the position agreed upon by the jurists.”⁴ Ibn Qudāmah further reinforces this consensus in *al-Mughnī*, stating that the scholars, from the Companions onward, affirmed the validity and binding nature of waqf without judicial intervention.⁵

Taken together, these discussions demonstrate that juridical personality in some madhhab precedents is not dependent on governmental recognition for its ontological existence. Rather, recognition by the ruler or judiciary functions, in the majority view, as an organizational and evidentiary mechanism, not as a constitutive act that brings the juridical entity into being. The existence of *al-shakḥiyyah al-ma‘nawiyyah* flows from the fulfillment of its substantive legal conditions, such as lawful purpose, valid establishment, and functional capacity, rather than from state registration. Accordingly, within classical Islamic jurisprudence, governmental recognition is best understood as regulatory rather than creative. It orders and safeguards legal relations but does not generate juridical personality ex nihilo. This conclusion has direct implications for contemporary debates on non-human legal subjects, as it suggests that legal personality may arise through functional and normative criteria even in the absence of formal state recognition.

Al-Ahliyyah in Uṣūl Terminology and Its Restriction to the Human Subject

In the context of madhhab precedent, including concepts such as *dhimmah* and *ahliyyah*, it is crucial to examine the issues of legal responsibility and personhood to determine whether robots, AI systems, and programs can be regarded as entities liable for their actions and errors.

In classical Islamic legal theory (*uṣūl al-fiqh*), *ahliyyah*, the legal capacity to possess rights and bear obligations, is understood as a characteristic specific to human beings. Jurists traditionally link this capacity to the human person, whose moral agency, intellect, and accountability (*taklīf*) make them suitable subjects of legal responsibility. Consequently, non-human entities do not possess *ahliyyah* in the classical sense. Classical works of *uṣūl al-fiqh* explain that the highest level of legal capacity (*al-ahliyyah*) is only realized in a rational

³ وَيُثْبِتُ الْوَقْفُ بِالْبَيِّنَةِ وَبِالْإِشَاعَةِ بَيْنَ النَّاسِ وَبِالْكِتَابَةِ...

Muḥammad b. Aḥmad al-Dasūqī, Ḥāshiyat al-Dasūqī ‘alā al-Sharḥ al-Kabīr, 4 vols. (Beirut: Dār al-Fikr, n.d.), 4:85.

⁴ فَإِذَا وَقَفَ شَيْئًا زَالَ مَلِكُهُ عَنْهُ بِنَفْسِ الْوَقْفِ وَلَزِمَ الْوَقْفُ، فَلَا يَجُوزُ لَهُ الرُّجُوعُ فِيهِ بَعْدَ ذَلِكَ وَلَا التَّصَرُّفُ فِيهِ بَيْعٌ وَلَا هِبَةٌ، وَلَا يَجُوزُ لِأَحَدٍ مِنْ وَرَثَتِهِ التَّصَرُّفُ فِيهِ، وَلَيْسَ مِنْ شَرْطِهِ لُزُومُ الْقَبْضِ وَلَا حُكْمُ الْحَاكِمِ وَهُوَ قَوْلُ الْفُقَهَاءِ أَجْمَعَ،

Abū al-Ḥasan al-Māwardī, *al-Ḥawā al-Kabīr fī Fiqh Madhhab al-Imām al-Shāfi‘ī wa-Huwa Sharḥ Mukhtaṣar al-Muzanī*, ed. ‘Alī Muḥammad Mu‘awwaḍ and ‘Ādil Aḥmad ‘Abd al-Mawjūd (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1st ed., 1419/1999), 7:511–512.

⁵ Muwaffaq al-Dīn Ibn Qudāmah al-Maqdisī, *al-Mughnī*, ed. ‘Abd Allāh b. ‘Abd al-Muḥsin al-Turkī and ‘Abd al-Fattāḥ Muḥammad al-Ḥulw (Riyadh: Dār ‘Ālam al-Kutub, 3rd ed., 1417/1997), 8:185–186.

human being. Jurists tied legal responsibility and the capacity to bear obligations to the presence of intellect (*‘aql*) together with the possession of a legal personality (*dhimmah*). These discussions assumed that rational agency was a uniquely human characteristic. Uṣūlīs define *al-ahliyyah* as the subject’s suitability for an act or claim to “issue from” it and be sought from it; and, in the Shar‘ī usage, as the subject’s suitability for rights and obligations to attach to it. This is stated succinctly in the Ḥanafī uṣūl tradition: “The legal capacity of the obligated person (al-mukallaf) to issue valid legal acts and to have them recognized, in the sense that his statements are considered legally effective and suitable for establishing rights for him and obligations upon him.”⁶ A closely aligned formulation is: “Ahliyyah al-adā’ (legal capacity for execution) is the fitness of a person for his statements and actions to be considered in the Sharī‘ah in such a way that legal effects are established upon them.”⁷ Notably, both definitions are framed expressly as the human being’s capacity, already indicating the anthropocentric premise of the doctrine.

In the modern technological era, however, developments in artificial intelligence challenge some of the assumptions underlying these classical discussions. Contemporary AI systems are capable of performing complex cognitive tasks, generating decisions, and executing actions on behalf of human users. In some contexts, these systems can imitate human behavior so convincingly that computer programs are designed specifically to determine whether the interacting agent is a human or a machine, a difficulty that reflects the increasing sophistication of AI systems. Such developments raise questions about whether rational-like decision-making alone could justify attributing a form of legal capacity to artificial entities.

Interestingly, classical jurists had already anticipated the conceptual distinction between intellect and legal capacity. They maintained that the mere presence of intellect, even if hypothetically found in a non-human being, would not itself establish legal responsibility. This idea is explicitly articulated by al-Taftāzānī, for example, in his discussion of *dhimmah*. He explains that legal obligation is grounded not merely in rationality but in the possession of the specific juridical attribute known as *dhimmah*, which is unique to human beings. As he writes in *Sharḥ al-Talwīḥ ‘alā al-Tawḍīḥ*: “And obligation is founded upon the attribute known as the *dhimmah*, such that if intellect were hypothetically established without that attribute, as if intellect were placed in a non-human animal, then

⁶ أَهْلِيَّةُ الْإِنْسَانِ لِلشَّيْءِ صِلَاحِيَّتُهُ لِمُصَدُّورِ ذَلِكَ الشَّيْءِ وَطَلَبُهُ مِنْهُ وَهِيَ فِي لِسَانِ الشَّرْعِ عِبَارَةٌ عَنْ صِلَاحِيَّتِهِ لَوُجُوبِ الْحَقُوقِ الْمَشْرُوعَةِ لَهُ وَعَلَيْهِ

‘Alā’ al-Dīn ‘Abd al-‘Azīz b. Aḥmad al-Bukhārī, *Kashf al-Asrār ‘an Uṣūl Fakhr al-Islām al-Bazdawī*, with Uṣūl al-Bazdawī appended in the margins (Istanbul: Sharikat al-ṣiḥāfah al-Uthmāniyyah, Maṭba‘at Sandah, 1st ed., 1308 AH/1890 CE), 4:237.

⁷ أَهْلِيَّةُ الْإِنْسَانِ لِلشَّيْءِ صِلَاحِيَّتُهُ لِمُصَدُّورِهِ وَطَلَبُهُ مِنْهُ وَقَبُولُهُ إِيَّاهُ

Muḥammad Amīn, known as Amīr Bādshāh al-Ḥusaynī al-Ḥanafī al-Khurāsānī al-Bukhārī al-Makkī, *Taysīr al-Taḥrīr ‘alā Kitāb al-Taḥrīr fī Uṣūl al-Fiqh al-Jāmi‘ bayna Iṣṭilāḥay al-Ḥanafīyyah wa al-Shāfi‘īyyah li-Kamāl al-Dīn Ibn Humām al-Dīn al-Iskandarī* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1351 AH/1932 CE); repr., Beirut: Dār al-Kutub al-‘Ilmiyyah, 1403 AH/1983 CE; and Dār al-Fikr, 1417 AH/1996 CE, 2:249.

obligation would not be established for it.”⁸ Al-Taftāzānī thus argues that legal obligation (*wujūb*) is founded upon the juridical attribute called *dhimmah*. Even if intellect were hypothetically implanted in a non-human creature, such as an animal, legal obligation would still not be established for it or upon it. Therefore, intellect is not itself the foundation of obligation; rather, obligation is founded upon the juridical attribute called *dhimmah*. Similarly, Ibn Amīr al-Ḥājj stated: “And obligation is founded upon the attribute known as the *dhimmah*, such that if intellect were hypothetically established without this attribute, such as if it were placed in a non-human animal, then obligation would neither be established for it nor upon it.”⁹ The Mālikīs, such as al-Qarāfī, provide a particularly explicit statement that *dhimmah* is not a natural property discovered by reason but a Shar‘ī meaning (*ma‘nā shar‘ī muqaddar*) that is assumed in the *mukallaf* under specific conditions, making the person apt for *ilzām*: “The *dhimmah* is a legally postulated meaning/attribute presumed to exist within the legally responsible person (*mukallaf*), which is capable of undertaking commitments and obligations.”¹⁰ Thus, even if a machine displays purposive behavior, *dhimmah* is not established merely by functional resemblance. It is a juridical construction tied to the *mukallaf*, and thus to the human subject as the locus of *taklīf*. The statements of scholars that the capacity for rulings to attach in the *dhimmah* is derived from “humanity,” understood as the preparedness to receive intellect (even if not yet actualized). Al-Ghazālī states it in *al-Mustaṣfā*:

As for the capacity for legal rulings to be established in the *dhimmah*, it is derived from humanity, through which one is prepared to receive the faculty of intellect by which legal responsibility (*taklīf*) is understood at a later stage. Thus, since animals possess no capacity to understand legal address, neither

8 وَالْوُجُوبُ مَبْنِيٌّ عَلَى الْوَصْفِ الْمُسَمَّى بِالذِّمَّةِ حَتَّى لَوْ فُرِضَ ثُبُوتُ الْعَقْلِ بِدُونِ ذَلِكَ الْوَصْفِ كَمَا لَوْ رُكِّبَ الْعَقْلُ فِي حَيَوَانٍ غَيْرِ الْإِنْسَانِيِّ لَمْ يَثْبُتِ الْوُجُوبُ لَهُ وَعَلَيْهِ

Sa‘d al-Dīn Mas‘ūd b. ‘Umar al-Taftāzānī, *al-Talwīḥ ‘alā al-Tawḍīḥ li-Matn al-Tanqīḥ fī Uṣūl al-Fiqh*, together with *al-Tawḍīḥ fī Ḥall Ghawāmiḍ al-Tanqīḥ* by ṣadr al-Sharī‘ah al-Maḥbūbī (d. 747 AH) (Cairo: Maṭba‘at Muḥammad ‘Alī ṣubayḥ wa-Awlādiḥ bi-al-Azhar, 1377 AH/1957 CE), 2:322.

9 وَالْوُجُوبُ مَبْنِيٌّ عَلَى الْوَصْفِ الْمُسَمَّى بِالذِّمَّةِ حَتَّى لَوْ فُرِضَ ثُبُوتُ الْعَقْلِ بِدُونِ هَذَا الْوَصْفِ بَأَن رُكِّبَ فِي حَيَوَانٍ غَيْرِ إِنْسَانِيٍّ لَمْ يَثْبُتِ الْوُجُوبُ لَهُ وَعَلَيْهِ

Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, his commentary on *Taḥrīr al-Kamāl* ibn al-Humām in *uṣūl al-fiqh*, which combines the terminologies of the Ḥanafīs and Shāfi‘īs; with the marginal commentary of Jamāl al-Dīn al-Isnawī (d. 772 AH), *Nihāyat al-Sūl*, on *Minhāj al-Wuṣūl ilā ‘Ilm al-Uṣūl* by al-Qāḍī al-Bayḍāwī (d. 685 AH) (Būlāq, Egypt: al-Maṭba‘ah al-Kubrā al-Amīriyyah, 1st ed., 1316–1318 AH), 2:164.

10 الذِّمَّةُ أَتَمَّا مَعْنَى شَرْعِيٍّ مُقَدَّرٍ فِي الْمَكْلَفِ قَابِلٍ لِلِإِلْتِزَامِ وَاللُّزُومِ ...

Abū al-‘Abbās Shihāb al-Dīn Aḥmad b. Idrīs b. ‘Abd al-Raḥmān al-Mālikī, known as al-Qarāfī, *al-Furūq* = *Anwār al-Burūq fī Anwār al-Furūq* (Beirut: ‘Ālam al-Kutub, n.d.), 3:230–231.

actually nor potentially, they are not fit for rulings to be ascribed to their *dhimmah*.¹¹

Similar formulations are recorded by other jurists.¹² Such statements show that the classical tradition ties the very possibility of attribution in *dhimmah* to humanity as a legal-theological category (preparedness for rational *taklīf*), even when intellect is only attainable in the future (as in the child). That makes AI's "actual intelligence" largely beside the point in the classical framework, because the category-marker is not performance but *insāniyyah*. This is relevant in contemporary discussions about artificial intelligence. Even if AI systems were to exhibit levels of intelligence comparable to, or even exceeding, human cognitive performance, classical Islamic legal theory would not necessarily recognize them as possessing *ahliyyah*. The reason is that legal capacity is not grounded solely in cognitive ability but in the possession of *dhimmah*, a juridical attribute historically restricted to human beings. Accordingly, the emergence of highly advanced artificial intelligence does not automatically lead to the recognition of legal capacity within the framework of classical Islamic jurisprudence. Rather, it highlights a deeper theoretical question: whether *dhimmah*, and the *ahliyyah* that flows from it, can ever be extended beyond the human subject, or whether it remains an exclusively human legal construct.

Dhimmah (Legal Personhood)

The concept of *al-dhimmah* occupies a central position in Islamic legal theory as the locus of legal capacity, obligation, and liability. Classical jurists across the schools defined *al-dhimmah* as a normative, legally constructed attribute, rather than a tangible or metaphysical substance. Despite differences in formulation and emphasis, the definitions converge on the understanding that *al-dhimmah* functions as the legal site in which rights and obligations are ascribed.

In Radd al-Muḥtār, Ibn ʿĀbidīn defines *al-dhimmah* as follows:

Dhimmah is a legally constructed attribute by which a person possesses the capacity for property to be owed by him and owed to him. Fakhr al-Islām interpreted it as the self or person whose neck (i.e., personhood) is bound by

¹¹ وَأَمَّا أَهْلِيَّةُ ثُبُوتِ الْأَحْكَامِ فِي الذِّمَّةِ فَمُسْتَفَادٌ مِنَ الْإِنْسَانِيَّةِ الَّتِي هِيَ يُسْتَعَدُّ لِقَبُولِ قُوَّةِ الْعَقْلِ ...

Abū Ḥāmid Muḥammad b. Muḥammad al-Ghazālī al-Ṭūsī, al-Mustaṣfā, ed. Muḥammad ʿAbd al-Salām ʿAbd al-Shāfi (Beirut: Dār al-Kutub al-ʿIlmiyyah, n.d.), 67.

¹² See for example: Tāj al-Dīn al-Subkī's *al-Ibhāj*:

فإن أهلية ثبوت الأحكام في الذمة تستفاد من الإنسانية التي لها يستعد لقبول قوة العقل ...

Taqī al-Dīn ʿAlī b. ʿAbd al-Kāfi al-Subkī and his son Tāj al-Dīn ʿAbd al-Wahhāb al-Subkī, *al-Ibhāj fī Sharḥ al-Minhāj* (on Minhāj al-Wuṣūl ilā ʿIlm al-Uṣūl by al-Qāḍī al-Bayḍāwī, d. 685 AH), with notes and verification by a group of scholars under the supervision of the publisher (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1st ed., 1404 AH/1984 CE), 1:158; And Ibn Qudāmah similarly in *Rawḍat al-Nāẓir*:

وإنما أهلية ثبوت الأحكام في الذمة بالإنسانية التي بها يستعد لقبول قوة العقل ...

Muwaffaq al-Dīn ʿAbd Allāh b. Aḥmad b. Qudāmah al-Jamāʿilī, *Rawḍat al-Nāẓir wa Junnat al-Manāẓir fī Uṣūl al-Fiqh ʿalā Madhhab al-Imām Aḥmad b. Ḥanbal*, introd., annotated, and verified by Dr. Shaʿbān Muḥammad Ismāʿīl (Beirut: Muʾassasat al-Rayyān li-al-Ṭibāʿah wa al-Nashr wa al-Tawzīʿ, 2nd ed., 1423 AH/2002 CE), 1:155.

a covenant, and what is meant by it is the covenant itself. Thus, their statement 'in his dhimmah' means 'in his person,' in consideration of its covenantal bond, this being an instance of referring to the state while intending the locus.¹³

This definition emphasizes *al-dhimmah* as the juridical capacity for financial obligation, framing it as a covenantal relationship that renders a subject fit to bear rights and liabilities. Among the Mālikīs, *al-dhimmah* is classically defined by al-Qarāfī, with the widely-cited definition of *dhimmah* as a *Shar'ī* estimated meaning in the *mukallaf* that is receptive to obligation and commitment, and he further links its estimation to conditions (e.g., *bulūgh/rushd* in his context): "*Dhimmah* is a legally constructed meaning assigned to the legally responsible person, rendering him capable of obligation and liability."¹⁴ The Mālikīs further explicate this definition by stating: "A quality established within the person by which one becomes fit to accept obligations, such as saying: 'You owe me a dīnār,' or 'I am guarantor for such-and-such.'"¹⁵

In his *Ḥāshiyah*, al-Dusūqī provides a more explicit articulation of the concept, stating: "A legally constructed meaning, that is, a notional attribute by which the Law judges and assigns existence within the locus, namely, the person, without it having independent existence."¹⁶ Al-Dusūqī then explains that attribution of obligation to *al-dhimmah* is figurative, since what is meant is that the *mukallaf* becomes capable, by virtue of this construct, of being held liable for compensations, rents, sale prices, and similar obligations. He further notes, quoting al-Qarāfī, that it is valid to attach legal rulings to this construct despite its lack of physical existence, because its attribution is tied to real attributes such as intellect, maturity, and legal competence. Hence, one who is legally incompetent (such as a prodigal minor) lacks a fully operative *dhimmah*, and certain transactions (e.g., deferred sales, salam, or assignment of debt) cannot validly occur in relation to him.¹⁷

13 الذِّمَّةُ وَصَفٌ شَرْعِيٌّ بِهٖ الْأَهْلِيَّةُ لِرُجُوبِ مَالِهِ وَعَلَيْهِ، وَقَسَرَهَا فَخَرُ الْإِسْلَامِ بِالنَّفْسِ وَالرَّقَبَةِ الَّتِي لَهَا عَهْدٌ، وَالْمُرَادُ بِهَا الْعَهْدُ، فَقَوْلُهُمْ فِي ذِمَّتِهِ أَيُّ فِي نَفْسِهِ بِاعْتِبَارِ عَهْدِهَا مِنْ بَابِ إِطْلَاقِ الْحَالِ وَإِرَادَةِ الْمُحَلِّ

Muḥammad Amīn, known as Ibn 'Ābidīn, *Ḥāshiyat Radd al-Muḥtār 'alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār* (Cairo: Sharikat Maktabat wa-Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādih, 2nd ed., 1386 AH/1966 CE), 5:281.

14 الذِّمَّةُ مَعْنَى شَرْعِيٍّ مُقَدَّرٍ فِي الْمَكْلَفِ قَابِلٌ لِلِالْتِزَامِ وَاللُّزُومِ

Abū al-'Abbās Shihāb al-Dīn Aḥmad b. Idrīs b. 'Abd al-Raḥmān al-Mālikī, known as al-Qarāfī, *al-Furūq = Anwār al-Burūq fī Anwā' al-Furūq* (Beirut: 'Ālam al-Kutub, n.d.), 3:230–231. And this is quoted in the Maliki works, see for example: Muḥammad b. Aḥmad b. 'Arafah al-Dasūqī al-Mālikī, *Ḥāshiyat al-Dasūqī 'alā al-Sharḥ al-Kabīr* (Beirut: Dār al-Fikr, n.d.), 4 vols. The work appears in the margins of al-Sharḥ al-Kabīr of Shaykh Aḥmad al-Dardīr on Mukhtaṣar Khalīl, 3:210–211.

15 وَصَفٌ قَامَ بِالنَّفْسِ بِهٖ صِحَّةُ قَبُولِ الْإِلْتِزَامِ كَلَّاكَ عِنْدِي دِينَارٌ وَأَنَا ضَامِنٌ لِكَذَا

Ibid, 3:210

16 مَعْنَى شَرْعِيٍّ أَيُّ وَصَفٌ اعْتِبَارِيٌّ يَنْكُمُ بِهٖ الشَّرْعُ وَيُقَدَّرُ وَجُودُهُ فِي الْمُحَلِّ وَهُوَ الشَّخْصُ مِنْ غَيْرِ أَنْ يَكُونَ لَهُ وَجُودٌ

Ibid.

¹⁷ Ibid, 3:211

From the Shāfi'ī tradition, al-Bujayramī defines *al-dhimma* as: "Linguistically, *dhimma* means covenant and security. Legally, it is a meaning subsisting in the self that is fit for obligation from the side of the Lawgiver and commitment from the side of the legally responsible person."¹⁸ Some Shāfi'ī articulations define it as a quality "standing in the human being" that is fit for *ilzām/iltizām* and that is removed by death.¹⁹ Finally, in the Ḥanbalī tradition, *Kashshāf al-Qinā'* defines *al-dhimma* as: "An attribute by which the legally responsible person becomes qualified to bear obligation and to undertake commitment."²⁰ In Ḥanbalī discussions, one finds careful debate about whether *dhimma* is "a *ṣifah* that perishes by death" or whether it is best analyzed as "*iltizām*" that can have remaining legal effects; Ibn Muflīḥ records this dispute.²¹

Thus, across the legal schools, *al-dhimma* is consistently defined as a legally constructed attribute that grounds the possibility of obligation and liability. While many definitions explicitly reference the *mukallaf*, this reflects the paradigmatic case rather than an absolute ontological limitation. Juristic practice, as will be seen, demonstrates that the functional consequences of *al-dhimma*, ownership, debt, and liability, were extended by juridical construction to non-human entities such as waqfs, mosques, and public treasuries. Accordingly, classical jurisprudence implicitly distinguished between moral *dhimma*, which presupposes *taklīf*, and financial or civil *dhimma*, which may be assigned independently of moral agency. It is this latter conception that undergirds *al-shakhṣiyyah al-ma'nawiyyah*. The presence of *al-dhimma*, even as a notional, non-tangible construct, is thus not ancillary but constitutive of juridical personhood. Where no independent *dhimma* is recognized, juridical personality cannot meaningfully exist.

Although *al-dhimma* is classically defined by many jurists as a capacity specific to the human being, often framed in relation to the *mukallaf*, juristic practice reveals that a range of legal rulings operate on the assumption that entities other than natural persons may function as loci of obligation and entitlement. This becomes evident when examining rulings that validate ownership, receipt of property, and financial allocation in favor of institutions such as mosques, public causes, and endowments. Such rulings are difficult to explain coherently without recognizing that these entities are treated, at least functionally,

¹⁸ Sulaymān b. Muḥammad b. 'Umar al-Bujayramī al-Miṣrī al-Shāfi'ī, *Tuḥfat al-Ḥabīb 'alā Sharḥ al-Khaṭīb = Ḥāshiyat al-Bujayramī 'alā al-Khaṭīb* (Beirut: Dār al-Fikr, n.d. [1415 AH/1995 CE]), 3:5.

الدِّمَّةُ مَعْنَاهَا لَعْنَةُ الْعَهْدِ وَالْأَمَانُ وَشَرْعًا مَعْنَى قَائِمٍ بِالدَّائِثِ يَصْلُحُ لِلْإِزَامِ مِنْ جِهَةِ الشَّارِعِ وَالْإِزَامِ مِنْ جِهَةِ الْمُكَلَّفِ

¹⁹ See for example: Aḥmad Salāmah al-Qalyūbī and Aḥmad al-Burullusī 'Umayrah, *Ḥāshiyatā Qalyūbī wa 'Umayrah* (Beirut: Dār al-Fikr, n.d. [1415 AH/1995 CE]), 4 vols, 2:356.

وَالدِّمَّةُ وَصْفٌ قَائِمٌ بِالْإِنْسَانِ صَالِحٌ لِلْإِزَامِ وَالْإِزَامِ وَهُوَ يَزُولُ بِالْمَوْتِ

²⁰ وَصْفٌ يَصِيرُ بِهِ الْمُكَلَّفُ أَهْلًا لِلْإِزَامِ وَالْإِزَامِ

Manṣūr b. Yūnus b. Idrīs al-Buhūtī, *Kashshāf al-Qinā' 'an Matn al-Iqnā'*, rev. and annotated by Hilāl Muṣayliḥ Muṣṭafā Hilāl (Riyadh: Maktabat al-Naṣr al-Ḥadīthah, owned by 'Abd Allāh and Muḥammad al-ṣālīḥ al-Rāshid, n.d. [dated by al-Turkī to 1388 AH/1968 CE in al-Madḥhab al-Ḥanbalī, 2:510]), 3:289.

²¹ Shams al-Dīn Muḥammad b. Muflīḥ al-Maqdisī, al-Furū', together with Taṣḥīḥ al-Furū' by 'Alā' al-Dīn 'Alī b. Sulaymān al-Mardāwī, followed by Ḥāshiyat Ibn Qundus by Taqī al-Dīn Abū Bakr b. Ibrāhīm b. Yūsuf al-Ba'ī (not included in this electronic edition), ed. 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī (Beirut: Mu'assasat al-Risālah; Riyadh: Dār al-Mu'ayyad, 1st ed., 1424 AH/2003 CE), 10:453–454.

as possessing a *dhimmah* in the operative legal sense, namely, as subjects capable of being owed and owing.

Thus, it becomes clear that classical jurists articulated and applied rulings in which causes, institutions, and legal constructs were effectively assigned a *constructed* (*muqaddarah*) *dhimmah*, a notional legal capacity that allows them to be owed and to owe, even though they are not natural persons. While jurists often framed *al-dhimmah* theoretically with reference to the human *mukallaf*, their positive rulings demonstrate that the operative function of *dhimmah*, as the locus of financial obligation and entitlement, was extended by juristic construction (*i'tibār*) to non-human causes such as mosques, endowments, and public entities. This functional attribution of *dhimmah* enabled such causes to receive bequests, incur debts, and have obligations attached to them independently of the individuals who administered them, thereby furnishing the doctrinal foundation for *al-shakhṣiyyah al-ma'nawiyyah* within classical madhhab precedents.

At the same time, it is crucial to note that the *dhimmah* attributed to such causes and juridical entities is not coextensive with the *dhimmah* of a natural person. The *dhimmah* of a human being is fuller and more expansive, encompassing not only financial and civil obligations but also moral and religious responsibility, such as liability for wrongful acts, accountability for crimes, and receptivity to acts of worship and ritual obligation. By contrast, the *dhimmah* attributed to non-human causes and institutions is restricted in scope, limited to those legal effects necessary to ground ownership, obligation, and liability in financial and civil matters.

In this sense, *al-dhimmah* is not a binary concept that is either fully present or entirely absent. Rather, it admits of degrees and levels, corresponding to the scope of legal capacity assigned by the law. This gradation closely parallels the classical juristic treatment of legal capacity (*ahliyyah*), which itself exists in varying degrees among human beings, such as the distinction between *ahliyyat al-wujūb* and *ahliyyat al-adā'*, and between complete and deficient capacity. Just as not every human possesses full capacity for all legal acts at all times, so too juridical entities may possess a partial or delimited *dhimmah* tailored to their function and purpose.

Accordingly, when classical jurists treated mosques, endowments, and public causes as capable of owing and being owed, they did not thereby assimilate such entities to natural persons in all respects. Rather, they assigned to them a functional, circumscribed *dhimmah* sufficient to support their legal role, while withholding those dimensions of *dhimmah* that presuppose intellect, intention, and moral accountability. Recognizing this stratified conception of *dhimmah* is essential for understanding how madhhab precedents accommodate juridical personality without collapsing the distinction between legal attribution and moral agency.

Thus, these definitions underscore that *dhimmah* is not a physical or metaphysical substance, but a normative legal capacity (*waṣf shar'ī*) assigned by the law. It is through this construct that ownership, liability, contractual obligation, and financial responsibility become legally intelligible. Some jurists further stipulated that *taklīf*, legal and moral responsibility, must be present for a *dhimmah* to be affirmed. On this view, only a subject capable of receiving the divine address (*khitāb al-taklīf*), such as a sane and mature human being, can truly possess a *dhimmah*. This position is reflected in formulations that define *dhimmah* specifically with reference to the *mukallaf*, and it underlies the hesitation of some jurists, particularly within certain strands of the Ḥanafī and Ḥanbalī schools, to ascribe independent *dhimmah* to institutions such as *waqfs* or mosques. However, a broader functional understanding of *dhimmah* emerges from juristic practice itself. Even among scholars who theoretically linked *dhimmah* to *taklīf*, legal consequences were routinely assigned to non-human entities through juridical construction. Endowments, public treasuries, and collective beneficiaries were treated as loci of ownership and liability, even though they were not subjects of moral obligation. This indicates that the capacity for *taklīf*

is not a necessary condition for the attribution of legal capacity in financial and civil matters, even if it remains essential for moral accountability.

Accordingly, Islamic jurisprudence came to operate with an implicit distinction between moral *dhimmah*, which presupposes taklīf and grounds sin, reward, and punishment, and financial or civil *dhimmah*, which grounds ownership, obligation, and liability. It is this latter sense of *dhimmah* that underpins *al-shakhṣiyyah al-ma'nawīyyah*. Juridical personality does not require intellect, volition, or moral responsibility; it requires only that the law designate a subject as capable of *ilzām* and *iltizām*. Where such designation exists, a juridical person exists in law, even in the absence of moral agency. This distinction is critical for contemporary discussions of non-human legal subjects. It demonstrates that, within Islamic legal theory, the attribution of legal capacity does not entail the attribution of moral responsibility. Rather, *dhimmah* functions as a flexible juridical tool, capable of extension by legal construction wherever the objectives of the *Sharī'ah* so require.

The Ḥanafī Division and Its Foundation: Ahliyyat al-wujūb and Ahliyyat al-adā'

Among the jurists of legal theory, the Ḥanafīs spoke extensively about *al-ahliyyah*, often giving it a discrete "chapter" with sub-classifications and extended discussion. This is evident in major Ḥanafī *uṣūl* works, where *ahliyyah* appears not as a passing remark under *taklīf*, but as a structured theory of legal receptivity and legal effectiveness. Al-Sarakhsī, for example, opens an explicit chapter devoted to the topic: "Chapter: The Capacity of the Human Being for Rights to Be Established for Him and Upon Him, and Regarding the Trust (*amānah*) Which Man Bore. He said, may Allah be pleased with him: This capacity is of two types: the capacity for obligation (*ahliyyat al-wujūb*) and the capacity for performance/execution (*ahliyyat al-adā'*)."²² Likewise, al-Bukhārī ('Alā' al-Dīn) begins *Kashf al-Asrār* with an expressly labeled chapter: "Chapter on Clarifying Legal Capacity (*Ahliyyah*) A person's capacity for a thing is his suitability for that thing to proceed from him and for it to be demanded of him. In the language of the *Sharī'ah*, it refers to his suitability for legally recognized rights to be established for him and upon him."²³ And Ibn Amīr al-Ḥājj underscores the same point explicitly, remarking that this "chapter" is a Ḥanafī specialty in terms of systematic treatment: "[A Section Which the Ḥanafīs Uniquely Devoted to Discussing Legal Capacity: The Capacity of the Human Being] [Legal Capacity Is of Two

²² بَاب أَهْلِيَّةِ الْإِنْسَانِ لِوُجُوبِ الْحُقُوقِ لَهُ وَعَلَيْهِ ... فَهَذِهِ الْأَهْلِيَّةُ نَوْعَانِ أَهْلِيَّةُ الْوُجُوبِ وَأَهْلِيَّةُ الْأَدَاءِ

Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed. Abū al-Wafā' al-Afghānī (Hyderabad, India: Lajnat Iḥyā' al-Ma'ārif al-Nu'māniyyah, n.d.; repr., Beirut: Dār al-Ma'rifah), 2:332.

²³ (بَابُ بَيَانِ الْأَهْلِيَّةِ)

أَهْلِيَّةُ الْإِنْسَانِ لِلشَّيْءِ صَلَاحِيَّتُهُ لِمُصَدُّورِ ذَلِكَ الشَّيْءِ وَطَلَبُهُ مِنْهُ ... وَهِيَ فِي لِسَانِ الشَّرْعِ عِبَارَةٌ عَنْ صَلَاحِيَّتِهِ لَوُجُوبِ الْحُقُوقِ الْمَشْرُوعَةِ لَهُ وَعَلَيْهِ

'Alā' al-Dīn 'Abd al-'Azīz b. Aḥmad al-Bukhārī, *Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdawī*, with Uṣūl al-Bazdawī appended in the margins (Istanbul: Sharikat al-ṣiḥāfah al-'Uthmāniyyah, Maṭba'at Sandah, 1st ed., 1308 AH/1890 CE), 4:237.

Types: Capacity for Obligation and Capacity for Performance] This is a section which the Ḥanafīs uniquely devoted to discussing legal capacity (*ahliyyah*).²⁴

By contrast, non-Ḥanafī uṣūl works generally do not present *ahliyyah* as a standalone theory. Rather, they often approach the underlying issues through adjacent categories, most prominently *al-mukallaf*, *fahm al-khiṭāb*, *taklīf*, *dhimmah*, and *ahliyyat al-taṣarruf* / *ahliyyat al-mu'āmalah*, even when they are clearly discussing functions comparable to Ḥanafī *ahliyyat al-wujūb* and *ahliyyat al-adā'*, with some using similar terms. Ibn al-Zāghūnī al-Ḥanbalī uses the terms "*ahliyyat al-adā'*" and "*ahliyyat wujūb al-dayn*."²⁵ al-Qarāfī, for instance, notes terminological confusion in the way some jurists collapse *dhimmah* into what they call "capacity for transactions": "(The One Hundred and Eighty-Third Difference: Between the Principle of the *Dhimmah* and the Principle of Legal Capacity for Transactions) Know that the reality of the *dhimmah* has been difficult for many jurists to understand, and a group of them hold the belief that it is merely the legal capacity for transactions (*ahliyyat al-mu'āmalah*)."²⁶ Al-Ghazālī frames the key premise in terms of "eligibility for the attachment of rulings in the *dhimmah*," grounding it in humanity as preparedness for reason (by potentiality): "As for the capacity for legal rulings to be established in the *dhimmah*, it is derived from humanity, through which one is prepared to receive the faculty of intellect by which legal responsibility (*taklīf*) is understood at a later stage."²⁷ And Ibn Qudāmah similarly says: "The capacity for legal rulings to be established in the *dhimmah* exists only by virtue of humanity, through which one becomes prepared to receive the faculty of intellect by which legal responsibility is understood at a later stage."²⁸

Thus, the Ḥanafīs provide a comprehensive, internally systematized doctrine of *ahliyyah* as a named category, whereas other schools more commonly address its operative components under different headings and terms.

A core analytic move in this literature is the division of *ahliyyah* into two kinds:

24 (وَهَذَا فَضْلٌ اخْتَصَّ الْحَقِيقَةُ بِعَقْدِهِ فِي الْأَهْلِيَّةِ...)

أَهْلِيَّةُ الْإِنْسَانِ لِلشَّيْءِ صَلَاحِيَّتُهُ لِصُدُورِهِ وَطَلَبُهُ مِنْهُ وَقَبُولُهُ إِيَّاهُ

Ibn Amīr al-Ḥājj, al-Taqrīr wa al-Taḥbīr, his commentary on Taḥrīr al-Kamāl ibn al-Humām in uṣūl al-fiqh, which combines the terminologies of the Ḥanafīs and Shāfi'īs; with the marginal commentary of Jamāl al-Dīn al-Isnawī, Nihāyat al-Sūl, on Minhāj al-Wuṣūl ilā 'Ilm al-Uṣūl by al-Qāḍī al-Bayḍāwī (Būlāq, Egypt: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1st ed., 1316–1318 AH; repr., Beirut: Dār al-Kutub al-'Ilmiyyah), 3 vols, 2:164.

²⁵ See: 'Alī ibn 'Ubayd Allāh ibn Naṣr Ibn al-Zāghūnī al-Ḥanbalī, al-Mufradāt, ed. 'Abd al-Majīd ibn 'Abd Allāh ibn Muḥammad al-Khunayn, 2nd ed. (Riyadh: Dār al-Ḥaḍārah, 2025).

26 ... بَيْنَ قَاعِدَةِ الذِّمَّةِ وَبَيْنَ قَاعِدَةِ أَهْلِيَّةِ الْمُعَامَلَةِ ... وَجَمَاعَةٌ يَعْتَقِدُونَ أَنَّهَا أَهْلِيَّةُ الْمُعَامَلَةِ

Shihāb al-Dīn Abū al-'Abbās Aḥmad ibn Idrīs ibn 'Abd al-Raḥmān al-Qarāfī, al-Furūq: Anwār al-Burūq fī Anwār al-Furūq (Beirut: 'Ālam al-Kutub, n.d.), 3:226.

27 وَأَمَّا أَهْلِيَّةُ ثُبُوتِ الْأَحْكَامِ فِي الذِّمَّةِ فَمُسْتَفَادٌ مِنَ الْإِنْسَانِيَّةِ الَّتِي بِهَا يُسْتَعَدُّ لِقَبُولِ قُوَّةِ الْعَقْلِ ...

Abū Ḥāmid Muḥammad ibn Muḥammad al-Ghazālī al-Tūsī, al-Mustaṣfā, ed. Muḥammad 'Abd al-Salām 'Abd al-Shāfi, 1st ed. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1413 AH/1993 CE), 67.

28 وَإِنَّمَا أَهْلِيَّةُ ثُبُوتِ الْأَحْكَامِ فِي الذِّمَّةِ بِالْإِنْسَانِيَّةِ الَّتِي بِهَا يُسْتَعَدُّ لِقَبُولِ قُوَّةِ الْعَقْلِ ...

Muwaḥḥaq al-Dīn 'Abd Allāh ibn Aḥmad ibn Qudāmah al-Jamālī, Rawḍat al-Nāẓir wa Junnat al-Manāẓir fī Uṣūl al-Fiqh 'alā Madhhab al-Imām Aḥmad ibn Ḥanbal, introduced, annotated, and documented by Sha'bān Muḥammad Ismā'īl, 2nd ed. (Cairo: Mu'assasat al-Rayyān li-l-Ṭibā'ah wa-l-Nashr wa-l-Tawzī', 1423 AH/2002 CE), 1:155.

1. أهلية الوجوب: capacity for rights/obligations to *attach* (*thubūt/ilzām*).
2. أهلية الأداء: capacity for acts to be *juridically effective* (*i'tibār al-fi'l shar'an*).

al-Taqrīr wa'l-Taḥbīr gives the standard exposition:

A person's capacity for a thing is his suitability for that thing to proceed from him, for it to be demanded of him, and for him to accept it. It is of two types: the capacity for obligation (*ahliyyat al-wujūb*) concerning the legally recognized rights established for him and upon him; and the capacity for performance (*ahliyyat al-adā'*), meaning that his actions are considered legally valid in the *Sharī'ah*.²⁹

According to the Ḥanafīs, the first category of *ahliyyah* is *ahliyyat al-wujūb*. Through this form of legal capacity, a person becomes fit for rights to be established for him and for obligations owed to others to attach to him. This capacity is not acquired through choice, nor is it dependent upon voluntary acceptance. Rather, it is affirmed for the human being by virtue of his legal status as a human subject. In this regard, there is no distinction between

²⁹ وَهِيَ صَرْبَانِ أَهْلِيَّةُ الْوُجُوبِ ... وَأَهْلِيَّةُ الْأَدَاءِ كَوْنُهُ مُعْتَبَرًا فِعْلُهُ شَرْعًا وَالْأَوَّلُ بِالذِّمَّةِ ...

Muḥammad ibn Muḥammad ibn Muḥammad, known as Ibn Amīr al-Ḥājj (d. 879 AH), *al-Taqrīr wa al-Taḥbīr*, his commentary on *al-Taḥrīr* of Kamāl al-Dīn Ibn al-Humām (d. 861 AH), printed with *Nihāyat al-Sūl* by Jamāl al-Dīn al-Isnawī (d. 772 AH) on *Minhāj al-Wuṣūl ilā 'Ilm al-Uṣūl* of al-Bayḍāwī (d. 685 AH), 1st ed. (Bulāq, Egypt: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1316–1318 AH), 2:164.

See also: Al-Sarakhsī states the division and develops the sub-classification of *ahliyyat al-adā'* (complete/deficient):

الْأَهْلِيَّةُ نَوْعَانِ أَهْلِيَّةُ الْوُجُوبِ وَأَهْلِيَّةُ الْأَدَاءِ ... وَأَهْلِيَّةُ الْأَدَاءِ نَوْعَانِ كَامِلٌ وَقَاصِرٌ

Abū Bakr Muḥammad ibn Aḥmad ibn Abī Sahl al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed. Abū al-Wafā' al-Afghānī, President of the Scientific Committee for the Revival of al-Ma'ārif al-Nu'māniyyah (Hyderabad, India: Lajnat Iḥyā' al-Ma'ārif al-Nu'māniyyah, n.d.). Reprinted by Dār al-Ma'rifah (Beirut) and others, 2:332.

Al-Bazdawī likewise ties *ahliyyat al-wujūb* to the existence of *dhimmah* and treats the human being as having a *dhimmah* suitable for obligation:

...وَأَمَّا أَهْلِيَّةُ الْوُجُوبِ فَبِنَاءٌ عَلَى قِيَامِ الذِّمَّةِ وَأَنَّ الْأَدَمِيَّ يُؤَلِّدُ وَلَهُ ذِمَّةٌ صَالِحَةٌ لِلْوُجُوبِ بِإِجْمَاعِ الْفُقَهَاءِ ...

'Alā' al-Dīn 'Abd al-'Azīz b. Aḥmad al-Bukhārī, *Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdawī*, with Uṣūl al-Bazdawī appended in the margins (Istanbul: Sharikat al-ṣiḥāfah al-4:237. 'Uthmāniyyah, Maṭba'at Sandah, 1st ed., 1308 AH/1890 CE),

And *Kashf al-Asrār* explicitly explains that the loci of obligation is *dhimmah*:

...لَا تَنْبُتُ هَذِهِ الْأَهْلِيَّةُ إِلَّا بَعْدَ وَجُودِ ذِمَّةٍ صَالِحَةٍ لِأَنَّ الذِّمَّةَ هِيَ مَحَلُّ الْوُجُوبِ ... وَلِهَذَا اخْتَصَّ الْإِنْسَانُ بِالْوُجُوبِ دُونَ سَائِرِ الْحَيَوَانَاتِ

'Alā' al-Dīn 'Abd al-'Azīz ibn Aḥmad al-Bukhārī, *Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdawī*, with Uṣūl al-Bazdawī printed in the margins, 4 vols., 1st ed. (Istanbul: al-ṣaḥāfah al-'Uthmāniyyah, Maṭba'at Sindah, 1308 AH/1890 CE). Reprinted by Dār al-Kitāb al-Islāmī and Dār al-Kitāb al-'Arabī, among others, 4:237.

Al-Sarakhsī expresses the same idea in direct terms:

...أَصْلُ هَذِهِ الْأَهْلِيَّةِ لَا يَكُونُ إِلَّا بَعْدَ ذِمَّةٍ صَالِحَةٍ ... فَإِنَّ الْمَحَلَّ هُوَ الذِّمَّةُ ... وَلِهَذَا اخْتَصَّ بِهِ الْأَدَمِيَّ دُونَ سَائِرِ الْحَيَوَانَاتِ

Abū Bakr Muḥammad ibn Aḥmad ibn Abī Sahl al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed. Abū al-Wafā' al-Afghānī, President of the Scientific Committee for the Revival of al-Ma'ārif al-Nu'māniyyah (Hyderabad, India: Lajnat Iḥyā' al-Ma'ārif al-Nu'māniyyah, n.d.). Reprinted by Dār al-Ma'rifah (Beirut) and others, 2:333.

the young and the old. Moreover, *ahliyyat al-wujūb* is not conditioned upon the individual's actual ability to perform what may be due from him, since its function is not performance as such, but the suitability of the *dhimmah* for the attachment of rights and obligations.³⁰

The Ḥanafis further subdivide *ahliyyat al-wujūb* into two forms: deficient and complete. *Ahliyyat al-wujūb al-nāqishah* refers to the suitability of a human being for rights to be established in his favor only, without any rights becoming binding upon him in favor of others. This deficient capacity is peculiar to the fetus in the womb.³¹

For this reason, jurists of the various legal schools affirmed a number of rights for the fetus, while recognizing that no obligations are yet imposed upon it. These include, most notably, lineage, inheritance, and entitlements arising from bequests, provided that the fetus is born alive. The fetus thus represents the clearest example of deficient *ahliyyat al-wujūb*: a legal subject capable of receiving certain rights, though not yet burdened with reciprocal obligations.

The second subtype is *al-ahliyyah al-wujūb al-kāmilah* (complete capacity of obligation). This form of *ahliyyah* is affirmed for the human being once he is born alive, since at that point his *dhimmah* is considered complete in all respects. Through this complete *ahliyyat al-wujūb*, the individual becomes suitable for all rights to be established in his favor and for obligations to be established upon him, except for those obligations whose performance requires capacities he does not yet possess.

Accordingly, a child after birth possesses complete *ahliyyat al-wujūb*, even though he lacks full *ahliyyat al-adā'*. He is therefore suitable for the affirmation of rights owed to him, such as inheritance, ownership, and maintenance. Likewise, certain obligations may attach to his *dhimmah*, even though their execution is carried out by his guardian. Among the examples discussed by the jurists are financial expenditures from his wealth, the payment of *zakāh* and *zakāt al-fiṭr* from his property, and liability for financial compensation when property belonging to others is destroyed. In such cases, the obligation is affirmed in his *dhimmah*, while the performance is undertaken by the guardian on his behalf.³²

The second type of *ahliyyah* according to the Ḥanafis is *ahliyyat al-adā'* (capacity for performance). It is defined as the suitability of a person for actions to issue from him in a

³⁰ See Sa'd al-Dīn Mas'ūd ibn 'Umar al-Taftāzānī, *al-Talwīḥ 'alā al-Tawḍīḥ li-Matn al-Tanqīḥ fī Uṣūl al-Fiqh*, together with *al-Tawḍīḥ fī Ḥall Ghawāmiḍ al-Tanqīḥ* by Ṣadr al-Sharī'ah al-Maḥbūbī (d. 747 AH) (Cairo: Maṭba'at Muḥammad 'Alī Ṣubayḥ wa-Awlādiḥ bi-l-Azhar, 1377 AH/1957 CE), 2:324–25; Muḥammad ibn Muḥammad ibn Muḥammad, known as Ibn Amīr al-Ḥājj (d. 879 AH), *al-Taqrīr wa al-Taḥbīr*, his commentary on *al-Taḥrīr* of Kamāl al-Dīn Ibn al-Humām (d. 861 AH), printed with *Nihāyat al-Sūl* by Jamāl al-Dīn al-Isnawī (d. 772 AH) on *Minhāj al-Wuṣūl ilā 'Ilm al-Uṣūl* of al-Bayḍāwī (d. 685 AH), 1st ed. (Būlāq, Egypt: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1316–1318 AH), 2:165.

³¹ See Sa'd al-Dīn Mas'ūd ibn 'Umar al-Taftāzānī, *al-Talwīḥ 'alā al-Tawḍīḥ li-Matn al-Tanqīḥ fī Uṣūl al-Fiqh*, together with *al-Tawḍīḥ fī Ḥall Ghawāmiḍ al-Tanqīḥ* by Ṣadr al-Sharī'ah al-Maḥbūbī (d. 747 AH) (Cairo: Maṭba'at Muḥammad 'Alī Ṣubayḥ wa-Awlādiḥ bi-l-Azhar, 1377 AH/1957 CE), 2:324.

³² 'Alā' al-Dīn 'Abd al-'Azīz b. Aḥmad al-Bukhārī, *Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdawī*, with *Uṣūl al-Bazdawī* appended in the margins (Istanbul: Sharikat al-ṣiḥāfah al-'Uthmāniyyah, Maṭba'at Sandah, 1st ed., 1308 AH/1890 CE), 4:239–240.

manner that is legally recognized by the Sharī'ah (*ṣalāhiyyat al-insān li-ṣudūr al-fi'l 'anhu 'alā wajh yu'tadd bihi shar'an*).³³

The jurists explain that *ahliyyat al-adā'* is established through the presence of two fundamental abilities: first, the ability to understand the address of the divine law (*khiṭāb al-shar'*), which is realized through the intellect; and second, the ability to act in accordance with what the address requires, which depends upon the physical capacity of the body.³⁴

Furthermore, the Ḥanafīs divide *ahliyyat al-adā'* into two subcategories: deficient and complete. The first is *ahliyyat al-adā' al-nāqīṣah* (deficient capacity of performance). This form of capacity exists when one of the two required abilities, intellectual comprehension or physical ability, is incomplete. It is affirmed, for example, in the case of a child who has reached the age of discernment (*tamyīz*) and is sane but whose physical and legal capacity remains incomplete due to the absence of puberty. Likewise, it may be present in a person who has reached puberty but suffers from intellectual deficiency, such as the *ma'tūh* (one whose mental capacity is impaired).³⁵

Because of this partial capacity, the discerning child (*al-ṣabī al-mumayyiz*) is permitted to engage in certain transactions that are purely beneficial to him. These include acts through which wealth enters his ownership without compensation, such as accepting gifts, charity, bequests, or endowments. Such transactions are considered valid even without the permission of a guardian. By contrast, transactions that result in wealth leaving his ownership without compensation, such as gifting, donating charity, establishing an endowment, issuing a divorce, or acting as a guarantor for another's debt, are invalid and do not take effect, even if the guardian were to approve them, since the child has no authority over such acts.

There also exists a third category of transactions whose benefit or harm is uncertain, such as sales, leasing, and other bilateral exchanges. In these cases, the discerning child may only perform the transaction with the permission of his guardian. Jurists have differed regarding the precise legal effects of such transactions and the extent of the guardian's authorization in them.

The second subtype is *ahliyyat al-adā' al-kāmilah* (complete capacity of performance). This is established when the two essential abilities are fully present: the intellect and the attainment of puberty. Once these conditions are met, the individual becomes fully qualified to perform legal acts, assume obligations, and bear liability for the rights owed to others.³⁶

³³ See Muḥammad Amīn al-Ḥusaynī al-Ḥanafī al-Khurāsānī al-Bukhārī al-Makkī, known as Amīr Bādshāh (d. 972 AH), *Taysīr al-Taḥrīr 'alā Kitāb al-Taḥrīr fī Uṣūl al-Fiqh al-Jāmi'* Bayna Iṣṭilāḥay al-Ḥanafīyyah wa al-Shāfi'īyyah of Kamāl al-Dīn Ibn al-Humām al-Iskandarī (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1351 AH/1932 CE). Reprinted by Dār al-Kutub al-'Ilmiyyah (Beirut, 1403 AH/1983 CE) and Dār al-Fikr (Beirut, 1417 AH/1996 CE), 2:249.

³⁴ Muḥibb Allāh b. 'Abd al-Shakūr, *Fawātiḥ al-Raḥamūt bi-Sharḥ Musallam al-Thubūt* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2002), 1:125.

³⁵ See Sa'd al-Dīn Mas'ūd ibn 'Umar al-Taftāzānī, *al-Talwīḥ 'alā al-Tawḍīḥ li-Matn al-Tanqīḥ fī Uṣūl al-Fiqh*, together with *al-Tawḍīḥ fī Ḥall Ghawāmiḍ al-Tanqīḥ* by Ṣadr al-Sharī'ah al-Maḥbūbī (d. 747 AH) (Cairo: Maṭba'at Muḥammad 'Alī Ṣubayḥ wa-Awladih bi-l-Azhar, 1377 AH/1957 CE, 2:328; Muḥibb Allāh ibn 'Abd al-Shakūr al-Bihārī, *Fawātiḥ al-Raḥamūt bi-Sharḥ Musallam al-Thubūt fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2002, 1:125.

³⁶ See Abū Bakr Muḥammad ibn Aḥmad ibn Abī Sahl al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed. Abū al-Wafā' al-Afghānī, President of the Scientific Committee for the Revival of al-Ma'ārif al-

Accordingly, full legal accountability (*taklīf*) becomes operative, and the individual is addressed with the entirety of the obligations of the Sharī'ah. The locus for the establishment of this complete *ahliyyah* is therefore the conjunction of sound intellect and puberty. In matters of financial transactions, however, the jurists further require the condition of *rushd* (financial prudence), as the ability to manage wealth responsibly forms an additional condition for the unrestricted exercise of legal agency in property matters.³⁷

This distinction matters for AI discussions because contemporary claims often jump from "system can decide" to "system can be liable." Uṣūlīs separate decision-like cognition (which might resemble *fahm al-khiṭāb* or intentional action) from the deeper juridical substrate that makes obligation *attach* in the first place (i.e., *dhimmah* and the conditions for it). This gives a way to frame modern AI debates: modern law can create legal personality by fiat (corporate personhood), but *uṣūl's dhimmah* is not simply an administrative convenience; it is a *Shar'ī* estimation tied to the human locus of *taklīf* and the covenantal/moral architecture of responsibility. Hence, the "AI is smarter than humans" argument does not, on its own, undermine the *uṣūl* restriction. So, in the Ḥanafī architecture, *dhimmah* is not an optional add-on: it is the vessel in which *wujūb* "settles," and it is precisely why *ahliyyah* is framed as human *ahliyyah*.

Classical Examples of al-Shakhṣiyyah al-Ma'nawiyyah in Islamic Jurisprudence

The default rule in Islamic legal theory is that legal capacity (*al-ahliyyah*) is affirmed only for human beings. That is, the human being is considered suitable to receive rights and bear obligations. Humans are the subjects addressed by the Islamic scriptures, and they are the beings whom Allah has made legally responsible for matters for which they will be held accountable. Consequently, the divine legal address (*al-khiṭāb al-shar'ī*) relates to their actions. For this reason, human beings possess a characteristic that distinguishes them from other creatures in relation to rights and obligations, namely the *dhimmah*. As discussed above, the *dhimmah* is a legal attribute that renders a person suitable to possess rights and to bear obligations. It is through this attribute that legal responsibility and entitlement are established.

While classical juristic discussions primarily focus on the *dhimmah* of real human beings, since they are the primary subjects of legal accountability (*taklīf*), the concept of legal personality did exist within Islamic legal thought. Jurists extended forms of *dhimmah* and legal capacity to certain political, financial, and religious institutions, thereby allowing them to receive and bear rights. This is reflected in numerous juristic discussions regarding endowments, mosques, and other public institutions.

Waqf (Endowment) and Non-Personal Legal Personality

A central example demonstrating the operative reality of *al-shakhṣiyyah al-ma'nawiyyah* in some madhhab precedents is *waqf* (endowment). The legal schools

Nu'māniyyah (Hyderabad, India: Lajnat Iḥyā' al-Ma'ārif al-Nu'māniyyah, n.d.). Reprinted by Dār al-Ma'rifah (Beirut) and others, 2:340; Muḥibb Allāh b. 'Abd al-Shakūr al-Bihārī, *Fawātiḥ al-Raḥamūt bi-Sharḥ Musallam al-Thubūt* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2002), 1:125.

³⁷ See 'Alā' al-Dīn 'Abd al-'Azīz ibn Aḥmad al-Bukhārī, *Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdawī*, with Uṣūl al-Bazdawī printed in the margins, 4 vols., 1st ed. (Istanbul: al-Ṣaḥāfah al-'Uthmāniyyah, Maṭba'at Sindah, 1308 AH/1890 CE). Reprinted by Dār al-Kitāb al-Islāmī and Dār al-Kitāb al-'Arabī, among others, 4:248–249.

mentioned that if one establishes a waqf for the mosque, it is valid.³⁸ Some jurists explicitly stated that the masjid itself may own, as reflected in discussions of bequests and expenditures directed to mosques. For example: In *Radd al-Muhtār*, Ibn 'Ābidīn treats bequests to a masjid as legally meaningful and discusses its financial obligations and expenditures.³⁹ However, the author still maintains that the endowment does not have a dhimmah:

His statement, 'It is not permissible to incur debt on behalf of the waqf,' means: if this was not done by the authorization of the founder (*wāqif*). This differs from the executor (*waṣī*), for he may purchase something on credit for the orphan even without necessity, because a debt can only initially be

³⁸ For example, in *al-Radd al-Muhtār* it is stated it is allowed:

قَوْلُهُ: وَإِنْ وَقَفَ عَلَى الْمَسْجِدِ جَازَ ظَاهِرُهُ أَنَّهُ لَا يُشْتَرَطُ فِيهِ كَوْنُ أَهْلِهِ مِمَّنْ يُخَصُّونَ؛ لِأَنَّ الْوَقْفَ عَلَى الْمَسْجِدِ لَا عَلَى أَهْلِهِ كَمَا هُوَ الْمُتَبَادَرُ مِنَ الْمُقَابَلَةِ، وَلَعَلَّ وَجْهَهُ أَنَّهُ يَصِيرُ كَالْتَنْصِصِ عَلَى التَّأْيِيدِ بِمَنْزِلَةِ الْوَقْفِ عَلَى عِمَارَةِ مَسْجِدٍ مُعَيَّنٍ فَإِنَّهُ يَصَحُّ فِي الْمُخْتَارِ لِتَأْيِيدِهِ مَسْجِدًا.

Muḥammad Amīn, known as Ibn 'Ābidīn, *Hāshiyat Radd al-Muhtār 'alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār* (Cairo: Sharikat Maktabat wa-Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādih, 2nd ed., 1386 AH/1966 CE), 6 vols.; repr., Beirut: Dār al-Fikr, 4:365.

Similarly, in *Tāj al-Iklīl* it is stated:

وَلَمَسْجِدٍ وَصَرَفَ فِي مَصْلَحَتِهِ ابْنُ الْحَاجِبِ: تَصَحُّحُ الْوَصِيَّةِ لِلْمَسْجِدِ وَالْفَنْطَرَةِ وَشَبَّهَهَا لِأَنَّهُ بِمَعْنَى الصَّرْفِ فِي مَصَالِحِهَا.

Muḥammad b. Yūsuf b. Abī al-Qāsim b. Yūsuf al-'Abdarī al-Gharnāṭī, Abū 'Abd Allāh al-Mawwāq al-Mālikī, *al-Tāj wa al-Iklīl li-Mukhtaṣar Khalīl* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1st ed., 1416 AH/1994 CE), 8:519.

Likewise, in *Mughnī al-Muhtāj* it is stated:

وَتَصَحُّحُ الْوَصِيَّةِ مِنْ كُلِّ مُسْلِمٍ أَوْ كَافِرٍ (لِعِمَارَةٍ) أَوْ مَصَالِحٍ (مَسْجِدٍ) إِنِشَاءً وَتَرْمِيًا؛ لِأَنَّهُ قُرْبَةٌ ... وَتُحْمَلُ عَلَى عِمَارَتِهِ وَمَصَالِحِهِ لِأَنَّ الْعُرْفَ يَحْمِلُهُ عَلَى ذَلِكَ.

Shams al-Dīn Muḥammad b. Muḥammad al-Khaṭīb al-Shirbīnī, *Mughnī al-Muhtāj ilā Ma'rifat Ma'ānī Alfāz al-Minhāj*, ed. and annotated by 'Alī Muḥammad Mu'awwaḍ and 'Ādil Aḥmad 'Abd al-Mawjūd (Beirut: Dār al-Kutub al-'Ilmiyyah, 1st ed., 1415 AH/1994 CE), 4:72.

And in *Kashshāf al-Qinā'* it is stated:

وتصحُّحُ الوصية (لمسجد، وتصرف في مصالحه) وكذلك الوصية لقطرة، وسقاية ونحوها؛ لأنها قريبة.

Manṣūr b. Yūnus b. Idrīs al-Buhūtī, *Kashshāf al-Qinā' 'an Matn al-Iqnā'*, rev. and annotated by Hilāl Muṣayliḥ Muṣṭafā Hilāl (Riyadh: Maktabat al-Naṣr al-Ḥadīthah, owned by 'Abd Allāh and Muḥammad al-ṣāliḥ al-Rāshid, n.d. [dated by al-Turkī to 1388 AH/1968 CE in al-Madhhab al-Ḥanbalī, 2:510]), 4:359.

³⁹ وَبِنَبْغِي الْإِفْتَاءِ أَنَّ الْوَصِيَّةَ لِلْمَسْجِدِ وَصِيَّةٌ لِفَقْرَائِهِ فِي مِثْلِ الْأَزْهَرِ كَذَا حَرَّرَ هَذَا الْمُحَلَّ السَّائِحَانِي - رَحِمَهُ اللَّهُ تَعَالَى - وَانْظُرْ مَا فِي شَرْحِ الْوَهْبَانِيَّةِ (قَوْلُهُ جَازَ لغيرهم) قَالَ فِي الْخُلَاصَةِ الْأَفْضَلُ أَنَّ يُصَرَّفَ إِلَيْهِمْ وَإِنْ أُعْطِيَ غَيْرُهُمْ جَازَ وَهَذَا قَوْلُ أَبِي يُوسُفَ، وَبِهِ يُفْتَى وَقَالَ مُحَمَّدٌ لَا يَجُوزُ أَه. قُلْتُ: وَالْأَوَّلُ مُوَافِقٌ لِقَوْلِهِمْ فِي النَّذْرِ بِالْغَاءِ تَعْيِينَ الزَّمَانِ وَالْمَكَانِ وَالذَّرَاهِمِ وَالْفَقِيرِ (قَوْلُهُ لَوَارِثِ الْمُوصِي) لِأَنَّ الرَّقَبَةَ عَلَى مَلِكِهِ وَلَوَاجِبَةٍ وَهَلْ نَفَقَتُهُ فِي وَقْفِ الْمَسْجِدِ، كَمَا لَوْ أَوْصَى بِخِدْمَتِهِ لِزَيْدٍ فَإِنَّ نَفَقَتَهُ عَلَيْهِ كَمَا سَيَأْتِي لَمْ أَرَهُ (قَوْلُهُ لِأَعْمَالِ الْبِرِّ) قَالَ فِي الظَّهِيرِيَّةِ وَكُلُّ مَا لَيْسَ فِيهِ تَمْلِكٌ فَهُوَ مِنْ أَعْمَالِ الْبِرِّ حَتَّى يَجُوزَ صَرْفُهُ إِلَى عِمَارَةِ الْوَقْفِ وَسَرَاجِ الْمَسْجِدِ دُونَ تَرْبِيئِهِ لِأَنَّهُ إِسْرَافٌ أَه.

Muḥammad Amīn Ibn 'Ābidīn, *Hāshiyat Radd al-Muhtār 'alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār*, 6 vols. (Cairo: Sharikat Maktabat wa-Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādih, 1386/1966). Reproduced by Dār al-Fikr, Beirut, 6:665.

established against a legal liability (*dhimmah*), and the orphan possesses a valid legal liability. Moreover, the orphan is a known individual, so it is conceivable to make a claim against him. As for the waqf, it possesses no legal liability (*dhimmah*)...⁴⁰

Al-Mardāwī similarly states: "It is not valid to lend to an entity such as a mosque, bridge, and the like, from those things which do not possess a legal liability (*dhimmah*)."⁴¹ In *Nihāyat al-Muḥtāj*, the masjid is described as being "treated as capable of ownership" (*munazzal manzilat man yamlik*), with bequests directed to its maintenance and interests.⁴² Ibn Ḥajar al-Haytamī expressed a similar view: "And a vow (*nadhr*) made for a mosque is valid, because it is considered free and capable of ownership. Accordingly, it is to be spent on its interests and needs, just like an endowment (*waqf*) made for it."⁴³

In al-Zarqānī's *Sharḥ on Mukhtaṣar Khalīl*, Mālikī jurists affirm the validity of bequests to a *masjid*, bridge, or public structure, even though such entities are not natural persons, because they function as beneficiaries in law.⁴⁴ In *al-Sharḥ al-Kabīr* it states: "And it is valid to make a bequest to a mosque and the like, such as a *ribāṭ* or a bridge, with the funds to be spent on its interests and needs, including repairs, mats, oil, and similar matters. Whatever remains beyond that is to be spent on those who serve it, such as the *imam*, the *mu'adhdhin*, and the like."⁴⁵ *Mughnī al-Muḥtāj* likewise states:

قَوْلُهُ: لَا تَجُوزُ الْإِسْتِدَانَةُ عَلَى الْوَقْفِ أَيُّ إِنَّمَا تَكُنْ بِأَمْرِ الْوَقْفِ، وَهَذَا بِخِلَافِ الْوَصِيِّ فَإِنَّ لَهُ أَنْ يَشْتَرِيَ لِنَفْسِهِ شَيْئًا بِنَيْسَبِهِ بِلَا ضَرُورَةٍ لِأَنَّ الدِّينَ لَا يَنْبُتُ ابْتِدَاءً إِلَّا فِي الدِّمَةِ وَالْيَتِيمِ لَهُ ذِمَّةٌ صَحِيحَةٌ، وَهُوَ مَعْلُومٌ فَتَصَوَّرُ مُطَالَبَتُهُ أَمَّا الْوَقْفُ فَلَا ذِمَّةَ لَهُ وَالْفُقَرَاءُ، وَإِنْ كَانَتْ لَهُمْ ذِمَّةٌ لَكِنْ لِكَثْرَتِهِمْ لَا تُتَصَوَّرُ مُطَالَبَتُهُمْ،

Ibid, 4:439

41 لَا يَصِحُّ قَرْضُ جِهَةٍ، كَالْمَسْجِدِ وَالْقَنْطَرَةِ وَنَحْوِهِ، مِمَّا لَا ذِمَّةَ لَهُ

'Alā' al-Dīn Abū al-Ḥasan 'Alī b. Sulaymān al-Mardāwī, *al-Inṣāf fī Ma'rifat al-Rājiḥ min al-Khilāf* (printed with al-Muqni' and al-Sharḥ al-Kabīr), ed. 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Hajar li'l-Ṭibā'ah wa'l-Nashr wa'l-Tawzī' wa'l-I'lān, 1st ed., 1415 AH/1995 CE), 12:328.

42 وَكَذَا إِنْ أُطْلِقَ فِي الْأَصَحِّ بِأَنْ قَالَ أَوْصَيْتُ بِهِ لِلْمَسْجِدِ، وَإِنْ أَرَادَ تَمْلِيكُهُ لِمَا مَرَّ فِي الْوَقْفِ أَنَّهُ حُرٌّ يَمْلِكُ: أَيُّ مُنْزَلٌ مُنْزَلَتُهُ (وَتَحْمَلُ)

الْوَصِيَّةُ حِينَئِذٍ (عَلَى عِمَارَتِهِ وَمَصَالِحِهِ) عَمَلًا بِالْعُرْفِ

Shams al-Dīn Muḥammad b. Abī al-'Abbās Aḥmad b. Ḥamzah al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj* (Beirut: Dār al-Fikr, 1404/1984), 6:48.

43 وَالنَّذْرُ لِلْمَسْجِدِ صَحِيحٌ لِأَنَّهُ حُرٌّ يَمْلِكُ وَحِينَئِذٍ يُصَرَّفُ لِمَصَالِحِهِ كَالْوَقْفِ عَلَيْهِ

Shihāb al-Dīn Aḥmad b. Ḥajar al-Haytamī, *al-Fatāwā al-Kubrā al-Fiqhiyyah*, compiled by his student 'Abd al-Qādir b. Aḥmad b. 'Alī al-Fākihī al-Makkī (repr., al-Maktabah al-Islāmiyyah), 4:284.

44 'Abd al-Bāqī b. Yūsuf al-Zurqānī, *Sharḥ al-Zurqānī 'alā Mukhtaṣar Khalīl*, with al-Fatḥ al-Rabbānī fīmā Dhahala 'Anhu al-Zurqānī, ed. 'Abd al-Salām Muḥammad Amīn (Beirut: Dār al-Kutub al-'Ilmiyyah, 1st ed., 1422/2002), 8:315.

45 وَصَحَّ الْإِيصَاءُ (لِلْمَسْجِدِ) وَنَحْوَهُ كَرِبَاطٍ وَقَنْطَرَةٍ (وَصَرَفٍ فِي مَصَالِحِهِ) مِنْ مَرْمَمٍ وَحُصْرٍ وَزَيْتٍ وَمَا زَادَ عَلَى ذَلِكَ فَعَلَى خِدْمَتِهِ مِنْ إِمَامٍ وَمُؤَدِّنٍ وَنَحْوِ ذَلِكَ كَمَا لَوْ لَمْ يَخْتَجِ لِمَا مَرَّ احتاجوا هم أم لا.

Muḥammad b. Aḥmad b. 'Arafah al-Dasūqī, *Ḥāshiyat al-Dasūqī 'alā al-Sharḥ al-Kabīr* (Beirut: Dār al-Fikr, n.d.), 4 vols, 4:426.

And a bequest is valid from every Muslim or non-Muslim for the construction or interests of a mosque, whether for establishing it or repairing it, because that is an act of devotion. Included in the meaning of a mosque are a madrasa, a charitable *ribāṭ*, and a *khānqāh*. However, *al-Kāfī* and other works qualified this by restricting it to an existing mosque. Thus, if one makes a bequest for a mosque that is yet to be built, it is definitively invalid. This parallels what *al-Rāfiʿī* decisively stated regarding one who makes a waqf for a mosque that will later be built.⁴⁶

al-Kharashī mentions that a *masjid* can own: "This indicates that the beneficiary of the endowment (*waqf*) is stipulated to be one who is qualified to possess ownership, either legally (*ḥukman*), such as a mosque, or physically/actually (*ḥissan*), such as a human being."⁴⁷ Furthermore, when Ibn Qudāmah argues why endowments for mosques are allowed, he says:

Chapter: A *waqf* is not valid for one who cannot own property, such as a purely owned slave, an *umm al-walad*, a *mudabbbar*, a deceased person, a fetus, an angel, *jinn*, or devils. Aḥmad said regarding one who made a *waqf* for his slaves: 'The *waqf* is not valid until he frees them.' This is because *waqf* constitutes a transfer of ownership, and thus it is not valid for one who cannot possess ownership. If it is said: 'You have permitted waqf for mosques, water stations, and similar things, even though they are not owned,' we reply: 'The waqf there is actually for the Muslims, except that it has been designated for a specific benefit for them.'⁴⁸

Mālik's position on bequests to mosques is transmitted in *al-Mudawwanah*. Ibn al-Qāsim relates the following case:

I asked: What if a person makes bequests and also makes a bequest for the maintenance of a mosque? Ibn al-Qāsim said: It has reached me from Mālik regarding a man who made a bequest saying: "Light the lamp of this mosque and maintain it," along with other bequests, how is this to be carried out?

46 وَتَصَحُّحُ الْوَصِيَّةِ مِنْ كُلِّ مُسْلِمٍ أَوْ كَافِرٍ (لِعِمَارَةِ) أَوْ مَصَالِحِ (مَسْجِدٍ) إِنِّشَاءً وَتَرْمِيًّا؛ لِأَنَّهُ قُرْبَةٌ، وَفِي مَعْنَى الْمَسْجِدِ الْمَدْرَسَةُ وَالرِّبَاطُ الْمَسْبُورُ وَالْخَانَقَاهُ وَقَدَّ فِي الْكَافِي وَغَيْرِهِ الْمَسْجِدُ بِالْمَوْجُودِ، فَإِنْ أَوْصَى لِمَسْجِدٍ سَيِّئِي لَمْ تَصَحَّ جِزْمًا وَهُوَ نَظِيرُ مَا جَزَمَ بِهِ الرَّافِعِيُّ فِيمَا إِذَا وَقَفَ عَلَى مَسْجِدٍ سَيِّئِي

Shams al-Dīn Muḥammad b. Muḥammad al-Khaṭīb al-Shirbīnī, Mughnī al-Muḥtāj ilā Ma'rifat Ma'ānī Alfāz al-Minhāj, ed. 'Alī Muḥammad Mu'awwaḍ and 'Ādil Aḥmad 'Abd al-Mawjūd (Beirut: Dār al-Kutub al-'Ilmiyyah, 1st ed., 1415 AH/1994 CE), 6 vols, 4:72.

47 يُشِيرُ بِهَذَا إِلَى أَنَّ الْمُوقِفَ عَلَيْهِ يُشْتَرَطُ فِيهِ أَنْ يَكُونَ أَهْلًا لِلتَّمْلِكِ حُكْمًا كَالْمَسْجِدِ أَوْ حِسًّا كَالْأَدَمِيِّ

Muḥammad al-Kharashī, Sharḥ al-Kharashī 'alā Mukhtaṣar Khalīl, 2nd ed. (Būlāq, Egypt: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1317 AH; repr., Beirut: Dār al-Fikr li'l-Ṭibā'ah), 7:80.

48 فَصْلٌ: وَلَا يَصَحُّ الْوَقْفُ عَلَى مَنْ لَا يَمْلِكُ، كَالْعَبْدِ الْقَنٍّ، وَأُمِّ الْوَلَدِ، وَالْمُدَبِّرِ، وَالْمَيْتِ، وَالْحَمَلِ، وَالْمَلِكِ وَالْجَنِّ وَالشَّيَاطِينِ. قَالَ أَحْمَدُ فِي مَنْ وَقَفَ عَلَى مَالِيكِهِ: لَا يَصَحُّ الْوَقْفُ حَتَّى يَعْتَقَهُمْ. وَذَلِكَ لِأَنَّ الْوَقْفَ تَمْلِكٌ، فَلَا يَصَحُّ عَلَى مَنْ لَا يَمْلِكُ. فَإِنْ قِيلَ: قَدْ جَوَزْتُمْ الْوَقْفَ عَلَى الْمَسَاجِدِ وَالسَّقَايَاتِ وَأَشْبَاهِهَا، وَهِيَ لَا تَمْلِكُ قُلْنَا: الْوَقْفُ هُنَاكَ عَلَى الْمُسْلِمِينَ، إِلَّا أَنَّهُ عَيْنٌ فِي نَفْعٍ خَاصٍّ لَهُمْ.

Abū Muḥammad 'Abd Allāh b. Aḥmad b. Muḥammad Ibn Qudāmah, al-Mughnī, on the Mukhtaṣar of Abū al-Qāsim 'Umar b. al-Ḥusayn al-Khiraqī, ed. Ṭāhā al-Zaynī, Maḥmūd 'Abd al-Wahhāb Fāyid, 'Abd al-Qādir 'Aṭā, and Maḥmūd Ghānim Ghayth (Cairo: Maktabat al-Qāhirah, 1st ed., 1388–1389 AH/1968–1969 CE), 6:38.

Mālik said: One looks to the value of one-third of the deceased's estate and to the bequests he made. They are apportioned within the one-third: the mosque is allotted its share according to the proportion, and the other bequests receive what was designated for them. Whatever portion accrues to the mosque is then endowed for it and used for lighting and maintenance until it is exhausted. Mālik ruled thus in this case, and this is also the position of the majority of transmitters.⁴⁹

The same appears in Shāfi'ī jurisprudence. In *Nihāyat al-Muḥtāj* it is stated: "If one makes a bequest to a public cause, the condition is that it not involve sin or intrinsic reprehensibility... and included within what is not sinful are acts of devotion, such as the construction and maintenance of mosques."⁵⁰ A similar position is found in Ḥanbalī law. Ibn Mufliḥ states in *al-Furū'*: "A bequest to a mosque is valid and is to be spent in its interest. Thus, if he says: 'If I die, my house is for the mosque,' or 'Give it one hundred from my wealth,' it is valid. Likewise, a bequest of a *muṣḥaf* for it to be read therein is valid..."⁵¹

Here, the validity of the bequest turns on the lawfulness of the purpose, not on the humanity of the recipient. The "public cause" (*jīhah 'āmmah*) is treated as a legally cognizable recipient, again implying a capacity to receive and hold wealth. This ruling treats the mosque as a recipient of apportionment, capable of receiving a determinate share of an estate and having that share legally reserved, administered, and expended for its benefit. Such treatment presupposes a legal capacity to be owed property, a core function of *al-dhimma* as defined by the jurists.

In this regard, the jurists agreed that the benefit (*manfa'ah*) of a *waqf* belongs to the beneficiary for whom the endowment was designated. Despite this agreement regarding the beneficiaries' entitlement to the usufruct of the *waqf*, the jurists differed over the legal ownership of the corpus (*'ayn*) of the endowed property when the *waqf* is designated for a specific beneficiary. Some scholars held that the endowed property remains under the ownership of the original donor while being restricted from transfer or disposal. This was the

⁴⁹ قُلْتُ: أَرَأَيْتَ إِنْ أَوْصَى بِوَصَايَا وَبِعِمَارَةِ مَسْجِدٍ؟

قَالَ ابْنُ الْقَاسِمِ: بَلَّغْنِي عَنْ مَالِكٍ فِي رَجُلٍ أَوْصَى فَقَالَ: أَوْقَدُوا فِي هَذَا الْمَسْجِدِ مِصْبَاحَهُ وَأَقِيمُوهُ لَهُ، وَأَوْصَى مَعَ ذَلِكَ بِوَصَايَا...
قَالَ مَالِكٌ: يُنْظَرُ كَمْ قِيَمَةُ ثُلُثِ الْمِثَّتِ... فَيَحَاصُّ لِلْمَسْجِدِ بِقِيَمَةِ الثُّلُثِ... فَمَا صَارَ لِلْمَسْجِدِ مِنْ ذَلِكَ وَقَفَ لَهُ وَاسْتُصْبِحَ بِهِ فِيهِ حَتَّى يُنْجَزَ... وَكَذَلِكَ قَوْلُ أَكْثَرِ الرُّوَاةِ

Mālik ibn Anas ibn Mālik ibn 'Āmir al-Aṣḥabī al-Madanī, al-Mudawwanah, 1st ed. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1415 AH/1994 CE), 4:360–361.

⁵⁰ وَإِذَا أَوْصَى لِجَهَةٍ عَامَّةٍ فَالشَّرْطُ أَنْ لَا تَكُونَ مَعْصِيَةً... وَسَمِعَلُ عَدَمَ الْمُعْصِيَةِ الْقُرْبَةَ كَعِمَارَةِ الْمَسَاجِدِ

Shams al-Dīn Muḥammad ibn Abī al-'Abbās Aḥmad ibn Ḥamzah al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj*, 8 vols. (Beirut: Dār al-Fikr, 1404 AH/1984 CE), 6:42.

⁵¹ وَتَصَحُّحُ الْمَسْجِدِ، وَيُصَرَّفُ فِي مَصْلَحَتِهِ، فَلَوْ قَالَ: إِنْ مِتُّ فَيُنِي لِلْمَسْجِدِ... صَحَّ، وَتَصَحُّحُ بِمُصْحَفٍ لِيُقْرَأَ فِيهِ...

Shams al-Dīn Muḥammad ibn Mufliḥ al-Maqdisī, *al-Furū'*, together with Taṣḥīḥ al-Furū' by 'Alā' al-Dīn 'Alī ibn Sulaymān al-Mardāwī, ed. 'Abd Allāh ibn 'Abd al-Muḥsin al-Turkī, 1st ed. (Beirut: Mu'assasat al-Risālah; Riyadh: Dār al-Mu'ayyad, 1424 AH/2003 CE), 7:460. The original work is also accompanied by the ḥāshiyah of Taqī al-Dīn Abū Bakr ibn Ibrāhīm Ibn Qundus al-Ba'ī, though it is absent from this electronic edition.

view of Abū Ḥanīfah,⁵² the well-known position of the Mālikī school,⁵³ and one opinion among both the Shāfi'īs⁵⁴ and Ḥanbalīs.⁵⁵ According to Abū Ḥanīfah, ownership of the endowed property does not leave the donor unless a judge formally validates the *waqf* or the donor suspends it upon his death through a testamentary arrangement. He further held that *waqf* is not a binding contract, but rather resembles a loan for use (*'āriyah*), and therefore may be inherited from the donor. This position differed from that of his two prominent students, Abū Yūsuf and Muḥammad al-Shaybānī, who considered the *waqf* binding and legally effective upon its establishment. The adherents of this broader opinion nevertheless differed regarding the binding nature of *waqf*. Abū Ḥanīfah considered the *waqf* non-binding, whereas the majority of those who adopted this position still regarded the *waqf* as irrevocable once established. Others maintained that ownership transfers to Allah, meaning that the property is removed from human ownership and exclusive private control, even though all creation ultimately belongs to Allah in a theological sense. This was the opinion of Abū Yūsuf, Muḥammad b. al-Ḥasan al-Shaybānī, and the dominant position of the Shāfi'ī school. Nevertheless, they differed concerning the point at which this transfer occurs. The Shāfi'īs and Abū Yūsuf held that ownership transfers merely through the *waqf* declaration itself, whereas Muḥammad b. al-Ḥasan required the appointment of a custodian and delivery of the property into his administration before the transfer becomes complete.⁵⁶ A third opinion argues that ownership transfers to the beneficiary of the *waqf*, except in cases where the beneficiary is not legally capable of ownership, such as a mosque. This was one opinion within the Shāfi'ī school and the dominant position among the Ḥanbalīs. According to this view, the beneficiary effectively acquires ownership over the corpus of the endowed property, though his ownership remains restricted by the conditions and perpetual nature of the *waqf*.⁵⁷ A fourth opinion, also found among some Shāfi'ī jurists, distinguished

⁵² Badr al-Dīn al-'Aynī, al-Bināyah Sharḥ al-Hidāyah, ed. Ayman ṣāliḥ Sha'bān (Beirut: Dār al-Kutub al-'Ilmiyyah, 1st ed., 1420/2000), 7:422; Muḥammad Amīn Ibn 'Ābidīn, Ḥashiyat Radd al-Muḥtār 'alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār (Cairo: Sharikat Maktabat wa-Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādiḥ, 2nd ed., 1386/1966), 4:339.

⁵³ Abū 'Abd Allāh Muḥammad al-Kharashī, Sharḥ al-Kharashī 'alā Mukhtaṣar Khalīl (Bulāq, Egypt: al-Maṭba'ah al-Kubrā al-Amīriyyah, 2nd ed., 1317 AH; repr., Beirut: Dār al-Fikr lil-Ṭibā'ah), 7:98.

⁵⁴ 'Abd al-Malik b. 'Abd Allāh al-Juwaynī (Imām al-Ḥaramayn), Nihāyat al-Maṭlab fī Dirāyat al-Madhhab, ed. 'Abd al-'Azīm Maḥmūd al-Dīb (Jeddah: Dār al-Minhāj, 1st ed., 1428/2007), 8:340-341.

⁵⁵ Burhān al-Dīn Ibrāhīm b. Muḥammad Ibn Muflīḥ al-Maqdisī al-Ḥanbalī, al-Mubdi' Sharḥ al-Muqni', ed. Khālīd b. 'Alī al-Mushayqīḥ, 'Abd al-'Azīz b. 'Adnān al-'Idān, and Anas b. 'Ādil al-Yatāmī (Kuwait: Rak'iz lil-Nashr wa-al-Tawzī', 1st ed., 1442/2021), 6:443.

⁵⁶ 'Uthmān b. 'Alī al-Zayla'ī al-Ḥanafī, Tabyīn al-Ḥaqā'iq Sharḥ Kanz al-Daqā'iq, with the ḥāshiyah of Shihāb al-Dīn Aḥmad al-Shilbī (Cairo: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1st ed., 1314 AH), 3:325; Abū Zakariyyā Muḥyī al-Dīn Yaḥyā b. Sharaf al-Nawawī, Rawḍat al-Ṭālibīn wa-'Umdat al-Muftīn, ed. Qism al-Taḥqīq wa-al-Taṣḥīḥ bi-al-Maktab al-Islāmī under the supervision of Zuhayr al-Shāwīsh (Beirut-Damascus-Amman: al-Maktab al-Islāmī, 3rd ed., 1412/1991), 5:342.

⁵⁷ 'Abd al-Malik b. 'Abd Allāh al-Juwaynī (Imām al-Ḥaramayn), Nihāyat al-Maṭlab fī Dirāyat al-Madhhab, ed. 'Abd al-'Azīm Maḥmūd al-Dīb (Jeddah: Dār al-Minhāj, 1st ed., 1428/2007), 8:340-341; Burhān al-Dīn Ibrāhīm b. Muḥammad Ibn Muflīḥ al-Maqdisī al-Ḥanbalī, al-Mubdi' Sharḥ al-Muqni', ed. Khālīd b. 'Alī al-Mushayqīḥ, 'Abd al-'Azīz b. 'Adnān

between different categories of *waqf*. According to this position, if the *waqf* is made for a specific individual, ownership transfers to that beneficiary, whereas if the *waqf* is established for a general charitable cause or public institution, ownership transfers to Allah in the legal sense of removal from private human ownership.⁵⁸

Proponents of the first position cite the narration in which 'Umar said: "I asked the Messenger of Allah about some land of mine in Thamgh. He said: 'Freeze it and donate its fruits.'" ⁵⁹ Proponents of the second position cite the narration that, during the lifetime of the Messenger of Allah peace be upon him, 'Umar endowed in charity a property of his known as Thamgh, a garden of date palms. 'Umar said: "O Messenger of Allah, I possess property that is among the most valuable of my wealth, and I wish to give it in charity." The Prophet peace be upon him replied: "Retain the corpus of the property and give its produce in charity, on the condition that neither the land nor the trees are to be sold, gifted, or inherited." Thus, 'Umar endowed it for the sake of Allah, dedicating its proceeds to the emancipation of slaves, the poor, guests, travelers, and relatives. The administrator of the endowment was permitted to consume from it in a reasonable and customary manner and to feed a friend from it, so long as he did not seek to accumulate wealth thereby.⁶⁰ Further evidences were adduced. The key point is the view that the corpus of the *waqf* is not owned by the donor, since the donor's legal capacity for ownership ceases upon death, while the legal status of the *waqf* remains unchanged after his death just as it was during his lifetime is relevant here. This indicates that the *waqf* exits the ownership of the donor both in terms of corpus and usufruct. Likewise, the endowed property cannot be said to belong to the beneficiary, because the beneficiary acquires only the right of usufruct and not ownership of the corpus itself; ownership of benefit does not necessitate ownership of the underlying property. Based on this, two possible conceptualizations remain. The first is that the *waqf* corpus is effectively suspended from private ownership altogether, such that no human being possesses ownership over it, similar to the legal status of a mosque or a charitable endowment dedicated to an unrestricted public cause, in which case ownership is ascribed to Allah in the legal sense discussed by the jurists. The second is that the *waqf* itself constitutes a distinct legal or juristic personality possessing an independent financial liability (*dhimma*) separate from both the donor and the beneficiary, comparable in some respects to the *Bayt al-Māl* in classical madhhab precedents.

These differing conceptions of ownership in *waqf* ultimately stem from broader juristic debates concerning the precise legal nature of endowment itself: whether it constitutes the retention of ownership with restriction of benefit, the complete removal of property from human ownership, or the transfer of ownership to designated beneficiaries under perpetual legal limitations. Once constituted, the *waqf*, despite not being owned by any human being, possesses enforceable legal attributes: it has rights and obligations; It may owe debts and be owed debts; It may buy, sell, and lease; It may litigate as plaintiff or

al-Īdān, and Anas b. 'Ādil al-Yatāmī (Kuwait: Rakā'iz lil-Nashr wa-al-Tawzī', 1st ed., 1442/2021), 6:443; Maṣūn b. Yūnus al-Buhūtī, Kashshāf al-Qinā' 'an Matn al-Iqnā', rev. and annot. Hilāl Muṣayliḥī Muṣṭafā Hilāl (Riyadh: Maktabat al-Naṣr al-Ḥadīthah, n.d. [ca. 1388/1968]), 4:254; Aḥmad Ibn Taymiyyah, Majmū' al-Fatāwā, compiled and arranged by 'Abd al-Raḥmān b. Muḥammad b. Qāsim, with the assistance of his son Muḥammad b. Qāsim (Medina: Muḥamma' al-Malik Fahd li-ṭibā'at al-Muṣḥaf al-Sharīf, 1425/2004), 31:233.

⁵⁸ Abū Zakariyyā Muḥyī al-Dīn Yaḥyā b. Sharaf al-Nawawī, Rawḍat al-Ṭalībīn wa-'Umdat al-Muṭtīn, ed. Qism al-Taḥqīq wa-al-Taṣḥīḥ bi-al-Maktab al-Islāmī under the supervision of Zuhayr al-Shāwīsh (Beirut-Damascus-Amman: al-Maktab al-Islāmī, 3rd ed., 1412/1991), 5:342.

⁵⁹ Narrated by al-Nasā'ī, no. 3605. Available at: <https://sunnah.com/nasai:3605>.

⁶⁰ Narrated by al-Bukhārī, no. 2764. Available at: <https://sunnah.com/bukhari:2764>.

defendant; It may own property; It is governed by legally binding conditions, and no one, including the ruler, may dispose of its assets arbitrarily. Taken together, these rulings establish a clear doctrinal pattern: the *waqf* exits private ownership; it does not enter the ownership of any human being; yet it operates as a bearer of rights and obligations; Its assets are legally protected, managed, and enforceable; legal relations attach to it as an institution, not merely as an aggregate of persons. Accordingly, even though classical jurists framed *waqf* in terms of ownership of Allah and charitable dedication, the functional reality is that *waqf* operates as a non-personal legal entity with a distinct dhimmah. In substance, this is precisely what later jurists and modern legal theory would describe as *al-shakhsiyyah al-ma'nawiyyah* / *al-i'tibāriyyah*.

Related to the discussion on al-*waqf* is the *nāẓir* (caretaker) of the *waqf*. The *nāẓir* acts as the operational representative of the *waqf*'s juridical personality, yet jurists differed regarding the juridical characterization of that representation: is the *nāẓir* the agent of the founder (*wakīl al-wāqif*), or the agent of the beneficiaries (often the poor), or even an officer acting by public authority when the endowment is administered under state supervision? This juristic divergence is stated for example in *al-Is'āf fī Ahkām al-Awqāf*, where the author notes that some opinions treat the trustee like an agent, and thus subject to the rule that agency terminates upon death: "...on the basis that the trustee is, according to them, like an agent (*wakīl*), and agency is voided by death..."⁶¹ Another view attributed to Muḥammad ibn al-Ḥasan, where the trustee's authority is not voided by the founder's death because the trustee is not the founder's agent but rather the agent of the beneficiaries: "As for according to Muḥammad, the authority does not lapse by the death of the founder, because the trustee is the agent of the poor, not the agent of the founder, and thus the founder cannot remove him without a condition in the founding instrument."⁶²

Because the juridical personality (*al-shakhsiyyah al-ma'nawiyyah*) cannot act by itself, its affairs are conducted by representatives who administer property, execute transactions, and safeguard assets. These representatives, whether the ruler's officials, the *nāẓir* of a *waqf*, or administrators of public causes, may be analyzed in some madhhab precedents under two overlapping rubrics: (i) *wakālah/niyābah* (agency/deputization) and (ii) *ijārah* (hiring for labor or service). The classification is not merely terminological. It determines the representative's liability regime, especially the extent to which his possession constitutes a hand of trust (*yad amānah*) or a hand of guarantee (*yad ḍamān*), and therefore whether he is liable for accidental loss.

Similarly, in *Nihāyat al-Muḥtāj*, while outlining the duties of the administrator of a *waqf*, it is stated:

His duty, when mentioned without qualification, is to safeguard the principal assets and revenues with due precaution, like the guardian of an orphan; and [this includes] leasing and maintenance, and likewise borrowing against the *waqf* when needed, if the founder stipulated this for him or the ruler permitted it, as stated in *al-Rawḍah* and elsewhere, contrary to al-Bulqīnī and

⁶¹ ... بناء على أن القيم عندهما بمنزلة الوكيل والوكالة تبطل بالموت...

Ibrāhīm b. Mūsā b. Abī Bakr al-Ṭarābulusī al-Ḥanafī, *al-Is'āf fī Ahkām al-Awqāf* (Cairo: al-Maṭba'ah al-Hindiyyah bi-Shāri' al-Mahdī bi-al-Azbakiyyah, 2nd ed., 1320/1902), 34.

⁶² وأما على قول محمد فإن الولاية لا تبطل بموت الواقف لأن المتولي وكيل الفقراء لا وكيل الواقف...

Ibid.

those who followed him, whether the loan is from his own wealth or from that of others.⁶³

This permits borrowing on behalf of the waqf under defined conditions, namely, need (*hājah*), stipulation by the founder, or authorization by the judge. Second, the borrowing is described as being “on the *waqf*” (*al-iqtirād ‘alā al-waqf*), not merely as a personal loan taken by the administrator in his own name. Third, the administrator is analogized to the guardian of an orphan, a figure who manages another’s property while remaining legally distinct from it. This analogy reinforces the notion that the waqf is treated as an independent financial locus, whose interests are safeguarded, enhanced, and, where necessary, temporarily burdened with debt for its own preservation. A parallel ruling appears in Ibn Mufliḥ’s *al-Furū’*, where the permissibility of borrowing against a waqf is stated even more directly. He writes: “The administrator has the right to incur debt on its behalf without the permission of the judge, for the sake of a benefit, such as purchasing on credit for the waqf or purchasing with unspecified cash; and the attribution of the loan as attaching to the property itself is directed, similar to the case of a guardian.”⁶⁴ This explicitly permits the *nāzir* to incur debt ‘*alā al-waqf*, that is, upon the endowment itself, not merely in his personal capacity. Second, this permissibility does not require prior judicial authorization so long as it is undertaken for the benefit (*maṣlaḥah*) of the *waqf*. Third, the administrator is once again analogized to a guardian (*walī*), reinforcing the conceptual separation between the legal personality of the administrator and that of the endowed institution. Most significantly, Ibn Mufliḥ’s statement that “the attribution of the loan as attaching to the property itself is directed” (*wa-yatawajjahu fī qarḍihi mālan*) indicates that the debt is conceived as relating to the waqf’s financial sphere, not merely as a personal obligation of the administrator. From a Maliki perspective, it is stated:

He stated in *al-Nawādir*: If the administrator of an endowment says, “I repaired it using my own money,” but later says, “I actually repaired it from the endowment’s revenue,” this is accepted. He said: If he states, “I spent from the revenue,” then he has carried out the terms of the endowment. But if he says, “I repaired it with my own money,” he must take an oath and may then reimburse himself from the revenue. His earlier statement, “I repaired it with my own money,” does not prejudice his claim. End quote. This indicates

⁶³ وَوُظِفَتْهُ عِنْدَ الْإِطْلَاقِ حِفْظُ الْأُصُولِ وَالْغَلَّاتِ عَلَى وَجْهِ الْإِحْتِيَاظِ كَوَلِّيِ الْيَتِيمِ وَالْإِجَارَةِ وَالْعِمَارَةِ) وَكَذَا الْإِفْتِرَاضُ عَلَى الْوَقْفِ عِنْدَ الْحَاجَةِ إِنْ شَرَطَهُ لَهُ الْوَاقِفُ أَوْ أَذِنَهُ فِيهِ الْحَاكِمُ كَمَا فِي الرُّوضَةِ وَغَيْرِهَا خِلَافًا لِلْبُلْقِينِيِّ وَمَنْ تَبِعَهُ سِوَاءَ فِي ذَلِكَ مَالُ نَفْسِهِ وَغَيْرِهِ

Shams al-Dīn Muḥammad ibn Abī al-‘Abbās Aḥmad ibn Ḥamzah Shihāb al-Dīn al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj* (Beirut: Dār al-Fikr, final ed., 1404 AH/1984 CE), 5:400.

⁶⁴ وَلِلنَّازِرِ الْإِسْتِدَانَةُ عَلَيْهِ بِلاَ إِذْنِ حَاكِمٍ، لِمَصْلَحَةٍ، كَثَرَاتِهِ لِلْوَقْفِ نَسِيئَةً أَوْ بِتَقْدِيرٍ لَمْ يَعْنِهِ، وَيَتَوَجَّهُ فِي قَرْضِهِ مَالًا كَوَلِّيٍّ

Shams al-Dīn Muḥammad ibn Mufliḥ al-Maqdisī, *al-Furū’*, together with Taṣḥīḥ al-Furū’ by ‘Alā’ al-Dīn ‘Alī ibn Sulaymān al-Mardāwī, ed. ‘Abd Allāh ibn ‘Abd al-Muḥsin al-Turkī, 1st ed. (Beirut: Mu’assasat al-Risālah; Riyadh: Dār al-Mu’ayyad, 1424 AH/2003 CE), 7:357. The work was originally published with the ḥāshiyah of Taqī al-Dīn Abū Bakr ibn Ibrāhīm ibn Yūsuf Ibn Qundus al-Ba‘lī, though that commentary is not included in this electronic edition.

that the administrator of an endowment may borrow on its behalf and use the borrowed funds to repair it.⁶⁵

Accordingly, borrowing against a *waqf* represents an example in which Islamic jurisprudence functionally extends the effects of *al-dhimmah* beyond the natural person, without collapsing that extension into moral responsibility or *taklif*. The *waqf* neither sins nor intends, yet it may owe, be owed, and have its financial interests burdened or protected in law.

The State and the Imam as Representative of the Community and Its Interests

The state possesses a legal personality distinct from the individuals who constitute it. It is capable of owning property and transferring ownership, may appear as either plaintiff or defendant, and bears rights and obligations independent of any particular person. The ruler and his agents act as representatives of the state, not in their personal capacities. Accordingly, their actions, judgments, and contracts are undertaken in the name of the state rather than in their own names. Thus, when a ruler appoints a judge or employs a worker, that individual serves as a representative of the ruler in his capacity as head of the state, not as the ruler's personal agent. Consequently, if the ruler dies or is removed, the judge or worker is not automatically dismissed, since their appointment attaches to the office and authority of the state rather than to the person of the ruler. Likewise, when the ruler or one of his representatives, such as a judge or state official, acts within the scope of his official duties and harm results, personal liability does not attach to the individual. Instead, liability falls upon the state itself, and compensation is discharged from public funds. This juristic treatment clearly reflects the recognition of the state as an independent legal entity possessing a distinct *dhimmah*, even where classical jurists did not articulate this reality using the later terminology of *al-shakhsiyyah al-ma'nawiyyah*.

Related to this is the *Imam* (head of state), who represents the Muslims collectively. Ibn al-'Arabī writes in *Aḥkām al-Qur'ān*: "As for the commander (*amīr*), there is no disagreement that his granting of protection (*ijārah*) is valid, because he is appointed for oversight and public welfare, a deputy on behalf of all in securing benefits and repelling harms."⁶⁶ The *amīr* is therefore treated as a deputy of the collective, not merely a private agent of a determinate individual. His acts bind the community because he is instituted for *naẓar* (oversight) and *maṣlaḥah* (welfare), and because his function is representation of the public interest. This same duality, agency and authority, is articulated explicitly by Ibn Taymiyyah in *al-Siyāsah al-Shar'iyyah*: "Those who hold authority are deputies of God over His servants, and they are the agents of the servants over themselves, like one partner with

⁶⁵ قَالَ فِي التَّوَادُّعِ الْقَائِمِ بِالْحَبْسِ إِذَا قَالَ أَعْمَرُهَا مِنْ مَالِي ثُمَّ قَالَ إِنَّمَا عَمَّرْتُهَا مِنَ الْعَلَّةِ جَارَ. قَالَ فَإِنْ قَالَ مِنَ الْعَلَّةِ أَنْفَقْتُ فَقَدْ أَنْفَقَ الْوَصِيَّةَ وَإِنْ قَالَ مِنْ مَالِي عَمَّرْتُهَا حَلَفَ وَرَجَعَ بِذَلِكَ فِي الْعَلَّةِ وَلَا يَصْرُهُ قَوْلُهُ أَعْمَرْتُهَا مِنْ مَالِي انْتَهَى وَيُفْهَمُ مِنْهُ أَنَّ لِلْقَائِمِ عَلَى الْحَبْسِ أَنْ يَسْتَقْرِضَ عَلَيْهِ وَيَعْمَرَهُ

Shams al-Dīn Abū 'Abd Allāh Muḥammad ibn Muḥammad ibn 'Abd al-Raḥmān al-Ḥaṭṭāb al-Ru'aynī al-Mālikī, *Mawāhib al-Jalīl fī Sharḥ Mukhtaṣar Khalīl*, 3rd ed. (Beirut: Dār al-Fikr, 1992), 6:40.

⁶⁶ فَأَمَّا الْأَمِيرُ فَلَا خِلَافَ فِي أَنَّ إِجَارَتَهُ جَائِزَةٌ؛ لِأَنَّهُ مُقَدَّمٌ لِلنَّظَرِ وَالْمَصْلَحَةِ، نَائِبٌ عَنِ الْجَمِيعِ فِي جَلْبِ الْمَنَافِعِ وَدَفْعِ الْمَضَارِّ

Abū Bakr Ibn al-'Arabī al-Mālikī, *Aḥkām al-Qur'ān*, rev. and annot. Muḥammad 'Abd al-Qādir 'Aṭā (Beirut: Dār al-Kutub al-'Ilmiyyah, 3rd ed., 1424/2003), 2:458.

another. In them is the meaning of both authority (*wilāyah*) and agency (*wakālah*).⁶⁷ Thus, the ruler is simultaneously a bearer of *wilāyah* (public authority) and *wakālah* (representational agency). This distinction is essential for understanding representation of juridical entities in some madhhab precedents: many forms of representation are neither purely contractual agency nor purely coercive authority, but a legally structured form of deputization that combines both.

This representational structure extends to those who hold delegated offices under the *Imam*, such as governors, ministers, military commanders, and trustees of public institutions (including *awqāf*). These officials are likewise representatives of the Muslims and agents of the state's juridical personality. Their actions are not normally attributed to them personally but to the office and the public entity they represent. This has legal consequences regarding continuity of authority. In *Radd al-Muḥtār*, in the context of deputization, Ibn 'Ābidīn notes: "Likewise, he does not become removed merely by his removal... nor by his death,"⁶⁸ explaining that what is meant is the death or removal of the appointing authority (such as the judge who deputized him or the ruler who appointed the judge). The underlying juristic intuition is that such deputization is not simply a private agency contract that collapses upon the death of the principal. He then explicitly contrasts this with ordinary private agency: "In contrast to the death of a private principal (*muwakkil*), for the agent is removed by it... for the ruler acts on behalf of the Muslims, whereas the private principal acts for himself." al-Qarāfī's *al-Dhakhīrah* makes the rationale even clearer. He argues that officials appointed under an Imam remain in office until the successor removes them, because the authority vested in them is a right belonging to the Muslims rather than a personal right of the appointing ruler: "Because the authority vested in them is a right of the Muslims, it is not voided by his death... and in that [voiding it] there would be great harm to the people."⁶⁹ This is a doctrinal distinction: public representation is not governed by the same termination rules as private *wakālah*, precisely because the "principal" is not an individual whose right collapses upon death, but a continuing collective right. There are also scholars, among them Shāfi'ī jurists, who theorized this by distinguishing types of deputization. In *Mughnī al-Muḥtāj*, the author explains that a restricted deputy, one authorized for a particular task, resembles a private agent and therefore ceases upon the death or removal of the one who authorized him: "His restricted

⁶⁷ والولاية نواب الله على عباده، وهم وكلاء العباد على نفوسهم، بمنزلة أحد الشريكين مع الآخر، ففيهم معنى الولاية والوكالة

Taqī al-Dīn Aḥmad Ibn Taymiyyah, *al-Siyāsah al-Shar'iyyah* (Riyadh: Wizārat al-Shu'ūn al-Islāmiyyah wa-al-Awqāf wa-al-Da'wah wa-al-Irshād, 1st ed., 1418 AH), 1:14.

⁶⁸ وَكَذَا لَا يَنْعَزِلُ أَيْضًا بِعَزْلِهِ... وَلَا بِمَوْتِهِ

بِخِلَافِ مَوْتِ الْمُوكَّلِ فَإِنَّهُ يَنْعَزِلُ بِهِ الْوَكِيلُ... فَالسُّلْطَانُ عَامِلٌ لِلْمُسْلِمِينَ... وَالْمُوكَّلُ عَامِلٌ لِنَفْسِهِ

Muḥammad Amīn Ibn 'Ābidīn, *Ḥāshiyat Radd al-Muḥtār 'alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār* (Cairo: Sharikat Maktabat wa-Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādih, 2nd ed., 1386/1966), 5:393.

⁶⁹ لِأَنَّ الْوِلَايَةَ فِيهِمْ حَقٌّ لِلْمُسْلِمِينَ لَا تَبْطُلُ بِمَوْتِهِ... وَفِي ذَلِكَ ضَرَرٌ عَظِيمٌ عَلَى النَّاسِ

Shihāb al-Dīn Aḥmad al-Qarāfī, *al-Dhakhīrah*, ed. Muḥammad Ḥajjī, Sa'īd A'rāb, and Muḥammad Bū Khubzah (Beirut: Dār al-Gharb al-Islāmī, 1st ed., 1994), 10:129.

deputy is removed upon his death... and he is like an agent (*wakīl*).⁷⁰ However, he notes a significant counter-qualification: if the *Imam* appoints a deputy on behalf of a judge, the deputy may not be removed by the judge's death or removal. The jurists therefore treat certain types of deputization as anchored in a higher, more public principal. A similar justification appears in Ḥanbalī discussions. In *al-Mughnī*, Ibn Qudāmah reasons that if judges were removed by the *Imam*'s death, it would cause widespread disruption: "If he were removed by the *Imam*'s death, harm would befall the Muslims... and legal rulings would be suspended."⁷¹ This line of reasoning confirms that representation here is not merely private agency but a public continuity mechanism required to preserve order and legal functioning.⁷²

70 وَيَنْعَزِلُ بِمَوْتِهِ... نَائِبُهُ الْمُقَيَّد... كَالْوَكِيلِ

Shams al-Dīn Muḥammad b. Muḥammad al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj ilā Maʿrifat Maʿānī Alfāz al-Minhāj*, ed. ʿAlī Muḥammad Muʿawwaḍ and ʿAdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1st ed., 1415/1994), 6:273.

71 لَوْ اِنْعَزَلَ بِمَوْتِ الْإِمَامِ، لَدَخَلَ الضَّرَرُ عَلَى الْمُسْلِمِينَ... وَتَنَعَطَّ الْأَحْكَامُ

Muwaffaq al-Dīn Ibn Qudāmah al-Maqdisī, al-Mughnī, ed. ʿAbd Allāh b. ʿAbd al-Muḥsin al-Turkī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulw (Riyadh: Dār ʿĀlam al-Kutub, 3rd ed., 1417/1997), 14:84.

⁷² Among the examples invoked to illustrate the functional reality of *al-shakhsiyyah al-maʿnawiyyah* are what jurists term the rights of Allah (ḥuqūq Allāh). These rights refer to matters connected to public benefit rather than to the interests of any specific individual, and for this reason they are ascribed to Allah. In the Ḥanafī legal tradition, jurists enumerate eight distinct categories of the rights of Allah, all of which share this public and non-individual character. Legal punishments (ḥudūd), for example, are grounded in public benefit and are therefore classified among the rights of Allah. Their enforcement lies with the state, and the ruler possesses no authority to waive or suspend them at will. Although these rights are ascribed to Allah, their administration and execution are entrusted to the political authority, reflecting a separation between attribution and implementation. Similarly, obligations such as zakāh on wealth, zakāh al-fiṭr, and al-kharāj are duties owed to the public interest. Upon payment, these assets exit the ownership of the individual and enter what jurists describe as the ownership of Allah. In practice, they are then administered either by the state, which itself functions as a legal-construct entity (*shakhsiyyah iʿtibāriyyah*), or by designated beneficiary groups. Each of these recipient groups likewise constitutes a legal-construct entity, insofar as entitlement attaches to the collective as such, rather than to any particular member. The same reasoning applies to the one-fifth of the spoils of war (al-khums) and to certain revenues derived from minerals and natural resources. These are classified as rights of Allah from the outset and therefore never enter the private ownership or dhimmah of any individual. Instead, they vest directly in the state as a legal entity, independent of any personal obligation or proprietary claim. Taken together, these examples demonstrate that some classical madhhab precedents recognized arrangements in which rights and assets are detached from individual persons and assigned to non-individual beneficiaries or authorities. While jurists did not always conceptualize these arrangements using the later terminology of *al-shakhsiyyah al-maʿnawiyyah*, the functional reality of such legal personality is clearly operative within the tradition.

Bayt al-Māl

Another governmental agency related to the state, and an example of *al-shakhsiyyah al-ma'nawiyyah* in some madhhab precedents, is *Bayt al-Māl*. The wealth held in *Bayt al-Māl* is not owned by any particular individual, not even by the head of state. Rather, *Bayt al-Māl* constitutes an independent legal entity with its own rights and obligations. *Bayt al-Māl* is capable of ownership, may appear as plaintiff or defendant, and may acquire property through lawful means, including inheritance from one who dies without an heir. It also disburses funds for legally designated purposes, such as the payment of salaries for the ruler and other public officials. No individual, including the ruler, is entitled to dispose of the wealth of *Bayt al-Māl* at will. Expenditure from it is strictly governed by its legally defined rights, obligations, and purposes. This juristic framework reflects the recognition of *Bayt al-Māl* as possessing an independent *dhimmah*, even though classical jurists did not always articulate this reality using the later terminology of *al-shakhsiyyah al-ma'nawiyyah*.

Al-Muḍārabah

Another instructive example is *muḍārabah*, where jurists distinguished between ownership of the corpus (*milk al-raqabah*) and authority over disposition (*milk al-taṣarruf*). This distinction led to disagreement over whether one party may transact with the *muḍārabah* capital as though it were the wealth of an independent entity. If the owner of the capital (*rabb al-māl*) purchases something for himself using the capital of the *muḍārabah*, jurists differed. Ibn Qudāmah said:

If the owner of the capital purchases for himself something from the property of the *muḍārabah* partnership, then according to one narration the sale is invalid, and this is also the opinion of al-Shāfi'ī. According to the other narration, however, the sale is valid, and this was the view of Mālik ibn Anas, al-Awzā'ī, and Abū Ḥanīfah, because the *muḍārib*'s right has become attached to the property, and thus it was permissible for the owner to purchase it, similar to purchasing from one's *mukātab* slave or from an authorized slave who has debts. Our evidence is that he already owns the property, and therefore purchasing it from himself is invalid, just as purchasing from his agent or from his authorized slave who carries no debt would be invalid.⁷³

Similarly, the jurists differed regarding the permissibility of the capital owner purchasing property from the *muḍārib* using assets belonging to the *muḍārabah* partnership. The first opinion holds that such a transaction is valid, and this was the position

⁷³ إذا اشترى رب المال من مال المضاربة شيئاً لنفسه، لم يصح في إحدى الروايتين. وهو قول الشافعي. ويصح في الأخرى. وبه قال مالك، والأوزاعي، وأبو حنيفة؛ لأنه قد تعلق حق المضارب به، فجاز له شراؤه، وكما لو اشترى من مكاتبه أو من عبده المأذون الذي عليه دين. ولنا، أنه ملكه، فلم يصح شراؤه له، كشرائه من وكيله وعبده المأذون الذي لا دين عليه.

Muwaffaq al-Dīn Ibn Qudāmah al-Maqdisī, al-Mughnī, ed. 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥulw (Riyadh: Dār 'Ālam al-Kutub, 3rd ed., 1417/1997), 7:166-167.

of the Ḥanafīs,⁷⁴ the Mālikīs,⁷⁵ and one narration within the Ḥanbalī school.⁷⁶ The second opinion maintains that it is invalid. Those who permitted the transaction reasoned that the capital owner possesses ownership over the corpus of the *muḍārabah* assets but does not possess unrestricted authority of disposition over them, while the *muḍārib* possesses authority of commercial disposition without ownership of the corpus itself. Thus, with respect to each party's missing aspect of ownership, the other party resembles a legal stranger (*ajnabī*). The capital owner cannot unilaterally prevent the *muḍārib* from engaging in authorized commercial transactions, and the *muḍārib* does not own the underlying property itself. Accordingly, the property of the *muḍārabah* is treated, in relation to each of them, similarly to the property of a third party, thereby allowing transactions between them. By contrast, those who prohibited the transaction argued that permitting the capital owner to purchase from the *muḍārabah* assets effectively results in a person selling his own property to himself, analogous to purchasing property from one's own agent. Since the assets fundamentally remain the property of the capital owner, the transaction lacks the legal distinction necessary for a valid sale.

The Ḥanafīs articulate this distinction most explicitly. They permit the owner of the capital to purchase from the *muḍārabah*, and the *muḍārib* to purchase from the owner of the capital, even if no profit has yet arisen, according to Abū Ḥanīfah and his two companions. Their reasoning is that the owner of the capital possesses ownership of the corpus without authority of disposition (*milk raqabah lā milk taṣarruf*), while the *muḍārib* possesses authority of disposition without ownership of the corpus (*milk taṣarruf lā milk raqabah*). Consequently, with respect to disposition, the owner of the capital is treated like a legal stranger, and with respect to ownership of the corpus, the *muḍārib* is likewise treated as a stranger. As a result, the *muḍārabah* capital is, in relation to each of them, analogous to the wealth of a third party, which renders transactions between them valid. This reasoning is stated explicitly in *Badā'ī' al-Ṣanā'ī'*:

Our three jurists held that it is permissible for the capital owner to purchase from the *muḍārabah* partnership, and likewise for the *muḍārib* to purchase from the capital owner, even if no profit has yet been generated in the partnership. However, Zufar ibn al-Hudhayl held that transactions between them involving *muḍārabah* assets are impermissible. The basis of Zufar's opinion is that such a transaction amounts to a person selling his own property for his own property and purchasing his own property with his own property, since both assets ultimately belong to the capital owner. Therefore, the transaction is invalid, analogous to dealings between an agent and his principal. Our evidence is that the capital owner possesses ownership of the corpus of the *muḍārabah* assets, but not ownership of the right of disposition. With respect to disposition, his ownership resembles that of a legal stranger. Conversely, the *muḍārib* possesses authority of disposition but not ownership of the corpus itself. Thus, regarding ownership of the corpus, the *muḍārib* resembles a legal stranger, to the extent that the capital owner cannot prevent him from engaging in authorized transactions. Consequently, the *muḍārabah* assets are treated, in relation to each of the two parties, like the

⁷⁴ See below.

⁷⁵ Abū al-Walīd Sulaymān b. Khalaf al-Bājī, *al-Muntaqā Sharḥ al-Muwaṭṭa'* (Cairo: Maṭba'at al-Sa'ādah, 1st ed., 1332 AH), 5:153.

⁷⁶ Muwaffaq al-Dīn Ibn Qudāmah al-Maqdisī, *al-Kāfī fī Fiqh al-Imām Aḥmad* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1st ed., 1414/1994). 2:160.

property of a third party, and for this reason transactions between them are permissible. Accordingly, if the *muḍārib* purchases a house and the capital owner possesses a right of preemption (*shuf'ah*) due to ownership of an adjacent property, he may exercise that right. Although the purchased property is in reality connected to his wealth, legally it is treated as though it is not his property, as evidenced by the fact that he cannot simply seize it from the possession of the *muḍārib*. For this same reason, purchasing it from the *muḍārib* is deemed permissible.⁷⁷

This juristic analysis demonstrates that some madhhab precedents recognized a form of functional separation between persons and the wealth under contract, such that the *muḍārabah* capital operates as a legally distinct financial sphere not fully absorbed into the personal ownership or liability of either party. While classical jurists did not conceptualize this arrangement using the later terminology of *al-shakhsiyyah al-ma'nawiyah*, the underlying logic reflects a recognition of a quasi-independent legal patrimony governed by its own rules of ownership and liability.

The Nafaqah of the Muḍārib

The jurists generally agreed that the *muḍārib* is not entitled to personal maintenance expenses while residing in his place of residence (*ḥaḍar*). This was the position of the four Sunni schools, who reasoned that the *muḍārib* entered the partnership upon the basis that he would receive a specified share of the profits, and therefore he is not entitled to additional compensation beyond that agreed share. However, al-Lakhmī differed from this majority position, arguing that if managing the *muḍārabah* capital occupies the worker to the extent that it prevents him from engaging in the means by which he ordinarily earns his livelihood, then he may spend from the *muḍārabah* assets even while residing locally and not traveling.

The jurists also discussed the validity of stipulating maintenance expenses within the contract itself. They generally held that if the parties expressly stipulate that the *muḍārib* is entitled to maintenance expenses, whether during travel or residence, the condition is valid, based upon the legal maxim that "Muslims are bound by their conditions." Likewise, if there exists an established commercial custom granting such expenses, then customary practice assumes the force of an implied contractual condition, in accordance with the maxim: "What is established by custom is equivalent to an explicit stipulation." The well-known Shāfi'ī position differed on this issue, maintaining that stipulating maintenance expenses

⁷⁷ وَيَجُوزُ شِرَاءُ رَبِّ الْمَالِ مِنَ الْمُضَارِبَةِ، وَشِرَاءُ الْمُضَارِبِ مِنْ رَبِّ الْمَالِ، وَإِنْ لَمْ يَكُنْ فِي الْمُضَارِبَةِ رَيْحٌ فِي قَوْلِ أَصْحَابِنَا الثَّلَاثَةِ...
وَلَنَا أَنَّ لِرَبِّ الْمَالِ فِي مَالِ الْمُضَارِبَةِ مِلْكَ رَقَبَةٍ لَا مِلْكَ تَصَرُّفٍ، وَمِلْكُهُ فِي حَقِّ التَّصَرُّفِ كَمِلْكِ الْأَجْنَبِيِّ، وَلِلْمُضَارِبِ فِيهِ مِلْكُ التَّصَرُّفِ لَا الرَّقَبَةِ، فَكَانَ فِي حَقِّ مِلْكِ الرَّقَبَةِ كَمِلْكِ الْأَجْنَبِيِّ حَتَّى لَا يَمْلِكَ رَبُّ الْمَالِ مَنَعَهُ عَنِ التَّصَرُّفِ، فَكَانَ مَالُ الْمُضَارِبَةِ فِي حَقِّ كُلِّ وَاحِدٍ مِنْهُمَا كَمَالِ الْأَجْنَبِيِّ، لِذَلِكَ جَازَ الشِّرَاءُ بَيْنَهُمَا وَلَوْ اشْتَرَى الْمُضَارِبُ دَارًا، وَرَبُّ الْمَالِ شَفِيعُهَا بِدَارٍ أُخْرَى بِجَنْبِهَا، فَلَهُ أَنْ يَأْخُذَ بِالشُّفْعَةِ؛ لِأَنَّ الْمُشْتَرِيَ وَإِنْ كَانَ لَهُ فِي الْحَقِيقَةِ لِكُنْهُ فِي الْحُكْمِ كَأَنَّهُ لَيْسَ لَهُ، بِدَلِيلٍ أَنَّهُ لَا يَمْلِكُ انْتِزَاعَهُ مِنْ يَدِ الْمُضَارِبِ، وَلِهَذَا جَازَ شِرَاؤُهُ مِنَ الْمُضَارِبِ
'Alā' al-Dīn Abū Bakr al-Kāsānī, Badā'ī' al-ṣanā'ī' fī Tartīb al-Sharā'ī', 7 vols. (1st ed., 1327–1328 AH), 6:101.

invalidates the *muḍārabah* contract.⁷⁸ The primary dispute, however, concerns the case in which the *muḍārib* travels for trade without any explicit stipulation regarding maintenance and without an established commercial custom. The jurists differed on whether he may spend from the *muḍārabah* assets merely by virtue of the contract itself. The first opinion, held by the Ḥanafīs⁷⁹ and Mālikīs,⁸⁰ permits the *muḍārib* to spend reasonably from the partnership assets during travel, provided that the capital can bear such expenses. The second opinion denies him any such entitlement absent explicit authorization. A third opinion adopts a middle position, allowing the *muḍārib* to spend only the additional expenses specifically incurred because of travel, rather than ordinary personal expenses that he would have borne regardless.

The Ḥanafī jurists further affirmed the functional independence of the *muḍārabah* patrimony through their rulings on the *nafaqah* (maintenance expenses) of the *muḍārib*. According to them, the *muḍārib's nafaqah* is charged against the wealth of the *muḍārabah* itself. If the *muḍārib* instead spends from his own funds, that expenditure becomes a debt owed by the *muḍārabah* capital, not by the owner of the capital personally. Crucially, this debt is attached exclusively to the wealth of the *muḍārabah*. If the *muḍārabah* capital is destroyed, the *muḍārib* has no right of recourse against the owner of the capital. The debt is extinguished with the destruction of the *muḍārabah* wealth and does not transfer to the personal *dhimma* of *rabb al-māl*. This ruling demonstrates that the obligation incurred by the *muḍārib's* expenditure is not borne by either contracting party personally, but rather by the *muḍārabah* fund itself. In effect, the debt is connected to the *dhimma* of the *muḍārabah* alone and does not extend to the *dhimma* of the individuals who constitute it. Al-Kāsānī states in *Badā'i' al-ṣanā'i'* that the *muḍārib* may spend upon himself from the *muḍārabah* capital, and if he spends from his own wealth, he may seek reimbursement from the *muḍārabah* fund so long as the capital remains intact. However, if the capital is destroyed, he may not recover anything from the owner of the capital. This is because the *muḍārib's nafaqah* is a charge upon the *muḍārabah* wealth itself; when that wealth perishes, the obligation perishes with it, analogous to a debt extinguished by the destruction of pledged collateral, or *zakāh* dropping due to the loss of the *niṣāb*.⁸¹

The legal consequence of this analysis is significant: the *muḍārabah* capital bears obligations independently of the personal liability of either party. This confirms that some madhhab precedents recognized, at least functionally, a separate legal patrimony with its own *dhimma*. Although classical jurists did not articulate this in the later terminology of *al-shakhsiyyah al-ma'nawiyyah*, the *muḍārabah* here operates as an entity whose rights and obligations are distinct from those of its constituent individuals. Moreover, the Ḥanafīs hold that any person accompanying the *muḍārib* and assisting him in the conduct of the *muḍārabah* is likewise entitled to maintenance from the *muḍārabah* fund. This includes free

⁷⁸ Abū Zakariyyā Muḥyī al-Dīn Yahyā b. Sharaf al-Nawawī, *Rawḍat al-ṭālibīn wa-'Umdat al-Muftīn*, ed. Qism al-Taḥqīq wa-al-Taṣḥīḥ bi-al-Maktab al-Islāmī under the supervision of Zuhayr al-Shāwīsh (Beirut–Damascus–Amman: al-Maktab al-Islāmī, 3rd ed., 1412/1991), 14:493.

⁷⁹ Zayn al-Dīn Ibn Nujaym al-Miṣrī, *al-Baḥr al-Rā'iḳ Sharḥ Kanz al-Daqa'iq*, with *Takmilat al-Baḥr al-Rā'iḳ* by Muḥammad b. Ḥusayn al-Tūrī and the marginal commentary *Minḥat al-Khāliq* by Ibn 'Ābidīn, 8 vols. (2nd ed.; repr., Beirut: Dār al-Kitāb al-Islāmī), 7:269.

⁸⁰ Muḥammad 'Illaysh, *Minaḥ al-Jalīl Sharḥ Mukhtaṣar Khalīl*, 9 vols. (Beirut: Dār al-Fikr, 1st ed., 1404/1984), 7:358.

⁸¹ 'Alā' al-Dīn Abū Bakr al-Kāsānī, *Badā'i' al-ṣanā'i' fī Tartīb al-Sharā'i'*, 7 vols. (1st ed., 1327–1328 AH), 6:106.

persons, slaves, hired workers, and those employed to serve the *muḍārib* or tend to his means of transport. Their maintenance is treated as analogous to the *muḍārib*'s own, since the performance of the *muḍārabah*, and particularly travel for its sake, cannot ordinarily be accomplished without them.⁸² This analysis reinforces the earlier conclusion that obligations arising in the course of the *muḍārabah* are attached directly to the *muḍārabah* patrimony itself, rather than to the personal *dhimmah* of either contracting party. The entitlement to maintenance is triggered not by personal status, but by the functional demands of the *muḍārabah* activity. In this way, the *muḍārabah* fund operates as a legally distinct financial sphere bearing its own expenses and obligations, further supporting the recognition of a separate *dhimmah* independent of the individuals involved.

The jurists also differed regarding the situation in which one party to the *muḍārabah* seeks to sell the partnership assets while the other insists upon retaining them in anticipation of greater profit. This dispute reflects the broader tension between the capital owner's interest in recovering his capital and the *muḍārib*'s interest in maximizing profit.

The Ḥanafīs held that if the *muḍārib* purchases merchandise and the capital owner later demands liquidation of the assets while the *muḍārib* refuses in hopes of obtaining profit, the *muḍārib* has no right to withhold the merchandise without the consent of the capital owner. If no profit has yet materialized, the *muḍārib* may either be compelled to sell the goods or to deliver the merchandise itself to the capital owner in satisfaction of the principal capital. The rationale is that the *muḍārib* possesses no presently realized right in the assets, but only a speculative expectation of future profit that may or may not materialize, and therefore he cannot prevent the capital owner from recovering his property on the basis of a merely conjectural interest. Some Ḥanafī jurists, however, stated that if the *muḍārib* wishes to retain the merchandise despite the absence of profit, he may repay the principal capital to the owner and retain the goods himself. If profit has already become apparent, for example, if the capital amounted to one thousand and the merchandise is now worth two thousand, the *muḍārib* may still be compelled to sell unless he offers the capital owner both the original capital and his share of the profit. In such a case, the capital owner may not refuse, because the realized profit constitutes a right belonging to the *muḍārib*, and a person cannot be compelled to sell his own property merely to secure the interests of his partner. Conversely, some Ḥanafī discussions suggest that where no profit exists, the capital owner may simply take possession of the merchandise itself at the value of his principal capital or independently sell it until he recovers his original investment.⁸³

The Mālikīs adopted a more discretionary approach. They held that when one party seeks liquidation while the other seeks delay for the sake of anticipated profit, the judge should determine whichever course appears more beneficial and equitable for both parties under the circumstances.

The Shāfi'īs distinguished between cases depending on which party requested the sale and on the legal status of the *muḍārib*'s entitlement to profit. If the *muḍārib* seeks liquidation while the capital owner refuses, the capital owner may be compelled to sell because the *muḍārib*'s right to profit cannot become fully realized except through sale of the merchandise. If the capital owner instead offers the *muḍārib* his share of the profit directly, the ruling depends upon whether the *muḍārib* is deemed to own his share merely upon the appearance of profit. If ownership is established immediately upon the appearance of profit, then the *muḍārib* cannot be compelled to accept such compensation in lieu of sale, just as a co-owner cannot be forced to surrender his share in jointly owned property. However, if

⁸² Ibid.

⁸³ 'Alā' al-Dīn Abū Bakr al-Kāsānī, *Badā'ī' al-ṣanā'ī' fī Tartīb al-Sharā'ī'*, 7 vols. (1st ed., 1327–1328 AH), 6:112.

ownership of profit is not established merely upon its appearance, then two views emerge within the school: one holding that the capital owner cannot be compelled to sell because he has already offered the *muḍārib* his due, and another holding that sale may still be compelled because the merchandise could later increase further in value. Conversely, if the capital owner requests sale while the *muḍārib* refuses, the *muḍārib* may generally be compelled to sell because the owner's right to recover his capital depends upon liquidation. Yet even here, the Shāfi'īs debated whether the *muḍārib* could waive his profit entitlement and thereby prevent compelled sale. It is also attributed to al-Shāfi'ī the broader principle that whichever party demands sale should generally prevail, so long as no undue harm results.

The Ḥanbalīs likewise distinguished between requests initiated by the capital owner and those initiated by the *muḍārib*. If the capital owner demands liquidation, the *muḍārib* is generally compelled to sell. One opinion within the school, however, maintains that the *muḍārib* cannot be compelled where no profit exists or where he waives his right to profit, because termination of the partnership effectively removes his authority over the assets and renders him analogous to a legal stranger. If the *muḍārib* seeks sale, the capital owner may be compelled to agree where profit has already arisen, since the *muḍārib*'s right in the profit cannot be fully realized except through liquidation. Ibn Qudāmah explicitly justified this ruling on the basis that the worker's share in profit only becomes fully manifest upon sale. However, where no profit exists, the capital owner cannot be compelled to liquidate his property, because the *muḍārib* possesses no present right therein and the owner has chosen to retain his property in that form.

Summarizing this, Ibn Qudāmah says that the *muḍārabah* partnership is among the non-binding contracts (*'uqūd jā'izah*), and therefore it is terminated by the revocation of either party, regardless of which party initiates the termination, as well as by death, insanity, or legal interdiction due to financial incompetence. This is because the *muḍārib* is merely authorized to transact in the property of another with permission, and thus resembles an agent (*wakīl*). There is no distinction in this regard between termination before commercial activity begins and termination after transactions have already occurred. If the partnership terminates while the capital remains in liquid cash form without profit, the owner simply reclaims his capital. If profit has arisen, the two parties divide the profit according to the ratio they stipulated. If the partnership terminates while the assets remain in the form of merchandise or commodities, and both parties agree either to sell the goods or divide them between themselves, this is permissible because the rights involved belong exclusively to them. If the *muḍārib* requests liquidation while the capital owner refuses, and profit has already become apparent in the assets, then the capital owner may be compelled to sell. This was also the view of Iṣḥāq ibn Rāhawayh and Sufyān al-Thawrī, because the *muḍārib*'s right in the profit cannot become fully realized except through sale of the merchandise. However, if no profit has yet appeared, the owner cannot be compelled to sell because the *muḍārib* possesses no established right in the property, and the owner has accepted the property in its current non-liquid form. This is the apparent position of al-Shāfi'ī. Some jurists nevertheless mentioned an alternative opinion that the owner may still be compelled to sell because a new bidder or interested purchaser might emerge and offer a price exceeding the ordinary market value, thereby generating profit for the *muḍārib*. The author rejects this latter reasoning on the basis that the *muḍārib* is only entitled to profits realized up until the moment of termination, and such entitlement is determined through valuation at the time of dissolution. Any later increase in value occurring after termination does not belong to the *muḍārib*. The discussion analogizes this to cases involving borrowed land upon which a borrower builds or plants, or cases involving preemption rights (*shuf'ah*), where compensation is determined according to existing value rather than speculative

future appreciation. If, on the other hand, the capital owner requests liquidation and the *muḍārib* refuses, two opinions exist. One opinion compels the *muḍārib* to liquidate the assets, which is also attributed to al-Shāfi'ī, because the *muḍārib* is obligated to return the capital in the same liquid form in which he originally received it. The second opinion maintains that the *muḍārib* cannot be compelled where no profit exists, or where he waives his right to profit, because termination of the contract removes his authority over the property and renders him legally analogous to a stranger with respect to the assets, much like an agent whose authority ends before returning goods that had been entrusted to him. He further explains that if the original capital consisted of dinars and was converted into dirhams, or vice versa, the ruling is treated similarly to the case of merchandise rather than liquid capital. Finally, once the principal capital has been fully liquidated and returned, the *muḍārib* is not obligated to liquidate the remaining profit, because the profit constitutes jointly owned property between the parties, and one partner cannot generally be compelled to liquidate the jointly owned property of another partner. Moreover, the obligation to liquidate applied only to restoration of the principal capital in its original form, and this rationale does not apply to the profits themselves.⁸⁴

Thus, the Ḥanafis describe the *muḍārabah* as voided by annulment or by a prohibition from acting, but they condition the practical effect of termination on the status of the capital at the time of termination. They explain that termination is properly effected when the capital is 'ayn; if it has become *matā'* (commodities), the *muḍārib* may sell those commodities until the capital becomes liquid (*yanīd*), restoring it to money so that it can be returned as received. They link the permissibility of post-termination selling to the requirement that the capital be returned in its proper form."⁸⁵ This was also affirmed by other jurists, as noted above. This doctrinal analysis demonstrates that post-termination

⁸⁴ عَرَضُ، فَاتَّفَقَا عَلَى بَيْعِهِ أَوْ قَسَمِهِ، جَازَ؛ لِأَنَّ الْحَقَّ لَهَا، لَا يَعْدُوهُمَا. وَإِنْ طَلَبَ الْعَامِلُ الْبَيْعَ، وَأَبَى رَبُّ الْمَالِ، وَقَدْ ظَهَرَ فِي الْمَالِ رِبْحٌ، أُجِبَ رَبُّ الْمَالِ عَلَى الْبَيْعِ. وَهَذَا قَوْلُ إِسْحَاقَ وَالثَّوْرِيِّ؛ لِأَنَّ حَقَّ الْعَامِلِ فِي الرَّبْحِ، وَلَا يَظْهَرُ إِلَّا بِالْبَيْعِ. وَإِنْ لَمْ يَظْهَرْ رِبْحٌ، لَمْ يُجِبْ؛ لِأَنَّهُ لَا حَقَّ لَهُ فِيهِ، وَقَدْ رَضِيَ مَالِكُهُ كَذَلِكَ، فَلَمْ يُجِبْ عَلَى بَيْعِهِ. وَهَذَا ظَاهِرُ مَذْهَبِ الشَّافِعِيِّ. وَقَالَ بَعْضُهُمْ: فِيهِ وَجْهٌ آخَرٌ، أَنَّهُ يُجِبُ عَلَى الْبَيْعِ؛ لِأَنَّهُ رُبَّمَا زَادَ فِيهِ زَائِدٌ، أَوْ رَغِبَ فِيهِ رَاغِبٌ، فَزَادَ عَلَى ثَمَنِ الْمَثَلِ، فَيَكُونُ لِلْعَامِلِ فِي الْبَيْعِ حَقٌّ. وَلَنَا، أَنَّ الْمَضَارِبَ إِنَّمَا اسْتَحَقَّ الرَّبْحَ إِلَى حِينِ الْفَسْخِ، وَذَلِكَ لَا يُعْلَمُ إِلَّا بِالتَّقْوِيمِ، أَلَا تَرَى أَنَّ الْمُسْتَعِيرَ إِذَا غَرَسَ أَوْ بَنَى، أَوْ الْمُشْتَرِيَ، كَانَ لِلْمُعِيرِ وَالشَّافِعِ أَنْ يَدْفَعَا قِيمَةَ ذَلِكَ، لِأَنَّهُ مُسْتَحَقٌّ لِلْأَرْضِ، فَهُنَا أَوَّلَى. وَمَا ذَكَرُوهُ مِنْ اخْتِمَالِ الزِّيَادَةِ، بَزِيَادَةِ مُزَايِدٍ أَوْ رَاغِبٍ عَلَى قِيمَتِهِ، فَإِنَّمَا حَدَثَ ذَلِكَ بَعْدَ فُسْخِ الْعَقْدِ، فَلَا يَسْتَحِقُّهَا الْعَامِلُ. وَإِنْ طَلَبَ رَبُّ الْمَالِ الْبَيْعَ، وَأَبَى الْعَامِلُ، فَفِيهِ وَجْهَانِ؛ أَحَدُهُمَا، يُجِبُ الْعَامِلُ عَلَى الْبَيْعِ. وَهُوَ قَوْلُ الشَّافِعِيِّ؛ لِأَنَّ عَلَيْهِ رَدَّ الْمَالِ نَاصًا كَمَا أَخَذَهُ. وَالثَّانِي، لَا يُجِبُ إِذَا لَمْ يَكُنْ فِي الْمَالِ رِبْحٌ، أَوْ اسْقَطَ حَقَّهُ مِنَ الرَّبْحِ؛ لِأَنَّهُ بِالْفُسْخِ زَالَ تَصَرُّفُهُ، وَصَارَ أَجْنَبِيًّا مِنَ الْمَالِ، فَأَشْبَهَ الْوَكِيلَ إِذَا اشْتَرَى مَا يُسْتَحَقُّ رَدُّهُ، فَزَالَتْ وَكَالَتْهُ قَبْلَ رَدِّهِ. وَلَوْ كَانَ رَأْسُ الْمَالِ دَنَانِيرَ، فَصَارَ دَرَاهِمَ، [أَوْ دَرَاهِمَ فَصَارَ دَنَانِيرَ]، فَهُوَ كَمَا لَوْ كَانَ عَرَضًا، عَلَى مَا شَرَحَ. وَإِذَا نَصَّ رَأْسُ الْمَالِ جَمِيعُهُ، لَمْ يَلْزَمْ الْعَامِلُ أَنْ يَنْصُ لَهُ الْبَاقِي؛ لِأَنَّهُ شَرَكَةٌ بَيْنَهُمَا، وَلَا يَلْزَمُ الشَّرِيكَ أَنْ يَنْصُ مَالَ شَرِيكِهِ، وَلِأَنَّهُ إِنَّمَا لَزِمَهُ أَنْ يَنْصُ رَأْسَ الْمَالِ، لِيُرَدَّ إِلَيْهِ رَأْسُ مَالِهِ عَلَى صِفَتِهِ، وَلَا يُوجَدُ هَذَا الْمَعْنَى فِي الرَّبْحِ

Muwaffaq al-Dīn Ibn Qudāmah al-Maqdisī, al-Mughnī, ed. 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥulw (Riyadh: Dār 'Ālam al-Kutub, 3rd ed., 1417/1997), 7:172-173.

⁸⁵ 'Alā' al-Dīn Abū Bakr al-Kāsānī, Badā'ī' al-ṣanā'ī' fī Tartīb al-Sharā'ī', 7 vols. (1st ed., 1327-1328 AH), 6:112.

acts are not open-ended “ownership acts” by either party; they are liquidation acts compelled by the internal needs of the *muḍārabah* fund.

A further indicator is the treatment of debts owed to the *muḍārabah* after termination. Ibn Qudāmah explains that if the *muḍārabah* is annulled while the wealth is a debt (*dayn*), the worker must pursue collection, because the contract requires returning the capital in its original form, and debts cannot serve as “liquid capital” until collected. He distinguishes this from pure agency, precisely because the *muḍārib* must return the capital as received, which is why liquidation/collection duties attach to him.⁸⁶

When these doctrines are read together, mutual transactions justified on the basis that the *muḍārabah* wealth is “like the wealth of a stranger” for each party (in a relevant respect), the restriction of post-termination activity to liquidation and restoration of capital, and the duty (or structured obligation) to collect and settle debts so that profit/loss can be determined, one sees a consistent juristic pattern: Neither party exercises unqualified personal dominion over the *muḍārabah* assets as ordinary private property; The fund’s assets must be converted, collected, and settled according to internal contractual rights, so that the fund’s financial result becomes knowable and divisible; Claims and obligations are treated as attaching to the *muḍārabah* sphere itself, not automatically to the personal *dhimmah* of either party, except where the contract or misconduct triggers personal liability. In this sense, *muḍārabah* functions as a legally distinct financial domain, a patrimony governed by its own rules, so that the rights and obligations arising within it are not simply reducible to the private ownership and private liabilities of the two contracting individuals.

Accordingly, while *muḍārabah* is described doctrinally through familiar fiqh categories (*wakālah*-like authority, partnership in profit, and fiduciary obligations), the detailed rulings reveal that the *muḍārabah* fund is treated as having a bounded, quasi-independent *dhimmah*. This boundedness, especially where obligations and entitlements are tied to the fund and do not necessarily extend to the persons behind it, supports the claim that classical fiqh, at minimum, recognized the functional content later systematized as *al-shakhsiyyah al-ma'nawiyyah* / *al-shakhsiyyah al-i'tibāriyyah*.

Khiyār al-Sharṭ and “Wealth Without a Private Owner”

Another revealing example is the Ḥanafī discussion of *khiyār al-sharṭ* (a stipulated option to rescind). In this doctrine, jurists confront a striking legal phenomenon: an item or price may exit the ownership of one party while not clearly entering the ownership of the other, at least on one influential Ḥanafī analysis. If *khiyār* is stipulated for the seller, then the commodity (*al-mabī'*) does not leave the seller’s ownership. By contrast, the price (*al-thaman*) is treated as leaving the buyer’s ownership by agreement; however, jurists differed over whether the price enters the seller’s ownership during the option period. Abū Ḥanīfah said: the price does not enter the seller’s ownership. Abū Yūsuf and Muḥammad said: the price does enter the seller’s ownership. If *khiyār* is stipulated for the buyer, then the price does not leave the buyer’s ownership. Meanwhile, the commodity exits the seller’s ownership by agreement; but jurists differed over whether it enters the buyer’s ownership during the option period. Abū Ḥanīfah held: the commodity does not enter the buyer’s ownership, while Abū Yūsuf and Muḥammad: the commodity does enter the buyer’s ownership. Al-Kāsānī lays out this disagreement explicitly in *Badā'i' al-ṣanā'i'*, explaining that the sale is definitive with respect to the party who has no option, while the existence of

⁸⁶ Ibid, 7:174

khiyār on one side alters the legal consequences of transfer. He then reports Abū Ḥanīfah's position that the presence of *khiyār* prevents the countervalue from entering the other party's ownership, partly to avoid combining the substitute and substituted item in one person in an exchange contract and to avoid inequity between the two parties in a contract of commutation. On the view of the two companions, if the commodity or the price does not enter the ownership of the other party during the option period, that would entail property without an owner, which they treat as an unacceptable implication; hence they affirm entry into ownership on the other side. Abū Ḥanīfah, however, accepts the result that neither contracting party has full proprietary attribution (in the relevant sense) over the transferred countervalue during the option period, even though both parties are natural persons. In other words, he affirms a legal state in which the countervalue is removed from one private ownership without being fully absorbed into another private ownership, and he is not compelled (in that doctrinal moment) to identify a human owner.⁸⁷

Conclusion From Classical Examples

The foregoing analysis demonstrates that classical Islamic jurisprudence recognized, in functional terms, a form of non-personal legal capacity. Entities such as mosques, *awqāf*, the *bayt al-māl*, and the *muḍārabah* fund were treated as possessing a distinct financial *dhimmah*, capable of bearing rights and obligations independently of the natural persons who administered them. Modern juristic discussions describe this concept as *al-shakhṣiyyah al-i'tibāriyyah* (legal personality). It has been defined in various ways, but the definitions generally revolve around the idea of a collective entity formed either by a group of individuals or by a body of wealth for the purpose of achieving a specific objective. Such an entity possesses its own legal existence, rights, and financial liability independent of the individuals who constitute it. Furthermore, its legal existence is not dependent upon the life or death of those individuals.

Thus, although the default rule is that legal capacity and *dhimmah* belong to real human beings, the practical demands of social, economic, and political life necessitated the recognition of collective entities that function with a degree of independent legal capacity. Through this mechanism, institutions can hold rights and obligations through a financial *dhimmah* separate from that of their founders or administrators.

Nevertheless, important differences remain between human beings and such legal personalities. First, a legal personality does not possess the same range of rights as a human being. Matters such as marriage, divorce, lineage, and similar personal rights apply only to human beings. Second, a human being acquires legal capacity to receive and bear rights by virtue of being born alive. By contrast, with respect to a legal personality there is discussion among contemporary jurists as to whether its existence requires recognition by the state or governing authority. Third, a legal personality can act only within the scope of the purpose for which it was established. Human beings, however, possess a far broader capacity to act across multiple spheres of life. Fourth, a human being may pursue personal benefit independently. A legal personality, however, is formed through a collective arrangement of individuals or assets and therefore lacks the same individual agency. Finally, human beings possess a finite lifespan and eventually die. Legal personalities, however, are not terminated by the death, bankruptcy, or withdrawal of the individuals associated with them. Rather, they continue to exist until the objective for which they were established ceases to exist or until the institution is formally dissolved, depending on the particular circumstances.

⁸⁷ 'Alā' al-Dīn Abū Bakr al-Kāsānī, *Badā'i' al-ṣanā'i' fī Tartīb al-Sharā'i'*, 7 vols. (1st ed., Cairo: Maṭba'at Sharikat al-Maṭbū'āt al-'Ilmiyyah, 1327–1328 AH), 5:265.

In relation to artificial intelligence, these distinctions raise new legal questions. AI systems consist of algorithms and programming that allow them to mimic aspects of human cognition, analyze data, and generate conclusions, sometimes independently of their original programmers. On the one hand, AI is not a human being created by Allah with a soul. On the other hand, it is also not merely an inanimate object in the traditional sense. Furthermore, classical legal personalities are ultimately controlled by human agents. All of the examples in classical jurisprudence previously mentioned essentially comprised groups of humans and wealth, rather than distinct beings. These entities cannot act beyond the will of those who administer them. AI systems, however, may operate with a degree of operational autonomy, sometimes generating decisions or actions that were not explicitly intended by their creators.⁸⁸ This characteristic raises the question of whether existing frameworks of legal personality and liability within some madhhab precedents are sufficient to account for such entities, or whether new conceptual approaches are required. It has already been established that *ahliyyah* does not apply to non-human entities. Liability will be addressed in the subsequent section.

Liability

A juridical personality (*al-shakhṣiyyah al-ma'nawiyyah*), precisely because it lacks physical embodiment and rational will, cannot transact, litigate, or administer its affairs except through a human agent. For this reason, classical legal discussions repeatedly address the relationship between a non-human "entity" or collective cause and the individual who acts on its behalf. The representative is the point at which the juridical personality becomes operational in the world: he contracts, receives, pays, litigates, and manages, while legal effects are attributed to the juridical person or public cause rather than to the representative in his private capacity.

At a general level, the relationship may be described as a form of *wakālah* (agency): the representative performs acts on behalf of another, within defined limits, such that the act is legally attributed to the principal rather than to the agent. Yet the classical sources show that representation of juridical personalities often exceeds the structure of ordinary private agency and is better described as a composite of *wakālah* and *wilāyah*, or, *niyābah* (deputization) grounded in public authority and public interest. This hybrid nature becomes particularly clear when jurists discuss whether the representative's authority terminates by death or removal, and whether his powers are derived from an individual principal or from a collective right.

The Representative as Wakīl: The Rule of Amānah and the Limits of Attribution

A foundational rule in the law of agency is that the agent is an *amīn* with respect to what is placed under his control; therefore he is not liable for loss absent transgression (*ta'addī*) or negligence (*tafrīt*). At the same time, the law draws a sharp distinction between accepting the agent's statement to exonerate himself and accepting it to impose liability on the principal.

⁸⁸ Amin Ahmad said: I would say that they can generate decisions or actions that are the opposite of what was intended by their creators. So while Tesla and Waymo both "intend" to produce self-driving cars that drive safely on roads, Waymo has deployed the capability much more conservatively than Tesla. I believe Waymo has only a few road accidents while Tesla has produced many fatalities.

Al-Sarakhsī's *al-Mabsūṭ* illustrates this distinction in the context of partnership purchases. He states that if one partner claims he purchased goods as an agent for the other and that the goods perished, that statement is not accepted to impose the price upon the principal unless circumstances establish the obligation through the act of purchase itself. He explains: "...because each of them is the other's agent in purchasing... the agent is a trustee (*amīn*), so his statement is accepted regarding his own release from liability (*ḍamān*), but his statement is not accepted in imposing a debt upon the principal... Rather, imposing liability occurs by the act of purchase itself, not by his mere acknowledgment."⁸⁹ The Mālikī *Mawāhib al-Jalīl* similarly emphasizes that the agent's admission binds him differently than it binds the principal: "...the agent's admission of receipt is not accepted against the principal, because the agent is a trustee between himself and his principal, not between himself and others."⁹⁰ Shāfi'ī law frames the same rule in explicit *ḍamān* terms. In *Asnā al-Maṭālib* it states: "If it perishes... without negligence he is not liable, because he is a trustworthy agent; but if there is negligence, he is liable..."⁹¹ And a Ḥanbalī articulation appears in *Sharḥ Muntahā al-ʿIrādāt*, where the author states the general maxim and its rationale: "The agent is a trustee: he does not guarantee what perishes in his hand without negligence... because he is the owner's deputy in possession and disposal; destruction in his hand is like destruction in the owner's hand... but if he is negligent or transgresses, he is liable."⁹²

These discussions matter directly for *shakḥsiyyah ma'nawiyyah*: when an administrator acts for a waqf or public cause, classical jurists frequently treat his possession as *yad amānah*, and his statements and liabilities are governed by the nuanced rules of the *amīn*.

Representatives as Hired Personnel: Ijārah and the Question of the Ājīr Khāṣṣ

Representatives of juridical personalities are often paid employees. This introduces a second set of classifications: is the representative merely a *wakīl*, or also an *ājīr* (hired worker)? And if an *ājīr*, is he *khāṣṣ* (exclusive) or *mushtarak* (non-exclusive)? The liability

⁸⁹ ... لِأَنَّ كُلَّ وَاحِدٍ مِنْهُمَا وَكِيلٌ صَاحِبُهُ بِالشَّرَاءِ...

...الْوَكِيلَ أَمِينٌ فَيَقْبَلُ قَوْلُهُ فِي بَرَاءَتِهِ عَنِ الضَّمَانِ، وَلَا يَقْبَلُ قَوْلُهُ فِي الْإِزَامِ الدَّيْنِ...

Shams al-A'imma al-Sarakhsī, *al-Mabsūṭ*, corrected by a group of scholars (Cairo: Maṭba'at al-Sa'ādah; repr., Beirut: Dār al-Ma'rifah), 11:167–168.

⁹⁰ ... إِقْرَأُ الْوَكِيلَ بِالْقَبْضِ غَيْرُ مَقْبُولٍ عَلَى الْمُوَكَّلِ؛ لِأَنَّ الْوَكِيلَ أَمِينٌ فِيمَا بَيْنَهُ وَبَيْنَ مُوَكَّلِهِ لَا فِيمَا بَيْنَهُ وَبَيْنَ غَيْرِهِ

Shams al-Dīn Abū 'Abd Allāh Muḥammad al-Ḥaṭṭāb al-Ru'aynī, *Mawāhib al-Jalīl fī Sharḥ Mukhtaṣar Khalīl* (Beirut: Dār al-Fikr, 3rd ed., 1412/1992), 5:212.

⁹¹ (وَإِنْ تَلَفَ)... (بَلَا تَفْرِيطُ لَمْ يَضْمَنْ)؛ لِأَنَّهُ وَكِيلٌ أَمِينٌ... (أَوْ بَتَفْرِيطٍ ضَمِنَ)

Zakariyyā al-Anṣārī, *Asnā al-Maṭālib fī Sharḥ Rawḍ al-Ṭālib*, 4 vols. (Beirut: Dār al-Kitāb al-Islāmī, n.d.), 2:234.

⁹² وَالْوَكِيلُ أَمِينٌ لَا يَضْمَنْ مَا تَلَفَ بِيَدِهِ بَلَا تَفْرِيطٍ... لِأَنَّهُ نَائِبُ الْمَالِكِ... فَالْهَلَاكُ فِي يَدِهِ كَالْهَلَاكِ فِي يَدِ الْمَالِكِ... فَإِنْ فَرَطَ أَوْ تَعَدَّى ضَمِنَ

Manṣūr b. Yūnus al-Buhūtī, *Daqā'iq Ūlī al-Nuhā li-Sharḥ al-Muntahā* (*Sharḥ Muntahā al-ʿIrādāt*), 3 vols. (Beirut: Ālam al-Kutub, 1st ed., 1414/1993), 2:202.

rules differ sharply on this axis. Jurists broadly treat the *wakīl* as *amīn* by agreement, i.e., non-labile absent *ta'addī/tafrīt*. The more disputed question is the hired worker, and particularly the *ājīr khāṣṣ* (the exclusive employee hired for a duration). A clear Ḥanafī statement appears in *al-Mabsūṭ* regarding the wet nurse (*zi'r*), treated analogically as an *ājīr khāṣṣ*. Al-Sarakhsī holds: "...the wet nurse does not guarantee anything... because she is like the exclusive hired worker... and the exclusive hired worker is a trustee with respect to what is in his hand..."⁹³ The Mālikī position appears forcefully in *al-Mudawwanah* in the chapter on holding a shepherd liable. Mālik is cited as stating: "There is no liability upon them except in what they transgressed in or were negligent about."⁹⁴

This equates scenarios of a shepherd working for multiple owners with one hired exclusively by a single owner, and maintains the same rule: no liability absent fault. The *Mudawwanah* also preserves supporting early reports (e.g., from Yaḥyā b. Sa'īd and Abū al-Zinād) that the hired shepherd is trusted, and that his oath suffices absent proof of wrongdoing, while allowing the possibility that liability can be established by evidence of transgression. The Shāfi'īs in *Nihāyat al-Muḥtāj* support the general framework that possession in the context of lawful use under contract is often treated as *yad amānah*, analogized to the deposit (*wadī'ah*), during the term of the lease: "The hand of the lessee over the riding animal or garment and the like is a hand of trust..."⁹⁵ And the Ḥanbalī manuals state the rule explicitly. In *Kashshāf al-Qinā'*, the author writes that the exclusive hired worker does not guarantee what is destroyed in his hand, because he is a deputy of the owner in directing the benefit as instructed: "...and he bears no liability... because he is the owner's deputy... so he does not guarantee like the agent... unless he intentionally destroys or is negligent..."⁹⁶ A Ḥanafī synthesis in *Tuḥfat al-Fuqahā'* states the point in near-maxim form, even using the language of consensus: "...the exclusive hired worker is not a guarantor of the item delivered to him for work; even if it perishes in his hand not by his doing, he does not guarantee it, by consensus."⁹⁷ Ibn Qudāmah offers a broad comparative statement in *al-Mughnī* that aligns the Ḥanbalī position with Mālik and Abū Ḥanīfah and his companions: the *ājīr khāṣṣ* is not liable absent wrongdoing, because his work is not guaranteed and because he is the owner's deputy in directing the benefit: "...as for the exclusive hired worker... there is no liability upon him so long as he does not transgress..."

⁹³ ... لَمْ تَضْمَنْ الظَّنَّ شَيْئًا؛ لِأَنَّهَا بِمَنْزِلَةِ الْأَجِيرِ الْخَاصِّ ... وَالْأَجِيرُ الْخَاصُّ أَمِينٌ...

Shams al-A'imma al-Sarakhsī, *al-Mabsūṭ*, corrected by a group of scholars (Cairo: Maṭba'at al-Sa'ādah; repr., Beirut: Dār al-Ma'rifah), 15:121.

⁹⁴ لَا ضَمَانَ عَلَيْهِمْ إِلَّا فِيْمَا تَعَدَّوْا أَوْ قَرَّطُوا

Mālik b. Anas, *al-Mudawwanah*, 4 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1st ed., 1415/1994), 3:449.

⁹⁵ (وَيَدُ الْمُكَتَرِي ... يَدُ أَمَانَةٍ ...)

Shams al-Dīn Muḥammad b. Abī al-'Abbās Aḥmad b. Ḥamzah al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj* (Beirut: Dār al-Fikr, 1404/1984), 5:308.

⁹⁶ ... وَلَا ضَمَانَ عَلَيْهِ ... لِأَنَّهُ نَائِبُ الْمَالِكِ ... فَلَمْ يَضْمَنْ كَالْوَكِيلِ ... إِلَّا أَنْ يَتَعَمَّدَ الْإِثْلَافَ أَوْ يُقَرِّطَ

Manṣūr b. Yūnus al-Buhūtī, *Kashshāf al-Qinā'* 'an Matn al-Iqnā', rev. and annot. Hilāl Muṣayliḥ Muṣṭafā Hilāl (Riyadh: Maktabat al-Naṣr al-Ḥadīthah, n.d. [ca. 1388/1968]), 4:33.

⁹⁷ ... فَأَجِيرُ الْوَحْدِ لَا يَكُونُ ضَامِنًا ... حَتَّى لَوْ هَلَكَ فِي يَدِهِ لَا بَصْنَعَهُ لَا يَضْمَنْ بِالْإِجْمَاعِ

'Alā' al-Dīn al-Samarqandī, *Tuḥfat al-Fuqahā'* (the foundational text upon which Badā'i' al-ṣanā'i' of al-Kāsānī was based) (Beirut: Dār al-Kutub al-'Ilmiyyah, 2nd ed., 1414/1994), 2:352.

because the exclusive hired worker is a deputy of the owner in directing the owner's benefits... thus he does not guarantee without transgression, like the agent and the *muḍārib*..."⁹⁸

Some jurists however held that certain workers, sometimes including the *ājir khāṣṣ* when he takes exclusive possession away from the owner, may be liable even without proven transgression, or that liability varies with whether the owner's "hand" is legally present. Al-ʿImrānī's Shāfiʿī work *al-Bayān* lays out a nuanced structure. He holds that if damage occurs through negligence, liability is clear. If it occurs without negligence, then the ruling differs based on whether the owner's hand is effectively present (e.g., the tailor works in the owner's house, or the owner stands watching). If the owner's hand is present, there is no liability: "...because the owner's hand remains established over his property in legal consideration..." But if the item is in the worker's premises and the owner is absent, the question becomes contested.⁹⁹ *Mughnī al-Muḥtāj* mirrors this architecture in tightly juristic terms: the worker is not liable for loss without transgression if he does not "act alone with the hand" (*infarada bi-l-yad*), meaning the owner sits with him or has him at home; and it records competing views when he does act alone with the hand, with the most prominent justification for non-liability being that he took the item for the benefit of the owner as well, analogized to the agent of *qirāḍ*.¹⁰⁰

Within Ḥanbalī law, *al-Inṣāf* likewise preserves a disagreement: the sound position in the *madhhab* is non-liability absent fault, but a contrary view exists, including an attribution to a narration from Aḥmad about guaranteeing losses "by a hidden cause" known only from the worker's side, echoing the logic sometimes used in the discussion of the *ājir mushtarak*.¹⁰¹

From the evidences that were used by those who argued for greater liability includes reports that ʿUmar and ʿAlī used to impose liability upon certain craftsmen. ʿAbd al-Razzāq reports that ʿUmar held a dyer liable: "...that ʿUmar b. al-Khaṭṭāb held liable the dyer who worked with his own hand."¹⁰² Similarly, ʿAbd al-Razzāq reported that ʿAlī held tailors

⁹⁸ ... الأجير الخاص... فلا ضمان عليه ما لم يتعد... ولأن الأجير الخاص نائب عن المالك... فلم يضمن من غير تعد كالوكيل والمضارب...

Muwaffaq al-Dīn Ibn Qudāmah al-Maqdisī, al-Mughnī, ed. ʿAbd Allāh b. ʿAbd al-Muḥsin al-Turkī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulw (Riyadh: Dār ʿĀlam al-Kutub, 3rd ed., 1417/1997), 8:106.

⁹⁹ Abū al-Ḥusayn Yaḥyā b. Abī al-Khayr al-ʿUmrānī, *al-Bayān fī Madhhab al-Imām al-Shāfiʿī*, ed. Qāsim Muḥammad al-Nūrī, 13 vols. (Jeddah: Dār al-Minhāj, 1st ed., 1421/2000), 7:385.

¹⁰⁰ Shams al-Dīn Muḥammad b. Muḥammad al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj ilā Maʿrifat Maʿānī Alfāz al-Minhāj*, ed. ʿAlī Muḥammad Muʿawwaḍ and ʿĀdil Aḥmad ʿAbd al-Mawjūd, 6 vols. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1st ed., 1415/1994), 3:477.

¹⁰¹ ʿAlāʾ al-Dīn al-Mardāwī, *al-Inṣāf fī Maʿrifat al-Rājiḥ min al-Khilāf* (printed with al-Muqniʿ and al-Sharḥ al-Kabīr), ed. ʿAbd Allāh b. ʿAbd al-Muḥsin al-Turkī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Hajar lil-Ṭibāʾah wa-al-Nashr wa-al-Tawzīʿ wa-al-Iʿlān, 1st ed., 1415/1995), 6:71.

¹⁰² ... أَنَّ عُمَرَ بْنَ الْخَطَّابِ ضَمَّنَ الصَّبَّاعَ الَّذِي يَعْمَلُ بِيَدِهِ

ʿAbd al-Razzāq al-ṣanʿānī, al-Muṣannaf, followed by Kitāb al-Jāmiʿ of Maʿmar b. Rāshid, ed. Ḥabīb al-Raḥmān al-Aḥamī (India: al-Majlis al-ʿIlmī; distributed by al-Maktab al-Islāmī, Beirut, 2nd ed., 1403/1983), 8:217, #14949.

and dyers liable as a precaution: "... 'Alī used to hold liable the tailor and the dyer and the like, as a precaution for people."¹⁰³

This entire liability architecture feeds directly into the discussion on representatives of juridical personalities not being "owners" of what they handle. Whether they are conceptualized primarily as agents (*wakīl/nā'ib*) or as employees (*ājir*), the default presumption in the classical tradition, consistently reflected across the classical sources, is that their "hand" is typically a hand of trust (*yad amānah*), and thus they are not liable except with *ta'addī* or *tafrīt*, with nuanced exceptions when possession, secrecy of causal knowledge, or corruption of practice alters the juristic calculus.

When considering artificial intelligence, several distinct categories must be distinguished. First, there are AI systems that operate entirely under human control. In such cases, the AI functions merely as a tool, and any harm or liability arising from its actions is attributable to the human operators, developers, or owners who deploy it. However, other levels may be more difficult to pass judgment over. There may emerge more advanced forms of AI that possess significant operational autonomy.¹⁰⁴ In these cases, do we consider the possibility of granting such systems a form of legal personality analogous to the juridical person recognized in modern law? This would not necessarily imply moral agency but could serve as a legal mechanism for assigning responsibility, regulating interactions, and structuring liability. A third hypothetical category concerns extremely advanced or "superintelligent" AI systems designed to surpass human capabilities. Such technologies raise deeper philosophical and legal concerns, as they effectively aim at constructing a form of artificial super-human entity. From a normative Islamic legal perspective, granting such systems legal personality is problematic, as it risks blurring the ontological distinction between human beings, who alone bear moral responsibility before God, and artificial constructs created by them. For this reason, while modern legal systems may expand the scope of juridical personality for pragmatic purposes, Islamic legal theory would require careful examination before extending *ahliyyah* to artificial entities. The central question remains whether legal capacity in Islamic jurisprudence can be detached from the human attributes of intellect, accountability, and moral agency upon which the classical doctrine of *ahliyyah* is built.

Once the juridical person (*al-shakhṣiyyah al-ma'nawiyyah*) is affirmed as a meaningful legal subject, the next question is not whether it "exists," but what kinds of responsibility can be attributed to it. Contemporary legal writing typically distinguishes between (1) civil responsibility and (2) criminal responsibility. The first category includes what is also called contractual responsibility, i.e. liability arising from obligations the party voluntarily assumed by entering a contract. Closely related, though conceptually distinct, is tortious liability, namely responsibility for harm that occurs due to one's actions and wrongdoing even outside a contractual framework. The second category, criminal

¹⁰³ ... كَانَ عَلَى يُضْمَنُ الْحَيَّاطُ، وَالصَّبَّاعُ... احْتِيَاظًا لِلنَّاسِ

Ibid, #14948.

See gradings of these reports:

Muḥammad ibn Mubārak Ḥakīmī, compiler, *al-'Atīq: Muṣannaf Jāmi' li-Fatāwā Aṣḥāb al-Nabī ﷺ*, 12 vols., unpublished manuscript. Note: the compiler placed a dash (-) at the

beginning of some reports; the reports were divided into separate pages based on this marker, 25:209-215.

¹⁰⁴ Amin Ahmad said: I think this has already happened, i.e. it's not something waiting to happen. The "Agentic AI" craze that's currently sweeping the globe is essentially about creating AI systems to autonomously operate entire business workflows with minimal or no human oversight.

responsibility, concerns whether an actor possesses the requisite capacity (*ahliyyah*) to be held criminally accountable for criminal acts, for example, a company being held answerable for harms caused by defective products, or for hazardous public works (such as digging a ditch in a road leading to injury).

Among scholars who recognize the juridical person, there is broad agreement that it can bear civil obligations: if it enters contracts and undertakes financial commitments, those commitments can attach to it, and it can be made to satisfy them through its assets. This is the realm of civil responsibility (including contractual and, in many modern formulations, tortious liability as financial compensation). At the same time, the jurists are agreed on a baseline: the default subject of moral-legal responsibility (*taklīf*) is the human being who is *mukallaf*. Whoever lacks the conditions of *taklīf*, and thus is not *mukallaf*, is not held responsible in the same sense. This point becomes central when the discussion shifts from civil obligations to criminal accountability. Even among those who affirm *al-shakhṣiyyah al-ma'nawiyyah*, the more difficult question is whether it may be held responsible for crimes committed by its representatives, when those representatives act for the benefit of the juridical person and within the scope of their assigned work, or whether criminal responsibility remains confined to the human perpetrator alone.

One prominent view holds that the juridical person is not criminally accountable for crimes attributed to it. On this analysis, the juridical person lacks knowledge and choice, which are conditions for *taklīf*; hence it is not *mukallafah*, and the non-*mukallaf* is not taken into account criminally for "its" acts. Accordingly, the crime is attributed to the real human agent who committed it, and punishment (and criminal blame) attaches to him rather than to the abstract entity. This position gains intuitive force from the classical linkage between criminal activity and moral agency. Yet it must confront a second, equally classical datum: even those lacking full *taklīf* can still be "taken into account" in certain ways, insofar as some madhhab precedents distinguish between moral culpability and financial consequence. Thus, while the child and the insane are not *mukallaf*, their actions can still generate legal effects: the child may be disciplined, and both the child and the insane may be held financially liable for what they destroy. This does not erase the difference between *taklīf* and financial consequence, but it complicates arguments that treat lack of full moral agency as eliminating all forms of imputability.

A second view argues that, while the juridical person is not *mukallaf* in the strict moral sense, it may nevertheless be held responsible for criminal harms, at least in the sense of financial consequences, when: (i) the act was committed by a person connected to the entity, (ii) the person acted within what the entity authorized him to do, and (iii) the harm was not the product of an intentionally transgressional act against others, but rather occurred as part of the entity's activity (often conceived as *khaṭa'* or non-intentional wrongdoing, or institutional fault).

Proponents cite the report that the Prophet peace be upon him compensated from public funds for mistaken killings committed by Muslims in the context of battle. The emblematic example is the killing of al-Yamān b. Jābir (the father of Ḥudhayfah b. al-Yamān) at Uhud, when he was not recognized and was killed by Muslims by mistake. The Prophet peace be upon him paid the blood money, and Ḥudhayfah then gave it away as charity to the Muslims.¹⁰⁵ On this reading, the "army," functionally a collective institutional

¹⁰⁵ Narrated by Aḥmad (#23639) and others. Ibn Ḥajar judged its chain *ḥasan* in *al-Dirāyah* (#1014). As narrated, the individual killer was 'Utbah b. Mas'ūd in the narration of Ishāq b. Rāhawayh (as referenced in *al-Dirāyah* #1014). See Abū al-Faḍl Aḥmad b. 'Alī b. Muḥammad b. Ḥajar al-'Asqalānī, *al-Dirāyah fī Takhrīj Aḥādīth al-Hidāyah*, ed. al-Sayyid

body operating under command, resembles a juridical person whose collective activity generated a compensable harm. Even if an identifiable individual carried out the mistaken killing, the Prophet's payment from public funds is taken to show that the institutional treasury may bear financial responsibility for harms arising from institutional action. This view then reinforces the argument by *qiyās*: just as the *'āqilah* (the collective liability group) bears the blood money for mistaken killing, the juridical person, comprised of its personnel and organized activity, may bear financial liability for mistaken harms caused by its representatives during the course of work. The point is not that the entity "intends," but that the law recognizes collective structures for distributing the financial burden of non-intentional harms.

A further line of proof is the classical doctrine that *Bayt al-Māl* covers certain liabilities arising from the mistakes of officials, especially the judge and ruler, precisely because those officials act not for themselves but for the public interest. This appears across the schools, with variations in detail, and is frequently framed as a problem of agency (*wakālah/niyābah*) and public representation. In the Ḥanafī *Badā'i' al-Ṣanā'i'*, the author begins by stating that a judge who errs is not personally liable, because he did not act for himself: "The principle is that if the judge errs in his judgment... he is not taken to task by liability (*ḍamān*)... because in judging he did not act for himself but for another; thus he is like a messenger, and the liability-burden does not attach to him..." He then distinguishes: if the matter concerns rights of people, restitution is pursued against the beneficiary when possible; if the matter concerns pure rights of God (such as the enforcement of *ḥudūd*), then the liability is in *Bayt al-Māl*, because the benefit returns to the community (deterrence), so the community bears the burden: "But if it is a pure right of God... then its liability is in *Bayt al-Māl*... because he acted therein for the generality of Muslims... thus his mistake is upon them... so it is paid from their treasury... and the judge is not held liable... nor the executioner, because he acted by the judge's order..."¹⁰⁶

The Mālikī *al-Mudawwanah* discusses the ruler's mistake in a ḥadd and frames the matter through the lens of *khaṭa'* and distribution, stating (in the interlocutor's view reported here) that what is above a threshold is borne by the *'āqilah*, while what is below is from the ruler's personal wealth: "...I view that as from the ruler's mistake. The *'āqilah*

¹⁰⁶ 'Abd Allāh Hāshim al-Yamānī al-Madanī (Beirut: Dār al-Ma'rifah, n.d.), 2:266-267; Aḥmad b. Ḥanbal, *Musnad al-Imām Aḥmad b. Ḥanbal*, ed. Shu'ayb al-Arna'ūt, 'Adil Murshid, et al., under the supervision of 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī (Beirut: Mu'assasat al-Risālah, 1st ed., 1421 AH/2001 CE), 50 vols, 39:46-47.

¹⁰⁶ الأصل أن القاضي إذا أخطأ في قضائه... أنه لا يؤاخذ بالضمان... لأنه بالقضاء لم يعمل لنفسه بل لغيره فكان بمنزلة الرسول فلا تلحقه العهدة...

وأما إذا كان من حق الله... فضمانه في بيت المال... لأنه عمل فيها لعامة المسلمين... فكان خطؤه عليهم... فيؤدى من بيت مالهم... ولا يضمن القاضي... ولا الجلاذ أيضاً...

'Alā' al-Dīn Abū Bakr b. Mas'ūd al-Kāsānī al-Ḥanafī, known as "Malik al-'Ulamā'," *Badā'i' al-ṣanā'i' fī Tartīb al-Sharā'i'* (Egypt: Maṭba'at Sharikat al-Maṭbū'āt al-'Ilmiyyah, vols. 1-2; Maṭba'at al-Jamāliyyah, vols. 3-7, 1st ed., 1327-1328 AH); repr., Beirut: Dār al-Kutub al-'Ilmiyyah, 7:16.

bears from it one-third and above; what is less than one-third is from the ruler's own wealth."¹⁰⁷

Furthermore, Mālikī and Shāfi'ī sources treat the judge's liability as turning on whether the error involved what is subject to *ijtihād* or rather an obvious deficiency, and whether there was negligence in investigating witnesses. Thus in *al-Ma'ūnah 'alā Madhhab 'Ālim al-Madīnah*, if the judge ruled and then the witnesses proved immoral (*fisq*), no liability is imposed because justice/*fisq* is *ijtihād*-based; but if they are proved slaves or unbelievers, liability may attach due to negligent verification: "...justice and *fisq* are matters whose path is *ijtihād*... unlike ruling by testimony of slaves and unbelievers, for there is no *ijtihād* there... thus the judge is negligent in verifying..."¹⁰⁸

In *Asnā al-Maṭālib*, the Shāfi'ī text explicitly states that if a judge rules by witnesses later found rejected, then if punishments like cutting or killing were executed, the liability is upon the judge's *'āqilah* due to negligence in complete investigation, even in a *ḥadd* of God, while property is returned or compensated through other routes: "...if cutting or killing was carried out... then the guarantee is upon the judge's *'āqilah*... due to negligence by leaving complete investigation..."¹⁰⁹

The Ḥanbalīs also have discussions that make the *wakālah* framing explicit. *Al-Inṣāf* notes that the legal consequences of the imām's error are analyzed on whether he is treated as the Muslims' agent, and that the issue "is textually established" in the matter of the imām's mistake: "...built upon: is he an agent for the Muslims or not? If it is said it is in Bayt al-Māl, then he is an agent... but if we say it is upon his *'āqilah*..."¹¹⁰ And *Kashshāf al-Qinā'* supplies the procedural implications: if witnesses' disbelief or immorality becomes clear after judgment, the judge must reverse the ruling and restore property (or its substitute) because it was taken without right, and compensation for an executed retaliation is pursued in the manner detailed under intentional killing.¹¹¹

Taken together, these strands supply the doctrinal architecture for the later position: the ruler and judge are paradigmatic representatives of a collective (the Muslims / the state), and thus, in the classical books, they operate in the space of juridical representation. When they err in the course of official duty, the tradition repeatedly routes financial consequences to *Bayt al-Māl* (or distributes them through *'āqilah* rules), precisely because

¹⁰⁷ ... وأرى ذلك من خطأ الإمام، وتحمل العاقلة من ذلك الثلث فصاعداً، وما كان دون الثلث ففي مال الإمام خاصة

Mālik b. Anas b. Mālik b. 'Āmir al-Aṣḥabī al-Madanī, *al-Mudawwanah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1st ed., 1415 AH/1994 CE), 4:506–507.

¹⁰⁸ al-Qāḍī 'Abd al-Wahhāb al-Baghdādī, *al-Ma'ūnah 'alā Madhhab 'Ālim al-Madīnah al-Imām Mālik b. Anas*, ed. and studied by Ḥumaysh 'Abd al-Ḥaqq (Mecca: al-Maktabah al-Tijāriyyah, Muṣṭafā Aḥmad al-Bāz, n.d.), 3:1563 (paraphrasing the cited passage).

¹⁰⁹ ... فإن استوفى قطع أو قتل ... فعلى عاقلة القاضي الضمان ... لتفريط بترك البحث التام...

Zakariyyā b. Muḥammad b. Zakariyyā al-Anṣārī, *Zayn al-Dīn Abū Yaḥyā al-Sunaykī, Asnā al-Maṭālib fī Sharḥ Rawḍ al-Ṭālib* (Beirut: Dār al-Kitāb al-Islāmī, n.d.), 4 vols, 4:386.

¹¹⁰ ... بناءً على أنه: هل هو وكيل للمسلمين أم لا؟ ... فإن قيل: في بيت المال فهو وكيل ... وإن قلنا: على عاقلته...

'Alā' al-Dīn Abū al-Ḥasan 'Alī b. Sulaymān al-Mardāwī, *al-Inṣāf fī Ma'rifat al-Rājiḥ min al-Khilāf* (published together with al-Muqni' and al-Sharḥ al-Kabīr), ed. 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Hajar li-al-Ṭibā'ah wa-al-Nashr wa-al-Tawzī' wa-al-I'lān, 1st ed., 1415 AH/1995 CE), 11:173–174.

¹¹¹ Maṣṣūr b. Yūnus b. Idrīs al-Buhūtī, *Kashshāf al-Qinā' 'an Matn al-Iqnā'*, rev. and annotated by Hilāl Muṣayliḥī Muṣṭafā Hilāl (Riyadh: Maktabat al-Naṣr al-Ḥadīthah, owned by 'Abd Allāh and Muḥammad al-Ṣāliḥ al-Rāshid, n.d. [dated by al-Turkī to 1388 AH/1968 CE in *al-Madhhab al-Ḥanbalī*, 2:510]), (6:360).

the official acts for the collective rather than for himself. From here, proponents argue by analogy: whenever an individual acts as a representative of a juridical personality (*shakhṣiyyah ma'nawīyyah*) within the scope of his work, harms that arise as non-intentional "work-product" may be treated as institutional harms whose financial consequences attach to the entity (its treasury/assets), even if the individual remains personally responsible when intentional transgression or private benefit is present.

This framing also preserves the crucial distinction emphasized: criminal moral accountability remains anchored in the *mukallaf* in the strict sense, yet the law has long recognized that harmful acts can generate financial consequences that attach beyond the individual actor, whether through *'āqilah*, *Bayt al-Māl*, or (by contemporary extension) the treasury of the juridical person, when the harm arises from authorized institutional activity.

Bases for Liability

There are multiple bases for liability in some madhhab precedents. Among the most prominent are transgression (*ta'addī*), destruction (*itlāf*), criminal offenses (*jināyāt*), indirect causation (*tasabbub*), and direct causation (*mubāsharah*).

With respect to destruction (*itlāf*), this refers to the loss of the benefit of property in the manner for which it is ordinarily utilized. It encompasses any action that destroys wealth or diminishes one of its benefits. This may occur through the complete destruction of the property such that it loses all value, such as burning it entirely, or through partial destruction, such as damaging only a portion of the property. It also includes situations in which a defect occurs that removes all, most, or some of its intended benefits. An example of this would be cutting or altering a possession in a way that prevents it from being used in its customary manner, or only allows partial use. Likewise, destruction may occur when property is transformed into another state that eliminates all or part of its benefit. Destruction, whether affecting life, property, or the benefits derived from them, may occur either through direct action or indirect causation.

Direct causation (*mubāsharah*) occurs when a person directly brings about the act of destruction by causing the instrument of harm to reach the object of destruction, or by initiating the act itself. Examples include killing, slaughtering, burning, drowning, consuming property, or destroying infrastructure. In such cases, the harm occurs through the actor's immediate action without the presence of an intermediary cause between the actor and the resulting damage.

The jurists are in agreement that the person who directly causes harm is liable for the damage he causes, regardless of whether the act involved transgression. Thus, even an insane person is financially liable for destruction caused by his actions from his own wealth, as is a child who has not yet reached the age of discernment. Similarly, a sleeping person who turns in his sleep and destroys another's property is liable, as is someone who accidentally trips and falls upon another person's property and damages it. This ruling applies so long as the person's action is the immediate and direct cause of the harm and no intervening action occurred that independently produced the damage. This principle is encapsulated in the well-known legal maxim: "*al-mubāshir dāmin wa-in lam yata'addā*" ("The direct actor is liable, even if he did not transgress"). The rationale behind holding the direct actor liable even in the absence of intentional wrongdoing is that the law presumes a degree of negligence in failing to exercise sufficient caution to prevent harm. The basis for this principle is found in both the Qur'ān and the Sunnah. Allah states: "*So whoever transgresses against you, then transgress against him in the same manner as he*

transgressed against you.”¹¹² Likewise, the Prophet peace be upon him stated: “There should be neither harming nor reciprocating harm.”¹¹³

As for indirect causation of destruction (*tasabbub fī al-itlāf*), it refers to situations in which destruction occurs through an intervening cause, while the first person’s action created the condition that led to that destruction. In other words, the person does not directly destroy the property or life, but brings about a situation that typically leads to such destruction. An example of this would be digging a pit in a location with the intention of causing harm, after which an animal or person falls into it and is harmed. In such a case, the destruction occurs through the fall, yet the act of digging the pit was the cause that led to it. Similarly, if a person cuts a rope and an object tied to that rope subsequently falls and breaks, the direct destruction is to the rope, while the destruction of the object occurs indirectly as a consequence of that action. Other examples include digging a well in a location where one has no right to dig, or building a fire near agricultural land such that it spreads and causes damage.

In principle, the one who indirectly causes destruction may also be held liable, since indirect harm still constitutes harm to another person’s life or wealth. Thus, anyone who destroys the property of another, whether directly or indirectly, may bear liability for that destruction. However, liability for indirect causation is subject to specific conditions.

The first condition is that the act of the indirect cause must constitute transgression (*ta’addī*). This occurs when the act is undertaken without a recognized legal right or permission under the Shari’ah, or when the person is negligent in failing to take the precautions that are normally required. For example, if a person digs a well on land that does not belong to him and without the permission of the landowner, and a human or animal subsequently falls into it, the one who dug the well is liable. By contrast, if the well was dug on his own land or with the permission of the landowner, then he would not be liable, because the act would not be considered transgressive. The second condition is that there must be no factor preventing the attribution of the harm to the indirect cause. It is not sufficient to establish liability merely by demonstrating that the person acted in a transgressive manner; rather, it must also be established that the harm is properly attributable to that action. This requires confirming that no intervening factor exists that would break the causal link. For instance, if a person digs a hole in a public road without permission from the authorities and an animal falls into it, he is liable because the act of digging the hole was both transgressive and directly connected to the resulting harm, with no intervening cause preventing attribution.

Accordingly, it is required that no independent action by another person intervene between the act of the indirect cause and the resulting destruction. If another person’s direct action intervenes, then liability is attributed to that direct actor rather than to the one who created the initial condition. This is because Islamic legal theory gives precedence to direct causation (*mubāsharah*) over indirect causation (*tasabbub*). For example, if a person digs a pit with the intention of causing harm, and another person subsequently pushes a human or an animal into that pit, liability falls upon the one who pushed the victim into the pit rather than upon the one who dug it. In this case, the destruction is attributed to the direct cause rather than the indirect one. This principle is expressed in the legal maxim: “If direct and indirect causation combine, the ruling is attributed to the direct cause.”

¹¹² Qur’ān, 2:194.

¹¹³ Narrated by Ibn Mājah, no. 2340. Available at: <https://sunnah.com/ibnmajah:2340>.

The Liability of AI

The default ruling regarding *ahliyyah* (legal capacity) is that it is affirmed only for human beings. In other words, the human being is considered suitable to possess rights and bear obligations. Thus, human beings possess the characteristic of legal personhood (*dhimmah*), which distinguishes them from other beings. Through this characteristic, a person becomes qualified both to acquire rights and to owe obligations. The condition for possessing a *dhimmah* is the presence of life in a human being, for the deceased no longer possesses a *dhimmah*.

However, as mentioned previously, modern legal systems have extended legal personhood to entities other than humans, such that they may possess rights and bear obligations. This is referred to as *al-shakhṣiyyah al-i'tibāriyyah* (juristic or legal personality). Nevertheless, classical fiqh, as also previously mentioned, also contains examples that may be understood as affirming *dhimmah* or *ahliyyat al-wujūb* in a legal sense to certain entities, including political, religious, and financial institutions, such as the *bayt al-māl*, the state, endowments (*awqāf*), mosques, and similar entities. These possess a form of legal personality that qualifies them to acquire rights and bear responsibilities. These examples indicate that *ahliyyat al-wujūb* may be affirmed for entities other than humans as independent legal personalities separate from the *dhimmah* of their administrators or caretakers. Accordingly, such entities may acquire rights and bear obligations and responsibilities. Thus, although the default ruling is that *dhimmah* and *ahliyyah* are affirmed only for humans, in certain cases they may also be affirmed for other entities, albeit with important distinctions remaining between the two.

Artificial intelligence entities are programs that mimic aspects of human intelligence through algorithms and software, enabling them to make independent decisions, learn, analyze, deduce, and improve their performance. However, such programs cannot be considered human beings. At the same time, because these systems may perform actions or make decisions independently from the direct will of their owners or users, they differ from the previously mentioned forms of legal personality, since those entities ultimately act through human representatives who speak and act on their behalf. Consequently, this represents a novel issue for Islamic jurists. For this reason, classical Muslim jurists did not directly address the question of liability (*ḍamān*) arising from harms caused by such entities. Nevertheless, Muslim jurists did discuss liability for harms caused by instruments and inanimate objects. Ibn Rajab stated: "If, in such a case, the direct act (*mubāsharah*) involves no transgression whatsoever, then liability rests solely upon the indirect cause (*sabab*). However, if the direct act itself involves transgression, then it shares liability with the indirect cause."¹¹⁴

For example, they mentioned that if an axe slipped from the hand of a butcher while he was breaking bones and it destroyed a limb of a person, he is liable for compensation, and it is considered accidental.¹¹⁵ Likewise, they stated if the owners of ships dock them along the shore, and another ship comes and strikes the docked ship causing the docked ship to break, then liability for the docked ship falls upon the owner of the incoming ship.

¹¹⁴ ثم إن كانت المباشرة والحالة هذه لا عدوان فيها بالكلية؛ استقل السبب وحده بالضمآن، وإن كان فيها عدوان؛ شاركت السبب في

الضمان

Zayn al-Dīn 'Abd al-Rahmān ibn Aḥmad Ibn Rajab al-Ḥanbalī, *Taqrīr al-Qawā'id wa-Taḥrīr al-Fawā'id* (commonly known as *Qawā'id Ibn Rajab*), ed. Abū 'Ubaydah Mashhūr ibn Ḥasan Āl Salmān (Saudi Arabia: Dār Ibn 'Affān, 1st ed., 1998), 2:597.

Abū Muḥammad Ghānim b. Muḥammad al-Baghdādī al-Ḥanafī, *Majma' al-ḍamānāt* ¹¹⁵ (Beirut: Dār al-Kitāb al-Islāmī, n.d.), 170.

But if the incoming ship itself breaks, the owner of the docked ship is not liable, because the ruler (*imām*) has permitted ship owners to dock their ships along the shore, and therefore this does not constitute transgression (*ta'addī*).¹¹⁶ If the pounding tool (*midqqa*) slips from the hand of the fuller's hired worker or apprentice and falls upon one of the garments being processed in the fulling operation, then the apprentice bears no liability; rather, liability falls upon the master. But if it falls upon something not among the garments of the fulling operation, then liability falls upon the apprentice. If the apprentice returned the pounding tool to its proper place and afterward it fell upon something else, then liability falls upon the master, not upon the apprentice. If the pounding tool struck a person, then liability falls upon the apprentice. And if something from the tools of the fulling trade, whether that with which pounding is done or that upon which pounding is done, breaks due to the apprentice's work, the apprentice is not liable. But if it is something not normally used for pounding or not normally pounded upon, then the apprentice is liable.¹¹⁷

Accordingly, liability for harms caused by inanimate objects rests upon the person who owns or controls those objects whenever transgression or negligence has occurred. On this basis, it may be argued that liability for harms caused by artificial intelligence systems falls under these same principles. However, there are multiple parties involved in the creation and operation of AI systems. Which of these parties should bear liability? When it comes to AI programs, it may at times be difficult to determine the precise source of the error or harm.¹¹⁸ The fault may stem from a specific issue related to the user or the device upon which the program is operating. The designer or manufacturer may be liable if negligence or transgression occurred in the creation or development of the AI program.¹¹⁹ Likewise, the user may be liable if they acted negligently or transgressed in their usage of the program.¹²⁰ In the case of a person using a product through leasing or borrowing from the owner, liability for harms caused by animals, inanimate objects, or AI programs is

Ibid, 150¹¹⁶

Ibid, 43.¹¹⁷

Amin Ahmad said: With modern "deep learning" AI systems, there literally is no "precise source" because knowledge is diffused throughout the neural network. Such systems are much more powerful reasoners than traditional computer programs.¹¹⁸

Amin Ahmad said: In the context of training deep learning systems, even the concept of what constitutes negligence on the part of system designers is under a lot of debate.¹¹⁹

For instance, the LLM models that underpin Claude and ChatGPT are trained on a corpus of text that includes most of the internet. It clearly includes a lot of racist, demonic, and otherwise bad material, but it's not clear whether including such data in training is itself negligent, because it's hard to pin down what effects it has on the final system. What about deploying a system that behaves non-deterministically? At what point does it cross into negligence? Anthropic and OpenAI focus a lot on the safety of their models to ensure they never discuss harmful topics with users. In contrast, companies like Character AI took fewer safety precautions, presumably either from a spirit of libertarianism or to maximize market share, and are currently facing many lawsuits from parents who claim that their AI chatbots pushed their children to self-harm, including suicide.

Amin Ahmad said: I understand the point this sentence is making, but I also think these arguments can become circular and poorly-defined with modern AI systems. For example, if a user discusses suicide with an AI chatbot, and the chatbot encourages him to kill himself, then from the chatbot maker's point of view, they will argue that the user is at fault for violating the "terms of service" (transgressing in their usage of the program by discussing prohibited topics), while others would argue that the chatbot maker is at fault for designing a system capable of providing harmful answers.¹²⁰

connected to the one in possession and control of the object at the time the harm occurred. This is because the animal, for example, is under the control of the borrower during that period, as is mentioned by the Hanafis: "...whoever is injured by it after it has fallen to the ground, such as if someone trips over it or becomes entangled in it, the person is liable for him, just as if he had placed it upon the road with his own hand. And the rider, the one riding behind, the driver, and the guide are all equal with respect to liability, because the animal is under their control and they direct and manage it however they wish."¹²¹ Thus, even if the borrower and others such as the lesee, is not the owner, he may still be liable, in that each of them is liable for whatever the animal causes to be destroyed while under his control as mentioned in *Asnā al-Maṭālib*¹²² and by al-‘Izz ibn ‘Abd al-Salām: "Negligence in safeguarding an animal is not restricted to its owner; rather, it applies generally to anyone who is negligent in controlling and guarding it."¹²³ Negligence in controlling the object is therefore not restricted to the owner alone; rather, it includes anyone who exercises control over it and fails to properly manage it, whether the owner or another party.

Accordingly, the user of an AI system may be liable if negligence or transgression occurred in its usage, such as using it in an unlawful manner, operating it contrary to the manufacturer's instructions, or failing to perform required maintenance checks. The owner may likewise be liable if negligence or transgression occurred while the system was under his possession or authority. Examples include failing to intervene to prevent foreseeable harm caused by the AI system, neglecting maintenance that fell under his responsibility rather than the manufacturer's, or other forms of negligence that result in harm. In addition, parties other than the manufacturer, owner, or user may also bear liability if their actions through the AI system cause harm to others. This would include cases such as hacking or unauthorized interference with the system. Such liability resembles the discussions of jurists concerning borrowed property, where liability falls upon the individual exercising wrongful control. In such cases, the violator alone would bear liability, so long as the manufacturer, owner, or user were not complicit in the harmful act. With respect to situations in which an AI program causes harm independently, without a programming defect and without the harm resulting from instructions given by its owner or user, the

¹²¹ وَكَذَلِكَ مَنْ عَطَبَ بِهِ بَعْدَ مَا وَقَعَ عَلَى الْأَرْضِ، فَإِنْ عَثَرَ بِهِ، أَوْ تَعَقَّلَ، فَهُوَ ضَامِنٌ لَهُ بِمَنْزِلَةِ مَا لَوْ وَضَعَهُ بِيَدِهِ عَلَى الطَّرِيقِ وَالرَّاكِبِ، وَالرَّذِيفُ، وَالسَّائِقُ، وَالْقَائِدُ فِي الضَّحَانِ سَوَاءٌ؛ لِأَنَّ الدَّابَّةَ فِي أَيْدِيهِمْ وَهُمْ يُسَيِّرُونَهَا وَيُصَرِّفُونَهَا كَيْفَ شَاءُوا

See for example: Muḥammad b. Aḥmad b. Abī Sahl Shams al-A‘immah al-Sarakhsī, al-Mabsūṭ, corrected by a group of distinguished scholars (Cairo: Maṭba‘at al-Sa‘ādah, n.d.; repr., Beirut: Dār al-Ma‘rifah), 26:190.

¹²² المودع، والمستأجر للحفظ كالمالك في أن كلا منهما يضمن ما أتلفته الدابة في يده

Zakariyyā al-Anṣārī al-Shāfi‘ī, *Asnā al-Maṭālib: A Commentary on Rawḍ al-Tālib*, together with the marginal notes of Abū al-‘Abbās Aḥmad al-Ramlī al-Kabīr, excerpted from his manuscript by Muḥammad al-Shubrī, edited, ḥadīths sourced, and annotated by Dr. Muḥammad Muḥammad Tāmir (Faculty of Dār al-‘Ulūm, Department of Sharī‘ah) (Cairo: n.p., n.d.), 8:440.

¹²³ وَالتَّقْصِيرُ فِي حِفْظِ الدَّابَّةِ لَا يَخْتَصُّ بِإِلْكِيهَا بَلْ يَعْمُ مَنْ قَصَرَ فِي صَبْطِهَا وَحِفْظِهَا مِنْ مَالِكٍ أَوْ غَالِبٍ أَوْ مُودِعٍ أَوْ مُسْتَعِيرٍ أَوْ مُسْتَأْجِرٍ.

‘Izz al-Dīn ‘Abd al-‘Azīz b. ‘Abd al-Salām al-Sulamī al-Dimashqī, known as Sulṭān al-‘Ulamā’, *Qawā‘id al-Aḥkām fī Maṣāliḥ al-Anām*, rev. and annotated by Tāhā ‘Abd al-Ra‘ūf Sa‘d (Cairo: Maktabat al-Kulliyāt al-Azhariyyah, new corrected and revised ed., 1414 AH/1991 CE; repr., Beirut: Dār al-Kutub al-‘Ilmiyyah; Cairo: Dār Umm al-Qurā), 2:194.

question arises whether liability may be attributed to the AI entity itself independently of its manufacturer, owner, or user according to Islamic jurisprudence.¹²⁴

Based on what was discussed previously regarding *ahliyyah*, the default rule is that *ahliyyah* is affirmed only for human beings, although limited exceptions were recognized for certain religious, political, and financial entities. AI systems, however, are not beings that are legally responsible in madhhab precedents, nor are they characterized by *ahliyyah*. As such, they are not considered entities suitable to possess or bear rights and obligations independently. Moreover, punishments and legal penalties in some madhhab precedents are prescribed as deterrents and restraints against sins and crimes, and such legal accountability is directed only toward human beings. There is no equivalent in some madhhab precedents to punishing animals or inanimate objects; rather, legal consequences are connected to the human beings under whose possession or control such entities operate. Permitting liability to rest upon the AI application itself would also create a loophole through which humans could evade responsibility, despite the fact that the AI system ultimately functions within a framework created, owned, deployed, or supervised by human beings. Furthermore, one of the conditions for liability is that the one causing the harm be among those who possess *ahliyyat al-ḍamān* (the legal capacity to bear liability). This capacity is affirmed for every human being, whether young or old, sane or insane, awake or asleep, free or enslaved, whenever harm occurs either directly (*mubāsharah*) or indirectly through causation (*tasabbub*) accompanied by transgression or negligence.

The examples cited in Islamic jurisprudence to support the concept of *al-shakhṣiyyah al-ma'nawīyyah* (juristic or legal personality) do not establish the existence of independent metaphysical beings separate from the human individuals who constitute and administer them. Rather, these examples demonstrate a legal abstraction employed for purposes of organization, liability, ownership, and representation in cases where collective human activity extends beyond the scope of a single individual. Thus, the attribution of a juristic personality to entities such as the *bayt al-māl*, *waqf* institutions, partnerships, corporations, or public treasuries is ultimately reducible to the actions, authority, and responsibility of the human beings who manage and act through them.

The classical discussions themselves indicate this underlying reality. Jurists repeatedly tied legal responsibility to human agency, intellect, and *dhimmah*. As the Ḥanafī jurists explained, legal obligation is founded upon the *dhimmah*, which is connected to human capacity and preparedness for understanding legal address. They explicitly state that legal rulings are established in the *dhimmah* due to *insāniyyah* (humanity), through which one becomes capable of receiving intellect and understanding *taklīf*. Animals, despite possessing movement and independent activity, were excluded from possessing *dhimmah* or *ahliyyah* because they lack the capacity to understand legal address. This demonstrates that legal subjectivity in some madhhab precedents is fundamentally rooted in human moral agency, not merely the ability to act or produce effects.

As such, when jurists recognized forms of collective or institutional liability, this did not mean they viewed such entities as ontologically independent persons existing apart from the humans behind them. Rather, these entities functioned as legal vessels through which human obligations, rights, and transactions were organized. Even modern corporate personality in positive law operates in this fashion: the corporation is not treated as a metaphysical being with independent consciousness, but as a legal construct facilitating the activities and liabilities of human shareholders, directors, employees, and agents. Therefore, the use of *al-shakhṣiyyah al-ma'nawīyyah* in Islamic jurisprudence cannot be invoked as

¹²⁴ Amin Ahmad said: The AI system, however complex, is ultimately a computer program. Causing harm independently without a programming defect is confusing to me. Unless the intention of the system is to harm, then I would argue that any harm caused is the result of a programming defect.

proof that artificial intelligence systems should be regarded as independent legal or moral persons. AI systems, regardless of their complexity, remain tools, instruments, and products ultimately designed, trained, deployed, and supervised by human beings and institutions. Any harms, contracts, or decisions associated with such systems ultimately trace back to human agency, ownership, programming, authorization, negligence, or oversight. Assigning legal personality to collective institutions for administrative necessity does not entail recognizing non-human autonomous beings possessing independent *dhimmah*, *taklīf*, or moral accountability in the *Shar'ī* sense.

This is why liability is not directed toward animals, because legal address (*khiṭāb taklīf*) is not directed toward them in the first place. For this reason, if harm originates solely from the independent action of an animal without negligence or involvement from its owner, then the resulting loss may be considered *ḥadr* (without compensatory liability). However, if the owner contributed to the harm through negligence, such as failing to restrain the animal, or if the animal functioned effectively as an instrument in his hand, such as a mounted riding animal under active control, then liability returns to the human actor. Similarly, liability for harms caused by inanimate objects is not attributed to the objects themselves, but rather to human involvement through direct action (*mubāsharah*) or indirect causation (*tasabbub*). Thus, if an AI system were to cause harm entirely independently, without negligence, transgression, or causative involvement from a human actor, then the AI itself would not bear liability under Islamic jurisprudence, because it lacks *ahliyyah* and is not a legally accountable subject. Rather, the discussion would return to whether any human involvement through causation, negligence, ownership, supervision, or deployment can still be identified.

Some madhhab precedents have legislated precaution and care in the use of objects and instruments so that they do not cause harm to others. This is reflected in the ḥadīth: "that the Messenger of Allah peace be upon him passed by some people in a gathering who were drawing an unsheathed sword and passing it among themselves. He said: 'Did I not forbid this? When one of you draws a sword, let him sheath it before handing it to his brother.'" ¹²⁵ Likewise, the Prophet peace be upon him said: "If one of you passes through our mosque or marketplace carrying arrows, then he should hold their iron heads firmly with his hand lest he injure one of the Muslims." ¹²⁶ Accordingly, the use of AI systems and the harms resulting from their use fall under the general principles and rules of liability in Islamic jurisprudence. The person who directly causes harm (*mubāshir*) is liable even if no transgression occurred, whereas the person who indirectly causes harm (*mutasabbib*) is not liable unless negligence or transgression is established. Islamic jurists therefore distinguished between direct causation (*mubāsharah*) and indirect causation (*tasabbub*), considering harm to occur only through one of these two modes, with liability determined accordingly. Among the closest analogous cases discussed by Islamic jurists are those involving animals and inanimate objects. The jurists repeatedly emphasized that liability is connected to the one who possesses and controls the object or animal at the time the harm occurs.

¹²⁵ عَنْ جَابِرٍ، أَنَّ رَسُولَ اللَّهِ ﷺ مَرَّ بِقَوْمٍ فِي مَجْلِسٍ، يَسْلُونُ سَيْفًا يَتَعَاطَوْنَهُ بَيْنَهُمْ غَيْرَ مَعْمُودٍ، فَقَالَ: أَلَمْ أَزَجُرْ عَنْ هَذَا؟ فَإِذَا سَلَّ أَحَدُكُمْ السَّيْفَ فَلْيُعْمِدْهُ، ثُمَّ لْيُعْطِهِ أَخَاهُ.

See Nūr al-Dīn 'Alī b. Abī Bakr b. Sulaymān al-Haythamī, *Majma' al-Zawā'id wa Manba' al-Fawā'id*, ed. Ḥusām al-Dīn al-Qudṣī (Cairo: Maktabat al-Qudṣī, 1414 AH/1994 CE), 7:291; Aḥmad b. Ḥanbal, *Musnad al-Imām Aḥmad b. Ḥanbal*, ed. Shu'ayb al-Arna'ūt, 'Ādil Murshid, et al., under the supervision of 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī (Beirut: Mu'assasat al-Risālah, 1st ed., 1421 AH/2001 CE), 23:230-231.

¹²⁶ Narrated by al-Bukhārī, no. 7075; Muslim, no. 2615a.

This is found in the Ḥanafī texts: "And this is because the animal is under their control, and they direct and manage it however they wish."¹²⁷ Likewise, the Shāfi'ī jurists stated:

If a person is accompanying an animal, he is liable for whatever it destroys of life or property, whether the destruction occurs during the night or the day, whether he is driving it, riding it, or leading it, and whether the harm is caused by its hand, foot, bite, or tail. This is because it is under his control, and he is responsible for supervising and guarding it. This ruling applies whether the person accompanying the animal is its owner, employee, renter, borrower, usurper, or otherwise, due to the comprehensiveness of possession and control.¹²⁸

Al-Nawawī likewise stated: "Liability is due upon the property of the one accompanying it, whether he is its owner, renter, borrower, usurper, trustee, agent, or otherwise."¹²⁹ Similarly, al-Qarāfī stated: "Know that the causes of liability in the Sharī'ah are three with no fourth ... the third being possession through a hand that is not entrusted."¹³⁰ Close discussions are also found in the writings of al-'Izz ibn 'Abd al-Salām,¹³¹

لَاَنَّ الدَّابَّةَ فِي أَيْدِيهِمْ وَهُمْ يُسَيِّرُونَهَا وَيَصْرِفُونَهَا كَيْفَ شَاءُوا ¹²⁷

Muḥammad b. Aḥmad b. Abī Sahl Shams al-A'immaḥ al-Sarakhsī, al-Mabsūṭ, corrected by a group of distinguished scholars (Cairo: Maṭba'at al-Sa'ādah, n.d.; repr., Beirut: Dār al-Ma'rifah), 26:190.

إِذَا كَانَ مَعَ الْبَيْمَةِ شَخْصٌ، ضَمِنَ مَا أَتْلَفَتْهُ مِنْ نَفْسٍ وَمَالٍ، سِوَاءَ أَتْلَفَتْ لَيْلًا أَوْ نَهَارًا، وَسِوَاءَ كَانَ سَائِقُهَا أَوْ رَاكِبُهَا أَوْ فَائِدُهَا، ¹²⁸
وَسِوَاءَ أَتْلَفَتْ بِيَدِهَا أَوْ رَجُلِهَا أَوْ عَصَبِهَا أَوْ ذَنْبِهَا؛ لِأَنَّهَا تَحْتَ يَدِهِ وَعَلَيْهِ تَعَهُدُهَا وَحِفْظُهَا، وَسِوَاءَ كَانَ الَّذِي مَعَ الْبَيْمَةِ مَالِكُهَا أَوْ أَجِيرُهُ،
أَوْ مُسْتَأْجِرًا أَوْ مُسْتَعِيرًا أَوْ غَاصِبًا، لِشُمُولِ الْيَدِ، وَسِوَاءَ الْبَيْمَةِ الْوَاحِدَةُ وَالْعَدَدُ، كَالْإِبِلِ الْمُقْطُورَةِ

Abū Zakariyyā Muḥyī al-Dīn Yahyā b. Sharaf al-Nawawī, Rawḍat al-ṭālibīn wa 'Umdat al-Muṭtīn, verified by the editorial and correction department of al-Maktab al-Islāmī in Damascus under the supervision of Zuhayr al-Shāwīsh (Beirut-Damascus-Amman: al-Maktab al-Islāmī, 3rd ed., 1412 AH/1991 CE), 10:197.

وَجَبَ الضَّمَانُ فِي مَالِ الَّذِي هُوَ مَعَهَا سِوَاءَ كَانَ مَالِكُهَا أَوْ مُسْتَأْجِرًا أَوْ مُسْتَعِيرًا أَوْ غَاصِبًا أَوْ مُودَعًا أَوْ وَكِيلًا أَوْ غَيْرُهُ ¹²⁹

Abū Zakariyyā Muḥyī al-Dīn Yahyā b. Sharaf al-Nawawī, al-Minhāj Sharḥ ṣaḥīḥ Muslim b. al-Ḥajjāj (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 2nd ed., 1392 AH), 11:225.

اعْلَمْ أَنَّ أَسْبَابَ الضَّمَانِ فِي الشَّرِيعَةِ ثَلَاثَةٌ لَا رَابِعَ لَهَا ... وَنَالِثُهَا وَضْعُ الْيَدِ الَّتِي لَيْسَتْ بِمُؤَمَّمَةٍ ¹³⁰

Abū al-'Abbās Shihāb al-Dīn Aḥmad b. Idrīs b. 'Abd al-Raḥmān al-Mālikī, known as al-Qarāfī, al-Furūq = Anwār al-Burūq fī Anwā' al-Furūq (Beirut: 'Ālam al-Kutub, n.d.), 2:206.

¹³¹ 'Izz al-Dīn 'Abd al-'Azīz b. 'Abd al-Salām b. Abī al-Qāsim b. al-Ḥasan al-Sulamī al-Dimashqī, known as Sulṭān al-'Ulamā', Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām, rev. and annotated by ṭāhā 'Abd al-Ra'ūf Sa'd (Cairo: Maktabat al-Kullīyyāt al-Azhariyyah, new corrected and revised ed., 1414 AH/1991 CE; repr., Beirut: Dār al-Kutub al-'Ilmiyyah; Cairo: Dār Umm al-Qurā), 2:154.

al-Ghazālī,¹³² and Ibn Rajab.¹³³ The basis for considering possession and control to be central in determining liability is that the person exercising control is the one capable of preventing harm and regulating the conduct of the object or instrument under his authority. Some jurists also considered custom (*urf*) relevant in determining negligence and liability. For example it was said:

If a person exceeds customary practice in spraying water, he is liable; otherwise he is not liable if he sprinkled according to customary practice for suppressing dust. If the driver of the animal saw the water that had been sprinkled and nevertheless drove the animal through it, the one who sprinkled would not be liable. But if he did not see it, or if it occurred at night, then liability would apply, as some jurists issued fatwā.¹³⁴

This is in agreement with the hadith: “The hand which takes is responsible till it pays.”¹³⁵ Furthermore, one of the conditions for liability (*ḍamān*) in some madhhab precedents is that the one who causes destruction be from those legally capable of bearing liability (*ahl al-ḍamān*). Al-Kāsānī states:

Among the conditions is that the destroyer be from those upon whom liability may be imposed. Thus, if an animal destroys the property of a person, there is no liability upon its owner, because the act of the non-rational animal is considered legally without compensation (*jubār*), and therefore wasted (*hadar*). Since there was no destruction directly attributable to its owner, liability is not obligatory upon him.¹³⁶

¹³² Abū Ḥāmid Muḥammad b. Muḥammad al-Ghazālī al-Ṭūsī, *al-Wasīṭ fī al-Madhhab*, ed. Aḥmad Maḥmūd Ibrāhīm and Muḥammad Muḥammad Tāmir (Cairo: Dār al-Salām, 1st ed., 1417 AH), 3:383.

¹³³ Abū al-Faraj ‘Abd al-Raḥmān b. Aḥmad b. Rajab al-Baghdādī al-Ḥanbalī, *Taqrīr al-Qawā’id wa Taḥrīr al-Fawā’id* [commonly known as *Qawā’id Ibn Rajab*], together with a valuable marginal commentary by his student Muḥibb al-Dīn Aḥmad b. Naṣr Allāh al-Baghdādī and other marginalia by scholars of the madhhab, ed. Khālīd b. ‘Alī al-Mushayqīh, ‘Abd al-‘Azīz b. ‘Adnān al-‘Īdān, and Anas b. ‘Ādil al-Yatāmā (Kuwait: Rakā’iz li-al-Nashr wa-al-Tawzī’; distributed by Dār Aṭlas, Riyadh, 1st ed., 1440 AH/2019 CE), 2:208.

¹³⁴ لَوْ تَعَدَّى بَرِّهِ ضَمِنَ وَإِلَّا فَلَا يَضْمَنُ بَأَن رَّشَّ هُوَ كَالْعَادَةِ لِدَفْعِ الْغُبَارِ، وَلَوْ رَأَى سَائِقُ الدَّابَّةِ الْمَاءَ قَدْ رَشَّ فَسَاقَهَا لَمْ يَضْمَنِ الرَّاشُّ، وَلَوْ لَمْ يَرَهُ، أَوْ كَانَ بِاللَّيْلِ ضَمِنَ، كَذَا أَفْتَى بَعْضُهُمْ

Abū Muḥammad Ghānim b. Muḥammad al-Baghdādī al-Ḥanafī, *Majma‘ al-ḍamānāt* (Beirut: Dār al-Kitāb al-Islāmī, n.d.), 164.

¹³⁵ Abū Dāwūd, no. 3561; ; Ibn Mājah, no. 2400; ; al-Tirmidhī, no. 1266., and others. See Khālīd b. ḍayf Allāh al-Shallāhī, *Rawḍat al-Mutamatti‘ fī Takhrīj Aḥādīth al-Rawḍ al-Murbi‘* (Riyadh: Maktabat al-Rushd, 1st ed., 1440 AH/2019 CE), 4:298.

¹³⁶ وَمِنْهَا أَنْ يَكُونَ الْمُتْلِفُ مِنْ أَهْلِ وَجُوبِ الضَّمانِ عَلَيْهِ، حَتَّى لَوْ أَتَلَفَتْ مَالٌ إِنْسَانٍ بِهَيْمَةٍ لَا ضَمَانَ عَلَى مَالِكِهَا؛ لِأَنَّ فِعْلَ الْعَجَائِزِ جُبَارٌ، فَكَانَ هَدْرًا وَلَا يُتَلَفُ مِنْ مَالِكِهَا، فَلَا يَجِبُ الضَّمانُ عَلَيْهِ

‘Alā’ al-Dīn Abū Bakr b. Mas‘ūd al-Kāsānī al-Ḥanafī, *Badā’i‘ al-ṣanā’i‘ fī Tartīb al-Sharā’i‘* (1st ed., 1327–1328 AH; Cairo: Maṭba‘at Sharikat al-Maṭbū‘āt al-‘Ilmiyyah, vols. 1–2; Maṭba‘at al-Jamāliyyah, vols. 3–7). Reprinted by Dār al-Kutub al-‘Ilmiyyah and others, 7:168.

The jurists held that the human being possesses *ahliyat al-ḍamān* (legal capacity for financial liability) without conditions relating to discernment, sanity, or legal responsibility. Thus, the human being is liable for destruction regardless of whether he is discerning or non-discerning, free or enslaved, sane or insane, awake or asleep. Likewise, the intoxicated person is liable for what he destroys while intoxicated, even if he believed the property belonged to him and did not know it belonged to another person. Al-‘Izz b. ‘Abd al-Salām similarly stated: “Likewise, compensation has been legislated in cases of mistake and intentional conduct, ignorance and knowledge, remembrance and forgetfulness, and upon the insane and children.”¹³⁷ The Ḥanbalīs also state: “Whoever destroys protected property belonging to another, whether legally responsible or not, even if the destruction occurred accidentally or forgetfully and without the owner’s permission, is liable for it.”¹³⁸

The majority of Mālikīs agreed with the majority position. Thus, there is fundamentally no difference in financial liability between the intentional actor and the mistaken actor, the serious person and the one joking, the sane and the insane, or the adult and the child. The difference lies only in sinfulness and moral accountability. The adult sane person acting intentionally and knowingly is both liable and sinful, whereas in the remaining cases the person remains liable but is not sinful. However, some Mālikīs held a differing opinion. In *al-Tāj wa’l-Iklīl* it is stated: “If he is a child without understanding, it was said that whatever he damages is wasted (*hadar*), like the act of a non-rational animal.”¹³⁹ Likewise, al-Dusūqī mentions: “One view is that he guarantees the property... while another view is that his act is wasted like the act of a non-rational animal.”¹⁴⁰ The Mālikīs further differed regarding the age at which a child becomes liable for destroyed property. Some suggested one year, others one-and-a-half years, others two months, and other opinions were likewise mentioned. It was even said that a one-month-old infant is akin to the non-rational animal (*al-‘ajmā*). Nevertheless, the relied-upon position in the Mālikī school is: “The authoritative position is that the non-discerning child and the insane person are liable for property damage from their own wealth.” The text continues: “And the blood-money is

¹³⁷ وَكَذَلِكَ شَرَعَ الْجَبْرُ مَعَ الْخَطَا وَالْعَمْدِ وَالْجَهْلِ وَالْعِلْمِ وَالذَّكْرِ وَالنَّسْيَانِ، وَعَلَى الْمَجَانِينَ وَالصَّبِيَّانِ

Abū Muḥammad ‘Izz al-Dīn ‘Abd al-‘Azīz b. ‘Abd al-Salām al-Sulamī al-Dimashqī, *Qawā’id al-Aḥkām fī Maṣāliḥ al-Anām*, rev. and annotated by Ṭāhā ‘Abd al-Ra’ūf Sa’d (Cairo: Maktabat al-Kulliyāt al-Azhariyyah, revised ed., 1414/1991). Reprinted by Dār al-Kutub al-‘Ilmiyyah, Beirut, and Dār Umm al-Qurā, Cairo, 1:178.

¹³⁸ وَمَنْ أَتْلَفَ مِنْ مُكَلَّفٍ وَغَيْرِهِ ... وَلَوْ كَانَ الْإِتْلَافُ خَطَاً أَوْ سَهْوًا مَالًا مُحْتَرَمًا لِغَيْرِهِ بِغَيْرِ إِذْنِهِ ضَمَنَهُ

Manṣūr b. Yūnus al-Buhūtī, *Kashshāf al-Qinā’ ‘an Matn al-Iqnā’*, rev. and annotated by Hilāl Muṣayliḥī Muṣṭafā Hilāl (Riyadh: Maktabat al-Naṣr al-Ḥadīthah, n.d.), 6 vols. The edition is dated by ‘Abd Allāh al-Turkī to 1388/1968 in *al-Madhhab al-Ḥanbalī*, 2:510, 4:116.

¹³⁹ وَإِنْ كَانَ صَبِيًّا لَا يَعْقِلُ فَقِيلَ: إِنْ مَا أَصَابَهُ هَدَرٌ كَالْبَهِيمَةِ الْعَجَبَاءِ

Muḥammad b. Yūsuf al-Mawwāq al-Mālikī, *al-Tāj wa’l-Iklīl li-Mukhtaṣar Khalīl* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1st ed., 1416/1994), 8 vols, 7:309.

¹⁴⁰ أَوْ لَا يَضْمَنُ الْمَالُ ... أَوْ فَعَلَهُ هَدَرٌ كَالْعَجَبَاءِ

Muḥammad b. Aḥmad b. ‘Arafah al-Dasūqī, *Ḥāshiyat al-Dasūqī ‘alā al-Sharḥ al-Kabīr*, 4 vols. (Beirut: Dār al-Fikr, n.d.), 3:443.

upon the *‘āqilah* if it reaches one-third [of the full indemnity], otherwise it is from their own wealth.”¹⁴¹

Thus, *ahliyat al-ḍamān* is affirmed even for the young child who has not reached discernment and for the insane person, and they are liable from their own wealth for what they destroy. If they do not possess wealth, then liability remains attached until they later acquire wealth, and nothing is obligatory upon their guardians. At the same time, the condition that the destroyer be from *ahl al-ḍamān* excludes animals from legal liability for what they destroy. This is because the legislative address (*khīṭāb al-Shārī‘*) cannot be directed toward them, neither presently nor in the future. Accordingly, the actions of the non-rational animal (*al-‘ajmā‘*) are considered *hadar*, meaning that there is ordinarily no liability upon the owner if the animal independently causes harm. However, if the harm results from negligence by the owner in controlling or restraining the animal, or if the animal functions effectively as an instrument in the owner’s hand, such as an animal being ridden or driven, then the owner or user becomes liable due to direct causation (*mubāsharah*) or indirect causation (*tasabbub*). Outside such circumstances, there is no liability for the harms caused by the animal itself. Similarly, inanimate objects possess no independent liability whatsoever. Liability only arises when harm caused through them is attributable to a human being either directly (*mubāsharah*) or indirectly through causation (*tasabbub*).

These discussions are highly significant in relation to constructed legal personhood (*al-shakhṣiyyah al-ma‘nawiyyah*). The jurists made *ahliyat al-ḍamān* dependent not upon moral responsibility (*taklīf*), intellect, or discernment, but rather upon legal recognition as an entity capable of bearing financial obligation. Thus, liability exists even for children, the insane, and sleepers, despite their absence of moral accountability, while animals and inanimate objects are excluded because they are not recognized as bearers of legal obligation. Accordingly, the basis for liability in some madhhab precedents is not necessarily human moral agency, but rather the law’s recognition of a legally operative dhimmah capable of bearing obligations. This provides an important conceptual foundation for recognizing constructed legal personalities and institutions as bearers of financial liability independent of the moral culpability of individual human actors.

Thus, the concept of possession and control at the time harm occurs serves as a central factor in determining liability for harms caused by AI systems. Likewise, the principles of transgression, negligence, direct causation (*mubāsharah*), and indirect causation (*tasabbub*) remain the governing legal framework through which liability is assessed in such cases.

Criminal Liability

From the examples of criminal liability in some madhhab precedents related to constructed legal personalities is the doctrine of the *‘āqilah*. Just as the *‘āqilah* is collectively liable for the indemnity (*diyyah*) of mistaken killing, similarly, a constructed legal person may be held liable for harms arising from the actions or mistakes of its members. In both cases, liability extends beyond the individual actor to a broader collective entity recognized by the Shari‘ah. Also, the incident of Khālīd b. al-Walīd and Banū Jadhīmah demonstrates liability being attributed beyond the direct perpetrator himself. Ibn ‘Umar narrated:

The Prophet peace be upon him sent Khālīd b. al-Walīd to Banū Jadhīmah and called them to Islam. They could not properly say: ‘We have accepted Islam,’

¹⁴¹ الْمَذْهَبُ أَنَّ الصَّبِيَّ الْغَيْرَ الْمُمَيَّرَ، وَالْمَجْنُونِ يَضْمَنَانِ الْمَالَ فِي مَا لِهُمَا

وَالذِّبَّةُ عَلَى الْعَاقِلَةِ إِنْ بَلَغَتْ الثُّلُثَ، وَإِلَّا فَفِي مَا لِهُمَا

Ibid.

and instead began saying: 'Ṣaba'nā, Ṣaba'nā.' Khālīd then began killing some of them and taking others captive, assigning each of us a captive. Then one day Khālīd ordered each of us to kill his captive. I said: 'By Allah, I will not kill my captive, nor will any of my companions kill theirs.' We later mentioned this to the Prophet peace be upon him, who said: 'O Allah, I dissociate myself from what Khālīd b. al-Walīd has done,' repeating it twice.¹⁴²

In some narrations, the Prophet peace be upon him sent 'Alī b. Abī Ṭālib to compensate them for the blood and property that had been destroyed:

Then the Messenger of Allah peace be upon him called 'Alī b. Abī Ṭālib and said: 'Go to these people and compensate them for their blood and their property, and place the affairs of jāhiliyyah beneath your feet.' So 'Alī went, and the Messenger of Allah peace be upon him had given him wealth. He compensated them for their blood and their property, even compensating them for the price of a dog's bowl. There remained some wealth with 'Alī, so he said: 'I give you this additionally as a precaution on behalf of the Messenger of Allah peace be upon him for what the Messenger of Allah peace be upon him does not know and for what you yourselves do not know.' When he returned to the Messenger of Allah peace be upon him and informed him of what had occurred, the Prophet peace be upon him said: 'You have done well and acted correctly.'¹⁴³

Thus, Khālīd intentionally killed those whose blood was protected, yet the indemnity was ultimately borne by the public treasury and authority of the Muslim polity. In effect, *Bayt al-Māl* bore liability as a juridical entity distinct from the personal *dhimma* of Khālīd himself.

Similarly, there are narrations regarding those who died due to crowding during Friday prayer, 'Īd prayer, and similar public gatherings, in which 'Alī ruled that *Bayt al-Māl* was liable for the indemnity. 'Abd al-Razzāq narrates: "Ma'mar narrated from al-Zuhrī, who

142 بَعَثَ النَّبِيُّ ﷺ خَالِدَ بْنَ الْوَلِيدِ إِلَى بَنِي جَذِيمَةَ، فَدَعَاهُمْ إِلَى الْإِسْلَامِ، فَلَمْ يُخْسِنُوا أَنْ يَقُولُوا أَسْلَمْنَا، فَجَعَلُوا يَقُولُونَ: صَبَأْنَا، صَبَأْنَا، فَجَعَلَ خَالِدٌ يَقْتُلُ مِنْهُمْ وَيَأْسِرُ، وَدَفَعَ إِلَى كُلِّ رَجُلٍ مِنْ أَصْحَابِهِ، فَذَكَرْنَا ذَلِكَ لِلنَّبِيِّ ﷺ، فَقَالَ: اللَّهُمَّ إِنِّي أَبْرَأُ إِلَيْكَ مِمَّا صَنَعَ خَالِدُ بْنُ الْوَلِيدِ، مَرَّتَيْنِ أَقْتُلُ أُسِيرِي، وَلَا يَقْتُلُ رَجُلٌ مِنْ أَصْحَابِي أُسِيرَهُ، فَذَكَرْنَا ذَلِكَ لِلنَّبِيِّ ﷺ، فَقَالَ: اللَّهُمَّ إِنِّي أَبْرَأُ إِلَيْكَ مِمَّا صَنَعَ خَالِدُ بْنُ الْوَلِيدِ، مَرَّتَيْنِ

Narrated by al-Bukhārī, no. 7189.

143 ثُمَّ دَعَا رَسُولُ اللَّهِ ﷺ عَلِيَّ بْنَ أَبِي طَالِبٍ، فَقَالَ: اخْرُجْ إِلَى هَؤُلَاءِ الْقَوْمِ فَأَدِّ دِمَاءَهُمْ وَأَمْوَالَهُمْ وَاجْعَلْ أَمْرَ الْجَاهِلِيَّةِ تَحْتَ قَدَمَيْكَ فَخَرَجَ عَلِيٌّ، وَقَدْ أَعْطَاهُ رَسُولُ اللَّهِ ﷺ مَالًا فَوَدَى هُمْ دِمَاءَهُمْ، وَأَمْوَالَهُمْ حَتَّى إِنَّهُ لَيُعْطِيهِمْ ثَمَنَ مِيلَغَةِ الْكَلْبِ فَيَتِي مَعَ عَلِيٍّ بَقِيَّةً مِنْ مَالٍ، فَقَالَ: أَعْطَيْكُمْ هَذَا اخْتِيَاظًا لِرَسُولِ اللَّهِ ﷺ فِيمَا لَا يَعْلَمُ رَسُولُ اللَّهِ ﷺ فِيمَا لَا تَعْلَمُونَ، فَأَعْطَاهُمْ إِيَّاهُ، فَلَمَّا قَدِمَ عَلَى رَسُولِ اللَّهِ ﷺ وَأَخْبَرَهُ الْخَبَرَ، قَالَ: أَحْسَنْتَ وَأَصَبْتَ

Aḥmad b. al-Ḥusayn al-Bayhaqī, *Dalā'il al-Nubuwwah wa-Ma'rifat Aḥwāl Ṣāhib al-Sharī'ah*, ed. 'Abd al-Mu'īṭ Qal'ajī (Beirut: Dār al-Kutub al-'Ilmiyyah, 1st ed., 1405/1985), 5:114-115. See also Muḥammad b. 'Umar al-Wāqidī, al-Maghāzī, ed. Marsden Jones (London: Oxford University Press, 1966), 3:882; 'Abd al-Malik b. Hishām, al-Sīrah al-Nabawiyyah, ed. Muṣṭafā al-Saqqā, Ibrāhīm al-Abyārī, and 'Abd al-Ḥafīz Shalabī (Cairo: Sharikat Maktabat wa-Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādih, 2nd ed., 1375/1955), 2:492-493.

said: 'Whoever is killed in a crowd, then his indemnity is upon the people present there, whether during Friday prayer or otherwise.'" Likewise: "Ibn Jurayj narrated that 'Abd al-'Aziz b. 'Umar informed him from a letter of 'Umar b. 'Abd al-'Aziz that it reached us that the Messenger of Allah peace be upon him ruled concerning one killed on the Day of *Fiṭr* or the Day of *Aḍḥā* that his indemnity is collectively upon the people, because it is not known who killed him." Likewise: "Al-Thawrī narrated from Wahb b. 'Uqbah al-'Ijlī, from Yazīd b. Madhkūr al-Hamdānī, that a man was killed on Friday in the mosque due to crowding, so 'Alī made his indemnity payable from *Bayt al-Māl*." Also: "Al-Thawrī narrated from al-Ḥakam, from Ibrāhīm, from al-Aswad, that a man was killed in the Ka'bah. 'Umar asked 'Alī [regarding the indemnity], and he replied: '[It is] from *Bayt al-Māl*.'" Thus, 'Alī did not regard these deaths as wasted blood (*ḥadr*), despite the fact that they resulted from crowding in public religious spaces such as the mosque and the *Ka'bah*. Rather, liability was assigned to *Bayt al-Māl* as the public juridical entity responsible for communal administration and protection.¹⁴⁴

144 عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ، قَالَ: «مَنْ قُتِلَ فِي زَحَامٍ، فَإِنَّ دِيْنَهُ عَلَى النَّاسِ، عَلَى مَنْ حَضَرَ ذَلِكَ، فِي جُمُعَةٍ أَوْ غَيْرِهَا»
عَنِ ابْنِ جُرَيْجٍ، قَالَ: أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ، عَنْ كِتَابِ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ بَلَّغَنَا أَنَّ رَسُولَ اللَّهِ ﷺ «قَضَى مَنْ قُتِلَ يَوْمَ فِطْرٍ، أَوْ يَوْمَ أَضْحَى، فَإِنَّ دِيْنَهُ عَلَى النَّاسِ جَمَاعَةً، لِأَنَّهُ لَا يَدْرَى مَنْ قَتَلَهُ»
عَنِ الثَّوْرِيِّ، عَنْ وَهْبِ بْنِ عُقْبَةَ الْعِجْلِيِّ، عَنْ يَزِيدَ بْنِ مَذْكُورٍ الْهُمْدَانِيِّ، أَنَّ رَجُلًا قُتِلَ يَوْمَ الْجُمُعَةِ فِي الْمَسْجِدِ فِي الرَّحَامِ «فَجَعَلَ عَلَى دِيْنِهِ مِنْ بَيْتِ الْمَالِ»

عَنِ الثَّوْرِيِّ، عَنِ الْحَكَمِ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، أَنَّ رَجُلًا قُتِلَ فِي الْكُعْبَةِ فَسَأَلَ عُمَرُ عَلَيْهِ السَّلَامُ فَقَالَ: «مِنْ بَيْتِ الْمَالِ»
Abū Bakr 'Abd al-Razzāq b. Hammām al-ṣan'ānī, al-Muṣannaf, followed by Kitāb al-Jāmi' of Ma'mar b. Rāshid, ed. Ḥabīb al-Raḥmān al-A'zamī (India: al-Majlis al-'Ilmī; Beirut: al-Maktab al-Islāmī, 2nd ed., 1403/1983), 10:50-51, #18314-18317.
See Ibn Hajar's grading: Abū al-Faḍl Aḥmad b. 'Alī Ibn Ḥajar al-'Asqalānī, al-Maṭālib al-'Āliyah bi-Zawā'id al-Masānīd al-Thamāniyah, ed. a group of researchers in seventeen university dissertations, coordinated by Sa'd b. Nāṣir al-Shithrī (Riyadh: Dār al-'Āṣimah li'l-Naṣh wa'l-Tawzī'; Dār al-Ghayth li'l-Naṣh wa'l-Tawzī', 1st ed.), 9:182.
See Ibn Ḥazm's discussion of these reports: Abū Muḥammad Ibn Ḥazm discusses the issue of those killed in crowds, situations in which the killer is unknown, or cases where death results from a cause whose direct perpetrator cannot be identified. He cites a number of narrations from 'Alī b. Abī Ṭālib and others indicating that the indemnity in such cases may be paid from Bayt al-Māl. Ibn Ḥazm writes:

أَنَّ رَجُلًا قُتِلَ فِي الطَّوَافِ، فَاسْتَشَارَ عُمَرُ النَّاسَ. فَقَالَ عَلِيٌّ: دِيْنُهُ عَلَى الْمُسْلِمِينَ، أَوْ فِي بَيْتِ الْمَالِ
"A man was killed during ṭawāf, so 'Umar consulted the people. 'Alī then said: 'His indemnity is upon the Muslims, or from Bayt al-Māl.'"

Likewise:

إِنَّ النَّاسَ ارْتَدَّوْا فِي الْمَسْجِدِ الْجَامِعِ بِالْكُوفَةِ يَوْمَ الْجُمُعَةِ، فَأَفْرَجُوا عَنْ قَتِيلٍ، فَوَدَّاهُ عَلِيٌّ بْنُ أَبِي طَالِبٍ مِنْ بَيْتِ الْمَالِ
"The people crowded together in the congregational mosque of Kūfah on Friday, and when the crowd parted there was a dead man. 'Alī b. Abī Ṭālib paid his indemnity from Bayt al-Māl."

Likewise:

إِنَّ رَجُلًا قُتِلَ فِي الْكَعْبَةِ فَسَأَلَ عُمَرُ عَلِيًّا، فَقَالَ: مِنْ بَيْتِ الْمَالِ

"A man was killed in the Ka'bah, so 'Umar asked 'Alī [regarding the indemnity], and he replied: '[It is] from Bayt al-Māl.'"

Similarly, 'Umar b. 'Abd al-'Azīz wrote concerning two men who died in crowding:

أَنْ يُودَيَا مِنْ بَيْتِ الْمَالِ، فَإِنَّمَا قَتَلَهُ يَدٌ، أَوْ رِجْلٌ

"That they are to be compensated from Bayt al-Māl, for they were only killed by a hand or a foot."

Ibn Ḥazm also cites the narration:

بَلَّغَنَا أَنَّ رَسُولَ اللَّهِ ﷺ فَضَى فِيمَنْ قُتِلَ يَوْمَ أَضْحَى، أَوْ يَوْمَ فِطْرٍ، فَإِنَّ دِيَّتَهُ عَلَى النَّاسِ جَمَاعَةً، لِأَنَّهُ لَا يُدْرَى مَنْ قَتَلَهُ

"It reached us that the Messenger of Allah peace be upon him ruled regarding one killed on the Day of Aḏḥā or the Day of Fiṭr that his indemnity is collectively upon the people, because it is not known who killed him."

Although Ibn Ḥazm critiques some of these reports and develops his own legal reasoning, the narrations themselves demonstrate an important principle: liability may be attributed collectively and discharged through public wealth when the direct perpetrator is unknown or when the harm results from collective activity connected to the public sphere.

Ibn Ḥazm himself ultimately argues that if a person dies due to crowd pressure, then the group itself collectively caused the death:

فَقَدْ عَرَفْنَا أَنَّ الْجَمَاعَةَ تِلْكَ بَعَيْنَهَا كُلُّهُمْ قَتَلَهُ، إِذْ كُلُّهُمْ تَضَاعَطُوا حَتَّى مَاتَ مِنْ ضَغْطِهِمْ

"We know that that entire group itself killed him, since all of them pressed against one another until he died from their pressure."

He further states that if the specific liable individuals cannot be identified, then the compensation is to come from the wealth designated for the public interests of the Muslims:

وَإِنْ كَانَ مَاتَ مِنْ أَمْرٍ لَا يُدْرَى مَنْ أَصَابَهُ فَدِيَّتُهُ وَاجِبَةٌ عَلَى جَمِيعِ الْأَمْوَالِ الْمَوْقُوفَةِ لِصَالِحِ الْمُسْلِمِينَ

"If he died from something where it is not known who struck him, then his indemnity is obligatory upon all wealth designated for the interests of the Muslims."

Thus, despite the juristic disagreement regarding the precise legal mechanism, these discussions demonstrate that some classical madhhab precedent recognized forms of collective and institutional liability extending beyond individual persons. Bayt al-Māl here functions as a constructed juridical entity capable of bearing financial obligations on behalf of the Muslim polity. This further supports the broader concept of al-shakhṣiyyah al-ma'nawiyyah within Islamic legal theory, wherein liability may attach not merely to natural persons, but also to collective and institutional entities recognized by the law.

Abū Muḥammad 'Alī b. Aḥmad b. Sa'īd Ibn Ḥazm al-Andalusī, al-Muḥallā bi'l-Āthār, ed. 'Abd al-Ghaffār Sulaymān al-Bundārī (Beirut: Dār al-Fikr, n.d.; reprint, Beirut: Dār al-Kutub al-'Ilmiyyah, 1408/1988), 12 vols, 11:107-111.

See also Ibn al-Mundhir's recording of the positions on this matter:

Abū Bakr Muḥammad b. Ibrāhīm Ibn al-Mundhir discusses the issue of one killed in crowds where the killer is unknown and records the differing opinions of the jurists regarding liability in such cases. He writes:

ذَكَرْتُ قَتِيلَ الْجَمَاعَاتِ فِي الرَّحَامِ لَا يُدْرَى مَنْ قَتَلَهُ، اخْتَلَفَ أَهْلُ الْعِلْمِ فِي الْقَتُولِ فِي الرَّحَامِ

Likewise, in some madhhab precedents, *Bayt al-Māl* is liable for the mistakes of the *qāḍī* according to the majority of jurists, including the Ḥanafis,¹⁴⁵ Mālikīs,¹⁴⁶ one opinion

"Discussion concerning one killed in crowds during congestion where it is not known who killed him. The scholars differed regarding one killed in crowding."

He then mentions that a group of scholars held that the indemnity is paid from Bayt al-Māl, narrating this from 'Umar b. al-Khaṭṭāb and 'Alī b. Abī Ṭālib:

أَنَّ النَّاسَ أَجْلَوْا عَنْ قَتِيلٍ فِي الطَّوَافِ، فَوَدَّاهُ عُمَرُ بْنُ الْخَطَّابِ مِنْ بَيْتِ الْمَالِ

"The people uncovered a dead man during ṭawāf, so 'Umar b. al-Khaṭṭāb paid his indemnity from Bayt al-Māl."

Likewise:

قَالَ عَلِيٌّ: مَنْ قُتِلَ فِي زِحَامٍ أَوْ جُسُورٍ أَوْ فِي جَمَاعَةِ الْمُسْلِمِينَ فَدِيَّتُهُ فِي بَيْتِ الْمَالِ

"'Alī said: 'Whoever is killed in crowding, on bridges, or among the gathering of the Muslims, then his indemnity is from Bayt al-Māl.'"

Likewise:

أَنَّ رَجُلًا أَصِيبَ عِنْدَ الْبَيْتِ، فَسَأَلَ عُمَرُ عَلِيًّا، فَقَالَ لَهُ عَلِيٌّ: أَدِّهِ مِنْ بَيْتِ مَالِ الْمُسْلِمِينَ

"A man was struck near the Ka'bah, so 'Umar asked 'Alī, and 'Alī replied: 'Pay his indemnity from the Bayt al-Māl of the Muslims.'"

Ibn al-Mundhir then records the differing juristic positions on the issue. He states that al-Ḥasan al-Baṣrī and al-Zuhri held that the indemnity is upon those present, while Mālik held that the blood is wasted (hadr). He then cites the position of al-Shāfi'ī:

وَهُوَ أَنْ يُقَالَ لَوْلِيَّهِ: ادَّعَ عَلَى مَنْ شِئْتَ، فَإِنْ ادَّعَى عَلَى أَحَدٍ بَعِيْنِهِ أَوْ جَمَاعَةٍ... قُبِلَتْ دَعْوَاهُ، وَحَلَفَ، وَاسْتَحَقَّ عَلَى عَوَاقِلِهِمُ الدِّيَّةَ

"It is said to his guardian: 'Claim against whomever you wish.' If he claims against a specific person or a group that could have caused his death in the crowding, then his claim is accepted, he swears an oath, and he becomes entitled to the indemnity upon their 'awāqil."

These discussions further demonstrate that some classical madhhab precedent recognized forms of collective and institutional liability extending beyond direct individual causation. In many of these narrations and juristic opinions, Bayt al-Māl functions as a juridical entity responsible for compensating harms arising from communal circumstances where no individual perpetrator can be conclusively identified. This reflects an important aspect of al-shakhṣiyyah al-ma'nawiyyah within some madhhab precedent, namely that liability may attach to collective public entities and institutions in order to preserve rights and prevent protected blood from becoming wasted.

Abū Bakr Muḥammad b. Ibrāhīm Ibn al-Mundhir al-Naysābūrī, al-Awsaṭ min al-Sunan wa'l-Ijmā' wa'l-Ikhtilāf, ed. Yāsir b. Kamāl et al., rev. Aḥmad b. Sulaymān b. Ayyūb, collated by 'Abd Allāh al-Faqīh (Fayyum, Egypt: Dār al-Falāḥ, 2nd ed., 1431/2010), 13:444-446.

¹⁴⁵ Zayn al-Dīn b. Ibrāhīm b. Muḥammad Ibn Nuḡaym al-Miṣrī, al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā'iq, followed by Takmilat al-Baḥr al-Rā'iq by Muḥammad b. Ḥusayn al-Ṭūrī, with the marginal commentary Minḥat al-Khāliq by Ibn 'Ābidīn (2nd ed., 8 vols.), 7:52; Muḥammad Amīn Ibn 'Ābidīn, Ḥāshiyat Radd al-Muḥtār 'alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār (Cairo: Sharikat Maktabat wa-Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādiḥ, 2nd ed., 1386/1966), 6 vols. Reprinted by Dār al-Fikr, Beirut, 5:418.

¹⁴⁶ al-Qāḍī 'Abd al-Wahhāb al-Baghdādī, al-Ma'ūnah 'alā Madhhab 'Ālim al-Madīnah al-Imām Mālik b. Anas, ed. Ḥumaysh 'Abd al-Ḥaqq (Mecca: al-Maktabah al-Tijāriyyah, Muṣṭafā Aḥmad al-Bāz), 3:1563-1564.

among the Shāfi'īs, and the Ḥanbalīs.¹⁴⁷ They held that if a *qāḍī* errs in the application of a *ḥadd* punishment or similar judicial ruling, the resulting indemnity is to be paid from *Bayt al-Māl*. The jurists reasoned that the *qāḍī* acts on behalf of the Muslim community, and the implementation of legal punishments serves the collective public interest of the Muslims. Consequently, if an error occurs in the course of fulfilling that public function, the liability is borne collectively through *Bayt al-Māl*, which represents the wealth of the Muslim polity. Thus, the *qāḍī* here is treated not merely as an isolated natural person, but as an official acting through a constructed juridical capacity tied to the legal personality of the state.

Another example appears in the discussions surrounding endowed property (*waqf*). Some jurists held that if an endowed slave committed an offense requiring *qisās*, then retribution would be carried out regardless of whether the offense was against the *mawqūf 'alayh* or another person. If the slave were killed in retaliation, then the *waqf* in him would terminate; if only part of him were amputated or injured, then the remaining portion would continue as *waqf*. If the offense instead required financial compensation, then the indemnity would not attach to his neck in a manner permitting sale, because *waqf* property cannot be sold. Rather, the compensation would be paid either by the *mawqūf 'alayh* or from the revenues generated by the *waqf* itself.¹⁴⁸

¹⁴⁷ Shams al-Dīn Abū al-Faraj 'Abd al-Raḥmān b. Muḥammad b. Aḥmad Ibn Qudāmah al-Maqdisī, al-Sharḥ al-Kabīr (published together with al-Muqni' and al-Inṣāf), ed. 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Hajar li'l-Ṭibā'ah wa'l-Nashr wa'l-Tawzī' wa'l-I'lān, 1st ed., 1415/1995), 30 vols, 26:60-61.

¹⁴⁸ Ibid, 16:427-432.

Ḥanbalī jurists discussed the issue of a *waqf* committing an offense that obligates financial compensation or retaliation, and these discussions further illustrate the concept of constructed legal personality in some madhhab precedent:

وَإِنْ جَنَى الْوَقْفُ خَطَأً، فَلَا رُشُّ عَلَى الْمَوْقُوفِ عَلَيْهِ، وَيَحْتَمِلُ أَنْ يَكُونَ فِي كَسْبِهِ

"If the *waqf* commits an accidental offense, then the indemnity is upon the beneficiary of the *waqf*, though it is also possible that it should be paid from its earnings."

He then explains:

إِذَا جَنَى الْوَقْفُ جَنَائَةً مُوجِبَةً لِلْمَالِ، لَمْ يَتَعَلَّقْ أَزْهَاهَا بِرَقَبَتِهِ؛ لِأَنَّهُ لَا يُمْكِنُ بَيْعُهَا

"If the *waqf* commits an offense obligating financial compensation, then its indemnity is not attached to its corpus, because it cannot be sold."

He further states that according to one interpretation the compensation is upon the beneficiary of the *waqf* because the beneficiary effectively possesses its benefit, while according to another interpretation:

فَلَا رُشُّ فِي كَسْبِهِ؛ لِأَنَّهُ تَعَدَّرَ تَعَلُّقُهُ بِرَقَبَتِهِ، لِكُونِهَا لَا تَبَاعُ، وَبِالْمَوْقُوفِ عَلَيْهِ؛ لِأَنَّهُ لَا يَمْلِكُهُ، فَكَانَ فِي كَسْبِهِ، كَاخَرُ

"The indemnity is to be paid from its earnings, because it cannot attach to its corpus since it cannot be sold, nor can it attach to the beneficiary because he does not own it. Thus, it is paid from its earnings, similar to a free person."

He then mentions another possible view:

وَيَحْتَمِلُ أَنْ يَكُونَ فِي بَيْتِ الْمَالِ، كَأَرْشِ جَنَائَةِ الْخَرِّ الْمُعْسِرِ

"It is also possible that it should be paid from *Bayt al-Māl*, similar to the indemnity of an insolvent free person."

Likewise, regarding offenses requiring retaliation, he states:

Thus, the *waqf* here functions as a juridical entity bearing financial responsibility independent of any particular private owner. The liability is attached neither to an ordinary individual owner nor to unrestricted private property, but rather to the *waqf* as a distinct legal institution possessing its own operative *dhimmah*. These rulings further demonstrate that some classical madhhab precedents recognized forms of constructed legal personality capable of bearing rights, obligations, and liabilities separate from the natural persons connected to them.

Based on the foregoing discussion, the legal treatment of liability in cases involving artificial intelligence must ultimately return to the broader juristic principles governing causation, agency, legal capacity (*ahliyyah*), and the rulings related to harm caused by tools, animals, and inanimate objects. The precedents discussed throughout this study indicate that AI, regardless of its sophistication or apparent autonomy, remains in principle a tool (*ālah*) and not an independently morally responsible legal agent. Accordingly, when harm occurs through the use of AI in medicine, transportation, finance, warfare, or other fields, the rulings pertaining to liability for direct action (*mubāsharah*) and indirect causation (*tasabbub*) continue to apply to the human actors connected to its operation, design, supervision, or deployment. Thus, if a physician utilizes AI-assisted diagnostic software, or a person operates an automated vehicle, the liability rulings related to users and instruments remain operative in accordance with the established principles of fiqh.

At the same time, the juristic discussions concerning animals and unattended instruments causing harm provide an important analogy for situations in which AI systems may eventually operate with minimal or no immediate human intervention. In such cases, the closest legal parallel would not be an independent legal person possessing full *ahliyyah*, but rather the rulings related to harm caused by animals or tools acting outside the direct control of their owners or operators. This distinction is significant, as the classical jurists differentiated between harm directly connected to the action of a responsible agent and harm arising independently from objects, animals, or conditions not actively controlled at the moment damage occurs.

Nevertheless, the discussion of *al-shakhṣiyyah al-ma'nawiyyah* and the precedents related to *Bayt al-Māl* demonstrate that some madhhab precedents possess mechanisms through which liability may be socially or institutionally allocated in situations where identifying a singular responsible party becomes difficult or impossible. This becomes

وَأِنْ جَنَى جَنَابَةً تُوجِبُ الْقِصَاصَ وَجَبَ، سَوَاءٌ كَانَتْ عَلَى الْمُوقُوفِ عَلَيْهِ أَوْ عَلَى غَيْرِهِ، فَإِنْ قُتِلَ بَطَلَ الْوَقْفُ فِيهِ، وَإِنْ قُطِعَ كَانَ بَاقِيهِ وَقْفًا

"If it commits an offense obligating retaliation, then retaliation is carried out, whether the offense was against the beneficiary of the *waqf* or another person. If the endowed slave is killed, then the *waqf* concerning him is terminated; if only part of him is amputated, then the remainder continues as *waqf*."

These discussions are significant because the jurists explicitly analyze where liability is attached when the offending property is part of a *waqf* whose corpus cannot be sold and whose ownership is not reducible to ordinary private ownership. The indemnity is discussed as potentially attaching to the *waqf*'s earnings, to the beneficiary, or even to *Bayt al-Māl*, demonstrating that the *waqf* was treated as possessing a distinct juridical status separate from ordinary privately owned property.

Thus, the *waqf* here functions as a constructed legal personality (*shakhṣiyyah ma'nawiyyah*) possessing operative financial obligations independent of any particular individual owner. The juristic discussion assumes that the *waqf* may bear liabilities, possess earnings from which compensation may be extracted, and continue juridically despite changes affecting parts of its endowed property. This further demonstrates that some classical madhhab precedent recognized institutional entities capable of bearing rights and obligations independently from the natural persons associated with them.

particularly relevant in future contexts where large sectors of medicine, transportation, infrastructure, finance, and public services may rely extensively upon interconnected AI systems. In many such cases, determining fault may prove extraordinarily complex: liability could potentially relate to the user, software developer, manufacturer, data provider, institution deploying the technology, or the AI system's operational processes themselves.

The reports transmitted from the Salaf regarding *Bayt al-Māl* covering damages in cases where liability was uncertain, such as deaths occurring in crowded mosques or public spaces, demonstrate that the juristic tradition did not always leave such harms entirely uncompensated merely because a direct liable party could not be conclusively identified. Likewise, the differing opinions among the jurists regarding collective or institutional responsibility indicate flexibility within the legal tradition in addressing widespread public needs and preserving rights. Based upon these precedents, it may be argued that modern states, public (Islamic) insurance systems, or institutional compensation funds functioning as forms of contemporary *al-shakhṣiyyah al-ma'nawiyyah* could assume liability in cases involving autonomous AI harms where no individual fault can be definitively established. Furthermore, even in situations where some jurists might classify certain harms as *ḥadr* due to the absence of an identifiable liable agent, the precedents of the Companions and later jurists holding certain craftsmen and professionals liable as a matter of public protection and safeguarding rights provide an important basis for legislative intervention. Thus, as AI becomes increasingly normalized within essential sectors such as surgery, autonomous transportation, and public infrastructure, there may emerge a legitimate need to expand institutional liability frameworks in order to preserve public trust, protect individuals from uncompensated harm, and fulfill the higher objectives of *Sharī'ah* concerning justice, preservation of life, and protection of wealth. In this sense, the Islamic legal tradition possesses sufficient doctrinal flexibility to address the novel challenges posed by artificial intelligence while remaining firmly grounded within its established jurisprudential principles.

Conclusion

The rapid development of artificial intelligence, autonomous systems, and transhumanist technologies presents one of the most significant jurisprudential challenges of the modern era. Questions surrounding legal personhood, liability, agency, virtual presence, and technologically mediated human interaction are no longer theoretical abstractions confined to speculative philosophy. Rather, they increasingly shape medicine, transportation, governance, finance, warfare, communication, and even human social relationships. These developments require Islamic legal theory to confront foundational questions regarding the nature of the legal subject, the basis of obligation and liability, and the limits of juridical attribution.

This study has argued that some madhhab precedents already possess a sophisticated conceptual framework capable of engaging these emerging issues. The doctrines of *dhimmah*, *ahliyyah*, *al-shakhṣiyyah al-ma'nawiyyah*, *taklīf*, *wakālah*, *tasabbub*, and *mubāsharah* collectively demonstrate that classical jurists developed highly nuanced discussions concerning legal personality, representation, delegated agency, and mediated causation long before the emergence of modern technological systems. The juristic treatment of endowments, mosques, public treasuries, political offices, collective ownership structures, and non-human causes of harm illustrates that some madhhab precedents distinguished carefully between moral agency and juridical attribution. As such, the legal tradition was never limited solely to natural persons in the narrow physical sense, nor did it require consciousness or moral accountability for every form of legal attribution.

At the same time, the paper has demonstrated that classical Islamic legal theory consistently grounds full legal and moral responsibility in the human being. *Ahliyyah* in its complete sense remains tied to the human subject as the bearer of *dhimmah* and the recipient of *taklīf*. Even where jurists recognized forms of constructed or representative legal personality, these entities possessed only limited and functional legal capacities rather than independent moral agency. Accordingly, the study concludes that artificial intelligence, regardless of its sophistication or operational autonomy, does not presently satisfy the classical requirements for full juridical and moral personhood. AI systems remain, in principle, tools and mediated instruments whose actions ultimately relate back to human agents, institutions, or collective structures.

Nevertheless, some madhhab precedents also demonstrate considerable flexibility in assigning liability and protecting rights in situations where direct attribution becomes difficult. The precedents related to public harms, institutional liability, *Bayt al-Māl*, craftsmen, physicians, animals, and delegated action reveal that the *Shari'ah* did not leave widespread harms unaddressed merely because causation became distributed or uncertain. This becomes increasingly relevant in contexts where artificial intelligence systems may operate with significant autonomy and where fault cannot easily be isolated to a single programmer, user, manufacturer, or institution. In such circumstances, the juristic concepts of *al-shakhṣiyyah al-ma'nawiyyah* and institutional *dhimmah* provide important theoretical foundations through which modern legal systems may allocate liability while preserving the higher objectives of justice, protection of wealth, and preservation of life.

The paper also addresses questions of institutional representation and liability arising from the actions of AI systems in light of classical agency doctrine, examining how the principles governing *wakālah*, *ijārah*, and public deputization bear upon the attribution of responsibility in technologically mediated contexts.

Likewise, contemporary transhumanist ambitions challenge core assumptions regarding the human condition itself. Efforts to technologically enhance cognition, embodiment, memory, lifespan, or emotional experience raise profound questions regarding the limits of human modification and the distinction between treatment and transformation.

Islamic legal theory cannot adequately address these developments through reactionary rejection nor through uncritical acceptance. Rather, it must distinguish between therapeutic interventions that preserve human welfare and enhancement paradigms that risk redefining the nature of moral agency, accountability, and human identity.

Ultimately, this paper contends that some madhhab precedents possess both the conceptual depth and jurisprudential flexibility necessary to engage emerging technological realities without abandoning its normative foundations. The classical legal tradition demonstrates that Islamic jurisprudence has historically accommodated evolving social and institutional realities through principled analogical reasoning while preserving the centrality of the human moral subject. Artificial intelligence, virtual environments, and transhumanist technologies therefore do not require the abandonment of classical legal categories; rather, they require their careful reexamination, refinement, and application within new technological contexts.

The questions explored in this study remain in their early stages and will likely become increasingly urgent as technology advances. Future research will need to address more specific applications of AI governance, algorithmic warfare, neurotechnology, autonomous systems, virtual economies, digital embodiment, and enhancement technologies. Yet the broader conclusion remains clear: Islamic legal theory already contains the doctrinal tools necessary to participate meaningfully in these global ethical and legal discussions. Its concepts of *dhimmah*, *ahliyyah*, juridical personality, causation, public welfare, and moral accountability continue to provide a coherent framework through which emerging technologies may be critically assessed while preserving the ethical and anthropological principles at the heart of the *Shari'ah*.

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And Allah knows best.

May His peace and blessings be upon the Prophet Muhammad.