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Custom And Its Contemporary Applications

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Praise be to God. We praise Him, seek His help, and seek His forgiveness, and we seek refuge in God from the evils of ourselves, and from the evils of our deeds. I bear witness that there is no god but God alone, with no partner, and I bear witness that Muhammad is His servant and His Messenger. Custom is considered one of the legal evidence for jurists. Many jurisprudential rulings in different schools were built upon it, and a constellation of jurisprudential rules emerged from its law, and this is considered a binding law for them.

The Sharia was only revealed by God Almighty for the interests of the people, and therefore the Sharia did not come to deprive people of their habits and customs, in order to establish the interests of the people in that. But the Islamic Sharia does not approve of what contains the evils of the people, and if they think that it is in their interests, Islam does not approve the custom of revenge, but it approved Retribution instead, and Islam did not approve of circumambulating the House naked, but it approved circumambulation in clean clothes...and so on.

Because of the importance of custom and its great influence in Islamic jurisprudence, the scholar Ibn Abidin al-Hanafi said in his poem: And custom in the law has consideration \ Thus, judgment may be administered.

The nature of custom and its contemporary applications according to fundamentalists necessitated dividing the research into:

An introduction, five topics, and a conclusion as follows:

The first topic :The concept of custom.

The second topic :Authentic custom and evidence of it.

The third topic: Terms of consideration and arbitration custom.

Fourth topic: Custom divisions.

Fifth topic: Contemporary applications on the origin of custom.

The first topic :The concept of custom:

In Arabic linguistics, Ibn Faris said: (the letters/[ع] a/ [ر] ,/r/ and/ [ف] f/ form the root[عرف] 'custom'. They represent interrelatedness of a thing as well as silence and tranquility. The term also indicates knowledge and acknowledgement. It also indicates good smell. A poet said :

O for the day and night I played with

A woman of bright cheeks and good smell .The word) عرف custom) also means good deed.The ancient as well as modern Arabic fundamentalists made different definitions of the term custom, the most important of which are listed below.

First definition:

Abdullah bin Ahmed Al-Nasfi in his book “Al-Mustafa” defined custom by saying: “It is what has settled in souls from the point of view of minds, and healthy temperament has accepted it”. Al-Jurjani followed him in his definitions, where he says: ((Custom is what souls have settled upon by the testimony of minds, and natures have received it by acceptance)).

Dr. Ahmed Fahmy Abu Sunna, explaining the definition of Al-Nasfi, says: ((It is the matter that souls are reassured and know about, realized in their decisions, and it is based on the approval of the mind, and the people of good taste, not denied by common, repetitive use arising from inclination and desire)).

Second definition:

It is what Ibn al-Najjar reported on the authority of Ibn Attia, who said that the meaning of custom is: all that is known to souls, which the Shari’a does not reject.

-Contemporary scholars have explicated the meaning of custom, with close definitions, some of which are mentioned below:

First definition: Abu Zahra defined the custom by saying: ((It is what people are accustomed to dealing with, and their affairs are straightforward with it)).

Second definition: Dr. Abdul Aziz Al-Khayyat mentioned in his book “Theory of Custom”, that the custom is “What people are accustomed to and they follow in their life affairs.”

Third definition: Dr. Al-SayyidSalihAwad concluded in his book “The Impact of Custom in Islamic Legislation” that: “Custom is what has settled in the souls, and the minds approve of it, and the sound natures accept it, and people persist in it, which the Sharia does not reject”
.

If we look closely at these definitions, we find that they are not devoid of discussions. From that:

(a) Some of these definitions are not comprehensive, because corrupt custom is not included.

(B) Some of them have restricted the custom to social interaction, as is clear from the definition of Muhammad Abi Zahra, and this restriction is unjustified, because the custom as it is in social interaction is in the means of worship, crimes and customs.()

Selected definition:

It is what was decided by the Council of the Islamic Fiqh held in its fifth conference session in Kuwait from 1-6 Jumada al-Ula 1409 AH corresponding to 10-15 December 1988, where it was stated that what is meant by custom is: ((what people are accustomed to, and they follow in saying, doing or leaving. It may or may not be legally valid.

Important differences:

Some scholars distinguish the custom from other similar terms, and in this point we will talk - by the will of God Almighty - about the most important essential differences between custom and other terms.

The first element: The difference between custom and habit.

Many scholars differentiated between custom and habit into three views:

(a) The first view: It implies that custom and habit are two synonymous terms, meaning one. Ibn Abidin - one of the Hanafi jurists - says: “A habit is taken from repetition, so by repeating it and repeating it again and again it has become known, stable in souls and minds, received by acceptance without any relation or presumption, until it became a customary reality, so habit and custom have one meaning in terms of what is true, even if they differ in terms of concept. Sheikh Abdul WahhabKhelaf followed this approach when he says: ((And custom and habit in the tongue of the legalists are two synonymous words; their meaning is one)) .

(b) The second view: It implies that custom is specific to speech, while is specific to action. Dr. SayyidSalihAwad quoted from the author of “Fusoul al-Bada’i fi Usul al-Shari’a”: With regard to what the truth is left in, he said: “And the sheikhs restricted them to five: What is the significance of custom?” in word, and habit in action.

Sheikh Muhammad Fahmy Abu Sunna criticized this view by saying: ((This restriction has no meaning, because the jurists from the predecessors and the successors made a habit of saying and doing together)).

(C) The third view: The ratio between custom and habit is general and the specific is absolute. Habit is more general than custom at all, as it is called a collective custom (custom) and an individual custom, so custom is more specific, and habit is more general, since every custom is a habit, and not every habit is a custom.

As for the ruling based on custom, it changes with the change of custom, and it is not binding except for those who are familiar with it.

(5)That the custom is established by the familiarity of all people, or the acquaintance of most of them with it. It is not invalidated by some people’s violation of it, and it does not preclude from being considered, this if the custom is general, as well as in the case of a special custom. It is stipulated that all people or most of them get to know it, as for

unanimity it can only be achieved by the agreement of all the mujtahids, in the era of the occurrence of the presented incident, and the opposition of one mujtahid may be in contradiction to the ruling of consensus.

(6)that custom may be corrupt, as if people become acquainted with a forbidden matter that contradicts the text, unlike the consensus, that it cannot be corrupt . For example: the custom of usurious transactions as in our present time, is considered a corrupt custom that does not work, because it contradicts the legal texts.

The second topic: the authenticity of custom and the evidence for its credibility

The beholder of what is meant by custom among fundamentalists - before looking into the authority of custom and the evidence for its consideration - must liberate the field of invoking custom, and what is their intention by custom when searching?

•Editing the field of research in what is meant by custom among fundamentalists:

We can divide the custom with regard to the scholars taking it into three categories:

(1)A custom that all jurists follow, and it is the custom that a text referred to in one of the places, and in this case it is taken by consensus. There is no disagreement among the jurists regarding the obligation to act upon it, and that its rulings are fixed and do not change according to different times and cities, because they are continuous legal rulings that are not subject to change or alteration, as changing them and altering them are abrogation of them, and there is no abrogation after the death of the Messenger of God (peace be upon him).

(2)The custom in which it was taken by order that the legislator stipulated its prohibition in a definite text, or there was neglect of an obligation that was established by a text that does not accept specification. This type of custom is neither respected nor accepted unanimously, rather it is a general corruption that must be eradicated, and that is by cooperating in righteousness and piety. As for silence about it, it is considered silence about enjoining good and forbidding evil, and contentment with it is cooperation in sin and aggression.

(3)The custom that has not been proven to be forbidden, nor guidance to it, nor a gesture to act according to a text. This type is what people know and that runs between them, from the means of expression and methods of speech, and what they are humble of actions, and they are accustomed to in the affairs of dealings and others. Thus it becomes clear to us that the field of research is in this type of custom, and not in the previous two types of custom.

The view of scholars on invoking custom:

If we look carefully at the books of jurisprudence and fundamentalism and others, we will find that the scholars, despite their different methods of invoking custom and invoking it, are in general agreement on its authority and consideration, and this is evidenced by the following:

(1)Imam Al-Qarafi says: ((Habits and customs are the predominance of a meaning over people, and this predominance may be in other regions, such as the need for food and breathing in the air, and it may be specific to some countries, such as money and faults. It may be specific to some groups, such as the call to Islam and the bell gor the Christians... It is

reported from our sect that one of its characteristics is to consider the returns and interests sent and ignore pretexts. As for custom, it is common among the sects, and those who settled it.

(2)With regard to the law of custom, Ibn Abdeen says in his poem: And custom in the law has consideration.\ So, the judgment may be administered.

(3)Imam al-Bukhari classified in his Sahih in the Book of Sales for the correct custom that does not conflict with Sharia; He said: ((Chapter of those who make the affairs of cities according to what they know among themselves in terms of sales, rent, weight, and their practices according to their intentions and their well-known doctrines)). Under this section, he cited Shureh's saying to the Ghazalists: "Your Sunnah is among you." Abd al-Wahhab said on the authority of Ayoub on the authority of Muhammad: There is nothing wrong with ten for eleven, and he takes a profit for the maintenance. And the Prophet, peace and blessings be upon him, said to Hind: "Take what is sufficient for you and your children on a reasonable basis." The Almighty said: ((And whoever is poor, let him eat in kindness)). And Al-Hasan bought a donkey from Abdullah bin Merdas and said: How much? He said: he rode it, then came again, and said: The donkey is the donkey! So he rode it and did not join it, so he sent him half a dirham. Ibn Hajar says in his explanation of the translation of the chapter: ((Ibn al-Munir and others said: What is meant by this translation is to prove reliance on custom, and that it is based on the apparent meanings of words. Weighted or measured other than the usual measure or weight, and Al-Qadi Al-Hussein of the Shafi'is mentioned that returning to custom is one of the five rules on which jurisprudence is built :Including: Referring to custom to know the reasons for rulings from additional characteristics, such as the smallness of the silver streak, its largeness, the majority of density in the beard and its sparseness, nearness to the house, number of actions or words in prayer, and in exchange for a price in the sale, in kind and a price like, and a dowry like, and the efficiency of marriage provisions, alimony, clothing, housing, and what befits a person's condition from that.

(4)This meaning is confirmed by Dr. Ahmed Fahmy Abu Sunna: ((The jurists of different sects considered custom, and made it a foundation upon which a great part of the rulings of jurisprudence could be built)).

(5)It is concluded from the words of Abu Zahra that the custom is one of the jurisprudential principles that are considered in the various schools of thought, where he says: ((The Maliki jurisprudence is like the Hanafi jurisprudence that takes custom and considers it as one of the jurisprudential principles, while there is no definitive text in it. It is from the Hanafi School, because interests are the pillar of the Maliki jurisprudence in inference, and there is no doubt that observing the custom in which there is no corruption is a form of interest that the jurist cannot abandon. Custom Consideration Evidence:

We have previously explained that jurists of different sects and methods have issued many rulings and fatwas; Based on what the people of their era knew about. They have inferred the authority of custom and that it is a legal evidence, and a foundation upon which many rulings are built. With a lot of evidence, we mention the most important ones as follows:

First: Inference from the Holy Book:

A- The Almighty’s saying: "So when they were insolent about that which they had been forbidden, We said to them, "Be apes, despised (Quran 166:7). Imam Al-Qarafi says in the one hundred and sixty difference between the rule of the two parties, something that one does not take precedence over the other except with a clear argument, and he explained the rule of the two spouses in relation to the belongings of the house, each one of them presents what is similar to having: ((Malik said in al-Mudawwana: If they disagree while they are married or upon divorce ... it is judged for the woman in what is the matter of women, and for the man in what is the business of men, and what works for them is decreed for the man, because the house is his house in the course of the habit, so it is under his hand. Malik Abu Hanifa and the jurists, may God be pleased with them, agreed. Al-Qarafi then favored the Maliki school of thought in this matter, as he says: ((We have the Almighty’s saying: “Take pardon and enjoin custom.”) Everything that was witnessed by custom is judged, for the apparent meaning of this verse, unless there is evidence, and because the saying is the saying of the claimant of habit in consensus situations..)). b) Almighty's saying: "Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do" (Quran 1: 233).The point of inference from the noble verse is that God Almighty made the determination of sustenance and clothing and its quality a function of custom, as God has referred to it. Ibn al-Arabi says in Ahkam al-Qur’an: ((It means according to the extent of the father’s condition in terms of spaciousness and narrowness... and it refers to custom and habit in such work. Had it not been for it to be known, God Almighty would not have entered it into favor)).

Second: Inference from the Sunnah of the Prophet. Some scholars cited the authority of custom as evidence of the hadith that Imam Ahmad included in his Musnad that the Prophet, may God bless him and grant him peace, said: ((Whatever Muslims see good is good with God, and what they see bad is with God bad)).

Al-Suyuti says: The sixth rule is ((the habit is firm)). The judge said: Its origin is the saying of the Prophet, peace and blessings be upon him, ((what the Muslims see as good is good with Allah)) .The point of inference from the noble hadith: that what Muslims are accustomed to and know, and which their minds approve of and their souls receive with acceptance, is good, and if it is like that, then it is good with God, i.e.: it is accepted and accepted by its legitimacy.

Finally: We say that the stability of the proceeds on one rule despite their change and alteration causes people to suffer severe embarrassment and certain narrowness, and takes the rulings attributed to Sharia from the path of justice and mercy that characterizes Sharia

to the injustice and cruelty with which God has absolved His Sharia of being characterized by them.

Imam Al-Shatibi confirms this meaning by saying: ((Current proceeds are necessary to be taken into account according to Sharia, whether they are legal in their origin or not, i.e., whether they are established by legal evidence, an order, a prohibition, a permission or not..)).

The third topic: the conditions for considering custom and its arbitration.

This topic has a great benefit and a special place, because it sets an accurate criterion for researchers in Sharia sciences for the considered customs and the unreputable ones, after the reasoning for fatwas on custom has become widespread, in its place and in its misplacement.

How sad it is for those who are zealous about God's law that they legalize forbidden things, then philosophize and stick to the chest of Sharia as being legitimate in the name of customs and habits.Let us now proceed to explain what we have nominated for in this topic: the conditions of custom.

The first condition: that the custom should not contradict a legal text or a definitive principle in the Sharia, so that the practice of custom would be an impediment to it.The scholars - may God Almighty have mercy on them - when they decide that custom is an apparent origin of the principles of deduction, they say: It is only so where a text from the Book or the Sunnah does not contradict it, or a definitive principle that can be learned from them

The second condition: that the custom be consistent or prevalent, i.e., that the practice of it - according to its acquaintances - should be continuous in all events and not lag behind in any of them, and this is the meaning of regularity. Or that it should be applied in most of the accidents if not in all of them, and this is the meaning of predominance. Al-Suyuti says in his "Ishabha": ((The habit is considered if it is expelled, and if it is disturbed, then it is not.

The Imam - the Imam of the Two Holy Mosques - said in the chapter on Origins and Fruits: Everything in which the regularity of habit becomes clear is the decisive one, and its implication is as explicitly mentioned. Everything that speculation contradicts some inconsistency in the rule of habit in it is the subject of disagreement.

The third condition: that custom should be general in all countries, not specific.The generality of custom is not continuous, because custom may be general, but the practice of it is not continuous in all accidents, so it is not steady. Likewise, custom may be specific to a sect, profession or people of a particular country, and it may not be steady in the aforementioned sense, for the general may be indefinite, steady, and the steady may not be general. This condition is not agreed upon.

Scholars have two opinions regarding the requirement that custom be general, with its increasing frequency:The first: Some of the Hanafis and some of the Shafi'is were of the view that the custom should be general, and this means that the specific custom in their view is not considered.The second: The majority of scholars from the Maliki school and some of the

Hanafis and Shafi'is are of the view that the custom should not be general, and that it considers the specific custom as the general custom.

Ibn Nujaim says, explaining the scholars' disagreement with this condition: ((Is it considered in the construction of rulings general custom or absolute custom, even if it is specific? Then he mentioned many examples and branches and said: The point is that the belief is not to consider the special custom, but many of the sheikhs issued fatwas as such)).

Imam Al-Qarafi supports the Maliki school of thought, considering both general and specific custom, as he says: "Habits and customs dominate one of the meanings over people, and this predominance may be in all regions, such as the need for food and breathing in the air. It may be specific to some countries, such as money and defects, and it may be specific to some groups, such as the call to prayer for Islam and the bell for the Christians.

The fourth condition: that the custom to be arbitrated and enforced in the dealings which should be in existence and existent at the time of its establishment.That is, the custom that is intended to be arbitrated, and that compels the disposition to exist and is in force at the time of the creation of this disposition, by the occurrence of the custom prior to the occurrence of the disposition, then it continues to its time and its occurrence is compared, because the custom affects what exists after it, not in the past before it, Equal to the verbal and practical custom.In this regard, Al-Suyuti says: ((The custom that bears the words is the previous comparison, not the later)).()

The fifth condition: that the custom should not contradict a statement otherwise.

That is, there is no statement declaring a contradiction to the custom or an act that indicates the opposite of its content, since the arbitration of custom is due to the silence of the contracting parties about the customary matter and their not explicitly requiring it to be considered an acknowledgment by them. This indication is invalid because the custom is weaker than the connotation of the utterance, so its side will prevail in opposition. As there is no significance in the interview statement. In the meaning of this, Imam Al-Izz bin Abd al-Salam says: ((Everything that is proven in custom, if the contracting parties state otherwise, in what agrees with the purpose of the contract and can be fulfilled is correct
b) Almighty's saying: "Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do" (Quran 1: 233).The point of inference from the noble verse is that God Almighty made the determination of sustenance and clothing and its quality a function of custom, as God has referred to it. Ibn al-Arabi says in Ahkam al-Qur'an: ((It means according to the extent of the father's condition in terms of spaciousness and narrowness… and it refers to custom and habit in such work. Had it not been for it to be known, God Almighty would not have entered it into favor)).

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The first condition: that the custom should not contradict a legal text or a definitive principle in the Sharia, so that the practice of custom would be an impediment to it.The scholars – may God Almighty have mercy on them – when they decide that custom is an apparent origin of the principles of deduction, they say: It is only so where a text from the Book or the Sunnah does not contradict it, or a definitive principle that can be learned from them. The second condition: that the custom be consistent or prevalent, i.e., that the practice of it – according to its acquaintances – should be continuous in all events and not lag behind in any of them, and this is the meaning of regularity. Or that it should be applied in most of the accidents if not in all of them, and this is the meaning of predominance.

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The generality of custom is not continuous, because custom may be general, but the practice of it is not continuous in all accidents, so it is not steady. Likewise, custom may be specific to a sect, profession or people of a particular country, and it may not be steady in the aforementioned sense, for the general may be indefinite, steady, and the steady may not be general. This condition is not agreed upon.

Scholars have two opinions regarding the requirement that custom be general, with its increasing frequency:
The first: Some of the Hanafis and some of the Shafi'is were of the view that the custom should be general, and this means that the specific custom in their view is not considered.
The second: The majority of scholars from the Maliki school and some of the Hanafis and Shafi'is are of the view that the custom should not be general, and that it considers the specific custom as the general custom.
Ibn Nujaim says, explaining the scholars' disagreement with this condition: ((Is it considered in the construction of rulings general custom or absolute custom, even if it is specific? Then he mentioned many examples and branches and said: The point is that the belief is not to consider the special custom, but many of the sheikhs issued fatwas as such)).
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The fourth condition: that the custom to be arbitrated and enforced in the dealings which should be in existence and existent at the time of its establishment.
That is, the custom that is intended to be arbitrated, and that compels the disposition to exist and is in force at the time of the creation of this disposition, by the occurrence of the custom prior to the occurrence of the disposition, then it continues to its time and its occurrence is compared, because the custom affects what exists after it, not in the past before it, Equal to the verbal and practical custom.

In this regard, Al-Suyuti says: ((The custom that bears the words is the previous comparison, not the later)) ().

The fifth condition: that the custom should not contradict a statement otherwise.
That is, there is no statement declaring a contradiction to the custom or an act that indicates the opposite of its content, since the arbitration of custom is due to the silence of the contracting parties about the customary matter and their not explicitly requiring it to be considered an acknowledgment by them. This indication is invalid because the custom is weaker than the connotation of the utterance, so its side will prevail in opposition. As there is no significance in the interview statement. In the meaning of this, Imam Al-Izz bin Abd al-Salam says: ((Everything that is proven in custom, if the contracting parties state otherwise, in what agrees with the purpose of the contract and can be fulfilled is correct.
Affirming the customary ruling in this case is only a matter of indication, and if it is stated otherwise, this indication is invalidated, as it is one of the established jurisprudence rules that ((there is no lesson for indication in contrast to the statement)). Custom is an argument

if it does not contradict a text or a condition of one of the contracting parties. The sixth condition: that the custom be binding. If the above five conditions are met in custom, it becomes binding and considered in the legislation. And the meaning of it being binding: that it is imperative to act according to it in the eyes of the people. This meaning is indicated by the sayings of the jurists: ((the known by convention is like a conditional condition)) and “the known among merchants is as the conditional between them” and “the custom is firm”.

Fourth topic: divisions of custom

Fundamentalists mention that custom is divided into several sections, with different considerations, according to the consideration directed to it, and they are as follows:

First: The division of custom in terms of its relation and subject matter.

The custom is divided, with regard to its relation and subject, into a verbal custom and a practical custom:

A - Verbal custom: It is for a people to get acquainted with using a word for a meaning other than the meaning for which it was originally established, so that the customary meaning comes to mind when hearing it, without its conjugation. Imam Al-Qarafi in explaining this meaning: ((The verbal custom is that the custom of the people of custom use the word in a specific meaning, and that was not a language)). An example to this is people's familiarity with the word (boy) for the male and not the female, although it is a language for both of them, and this was mentioned in the Book of God "Allah instructs you concerning your children: for the male, what is equal to the share of two females..." (Quran, 4:11).

b - Practical custom: It is what people are familiar with in their actions rather than their words, and in other words: it is what the work is done, and from that: people consider a specific fee for some work, such as what the owners of taxis and transport are familiar with from a specific fee when transporting passengers from a place to another, and the example of people getting acquainted with the sale by giving without being obligated and accepted when buying their needs from their markets and shops. And their familiarity with the fact that the one who transports the passengers is satisfied with the fare, and notasking for the value of the fuel and oils the car consumes.

Second: Dividing the custom according to its content.

The custom is divided according to what is issued by it into a general custom, and a special custom.

(a) General custom: It is what people have become accustomed to in different ages. Ibn Abidin says in his definition: ((It is what the people of the country deal with, whether it is old or new)) (). That is, what most people in all countries have in common, regardless of their times, environments, cultures and levels, and this is regulated by many social phenomena that are widespread in the world, and this was exemplified by entering the bathroom without appreciating the time of stay, the water used and the fee, because people have known since ancient times that these things are not specified This was the case in most countries.

This particular custom is very diverse and renewable, its forms are innumerable and does not stop at any limit. Because the interests of the people and their means to it and to facilitate their needs and their relationships are renewed. For example: lawyers have known

today that a known part of the wages of the lawsuits that they accept, such as half, for example, is deferred and contingent on the profit of the lawsuit, and the judgment becomes final, and the judgment document is extracted and placed in the execution department. Third: The division of custom on the grounds that it agrees with or contradicts Islamic law.

We can divide the custom – considering its agreement or opposition to Islamic law – into valid custom and invalid custom.

A – The valid custom: It is what the majority of people are familiar with in terms of saying or doing, for which the evidence of the Shari'a testified with regard to it, or to which it was not attested in denial or affirmation, but it did not miss an interest, and did not bring about a corruption.

An example of what the Sharia testifies to is the obligation of maintenance and clothing for the mother according to the condition of the man in terms of left and insolvency, where God Almighty restricted it with kindness in His saying: "Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable(Quran 1:233). Likewise, peace was well-known among the people of Medina, but the law organized it and surrounded it with a fence that prevents oppression and exploitation. An example of what was not witnessed by the Sharia, but did not miss an interest, and did not bring about a corruption is what some people have known about dividing the dowry into deferred and expedited.

This is a matter that has become widespread in our time, especially those who marry a woman from outside his country, as they postpone some of the dowry, and the reason for that is to facilitate and ease the husband's burden at the beginning of his married life.

B- Invalid custom which contradicts some of the evidences of the Sharia, or some of its basic rules like the acquaintance with some divine contracts, and the familiarity of merchants considering the benefits of divine interest from profits, and the custom of some Islamic countries to bring a dancer to perform the dance in front of men at weddings, and like their acquaintance with the mixing of adorned women with men at the time of the marriage bond. It like wearing the gold ring for men to denote that they're married, and such as that some restaurants employ naked or half-naked women to serve food which is opposite with Sharia. These corrupt norms are not considered, and they must be canceled and not to work, because they have dismissed the texts of Sharia and its general purposes, as Shari'a is not controlled, and the Prophet ﷺ did not recognize what was void of ignorance habits.

The fifth topic: contemporary applications on the origin of custom

Before we go into a list of some contemporary applications on the origin of custom, we would like to make an introduction, which is represented in the jurist's need for knowledge of custom.

The importance of custom and the jurist's need to consider it:

Imam Ibn al-Qayyim excelled in the signatories' flags; Where he mentioned precious words that clearly show us the extent of his interest in custom in terms of knowledge and action, as

a rule and application, and that the jurist needs knowledge of custom, through his talk in the chapter on changing fatwas and their differences according to changing times, places, conditions, intentions and customs. He says, may God have mercy on him: ((This is a very useful chapter, which, due to ignorance, made a great mistake on the Shariah that necessitated the hardship and the task of what is impossible to achieve. It is known that the brilliant Sharia which is in the highest ranks of interests does not come with it, for the Sharia is based on judgment and the interests of the people in the life and the Hereafter. And it is all justice, all mercy, all interests, and all wisdom, so every issue that departs from justice to injustice, from mercy to its opposite, from good to evil, and from wisdom to absurdity, is not from the Sharia even if it is included in it by interpretation…)). Then he listed the examples and details of that, and vehemently denounced the one who gives fatwas or rules, and he does not observe the customs and habits that people are upon as he mentioned in the eighth example, which changes the fatwa with the change of custom and habit: the imperatives of oaths, confessions, vows and others.

Thus, it becomes clear to us through the texts that we quoted from Ibn al-Qayyim: that the matter that is not hidden is that the rulings that are based on the customs change with the change of time and place. It is evident that the jurist is affected by the social environment in which he lives, for example, the two companions of Abu Hanifa – may God have mercy on him – disagreed with him on some issues, and said: ((If Abu Hanifa was alive, he would have said our words)), and they made it a matter of the difference of age and time, not argument and proof. The same is true of al-Shafi'I – may God have mercy on him – the Iraqi environment affected him in the opinions he said, and when he moved to Egypt he changed some of his opinions influenced by the Egyptian environment.

It also becomes clear to us that custom may be a reason for deviating from the correct view of the madhhab into a narration, saying, or aspect of it in the doctrinal dispute, or the preference between the sayings of the imams in the major controversy.

And that the change of times and the emergence of developments in terms of accidents and conditions have an impact on the built-in jurisprudential rulings on the returns and the causes of interest. All of this results in the necessity that muftis and judges review the opinions of the imams, and write the jurisprudential codes from the branches and issues based on the old custom and follow the customs of the past.

The first section: Moral rights ((innovation rights)).

None of the old jurists, or imams of jurisprudential schools, did not deal with this issue with objective, edited research, in depth and investigation.

The secret is that this issue did not exist during the era of the ancient jurists in this wide form that we see today, with the results of scientific, industrial and economic development, from the means of publication and distribution, as science was written in a manuscript of a few copies, in addition to that scientific innovation. It did not have the effect and maturity that we see today in universities, cultural centers, scientific laboratories, and in scientific application, all over the world.

This issue is the result of scientific development. Thus, in our time this topic is free to be singled out for legal research, in order for us to have the opportunity to look at the contemporary jurisprudential efforts in this issue, and evaluate their performance, and whether contemporary jurisprudence succeeded in overcoming developments, and the extent to which the principles of fundamentalism and jurisprudential principles are used in implementing them.

The first element: The meaning of the right

Linguistically, right is the opposite of falsehood, and its plural is rights… It is said: The right of the thing is obligatory.

Right in the legal terminology :

Jurists use it in many meanings, and in different places, depending on what is considered. The subject is vital and a reality in our time, and on a global scale, so we saw that it was dealt with by research in the light of jurisprudential principles, and the requirements of the principles of legislation, through the following elements:

(a) Some of them defined it as a specialization only in the general sense:

((The right is a specialization by which the Sharia establishes an authority or an assignment)), and that is like the right of the guardian to dispose of those under his guardianship, as it is the authority of a person over another, and like the seller's right to demand the price from the buyer, as it is an assignment on the second in the interest of the first, and as the right of the heir to ownership of the property of the inherited estate, and the human right to benefit from the property recommended, they are the authority of a person over something.

(b) Some scholars viewed the right by considering the interest in it only: ((The right is an interest of financial value, which is protected by law))it is what Dr. Al-Darini chose, as he defined the right as: ((a specialization by which the Sharia acknowledges authority over something, or the requirement of performance from another to achieve a specific interest)).

The most important conclusion from this definition:

First: He distinguishes between the right and its end, for the right is not an interest, but rather a means to it.

Second: A comprehensive definition that includes the rights of God Almighty, and the rights of natural and legal persons, of their two types: in-kind and personal.

The second element: types of rights

The jurists used to divide rights according to criteria and foundations, each according to his conception of the jurisprudential approach:

A – Ibn Rajab al-Hanbali divided rights into five types:

(c) The first type: property right; like the right of the master in the money of the offices, and what prevents him from inheriting due to an impediment, such as the inheritance that is engulfed in debt according to a narration, and like the one who is forbidden if his inheritance dies and his possession is a hunt in both ways.

(d) The second type: right of ownership

It is like the right of the father over his son, the right of the one who makes the contract if it is necessary for him, and the right of the intercessor in the story.

The third type: Usufruct like putting a piece of wood on his neighbor's wall if it does not harm him, and like putting water on someone else's land if he has to.

The fourth type: The right of jurisdiction

(e) It is what belongs to the one entitled to benefit from it, and no one has the right to compete with it, and it is not subject to compensation. It is like the vast market facilities in which it is permissible to buy and sell, such as permissible shops and the like. The one who precedes them has more right to them. It is also like sitting in mosques and the like for worship, so the seated person is more entitled to his seat until he stands on his behalf.

The fifth type: The right of attachment to the fulfillment of the right

It is like the attachment of the right of the mortgagee to the mortgage, which means that all parts of the mortgage are attached to every part of the debt until all of it is paid.

B- Contemporary jurists from the Department of Law fall into two categories:

First: A non-financial right.

The second: A financial right. It is divided into two parts:

(A) The personal financial right, which is a requirement that Shariah recognizes for one person over another.

(B) The financial right in kind. It is that a person has a specialized interest and then the direct authority over a specific financial asset is entrusted to him, such as the right of ownership and the right of easement, which are of two types:

(f) 1. An original right in kind: It is the right of ownership and easement.

(g) 2. The in-kind subordinate right: It is like the right of the mortgage. The contemporaries of the Department of

Financial Rights evaluated it with money into three types: -

(h) (1)Rights in kind: It is a direct authority granted by law to a person over a specific thing in particular, and it gives its owner the right to benefit from, use and exploit the thing, without the mediation of anyone. An example of this is the right of ownership, as the owner has the right to opt out of what he owns and to use and invest it directly.

(i) (2)Personal rights: It is a legal bond between two people; like a creditor and debtor, under this bond one of them performs a certain financial performance for the other person. If the debtor pays the debt to the creditor, or he delivers the price to the seller, or the seller delivers the thing sold to the buyer, these rights are called obligations.() .

(j) (3)Moral rights: They are as defined by Dr. Muhammad Shabeer: ((A person's authority over something immaterial, whether it is a mental product such as the copyright in scientific and literary works, or a patent on industrial inventions, or the fruit of a commercial activity carried out by the merchant to bring customers, as in the trade name and trademark)) .( )

(k) By looking closely at the types of innovation rights, we find that they refer to many forms, such as literary, artistic and industrial property, intellectual and intellectual rights, and rights related to customers, such as the trade name, trademark, etc. Our discussion in this demand will focus - by the will of God Almighty - on only three types of rights of innovation, due to their connection and their urgent relationship to one of the fundamentals that differ in them, which is: the origin of custom. The following is an explanation of those rights and their provisions in Islamic Sharia

Linguistically, it is derived from the triple verb) alif .(ألفAnd composition is the collection of things proportionate (). Copyright is a form of moral or inventive rights. The rights of authors and translators in the Arab and Islamic world were not regulated by laws until recently. Therefore, judgments regarding literary property were issued based on the rules of justice, although the United Nations issued the Universal Declaration of Human Rights on December 10, 1948, and stipulated in its twenty-seventh article that every individual has the right to protect the moral and material interests resulting from his scientific, literary or artistic production. The Berne International Treaty for the Protection of Copyrights was concluded in 1886, then it was amended several times, the last of which was in Stockholm in 1967.

UNESCO organized the conclusion of an international agreement in Geneva on September 6, 1952 on copyright.

In short, copyright means that the author is given the right to keep the fruit of his intellectual effort, to attribute this effort to him, and to withhold the financial benefit that can be obtained from its publication and dissemination.

Copyright in Islamic jurisprudence:

This issue is the result of scientific development, as there is no special text from the Qur'an, the Sunnah, consensus, or old jurisprudence regarding it. That is why the contemporaries hold two different sayings:

First saying:

Not considering copyright, and this is the view of a few contemporary scholars. Such as: Dr. Ahmed Al-Kurdi, and Sheikh Taqi Al-Din Al-Nabhani. They cited this as follows:

(A) Considering this right may lead to the author withholding his scientific work from publication and circulation, except in return for a financial consideration that he receives. This is considered as concealing the knowledge that the Legislator forbade, in the Almighty's verse: "Indeed, those who conceal what We sent down of clear proofs and guidance after We made it clear for the people in the Scripture - those are cursed by Allah and cursed by those who curse" (Quran 1:159).

It is answered that concealment of knowledge only occurs if the author prevents people from benefiting from what he has composed for reading, teaching and communicating! But the one who reserves the right to print does not prevent anyone from reading the book, studying it, teaching it, or communicating what is in it.

(B) Knowledge is considered closeness and obedience, and it is not a matter of trade or industry. It is not permissible to obtain a financial reward for its performance, and therefore the scholar must devote himself to his knowledge in order to acquire and teach free of charge, and the nation after that to suffice his livelihood from the treasury.

The answer to this is that this person is not a Muslim. Because the later jurists issued a fatwa that it is permissible to take a fee for doing acts of worship, such as leading and teaching the Qur'an.

© Keeping printing rights narrows the scope of the book's spread, and if everyone had the right to print and publish the book, its spread would be wider, and its benefit more general and comprehensive. The answer to this is that this evidence is reversed if we look from the other side. And it is that if the innovators were prevented from taking precedence over the profit from what they invented, their determination to break into big projects for the sake of new inventions would fail when they see that this only generates a small profit. The intent of approving these rights is to encourage invention and creativity, so that whoever makes his effort in them knows that he will be devoted to their investment, and he will be protected from those who try to take the fruits of his innovation and thinking.

The intent of approving these rights is to encourage invention and creativity, so that whoever makes his effort in them knows that he will be devoted to their investment, and he will be protected from those who try to take the fruits of his innovation and thinking, and crowd him into exploiting them.

The second view: Consideration of copyright

This is the view of a group of contemporary scholars, including Professor Sheikh Mustafa Al-Zarqa, Dr. Muhammad Othman Shabeer, Dr. Muhammad Fathi Al-Darini, Dr. Muhammad Saeed Al-Bouti, Dr. Wahba Al-Zuhaili, Professor Muhammad Taqi Al-Othmani, and a group of scholars from the Indian continent such as Sheikh Fath Muhammad Al-Laknawi, Sheikh Mufti Muhammad Kefaya Allah, Sheikh Nizam Al-Din, Sheikh Abdul Rahim Al-Lajbouri.

A – The benefits are money in the view of the majority of scholars from the Malikis, Shafi'is and Hanbalis(), and they – that is, the benefits – are intangible matters, and there is no doubt that the golden production represents one of the human benefits, so it is considered money that can be exchanged according to Sharia.

And calling it money is more appropriate than applying it to the in-kind, because it is not called money, except for its inclusion of benefits. Sharia in its authorization of the lease contract is a ruling that the benefit exists and is self-contained, in return for which the wage is paid, just as the price is paid in exchange for the in-kind in the sale contract.

B – The general custom is based on the author's right to authorship and creativity. If this right was not suitable as a place for exchange and lawful earning, the prize and compensation for it would be considered unlawful earnings.

It is well known that the general custom is one of the foundations of evidence if it does not conflict with a legal text or a general principle in Islamic Sharia.

Dr. Al-Zuhaili says: ((There is no doubt that copyright has become recognized in the laws and customs, and that printing or copying without right is aggression and injustice against copyright, and that the one who does that usually evades responsibility, and does not dare to admit his sinful act. This indicates that his work is injustice and it is necessary to compensate the right holder, and the Muslim is the first person to take care of rights and fulfill covenants.

Dr. Al-Darini stresses that the origin of the right to innovate is custom, as he says: ((The right to innovate originates from custom and the transmitted interest related to the private right first, and the public right second, because the legislator's approval of the right is by virtue of a ruling, and the ruling is derived from the sources of legislation that include custom and interest).

Thus, the issue of copyright is one of the contemporary applied issues on the origin of custom. Also, custom is considered one of the basic matters in the finances of things, so the measure of finance is people's familiarity with the fact that this thing is desirable and beneficial, or their lack of familiarity with it .Moreover, the general and private custom in the definition of finance are equal. This is why al-Bukhari said in Kashf al-Asrar: Finance is

proven by financing all people or financing some. This is because the proven custom of finance is a custom that is referred to in the application of the overall provisions.

C - Mental creativity is an origin for material means such as a car, plane, radio and other things that have the characteristic of financing, so it is necessary to consider the origin as having a financial quality.

The second type: patent right

Invention is like authorship, both are mental creativity, and therefore their judgments were one. A patent has been defined as: ((a general official document granted by a competent administrative authority to those who request it under certain formal and objective conditions. The patent includes a description of the invention. Granting it to its beneficiaries and successors for a certain period entails a minor right that is a barrier that is protected by a lawsuit of counterfeiting and fraud, and this right is a license to invest the invention covered by the patent, unless otherwise issued by a court ruling). This patent grants the inventor several rights, includingthe right for the inventor to invest his invention and for his heirs to invest his invention after his death for a certain period estimated by the patent laws, after which this right is forfeited and becomes part of the public wealth. This period in the Iraqi patent law is fifteen years starting from the date of the patent application. And the inventor's right to attribute the invention to him from the patent issued in the name of the employer.

The right of patent in Islamic law:

There is plenty of room for this right in Islam, as it is considered one of the private rights of its owners. In contemporary custom, the patent right has a significant financial value for people to finance it. This right is one of the rights that are protected by Sharia, its owners have the right to dispose of it, and it is not permissible to transgress against it. This right can also be extracted on the basis of the interests sent, and the interest in protecting this right is to encourage invention and creativity, so that the one who exerts his effort in invention knows that he will be exclusive of it, and he will be protected from those who try to take the fruit of his innovation and thinking.

The third type: Trade name right

The issue of the trade name and trademark has arisen since trade increased in size and magnitude, and one merchant, or one company, produced and exported his huge money to a large number of people and countries, and the products of the same kind varied according to their different descriptions. These descriptions became known as the product. Whenever the consumer sees that the goods were produced by the company that is known by its good reputation in the market, he buys it as soon as he hears the name of the company, or the presence of its trademark on the face of the goods.

It seems that there is no legal objection to it from taking the same course of money as it is permissible to buy and sell it, and this is subject to two conditions: First: That the trade name or trademark be legally registered with the government, because what is not registered is not considered money according to the custom of traders.

Second: That this sale does not entail confusion or deception against consumers, by announcing by the buyer that the product of this commodity is not the previous product, but rather using this name or mark after buying them with the intention that he will try as much as possible to make his production at the level of the previous production or better than it. Without this advertisement, the transfer of the name or mark to another product causes confusion and deception for consumers. Wearing and deceiving is forbidden and is not permissible in any case.

In short, custom considers a trade name or trademark a financial right, and custom here does not conflict with Sharia texts, or the overall rules of Islamic Sharia; The opinion of the Islamic Fiqh Council on moral rights: The Council of the Islamic Fiqh Academy held in its fifth session in Kuwait From 1-6 Jumada al-Ula 1409 AH corresponding to 10-15 December 1988. After reviewing the research papers submitted by members and experts on the subject of moral rights, and listening to the discussions that took place on it, the council decided the following:

First: The trade name, commercial address, trademark, authorship, invention or innovation are private rights of their owners, which, in contemporary custom, have a significant financial value for people to finance with. These rights are considered legitimate, so it is not permissible to violate them.

Second: It is permissible to dispose of the trade name, commercial address, or trademark, and transfer any of them for a financial consideration, if there is no deception, or fraud, given that this has become a financial right.

Third: Copyrights, inventions or innovations are protected by Sharia, and their owners have the right to dispose of them, and it is not permissible to infringe upon them.()

The second section: Parallel production

Perhaps one of the most important conditions for the production’s contract is that it be something that deals with people in any era. Thus, if at any time they got to know things that were not known in the times that preceded them, then there is no objection in this case to considering it as customary and attaching it to production without stopping production on certain issues. It was said by the previous jurisprudence only, and this is what some contemporary jurists have turned to, as some of them included clothes within the production contract, and the previous jurists did not see production in clothes, because they did not have what they became familiar with yet . Abu Sunna says: ((The jurisprudence is that what is customarily used is correct to manufacture, such as slippers, shoes, utensils, home furniture, war kits and clothing. As for the statement of our jurists - that is, the Hanafi school - it is not permissible to manufacture clothes. This is based on their custom, because people did not deal in this type. But now this interaction has spread between merchants and manufacturers in countries, and the custom that is permissible for manufacturing is stipulated that it be general)).

Production is a contract in which there is flexibility that makes it easier for Islamic banks to use it in their dealings with the public, because of the possibility of accelerating the price or paying it in installments .

(2)As for the bank being a manufacturer, on the basis of the production contract, it is able to enter the world of industry and the world of contracting with their broad horizons, such as the manufacture of ships, aircraft, machinery and the like, housing projects, large buildings, road construction, construction, and airports, and providing them with their various equipment. The bank implements this by using administrative devices within separate departments from the banking work departments in the same bank, and these devices manage the industrial processes to produce what it was asked to manufacture, or re-manufacture.

Manufacture of paper currency:

If the central bank needs to print (10) million banknotes, for example, and commissions a company to do so on the basis of the production contract, then there is no difference between that and printing

(10)million cards, for example, both are permissible without reservation. And there is no usury here, because these banknotes do not have any price power before the central bank receives them from the one who printed them, because their value power only takes them from the recognition by the central bank, and it does not recognize their value before receiving them and entering them in its records and safes in preparation for putting them into circulation. It has become a priceless force and entered into the provisions of usury.Resolution of the Islamic Fiqh Council No. 65/3/7 regarding production:

The Islamic Fiqh Academy raised the subject of the production contract in its seventh session held in Jeddah in the Kingdom of Saudi Arabia from 7-12 Dhu'l-Qa'dah 1412 AH corresponding to 9-14 May 1992, and after reviewing the research received by the Council on the subject of the production contract, and after listening to the discussions that it revolved around, taking into account the purposes of Sharia in the interests of the people and the jurisprudence rules in contracts and actions, and given that the production contract has a major role in revitalizing the industry, and in opening wide areas for financing and the advancement of the Islamic economy.

The council decided the following:

First: The production contract - which is a contract that includes work and the right to be owed - is binding on both parties if the elements and conditions are met.

Second: The production contract requires the following:

(a) An indication of the manufacturer's kind, type, quantity and required descriptions.

(B) To specify the time limit.

Third: It is permissible in the production contract to postpone the whole price, or to divide it into known installments for specific periods.

Fourth: The production contract may include a penalty clause in accordance with what the two contracting parties have agreed upon, unless there are force majeure circumstances.

The third section: Reliance on modern means of communication in concluding contracts.

What is meant by modern means of communication is the phone, smart applications, e-mail, and so on, as people are known today to use them in their commercial transactions and courts, and some people use them in marriage, divorce, taking back, and so on.

Among the characteristics of electronic contracting are:

It is done remotely, so it is devoid of the contract council in its physical form. The presence of the contracting parties in different places, and this position made some commentators of the law apply to electronic contracting the provisions of contracting between absentees, but a careful look at the development of modern means of communication makes us affirm that contracting via the Internet, especially the viewing and audio, applies to the provisions of the contract between those present in terms of time, for the existence of a legal contract council, is very close to the real contract council, and after that there remains the difference in the place that entails determining the applicable law.

The Islamic Fiqh Academy addressed this issue, studied it carefully and in detail, and then took the following decision: Resolution No. 52 (3/6): Concerning the Ruling of Contracts Using Modern Communication Machines: The Council of the Islamic FiqhAcademy held during its sixth session in Jeddah in the Kingdom of Saudi Arabia from 17-23 Sha'ban 1410 AH corresponding to 14-20 March 1990. After perusal of the research papers received by the Academy on the subject of contracting with modern communication machines and in view of the great development that has taken place in the means of communication, the flow of work in them in concluding contracts to speed up the completion of financial transactions and actions, and by recalling what the jurists were exposed to regarding concluding contracts by letter, in writing, by sign and by the messenger, and what was established that the contract between the attendees requires the union of the council - except for the will and the agency - and the congruence of the offer and acceptance, the absence of evidence of one of the contracting parties' reluctance to contract, and the loyalty between offer and acceptance according to custom, decide that:

First: If a contract is concluded between two absentees who are not united in one place, and one of them does not see the other by inspection, nor hear his words, and the means of communication between them is: writing, letter, or the embassy (the messenger), and this applies to telegram, telex, fax, and computer screens. (computer), in this case the contract is concluded when the offer reaches the addressee and accepts it.Second: If the contract is concluded between two parties at the same time, and they are in two separate places, and this applies to the phone and the wireless, then the contract between them is considered a contract between two present, and the original provisions established by the jurists referred to in the preamble are applied to this case.

Third: If, by these means, the offeror issues an offer for a definite period, he is obligated to remain in his offer during that period, and he has no right to withdraw from it.

Fourth: The previous rules do not include marriage. To require attestation, or exchange; To stipulate the handshake, nor the Salam; To require the acceleration of capital.

Fifth: With regard to the possibility of forgery or error, it is referred to the general rules of proof.

The fourth section: The subject of arrest .

It is known that the issue of arrest is considered a mainstay in the framework of financial exchanges, and we often find conflict rages over the investigation of arrest or its lack of realization, whether the case is related to real arrest, or to judgmental arrest. The connection of arrest is evident by custom in the popular sayings of jurists in their books: (arrest according to custom).

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1 -The stock exchange and the effect of arresting it:

The stock exchange is an organized market that is held in certain places and at specific times that are mostly daily between dealers, buying and selling, in various securities and likenesses whose amounts are to be quantified in terms of quantity, weight, or number, according to laws and regulations that define the rules of transactions, and the conditions that must be met by the dealers and the traded commodity.

These are buying and selling operations characterized by the fact that they take place immediately, so the price is paid and the securities that are the subject of the transaction are received immediately, or within a very short period. The objective of these operations is to employ and invest money, although its purpose may be speculation and benefit from price differences if the customer buys and then sells with repeating the process. Since shares and bonds represent the essence of dealing in the stock exchange, selling shares is permissible if the shares are in permissible commercial, industrial or agricultural companies.

Stock exchange operations, whether in buying or selling, are divided into immediate (cash) and forward operations.

The fifth section: the responsibility of the surgeon and the anesthesiologist.

The surgeon bears the responsibility for the qualification of the anesthetist assisting him in the surgical procedures, because he is not permitted to entrust the task of anesthesia to any person who does not have the qualification to perform the task of anesthesia according to the medical norms in accordance with the jurisprudence rule (The custom is tight).

As for the anesthesiologist, he bears direct responsibility for the patient’s eligibility for anesthesia, the narcotic substances he chooses, the amount of the narcotic dose, and the method of anesthesia, and this is what is done by medical custom, and approved by hospitals and health clinics in which surgical operations are performed.

Professional norms are the source of the physician's commitment, as they determine the meaning of the acquired medical data, which in turn determines the content of the physician's commitment to diagnosis or treatment.

Medical error is defined as: breaching the special obligations imposed by the medical profession without intending to harm others.

Medical error is based on the availability of a set of elements represented in the observance of the principles and scientific rules recognized in the science of medicine, and the violation of the duties of caution and caution and the lack of care that the doctor could do. The criterion by which the physician's error is measured should be an objective criterion that measures the action on the basis of a specific behavior that differs from one case to another, which is the behavior of the usual person, meaning that the judge, in order to assess the physician's error in treating a particular patient, measures his behavior on the behavior of another physician of the same level. Be it a general practitioner or a specialist.

And the Islamic Sharia has come to arbitrate custom in what has no legal or linguistic control for it. Al-Zarkashi said in Al-Manthur: (The jurists said everything that was mentioned in it is absolutely legal and has no control in it or in the language. That his condition varies according to different conditions and times, and the outcome varies according to the justice and injustice of the sultan, and the state of security and fear. The medical error is based on the availability of a set of elements, as follows: 1- Non-observance of the principles and scientific rules recognized in the science of medicine. 2- Violating the duties of caution and caution, and neglecting to exercise the care that the doctor could have done. 3- The extent to which there is a psychological association or relationship between the doctor's will and the wrong result. 4- Medical errors are actions and events that are unintentionally committed in the medical work, and lead to negative consequences that affect the patient's safety, and have nothing to do with the development or complications of the disease, as the doctor bears the responsibility of the means, not the responsibility of the result. The controls that are based on estimating medical error must be determined, and the most important of which is adherence to technical principles, scientific rules consistent with current knowledge of medical science, medical customs, or so-called medical habits. The doctor who follows these rules does not make a mistake, but if his behavior does not conform to the technical and scientific principles; the acquired, stable and contemporary medical habits, he has committed a mistake he is asked about, and to know the extent to which the doctor's action conforms to the professional norms, whose images are represented in the technical and scientific principles, medical habits or practice, and the acquired and contemporary scientific data… Conclusion: Praise be to God, whose grace good deeds are accomplished, and blessings and peace be upon the one who was sent as a mercy to the worlds, and upon all his family and companions.To him be praise and blessings, and to him is the credit for completing the blessing, as this research has completed its mission, demands and issues, through a drawn scientific plan, and a studied practical approach. This research has reached its end, and it is appropriate to summarize the findings as follows: -Deep belief in the validity of Islamic jurisprudence, the perfection of its method, and that it is rich and fulfills all the requirements of life and the developments of the times. -Defining the richness and diversity of Islamic jurisprudence, and that it is not small in size or superficial to dive, as many Orientalists and their hateful idiots claim. - Addressing contemporary issues, problems and emerging realities. Each era has its own issues, problems, and recurring facts that the previous jurists did not talk about. It is necessary for the jurists with the established faculties of jurisprudence to be careful about those issues,

problems and facts, otherwise this will lead to the isolation and freezing of society. -That custom may be a reason for deviating from the correct one to a narration, saying, or a facet of it in the doctrinal dispute, or the weighting between the sayings of the imams in the major controversy. - And that the change of times and the emergence of developments in terms of accidents and conditions have an impact on what was built from the jurisprudential rulings on the returns and the causes of interest. All of this results in the necessity that muftis and judges review the opinions of the imams, and write the jurisprudential codes from the branches and issues based on the old custom and follow the customs of the past. - This is what has been reviewed in these papers from examples and contemporary applications on the origin of custom, such as: moral rights ((innovation rights)), parallel istisna, reliance on modern means of communication in concluding contracts, arrest and contemporary issues, the responsibility of the surgeon, and the anesthesiologist.

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