

Rules Related to the Objectives of Sharia and their Applications from Contemporary Jurisprudence (Application models)

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Abstract

Study was called “Rules related to the objectives of Sharia and their applications from contemporary judiciary - applied models” and its nature required that it be organized into an introduction and two sections. The introduction included the importance of the topic and the approach I followed in it. The first section included three demands to introduce the vocabulary of the title. The second includes examples of rules related to the objectives of Sharia and their applications in the judiciary, then the conclusion and sources.

Keywords: *Sharia, contemporary judiciary.*

Introduction

In the name of God, with whom no matter begins except that He blesses it, and the blessings and peace of my Lord be upon the Prophet Muhammad, whom God sent to convey his message and his family and peace...

As for after:

If the science of objectives and its rules is one of the sciences with the greatest impact, the highest in value, and the most comprehensive in benefit and benefit, it was decided to research and study it in order to clarify and highlight its importance in deriving rulings from the contemporary judiciary on the rules related to the objectives of Sharia, the most important of which is preserving the five necessities (mind, soul, honour, money and offspring), and these There are many rules, so I chose among them those related to the objectives of harm and the removal of embarrassment as a model for my study, so I named them “the rules related to the objectives of Sharia law and its applications from contemporary jurisprudence - the objectives of harm and the removal of embarrassment as a model.”

The nature of this study required that it be organized into an introduction and two sections:

The first topic: defining the vocabulary of the title, and it contains three requirements:

The first requirement: Definition of the rule in language and terminology.

The second requirement: Defining the objectives of Sharia in language and terminology.

The third requirement: Defining the judiciary in language and terminology.

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The second section: The rules related to the objectives of Sharia law and its applications from contemporary jurisprudence, and it contains two requirements:

The first requirement: the rules related to the purpose of harm and their applications from contemporary jurisprudence.

The second requirement: The rules related to the purpose of removing embarrassment and their applications from contemporary jurisprudence.

The first topic

Definition of title vocabulary

The first requirement: Definition of the rule in language and terminology.

First: The rule in language.

It is “what a thing sits on, that is, it settles and is firm”³ And its source is sitting, so “qaf, ain, and dal are a continuous, metered origin that does not change, and it is similar to sitting, and it is said: a man sat sitting” (sitting).⁴; “That is, sitting, which is the opposite of standing.”⁵

Second: The rule in terminology.

Second: The rule in terminology and the “jurisprudential rule”

The term al-Qaeda was known to the scholars who lived through the first centuries preceding the eighth century AH, and later the definitions of it by scholars of jurisprudence and principles varied, and among these definitions are the following:

- “A comprehensive ruling that applies to its details so that its rulings can be learned from it”⁶
- It was said that: “It is a comprehensive issue that applies to all its parts.”⁷

The second requirement: Defining the objectives of Sharia in language and terminology.

Maqāsid in the language: the plural of maqsād, and its verb is intention. “The qāf, ṣad, and dal are three basic principles, one of which indicates the coming of something and its completion, and the other indicates hoarding of something, so the basic principle is: I intended it with intention and purpose”⁸ “The origin of Qasad and its positions in the speech of the Arabs: determination, orientation, sighing, and rising towards something, regardless of whether that is moderate or unjust, this is its origin in reality”⁽⁹⁾..

In terms of terminology: I did not find an independent definition of the word “objectives” unless it is added to another word, such as “objectives of Sharia law” or “objectives of principles” and others, except that they can be defined as: “the goals and objectives that are hoped for in uprightness, justice, and moderation”¹⁰.

⁽³⁾ Al-Manawi’s commentary on important definitions (p. 266).

⁽⁴⁾ Language Standards by Ibn Faris, (5/108).

⁽⁵⁾ Tongue Al-Arab by Ibn Manzur, (3/357).

⁽⁶⁾ Pointing to the clarification of the text of the revision in Fundamentals of Jurisprudence by Al-Taftazani, (1/34).

⁽⁷⁾ Definitions by Al-Jurjani, (p. 171).

⁽⁸⁾ Standards Al-Lughah by Ibn Faris, (5/95).

⁽⁹⁾ Taj Al-Arous from Jawaher Al-Qamoos by Muhammad Al-Zubaidi, (9/36).

⁽¹⁰⁾ look :The General Purposes of Sharia by Ibn Zughaiabah, (p. 38), doctoral thesis on intentional diligence according to Sheikh Ali al-Qaradaghi and its contemporary applications, by the student Imad Abdullah al-Jaff.(p. 83).

The Maqasid rule can be defined as: (a comprehensive issue applicable to all its parts in order to identify the goals and objectives that the legislator seeks from the principles of legislation).

The third requirement: Defining the judiciary in language and terminology.

First: Judgment in language.

Judgment linguistically: And judiciary means: “judgment.” God Almighty said in mentioning those who said: “Judge as you are a judge,” meaning make and judge. That is why the judge is called a judge, because he rules and implements rulings. Death is called a decree because it is an order that is carried out in the son of Adam and other creatures.”¹¹.

Second: Judiciary in terminology.

“Settlement of disputes in accordance with the law in order to preserve social peace by following special procedures that take specific forms carried out by the opponents, the judge and his assistants”¹².

The second topic

Rules related to the objectives of Sharia and their applications in contemporary judiciary

The first requirement: the rules related to the purpose of harm and their applications from contemporary jurisprudence

The Maqasid rules related to the objectives of harm and warding off evil contain within them what shows the status of Islamic legislation, and that it is valid for every time and place. It also shows the extent of its connection to the five necessities of (preserving the soul, mind, religion, and money). This is reinforced by what Imam Al-Ghazali mentioned in *Al-Mustasfa*. Where he said: “By interest, we mean preserving the purpose of the Sharia, and the purpose of the Sharia for creation is five-fold: which is to preserve for them their religion, their soul, their mind, their offspring, and their wealth. Everything that involves preserving these five principles is an interest, and everything that misses these principles is corruption and avoiding it is an interest.”⁽¹³⁾ Imam Al-Shatibi confirmed this by saying: “The nation - and even all the sects - have agreed that the Sharia was established to preserve the five necessities - which are: religion, the soul, lineage, money, and the mind - and the nation taught them as necessary, and this has not been proven to us with specific evidence.” We do not have any specific origin that distinguishes its reference to it, but rather its suitability to the Sharia is known from a combination of evidence that is not limited to one chapter.”¹⁴ What is meant by necessary is: “It is what the Sharia has known to turn to, such as preserving religion..., the mind is subject to drunkenness, the life is subject to retaliation, lineage and honor are subject to adultery and slander, and wealth is subject to the amputation of the thief”¹⁵ In this section, I will mention examples of the rules related to these objectives and what emerges from Islamic jurisprudence and contemporary judicial rulings.

First: The rule of “do no harm”

(11) (Dictionary of Language Standards), Al-Qazwini Al-Razi. (5/99).

(12) The judiciary and the system of proof in Islamic jurisprudence, and the positive systems by Mahmoud Muhammad Hashem, (pp. 9-10), *The History of the Judiciary in Islam*, by Mahmoud bin Muhammad Amous. (p. 9)

(13) *Al-Mustasfa* by Al-Ghazali, (p. 174).

(14) *Approvals for Shatby*, (1/31).

(15) *Summary of Al-Rawda* by Al-Tawfi, (3/209) See: The doctoral thesis on objective *ijtihad* according to Imam al-Qardahi and its contemporary applications by the student Imad. Abdullah H Al-Jaf, (p. 125).

The basis of this rule is what was narrated by Ubadah ibn al-Samit (may God be pleased with him), “The Messenger of God (may God’s prayers and peace be upon him) decreed that there should be neither harm nor harm”¹⁶ It has a great position in Islamic law. It reflects the greatness of Islamic legislation in preventing harm and damage to people⁽¹⁷⁾ What is intended by harm is corruption, and this rule has two aspects: the first is jurisprudential in that it is obligatory to remove harm, and the second is intentional in its statement that the law “intends to remove harm” and remove it.

Contemporary Maqasid jurisprudential applications of this rule include:

- Provisions related to the Corona epidemic, including: abandoning handshakes and wearing masks.

Many countries have established general precautionary measures; To preserve and protect people's lives, after learning about the strain of the disease and how it spreads, as contact was one of the most common ways to spread it, protocols were developed; _Any special precautions_ to limit its spread, including preventing handshakes, with the necessity of wearing masks; This is because smelling and touching are among the effects of the causes of spread, and this procedure falls under the Maqasid jurisprudential rule, “No harm, no harm.” This is considered a necessary goal for preserving people’s lives and safety, and it is based on this rule as follows:

- Expected harm: is the restriction of some individuals’ freedoms; This is by abandoning handshakes, as it leads to mistrust among some people and - especially the elderly and those with whom you are related - lack of respect, and the same applies to wearing a mask. Because of the harm it causes to those with respiratory diseases.

- As for the harm caused to others: it is the increase in infections with this disease. This is due to touching and breathing.

The harm resulting from restricting some freedoms can be considered special; Because it is related to a group of people, it can also be avoided by avoiding contact, and the harm that leads to an increase in infections, and the spread of the disease is considered general; Because it causes the spread of the disease, there is no “harm or harm,” and it can also be derived from the rule that stems from it, “He bears the private damage to prevent the public damage”⁽¹⁸⁾.

Among the judicial rulings based on the rule are:

First ruling:

“The Personal Status Court in Kirkuk was formed on January 30, 2017, with its judge, Mr. Abdul Ghafour Muhammad Ismail, authorized to judge in the name of the people, and it issued the following ruling:

Plaintiff/Dr. Wham.

The defendant/A. A. s.

The decision:

“Because the plaintiff claims, through her agent, that the defendant was married to her, legally and legally, according to a valid marriage contract, and that the defendant left her

⁽¹⁶⁾ Narrated by Ibn Majah in his Sunan, Kitab al-Ahkam, chapter on one who establishes against him something that harms his neighbor, (2/784) No. (2340).

⁽¹⁷⁾ Explaining the rules of principles and the complexities of the chapters By Abu Abdullah Al-Hazmi, (5/20).

⁽¹⁸⁾ look :The objective dimension of the rule “He bears private damage to prevent public damage” by Dr. Abu Al-Qasim bin Ahmed, (p. 101).

more than two years ago without a legitimate excuse, so she requested that the defendant be invited to plead and decide to separate them in accordance with the provisions of Article 43, Paragraph 2 of the Personal Status Law, and that he be charged with the expenses.” And the attorney’s fees and for conducting the pleading in absentia and in public, and the court’s review of the marriage ratification decision No. 2479 on 6/10/2015 issued by the Personal Status Court in Kirkuk and the report of the Social Research Office. Then the court heard the personal evidence presented by the plaintiff, which supported her claim, and that he abandoned the plaintiff for more than Two years, specifically since June 1, 2012, and that she is not divorced from him, and that the court heard the statements of the third person, the Mukhtar of Al-Mahalla, Granada district / Al-Muallimeen, Kirkuk, and he stated that his place of residence is unknown, and it heard the statements of the third person from the defendant’s family, who is his brother called (Izz Al-Din Othman Suleiman), who He supported the plaintiff’s claim and her husband abandoned her from the date of 2012 until now and went to an unknown destination, and she was harmed by him for abandoning her and not spending on her or her child on him, and since the defendant had abandoned his wife for a period of two years or more without a legitimate excuse, even if the husband’s place of residence was known and he had money from which she could spend. Whereas, the abandonment that the legislator intended is physical abandonment and that it is on purity and non -pregnant and accustomed to the reader and there is no previous divorce between them and where the defendant was abandoned for the plaintiff and when the Almighty said: “And if he separates, God is singing all of those who sought God and God”), and the rule in his saying (may God’s prayers and peace be upon him): (No harm, no retaliation), which is what was stipulated in (Article 216) of the Iraqi Civil Code, and the jurisprudential rule (the damage is paid and removed). Given the foregoing and upon request, the court decided to rule to separate the plaintiff (D. . WAM) and the defendant (A.A.S) on the date of this ruling, 1/30/2017, and it was considered a divorce because we were a minor between them for the first time, such that one of them would not be permissible for the other except with a new contract and dowry, and the plaintiff was warned to abide by the legal waiting period of three months and not to marry a man. Another, except after the end of her waiting period and the decision being final, and the defendant being charged the expenses and attorney’s fees of the plaintiff’s agent in an amount of ten thousand dinars, in absentia, subject to objection and cassation, in accordance with the Sharia rulings, and in accordance with Articles 40, 44, and 45 of the Personal Status Law No. 188 of 1959, as amended, and Articles 11 and 21, 22, 59, and 140/First of the Evidence Law No. 107 of 1979, amended... on 1/30/2017 AD” ⁽¹⁹⁾

Second ruling:

Claim:

“The plaintiff claimed, through her representative at the Mosul First Instance Court, that the defendant owns the Al-Jawsaq electrical generator in front of her building, built on the property 488/24 m 21 Dandan Al-Sharqiya, and that the presence of the generator in front of her building causes serious damage to it due to the large vibrations caused by the operation of the generator and its leakage.” Water from it reaches the foundations of the building, which leads to the soil being disturbed, in addition to the reluctance of tenants to rent shops or apartments due to the presence of the generator, which has deprived it of the benefit of the building for more than four years. So I requested that the defendant be invited to plead and rule obliging him to remove the generator from the current location, while bearing all fees, expenses, and fees. After the Director of the Municipality of Mosul - in addition to his position - added a third person to the lawsuit for clarification, the trial court issued on 12/6/2012, with file number 4037/2012, an in-person judgment, subject to

(19) Presidency of the Kirkuk Federal Court of Appeal, Issue No. 80, Section 4, 2017, dated 1/30/2017, published in the rules. And controls Jurisprudence in Marriage and Separation, by Judge Abdul Ghafour Al-Bayati, p. 293 et seqa . Adapted transfer.

appeal and cassation, ruling that the plaintiff's lawsuit be dismissed and that she be charged the fees and expenses and the amount of ten thousand dinars as the attorney's fees for the defendant's agent. The plaintiff's agent appealed. With the ruling, he requested that it be reviewed by cassation and he overturned it in his petition dated 1/2/2013. The ruling was returned as quashed pursuant to Cassation Decision No. 779/Civil Authority Transferred/2013 on 4/10/2013. On 9/23/2013, the court issued a judgment in the presence of the defendant (M. n. (r) By removing the generator installed on the property 24/189 AD 21 Dandan Al-Sharqiya and charging him the fees and expenses, the defendant's agent appealed the aforementioned ruling in distinction in his regulations dated 10/9/2013."

The decision:

"Upon examination and deliberation, it was found that the discriminatory appeal was submitted within the legal period. He decided to accept it in form, and upon examining the discriminatory ruling, he found that it is correct and in accordance with the law, and it was in accordance with what was stated in the discriminatory cassation decision No. (779/Civil), copied/2013 on 10/4/ 2013 This is because the trial court looked at the statements of the third person, the General Directorate of Roads and Bridges, whom the court included in the case to provide clarification, as he is the owner of the plot of land on which the electric generator was installed, which included his disagreement with the Mosul Municipality Directorate leasing the aforementioned plot of land to the discriminator/defendant. The court also stated that It sought the assistance of five experts and they submitted their report dated 7/26/2013, in which the majority stated that the operation of the generator gradually caused structural damage to the plaintiff's landmark building as a result of the vibrations resulting from the operation due to its proximity to it, and that the location of the generators had completely blocked the facade of the plaintiff's building and limited the movement of people and blocked the plaintiff's premises. From benefiting from the building, which consists of commercial shops and residential apartments, as a result of noise and air pollution, it resulted in people's reluctance to rent the shops and the demand to occupy them, which necessitates removing the generators from their current location. Since this report came with reasons and reasons, the court adopted it as a reason for its ruling in accordance with the provisions of Article 140. / Firstly, from the law of evidence as well.

That is, since these generators are mechanical machines that require special care to prevent damage from what is distinguishable, and that the defendant will be responsible for the damage they caused in accordance with the provisions of Article 231 of the Civil Code, and where there is no harm or damage, and the damage is removed as stipulated in Article 216 of the law. And since the court had ruled to remove the electric generators from their current location for the reasons referred to, its distinguished ruling is consistent with the provisions of the law. It decided to ratify it, reject the discriminatory appeals, and charge the discerning person the discriminatory fee. The decision was issued by agreement in Al-Hajjah / 1434 AH, corresponding to 10/28/2013 AD.²⁰⁾.

Based on what the judicial ruling requires:

It becomes clear to us whether the legal legislator has ruled on the principle of repayment of harm, in accordance with what is required by the text of Article (216) of the Civil Code, which is what was stipulated in the Journal of Judicial Provisions and whose drafters derived it from Islamic legislation.

(20)court's decision Federal discrimination Judgment No.: 1895 / Civil Copied / 2013 on 10/28/2013. Published in Al-Mukhtar From the Judgment of the Court of Cassation, Judge Falah Karim Al-Jahish, Part 1, p. 268 et seq.

Second: The rule (“If two evils collide, the greater harm will be taken into account.”²¹ This rule is one of the rules branching off from the previous rule, “No harm, no harm,” and its meaning is that “Sharia came to prevent evils, so if evils occur, they must be repelled as much as possible, and if it is not possible to prevent all of them, then the most corrupt must be repelled, then the most, because the intention is to disrupt the evils and reduce them as much as possible.” If a person is forced to commit one of two harmful acts, without specifying one of them, even though they differ in harm or harm, he is obliged to choose the one that causes the least harm or harm.”²² And the counterpart to this rule is the “rule of “preventing evil is more important than bringing about good”: “If there is a conflict between a harm and a good, then repulsion of the harm is often given priority, because the lawgiver’s attention to what is forbidden is more severe than his attention to what is commanded”²³.

Among the Maqasid applications of this rule are the following:

– If we look at the story of Musa with Al-Khidr when he killed the boy, we consider it evil, but his survival, which causes his parents to turn away from their religion, is greater evil than killing him, and if he thought there was good in his survival, then the wisdom and purpose is “that his parents’ religion remain, and their faith is better than his life, so that is why Al-Khidr killed him.”²⁴ God knows.

Among the judicial rulings based on the rule are the following:

First ruling:

“The Civil Commission was formed in the Federal Court of Cassation on August 28, 2019, headed by Judge Sabah Roumi and the membership of the two judges, Mr. Hijab Ibrahim and Sabah Arabi, who are authorized to judge in the name of the people, and it issued the following decision:

Claim:

“The plaintiffs claimed, through their representative before the Shirqat Court of First Instance, that the defendant had established a camp for the displaced in the Shirqat district on the plot numbered 88m in Ivory, which belonged to them and was planted with all kinds of fruit trees, and that he harmed them and deprived them of their benefit. Therefore, they requested to invite him to plead and issue a ruling obliging him to lift the encroachment and hand them over the land free of any disturbances.” Preventing them from retaining the claim for compensation and charging him with expenses, fees, and attorney’s fees, the trial court, No. 134 /B/ 2019, issued a judgment in the presence of the defendant obligating the defendant, in addition to his job, to remove the excess that he had committed over the life of the property numbered above and the entire detachment plot (1, 3, 4, 5, and 6), District 14, Baja, and hand it over. The plaintiff has no concerns, according to the expert surveyor’s decree, and considers it part of the decision upon implementation and charges him the fees, expenses, and attorney’s fees. Due to the defendant’s agent not being convinced of the ruling, he requested its cassation review and reversal in his regulations dated 8/6/2019.”

⁽²¹⁾ Similarities and isotopes By Al-Suyuti, (p. 87), Journal of Judicial Provisions, (Article 28), Iraqi Civil Law No. 40 of 1951, Article(213)

⁽²²⁾ Jurisprudential rules and their applications in the four schools of thought by Muhammad al-Zuhayli, (1/226).

⁽²³⁾ For the likes and counterparts of Al-Suyuti, (p. 87).

⁽²⁴⁾ See: Mafatih al-Ghayb = Al-Tafsir Al-Kabir by Al-Razi, (1/202), Al-Muwafaqat by Al-Shatibi, (2/461).

The decision:

"Upon examination and deliberation, it was found that the discriminatory appeal was filed within the legal period, so he decided to accept it in form. Upon reviewing the discriminatory ruling, he found that it was incorrect and in violation of the law. This is because the plaintiffs against whom the discriminatory matter was appealed requested that the defendant (Director of the Canadian Aid Organization - an addition to his position - the discriminator) be obligated to lift the violation that occurred. By him, which is the establishment of a camp for the displaced in the Shirqat district on the plot numbered 1488 in Ivory, and that the subject court, in its distinguished ruling, obligated Al-Mumayyaz to lift the transgression committed by him and remove the camp according to the details contained therein, in contravention of the provisions of the law. This body sees through the letter of the General Secretariat of the Council of Ministers / Department of Organizations Non-governmental organization No. D. M. 01/01/1879 on 6/1/2019 confirmed that Canadian Aid for Social Rehabilitation for Iraq was registered with them as a branch of a foreign organization in accordance with the Non-Governmental Organizations Law No. 12 of 2010 under the number (76232C1, number 1597 on 5/19/2013, and its headquarters are in Baghdad. It can open branches in the rest of the governorates after following the mechanism specified in our department for this purpose, and that the executive director in Iraq is (Majed Abdul Rahim Abdul Khaleq), and that the ongoing investigations by the trial court, when gangs arise The terrorist ISIS occupation of the cities of Salah al-Din Governorate, the presence of the displacement operations that the people of the aforementioned areas went through, restricted the individual's right, including property, in exchange for warding off the imminent dangers stipulated, including the situation of the displaced in the areas that were subjected to the aggression of the terrorist ISIS gangs. From all of the above, the trial court had to decide. To rule, for the reasons mentioned above, to dismiss the claim of the plaintiffs (the plaintiffs who were discriminated against), while reserving for them the right to file a claim for compensation in accordance with the text of Article (2/213) of the Iraqi Civil Code, which includes: If two evils conflict, the greater of the damage will be taken into account, the last disability, if this has a legal justification and since it was implemented. Contrary to the above, he decided to overturn the discriminatory ruling and return the case file to its court to follow the above, provided that the discriminatory fee remains dependent on the outcome, and the decision was issued by agreement on 8/28/2019 AD.²⁵ ..

Based on what the judicial ruling requires:

It becomes clear to us that the judge ruled to lift the camps in order to ward off the harm caused to the landowner, where two subsidiary harms conflicted, the greatest of which is harmful according to the legal text, which is what was stipulated in the Journal of Judicial Provisions, and its origin is one of the purposes of Islamic law in warding off harm.

Second ruling:

"The Appellate/Real Estate Panel was formed in the Federal Court of Cassation on 18/Rajab/1434 AH corresponding to 5/28/2013 AD, headed by the Vice President, Mr. Awad Mohsen, and the membership of the judges, Messrs. Kamel Shehab, Zaydoun Saadoun, Sabah Rumi, and Numan Karim, who are authorized to judge in the name of the people, and it issued the following decision:

Claim:

The plaintiff's agent claimed, in addition to his job at the People's Court of First Instance, that in view of the defendant's intention to build departments at Al-Rafidain College, in addition to his job, adjacent to the right wall of the filling station of the government banks

⁽²⁵⁾Federal Court of Cassation Decision, 5238/Civil Authority/2019 on 8/28/2019, unpublished decision.

belonging to his client, which is not more than a meter and a half away from the opening of the tanks, and in view of its danger and violation of environmental restrictions, he requested an invitation. The defendant to plead and oblige him to remove the building since it violates the peace conditions and estimated the value of exceeding the imposition of the fee at one million five hundred thousand dinars and bearing the expenses. On 10/14/2012, the trial court issued No. 480/B/2012, a judgment in the presence of the plaintiff ordering the dismissal of the plaintiff's lawsuit in addition to his job and bearing the expenses due to lack of conviction. The plaintiff, in addition to his position in the ruling, appealed it, requesting its annulment, by his representative's list dated 10/25/2012. The Baghdad Al-Rusafa Federal Court of Appeal, on 3/14/2013, and numbered 1378/S/2012, issued an in-person judgment ruling to uphold the appealed preliminary ruling, reject the appeal and its reasons, and charge the appellant with the expenses. The attorney's fees were considered inclusive of the two stages of litigation because the appellant, in addition to his position, was not convinced of the ruling. He appealed it by cassation, requesting its annulment, in the list of his representative dated 4/9/2013 AD.

Decision: -

“Upon examination and deliberation, it was found that the discriminatory appeal was filed within the legal period. He decided to accept it in form, and upon looking at the distinguished ruling, it was found that it is correct and in accordance with the law, because the lawsuit of the distinguished plaintiff, the General Manager of the Petroleum Products Distribution Company, in addition to his job, is focused on demanding that the defendant, the Dean of Al-Rafidain College, in addition to his job, remove The college department building is adjacent to the right wall of the government bank filling station, and which (the building) is not more than 1.5 meters away from the tank opening, contrary to building regulations near distribution outlets, which are estimated at (100 meters) due to its danger.. and support from the ongoing investigations by the court and the expert report The Al-Rafidain University College building is a four-story building built on the plot numbered 7980/1 AD, which is adjacent to the plot on which the fuel filling station is built, and that its construction (the college) was in accordance with the required specifications and instructions.

As for the subject of the case, which is the extent of damage to the building adjacent to the station, and if it is, how can it be removed? To find out, the court enlisted the help of three specialized experts and conducted an examination in their presence. The experts submitted their report dated 1/27/2013, in which they indicated that it was reprehensible to remove the college building since it had four floors in addition. In addition, the area adjacent to the station is devoid of any access overlooking the station, and due to the possibility of anticipating damage, experts say that it is possible to move the gasoline tanks to another place within the area allocated for the construction of the station, as indicated in the drawing organized by them, so that the distance between the tanks and the building is 100 meters or more, even if they are moved. Fuel tanks are less harmful than demolishing the building. In addition, Al-Mumayz's claim that Al-Rafidain University College was built after the construction of the station is considered an argument against him. He could have taken the legal path and asked the urgent judiciary to stop the new works stipulated in Article 141 and what follows of the Code of Civil Procedure instead. From waiting until the construction is completed and then filing a lawsuit, and where the lesser of two evils is chosen, if two evils conflict, the greater damage will be taken into account, and the greater damage will be removed by the lighter damage. Article 213 (civil) and the damage is still represented by him based on the provisions of Article 216 - civil. Accordingly, the distinguished ruling adhered to the above legal point of view, so he decided to confirm it. The cassation appeal was rejected

and the cassation fee was charged to the discerner, and the decision was issued by agreement on 18/Rajab/1434 AH corresponding to 5/28/2013 AD.²⁶

What the judicial ruling requires, as in its predecessor:

When two harmful effects conflict, which is here demolishing the building or transporting gasoline, the greater harm is taken into account by committing the lesser of them, which is what the Iraqi legislator has ruled, and the Code of Judicial Rulings stipulated, and its origin is one of the objectives of Islamic law.

The second requirement: the rules related to the purpose of removing embarrassment and their applications from contemporary jurisprudence

The goal of removing hardship is one of the goals of Islamic law, which is “what leads to hardship that the obligated person is not capable of and is not able to do, or is not able to do, but with great stress and extreme hardship that may cause him to miss out on some legitimate interests, or bring on him some harmful evils”²⁷ There are many rules related to this purpose, but I will limit myself to the rule that is the subject of my study.

The rule (“Necessities permit prohibited things, but they are determined according to their extent.”)²⁸ This rule is branched from the major rule “hardship brings ease” and at its origin there are two rules, the first is “necessities permit prohibited things” and the second is “necessities permit prohibited things.”

“Necessities are estimated according to their extent.” The first part of the rule is considered the original principle, but the jurists did not give it absolute terms, but rather set a limit for it that it cannot exceed, and they stipulated that “the necessity must be greater than the prohibited, and that it be in the eyes of Sharia”²⁹ He established one of the goals of Sharia law, the goal of which is to preserve the five pillars - or what are called the five necessities in Islamic jurisprudence - which are (religion, soul, mind, offspring, and money), and then all the other requirements of life.³⁰ It can be said that these are among the rules that go back to achieving goals, and determining them, either by repelling evils or reducing them³¹

Among the jurisprudential applications of the rule³² What follows:

- It is permissible to eat dead meat at the slaughterhouse.
- Pleasing a meal with wine is for someone who has indulged and cannot find anything else.

⁽²⁶⁾Federal Court of Cassation decision,2652/Real Estate Appellate Authority/2013, on 5/28/2013, unpublished decision.

⁽²⁷⁾Science of the Objectives of Sharia by Nour al-Din al-Khademi, (p. 129).

⁽²⁸⁾Al-Ahkam Magazine Justice (Article 21), Iraqi Civil Law No. 40 of 1951, Article (212).

⁽²⁹⁾See: Al-Ashbah wa Al-Naza'ir by Al-Suyuti, (p. 84). Similarities Al-Naza'ir by Ibn Nujaym, (72), The Jurisprudential Rules Contained in the Iraqi Civil Law, (p. 288).

⁽³⁰⁾See: Al-Zarqa's General Fiqh Introduction, (p. 62).

⁽³¹⁾See: Al-Tahrir Sharh Al-Tahrir by Al-Mardawi, (8/3846).

⁽³²⁾Al-Manthur fi Al-Qawa'id Al-Fiqhiyyah by Al-Zarkashi, (2/317), and see: Tashnif Al-Masami by Jammu' Al-Jami' by Taj Al-Din Al-Subki by Al-Zarkashi, (3/466), Al-Fawa'id Al-Sunni fi Sharh Al-Malifiya by Al-Baramawi, (5/2145), Al-Ashbah wal-Naza'ir by Ibn Nujaym, (p. 73) .

- The word disbelief is permissible for the one who is forced.
- The same applies to taking the money of a person who abstains from debt without his permission if it is of his kind, even if it is by breaking his door.

Among the judicial rulings based on this rule are the following:

“The appellant/Chief Public Prosecutor, the plaintiff’s agent (Abdullah Younis Abdullah, claimed before the Mosul First Instance Court that on 5/2/2008, police forces affiliated with the defendants’ department/1/Minister of the Interior/

2 / Director of Nineveh Governorate Police / in addition to their job.

By entering the Zanjili area near Al-Doura, it built a camp inside the former Al-Tasfirat building, and it placed and constructed towers made of concrete, completely blocking the main roads as well as the side streets with concrete barriers, and preventing the passage of all civilian vehicles, which caused serious damage to the properties adjacent to the headquarters of those forces, including the property belonging to its client and the number. 3/1/M 50 Al-Bazoun’s experience, which consists of closing the four shops rented by his client, as well as closing the bakery that belongs to him, which he works in with his son, and vacating the two apartments, one of which was rented and the other was inhabited by his client’s son from the date of the entry of those forces until now, and since the described property is the supplier. The only and primary requirement for his client and his family members to earn a living, and that the presence of these forces for an indefinite or known period has deprived his client of using the property and earning a living.

Therefore, he requested that the defendants be invited to plead and issue a ruling obliging them to pay appropriate and appropriate compensation for the loss his client suffered and the gain he lost as a result of the closure of the property. The compensation was estimated at thirty million dinars, and the client reserved the claim for the increase for what the experts estimated in an incident or independent lawsuit, while bearing the defendants for the expenses and fees. On 4/13/2009, the trial court, No. 2008/3247, issued a judgment in the presence of the defendants obligating the defendants to pay the plaintiff an amount of twelve million dinars, exposing him to the loss he incurred and the gain he lost as a result of being deprived of the use of the property numbered 503/1, the experience of Al-Bazoun. For the period from 5/2/2008 until 9/1/2008, the defendants were charged the relative expenses and attorney fees of the plaintiff’s agent, and the plaintiff’s claim was rejected with an increase amounting to eight hundred million dinars, and the relative expenses and attorney fees of the defendants’ agent were charged to him. The Chief Public Prosecutor submitted the appeal in the interest of the law pursuant to his letter of number 207/Appeal/190589/2010 dated 12/22/2010 requesting that the decision be overturned.”

the decision:

“Upon examination and deliberation, it was found that the appeal was submitted within the legal period stipulated in Article 30 Secondly B of the Amended Public Prosecution Law, so he decided to accept it in form. Upon referring to the appealed ruling, it became clear that the Mosul First Instance Court had ruled in its ruling issued No. 1347/2008 in 4/12/2009 obliging the defendants to pay to the plaintiff an amount of 12 million dinars in compensation for the loss he incurred and the gain he lost as a result of their placing and constructing concrete towers and at the main and secondary roads with concrete barriers and preventing the passage of all civil vehicles. This court finds that The general provisions for illegal acts require that a trespass befalls others and requires compensation, which requires verifying whether the defendants were trespassers and committed a mistake (an illegal act when they placed towers and concrete barriers in the area and closed the roads leading to it or not) and whether the damage that is the subject of the claim was a natural result of the act. Illegitimate or as a result of the deteriorating security

conditions at the time / and since necessities permit prohibitions in accordance with the provisions of (M/212) of the Iraqi Civil Code, and since the defendant's department represented by its employees was in a state of necessity to defend itself and protect the security of citizens from an imminent terrorist threat, therefore, its inclusion Damage to the plaintiff or someone else renders him exempt from liability as long as it does not exceed the necessary amount of necessary security procedures and precautions (212) Civil, which requires re-conducting the inspection and seeking the assistance of specialized experts for the purpose of determining whether the plaintiff was harmed by the defendant's actions or not and whether his harm exceeds The damage that could have been caused to him if the defendant did not take his measures, and whether the latter, in taking those measures, exceeded the necessary amount of necessary precautions, and what is the amount of that exceedance and that increase, and what is the appropriate compensation for them in accordance with the requirements of justice and the issuance of the contested preliminary ruling that was tainted by the aforementioned deficiency and resulted in the occurrence of A violation of the law would harm the state's funds, so it was decided to reduce it and return the case to its court to issue a new ruling in light of the above. It will automatically be sent to this court to conduct discriminatory audits, and the decision was issued by agreement on 9/Safar/1432 AH corresponding to 13/1/2010 AD.³³

Based on what was required by the judicial ruling:

It becomes clear to us that the judge relied on the principle of "necessities permit prohibitions." Therefore, he ordered the need to assess the necessity of issuing what is appropriate for both parties without harming either of them, in accordance with the legal text, which was stated in the Code of Judicial Rulings codifying the principles of Sharia, and this rule is based on the sublime purposes of Sharia.

Conclusion:

1. The Maqasid rule is: (a comprehensive issue applicable to all its parts in order to identify the goals and objectives that the legislator seeks from the principles of legislation).
2. There is no denying the role of general rules in general, and the objectives of them in particular, and their impact within the scope of positive laws, and the production of judicial rulings on them.
3. The judiciary had a clear imprint and distinguished presence in translating these rules on the ground and declaring their content in the rulings it issued.

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