



INTENTION IN ZAKÂH AND ITS CONTEMPORARY ISSUES

Compiled by
DR. ‘ABDUR-RAHMÂN IBN HAMAD AL-JIRÎSÎ

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and Its Contemporary Issues**

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Introduction

Indeed, all praise is due to Allah. We praise Him, seek His help, and ask for His forgiveness. We seek refuge in Allah from the evil of our souls and from our misdeeds. Whomever Allah guides, none can lead astray, and whomever He leads astray, none can guide. I bear witness that there is no deity worthy of worship except Allah alone, without any partners, and I bear witness that Muhammad is His servant and messenger, may the peace and blessings of Allah upon him, his family, his companions, and those who follow them in righteousness until the Day of *Judgment*.

To proceed:

No doubt, the most honorable, prestigious, highly estimable and virtuous field of knowledge is that relating to the noble *Shari'ah* (Islamic law) and understanding its great rulings. Therefore, it is necessary to assist those who seek such knowledge through making it easily accessible and through explaining its rulings and issues.

In fact, one of the areas understanding whose rulings is important is the obligatory *Zakâh*. Actually, it is the third pillar of Islam. Moreover, Allah the Almighty mentions it concomitantly with *Salâh* (prayer), which makes them the most important obligations of Islam ranking only after *Tawhîd* (monotheism) and sincerity. Allah (Exalted be He) says:

{“And they were not commanded except to worship Allah, [being] sincere to Him in religion, inclining to truth, and to establish prayer and to give Zakâh. And that is the correct religion.”} [Al-Bayyinah (The Clear Evidence): 5].

Moreover, Allah the Almighty considers giving *Zakâh* a means of purifying souls. In this regard, Allah says:

{“Take, [O Muḥammad], from their wealth a charity by which you purify them and cause them increase”}. [At-Tawbah (Repentance): 103].

To the same effect, Allah stated that holding this duty in a great esteem and

performing it are causes for achieving victory and gaining power. Allah says:

{“[And they are] those who, if We give them authority in the land, establish prayer and give Zakâh.”} [Al-Hajj (The Pilgrimage): 41].

Accordingly, the great esteem *Zakâh* occupies necessitates paying a special attention to studying its rulings and investigating its issues and contemporary cases relating thereto.

Investigating the rulings on *Zakâh*, we can find out that they are clearly connected with the intentions and objectives of a *Mukallaf* (person meeting the conditions to be held legally accountable for their actions). No doubt, deeds are based on intentions. Moreover, it is intention that differentiates one deed from the another. In other words, deeds have no value without intention, in accordance with the Hadith that reads: “*Deeds are to be judged only by intentions*”⁽¹⁾

Besides, intention has a pivotal effect on many *Zakâh*-related issues taking into account that *Zakâh* is all about properties and transactions besides being an act of worship to Allah the Almighty.

Therefore, I decided, after deep thinking, consultation, and *Istikhârah* (supplication for guidance), to choose the following topic for my PHD thesis: (Intention and Contemporary Issues of the Obligatory Charity in Islam “*Zakâh*”).

Significance of the thesis:

Following are some aspects that reveal the significance of this thesis:

- 1- This thesis addresses important issues concerning the rulings of *Zakâh*, which is one of the pillars of Islam. *Zakâh* holds a great position in religion, taking into account that Allah mentions it concomitantly with *Salâh* in many occurrences in the Qur'an and threatens those who abandon it with painful punishment.
- 2- The thesis is related to intentions, which are the basis of both verbal

(1) Related by Al-Bukhariy in his “*Sahîh*”, Book Pertaining to the Beginning of Revelation, Chapter: How the Divine Revelation started to be revealed to Allah's Messenger], *hadîth* no. (1), 1/6. It is also related by Muslim in his “*Sahîh*”, Book Pertaining to Leadership, Chapter: The saying of the Prophet "Actions are but by intentions" and that it relates to battles and other deeds, *hadîth* no. (1907), 3/1515.

and physical, minor or major, deeds. In fact, many *Shari`ah* rulings depend on intentions. In other words, they affect whether a certain deed is valid or invalid, effective or ineffective.

- 3- This thesis presents a novel topic, as it studies thirty contemporary issues of *Zakâh* issuing a judgment on them is based on intention. While doing so, we focused on to what extent, and in which way, intention affects the judgment.
- 4- This thesis deals closely with people's actual life and needs. This is supported by the frequently-asked questions about intention-related, old or contemporary, *Zakâh* issues.
- 5- Intention relates to *Zakâh* rulings from multiple perspectives. This is because *Zakâh* deals with properties and transactions among people, and because the various forms of payment and delivery to beneficiaries.

Reasons for choosing this topic:

Following is a summary of the reasons why I chose this topic:

- 1- I came across a mind map of *Zakâh*-related literature, including books, research, and articles, prepared by a specialized Islamic center. Investigating this mind map, I found out that the topic of intention in *Zakâh* needs more research and studies due to the scarcity of writings on this subject.
- 2- I could not come across a study dedicated to discussing the issues of intention in *Zakâh* or contemporary *Zakâh* issues where intention affects the ruling.
- 3- While studying many contemporary *Zakâh* issues, where intention influences the ruling, no specific attention is paid to the aspect of intentions and such issues that may arise as emergencies, hesitation, or combining multiple intentions.
- 4- Many issues of this topic require investigation and study and to be given a *Shari`ah*-based ruling. While doing so, it should be shown to what extent intention affects such a *Zakâh*-related issue.
- 5- I have the desire to highlight how *Shari`ah* pays attention to the issues

relating to intentions and objectives and the extent to which intentions might influence legal rulings.

Research objectives:

This research targets the following objectives:

- 1- Seeking to highlight the effect of intentions on legal rulings as far as *Zakâh*-related issues are concerned.
- 2- Providing a comprehensive *Fiqh* (Islamic jurisprudence) study addressing the problems of intentions regarding the ownership of a property on which *Zakâh* is due. Such problems might relate to identifying the intention and whether or not change or hesitation may occur to it, especially in contemporary issues.
- 3- Drawing a comparative study among the four Islamic schools of jurisprudence in order to deduce which of them pays more attention to intentions in *Zakâh*-related issues.
- 4- Making it easy for specialists and Muslim masses to access the rulings related to the intention of paying *Zakâh* and to the intentions regarding the ownership, and disposal, of a property on which *Zakâh* is due, as well as the effect of the intention on *Zakâh*-related issues.
- 5- Contributing effectively to filling the gap in the *Fiqh* literature by studying frequently asked questions regarding the rulings on intentions and their effect on acts of worship, especially *Zakâh*-related issues.

Scope of research:

The research topic covers *Fiqh* issues related to intentions as far as *Zakâh* is concerned. Relation to intention can either be direct, such as the issues of intentions relating to giving *Zakâh* and to the ownership of a property on which *Zakâh* is due and whether or not change, hesitation or combination of intentions may occur to it, or indirect, such as the issues where intention effectively influence the ruling on the issue. An example of the latter is the issue when some scholars support the ruling they issue with something that has to do with the intention of the individual.

Thus, the thesis is concerned with studying the rulings on intentions and their effects on *Zakâh* issues through a comparative *Fiqh*-based study. It also

addresses contemporary *Zakâh* issues where intentions influence the ruling, while paying special attention to explaining how they affect the ruling on modern issues.

Literature review:

(a) Theses and dissertations and complementary researches:

The first study:

Research title: Intention and Its Effect on *Shari`ah*-Based Rulings

Researcher's name: Dr. Sâlih ibn Ghânim Al-Sadlân

Academic degree: Doctor of Philosophy (PhD.)

Study institution: Imam Mohammad Ibn Saud Islamic University (IM-SIU) - The Higher Judicial Institute

Date of study: 1402 AH.

Publication status: Published.

Study size: 918 pages

Structure of the thesis:

The researcher divided his research into an introduction, two main sections, and a conclusion:

Section (I): Essence and reality of intention. This section is subdivided into eight chapters:

Chapter One: Definition and synonyms of intention.

Chapter Two: The position intention occupies.

Chapter Three: Ruling on intention.

Chapter Four: The wisdom behind considering intention obligatory.

Chapter Five: Types of intention and types of what is intended.

Chapter Six: Rules regarding intention.

Chapter Seven: The effect of intention on action.

Chapter Eight: Actions that do not require intention.

Section (II): The effect of intention on *Shari`ah* rulings. This section is

subdivided into **twenty-three chapters**:

Chapter one: The effect of intention on belief.

Chapter two: Rulings pertaining to acts of worship and transactions are based on intentions.

Chapter three: The effect of intention on ritual purification.

Chapter four: Intention in *Salâh* (prayer).

Chapter five: Intention in *Zakâh*.

Chapter six: Intention in *Sawm* (fasting).

Chapter seven: Intention in *Hajj* and *ʿUmrah*.

Chapter eight: Intention in Islamic slaughtering such as *Hady* (sacrificial animal offered by pilgrims), *Ud-hiyah* (sacrificial animal offered by non-pilgrims), and *ʿAqiqah* (sacrifice for a newborn).

Chapter Nine: [Note: Chapter 9 is missing in the original text]

Chapter ten: Intention in *Jihad*.

Chapter eleven: Intention in transaction contracts.

Chapter Twelve: Intention in Voluntary Financial Contracts.

Chapter Thirteen: Intention and Its Effect in Marriage.

Chapter Fourteen: Intention in Divorce.

Chapter Fifteen: Intention in *Rajʿah* (Revoking Divorce).

Chapter Sixteen: Intention in *Khulʿ* (Wife-Initiated Divorce).

Chapter Seventeen: Intention in *Ilaʾ* (husband's oath not to have intercourse with his wife for four months or more).

Chapter Eighteen: Intention in *Zhihar* (a man likening his wife to an unmarriageable relative).

Chapter Nineteen: Intention in *Iddah* (woman's prescribed waiting period after divorce or widowhood).

Chapter Twenty: Intention in Breastfeeding, Custody, and Relatives' Maintenance.

Chapter Twenty-One: Intention in Criminal Offenses.

Chapter Twenty-Two: Assuming Judgeship and the Effect of Intention in It.

Chapter Twenty-Three: Means of Proving Rights in Courts.

Comparison between the study above and the current research including the scientific addition it makes:

The above valuable study addresses the reality of intention and its effect on the rulings of *Shari`ah*. It covers the effect of intention on most rulings without focusing on a specific area or field of *Fiqh*. The first section includes eight chapters, where the researcher deals with the definition of intention, the position it occupies, the wisdom behind legislating it, its types, and acts of worship that do not require intention.

In the second section, the researcher discusses the effect of intention on the rulings of *Shari`ah*. In this section, he tackled the relationship between intention and some *`Aqidah* (creed) issues and between intention and twenty-two areas of *Fiqh*. Due to the broad and branched scope of the topic, the researcher covered, only the most important, rather than all intention-related issues in each section.

This study aligns with my research plan in the issues presented by the researcher under Chapter Five of Section (II), titled “Intention in *Zakâh*”. Under this chapter, the researcher addressed only three issues in nine pages:

- 1- The ruling on intention in *Zakâh*.
- 2- The timing of intention in *Zakâh*.
- 3- The how-to of intention in *Zakâh*.

Apart from these three issues, his thesis plan does not align with my study. To clarify, the researcher did not address contemporary *Zakâh* issues rulings on which are not affected by intention. Moreover, he did not discuss many rulings pertaining to the intention of paying *Zakâh* and contingencies relating thereto, among other issues I have included in this thesis.

The second study:

Research title: Contingencies of Intention Regarding Acts of Worship.

Researcher’s name: Dr. Imân bint Muhammad Al-Musharraf.

Academic degree: Master's Degree (MA).

Study institution: Imam Mohammad Ibn Saud Islamic University (IMSIU)
- College of Shariah in Riyadh - Department of Fiqh.

Study date: 1425 AH

Publication status: Unpublished.

Study size: 352 pages.

Structure of the thesis:

The researcher divided her research into an introduction, preface, five sections, and a conclusion.

Introduction: The Reality of Intention. It is subdivided into **six chapters:**

Chapter one: Definition and Types of Intention.

Chapter Two: Ruling on Intention.

Chapter Three: Wisdom behind the Legislation of Intention.

Chapter Four: Conditions of Intention.

Chapter Five: How-to of Intention in Acts of Worship.

Chapter Six: Timing of Intention in Acts of Worship.

Section (I): Changing the Intention. It is subdivided into **six chapters:**

Chapter one: Changing the Intention from One *Fard* (Obligatory act) to Another *Fard*.

Chapter Two: Changing the Intention from a *Fard* to a *Nafilah* (supererogatory act).

Chapter Three: Changing the Intention from a *Nafilah* to a *Fard*.

Chapter Four: Changing the Intention from One *Nafilah* to Another.

Chapter Five: Changing Intention in Prayer from an Imam (Leading the Prayer) to a *Ma'mum* (a person being led by an Imam in Prayer) or Praying Individually.

Chapter Six: Changing Intention from a Traveler *Salâh* to a non-Traveler *Salâh*, or from Shortening *Salâh* to Performing It In Full.

Section (II): Rejecting Intention. This section is subdivided into **two chapters**:

Chapter one: Rejecting Intention after Completing the Act.

Chapter Two: Rejecting Intention during the Act.

Section (III): Doubt in Intention. This section is subdivided into **three chapters**:

Chapter one: Doubt in Initiating the Intention.

Chapter Two: Doubt in Specifying the Intended Act.

Chapter Three: Doubt in the Timing of Intention.

Section (IV): Error in Specifying the Intended Act. This section is subdivided into **two chapters**:

Chapter one: Error in Acts for Which Intention Should Be Specified.

Chapter Two: Error in Acts Regarding Which Scholars Disagree Whether Intention Should Be Specified.

Section (V): Establishment and Suspension of *Taklif* (Religious Responsibility or Accountability). This section is subdivided into **three chapters**:

Chapter One: Reaching Puberty.

Chapter Two: Apostasy.

Chapter Three: Occurrence of Unconsciousness or Insanity.

Comparison between the study above and the current research including the scientific addition it makes:

This study addressed such changes, doubts, or errors as may occur to intention in acts of worship. In the first chapter, the researcher discussed changing intention in acts of worship from one *Fard* to another, or from a *Fard* to a *Nafilah* and vice versa. In the second chapter, she addressed the issues of rejecting intention in *Salâh*, *Sawm*, *I'tikâf* (spiritual retreat demands seclusion in the Mosque), and *Hajj*. The third and fourth chapters dealt with doubt and errors in intention. The researcher concluded her study with a fifth chapter that does not directly relate to intention, where she discussed issues of the establishment and suspension of *Taklif*.

Noteworthy, the study focuses solely on the intention of *Salâh* to the ex-

clusion of other acts of worship. The researcher addressed only the following three issues related to the intention of *Zakâh*:

- 1- Paying the *Zakâh* no more due on a damaged property as the *Zakâh* due on another non-damaged property.
- 2- The case when a person gives all his wealth in charity without intending the obligatory *Zakâh*.
- 3- The case when a person gives money to his representative to give it in charity, then intends it as the obligatory *Zakâh*.

Apart from these three issues, her thesis plan does not align with this study. My research plan focuses on matters of intention in *Zakâh* specifically rather than other acts of worship. Moreover, it addresses the effects of intention on *Zakâh* rulings and contemporary issues.

The third study:

Research title: Nawâzil Al-*Zakâh* (Contemporary Issues of *Zakâh*).

Researcher's name: Dr. `Abdu-Allah ibn Mansûr Al-Ghufayly.

Academic degree: Doctor of Philosophy (PhD)

Institution: Imam Mohammad Ibn Saud Islamic University (IMSIU) - College of Shariah in Riyadh - Department of *Fiqh*.

Study date: 1428 AH

Publication status: Published

Study size: 620 pages

Structure of the thesis: The researcher divided his research into an introduction, preface, five sections, and a conclusion:

Section (I): Contemporary Issues Regarding the Conditions of *Zakâh*. This section is subdivided into two **chapters**:

Chapter One: Contemporary Issues in Possessing the *Nisâb* (the minimum amount on which Zakah is due).

Chapter Two: Contemporary Issues regarding *Hawl* (the period of one lunar year).

Section (II): Contemporary Issues Regarding the Amount that Should Be

Paid as *Zakâh*. This section is subdivided into sixteen **chapters**:

Chapter One: *Zakâh* on Crops, Fruits, and Livestock.

Chapter Two: *Zakâh* on Factories and Manufacturing Materials.

Chapter Three: *Zakâh* on Paper Currency.

Chapter Four: *Zakâh* on Current Accounts.

Chapter Five: *Zakâh* on Commercial Securities.

Chapter Six: *Zakâh* on Multinational Corporations.

Chapter Seven: *Zakâh* on Bonds.

Chapter Eight: *Zakâh* on Investment Funds.

Chapter Nine: *Zakâh* on Public Property.

Chapter Ten: *Zakâh* on Insurance Money.

Chapter Eleven: *Zakâh* on End-of-Service Benefits.

Chapter Twelve: *Zakâh* on Monthly Salary.

Chapter Thirteen: *Zakâh* on Moral Rights.

Chapter Fourteen: *Zakâh* on Lease-to-Own Property.

Chapter Fifteen: *Zakâh* on *Isfîsnâ`* (a long-term contract whereby a party undertakes to manufacture, build or construct assets, with an obligation from the manufacturer or producer to deliver them to the customer upon completion).

Chapter Sixteen: Ruling on Considering Taxes as Part of *Zakâh*.

Section (III): Contemporary Issues Regarding *Zakâh* Beneficiaries. This section is subdivided into six **chapters**:

Chapter One: The Poor and the Needy.

Chapter Two: *Zakâh* Collectors.

Chapter Three: *Al-Muḥallafati Qulūbuhum* (new converts to Islam whose hearts are to be reconciled).

Chapter Four: Freeing Captives.

Chapter Five: The Cause of Allah.

Chapter Six: Wayfarer.

Section (IV): Investment of *Zakâh* Funds. This section is subdivided into three chapters:

Chapter One: Investing *Zakâh* Funds.

Chapter Two: Costs of Investing *Zakâh* Funds.

Chapter Three: *Zakâh* on Invested *Zakâh* Funds.

Section (V): Contemporary Issues Regarding *Zakât-ul-Fitr* (obligatory charity paid before the Festival of Breaking the Fast). This section is subdivided into four chapters:

Chapter One: Deputizing Charitable Societies and Islamic Centers to Pay It.

Chapter Two: Paying *Zakâtul-Fitr* in Cash.

Chapter Three: Ruling on Transferring *Zakâtul-Fitr* to Distant Countries.

Chapter Four: *Zakâh* institutions distributing the expected amounts of *Zakâtul-Fitr* before receiving them.

Comparison between the study above and the current research including the scientific addition it makes:

The study above discussed roughly thirty contemporary issues regarding *Zakâh*. While investigating them, the researcher focused on describing each issue, classifying it under major *Fiqh* issues, stating the ruling thereon, supporting his view with evidence, and weighing different opinions. The study above aligns with my research plan in addressing several issues although with different approach. These issues are:

- 1- The effect of investment and housing debts on reaching the *Nisâb*.
- 2- *Zakâh* on animals kept for trading their products such as milk and the like.
- 3- *Zakâh* on factories.
- 4- *Zakâh* on commercial securities.
- 5- *Zakâh* on investment funds.
- 6- *Zakâh* on public funds.

- 7- *Zakâh* on insurance money.
- 8- *Zakâh* on moral rights.
- 9- *Zakâh* on lease-to-own property.
- 10- Considering taxes as part of *Zakâh*.
- 11- *Zakâh* institutions distributing the expected amounts of *Zakâtul-Fitr* before receiving them.

However, my thesis plan tackles these issues from a different perspective and provides a scientific addition when studying these issues. It focuses on the aspect of intention and its effect on the ruling on these issues. Furthermore, it examines what may influence intention and highlights in which way intention can effect the ruling on contemporary issues, an aspect the study above did not address at all.

B- Peer-reviewed books and researches:

The first study:

Research title: Intention and Its Effect on Acts of Worship

Researcher's name: Hanâ' Al-Muhâjir Ṭarâbuzunlî.

Type of study: Book.

Publisher: Dâr Al-Nawâdir - Damascus.

Publication date: 1433 AH.

Study size: 560 pages.

Structure of the thesis:

This book includes a preface and three sections:

Section (I): Conditions and divisions of intention, and the divisions of intended acts. This section is subdivided into **three chapters**:

Chapter One: Conditions of intention.

Chapter Two: Divisions of intention and intended acts.

Chapter Three: Deputizing others in the intention for acts of worship.

Section (II): The effect of intention on acts of worship (their timing and how-to). This section is subdivided into **nine chapters**:

Chapter One: The effect of intention on purification with water and dust.

Chapter Two: The effect of intention on the time and how-to of *Salâh*.

Chapter Three: The effect of intention on the time and how-to of *Zakâh*.

Chapter Four: The effect of intention on the time and how-to of *Sawm*.

Chapter Five: The effect of intention on the time and how-to of *I'tikâf*.

Chapter Six: The effect of intention on the time and how-to of *Hajj* and *Umrah*.

Chapter Seven: The effect of intention on *Shari`ah*-based slaughtering.

Chapter Eight: The effect of intention on oaths, vows, and expiations.

Chapter Nine: The effect of intention on Jihad.

Section (III): The objective of *Shari`ah* regarding intention and the purpose for which intention is enjoined. This section is subdivided into **two chapters**:

Chapter One: Types of objectives and highlighting aspects of intention relating to the objectives of *Shari`ah*.

Chapter Two: Aspects of intention relating to the objectives of a *Mukallaf*, pursuant to the rule: "Matters are judged by their objectives."

Comparison between the study above and the current research including the scientific addition it makes:

The book above focuses on studying the effect of intention on acts of worship in brevity. The author prefaced the study by explaining the meaning, ruling, object and forms of intention. Then, in the section (I), she addressed the conditions of intention and explained what invalidates it. After that, she listed the divisions of intention and intended acts. Finally, she concluded the section with tackling the issues of deputizing others in the intention for acts of worship.

In section (II), she dealt with the effect of intention on acts of worship. In doing so, the author listed some effects of intention for each act of worship, focusing on the time and how-to of intention. The author concluded the study with a brief section discussing the *Shari`ah* objective regarding intention and the purpose for which intention is enjoined. In fact, my study agreed with the

plan of the thesis above in addressing the following issues:

- 1- Deputizing in *Zakâh*. (The author addressed this briefly in one page of the book)
- 2- Ruling on intention in *Zakâh*.
- 3- The time of intention in *Zakâh*.
- 4- Ruling on, and time of, the intention of *Zakâh* on commercial commodity.
- 5- Ruling on, and time of, the intention of *Zakâh* on freely grazing livestock.
- 6- Ruling on, and time of, the intention of *Zakâh* on jewelry.
- 7- The how-to of intention in *Zakâh*.

The author addressed all these issues in ten pages, focusing on the ruling on, and time of, intention, without addressing many of the other effects of intention on *Zakâh* issues. Apart from these issues, my research plan does not align with this study. In fact, my research plan addresses issues of intention in *Zakâh* extensively without addressing other acts of worship. Moreover, my study also addresses the effects of intention on the contemporary issues of *Zakâh*.

The second study:

Research title: The Effect of Intention on Paying *Zakâh*.

Researcher's name: Dr. Hâmid ibn Muddah Al-Jad'ânî.

Type of study: Peer-reviewed research.

Publisher: Journal of the Center for Islamic Research and Studies.

Publication date: 1434 AH.

Study size: 61 pages.

Structure of the thesis:

This research includes seven sections:

Section (I): Ruling on requiring intention in *Zakâh*.

Section (II): The how-to and time of intention.

Section (III): The case when a *Zakâh* payer mistakenly expresses a wrong intention.

Section (IV): One who gives in charity without intention and then intends it as *Zakâh* for his property.

Section (V): The case when a *Zakâh* payer expresses an indecisive intention.

Section (VI): Giving the *Zakâh* of unpossessed property with a decisive intention.

Section (VII): Ruling on intention in *Zakâh* when taken by the government.

Comparison between the study above and the current research including the scientific addition it makes:

In the research above, the researcher addressed seven issues related to the intention of giving *Zakâh* without addressing the effects of intention on *Zakâh* issues. Actually, he began with the issue of requiring intention when paying *Zakâh*. To do so, he mentioned the scholarly dispute and highlighted the preponderant view. Then, he discussed the how-to of intention and how to express it verbally. After that, he elaborated on the issue of case when a *Zakâh* payer mistakenly expresses a wrong intention in general. He then discussed paying the *Zakâh* of unpossessed property with a decisive intention, and the ruling on intention in *Zakâh* when taken by the government. However, the research above goes in line with the plan of this thesis in addressing the following issues:

- 1- Ruling on requiring intention in *Zakâh*.
- 2- The how-to and time of intention.
- 3- The case when a *Zakâh* payer mistakenly expresses a wrong intention.
- 4- One who gives in charity without intention and then intends it as *Zakâh* for his property.
- 5- The case when a *Zakâh* payer expresses an indecisive intention.
- 6- Giving the *Zakâh* of unpossessed property with a decisive intention.
- 7- Ruling on intention in *Zakâh* when taken by the government.

Noteworthy, the researcher (may Allah grant him success), however, addressed these issues briefly. In other words, he did not elaborate on citing views, proofs and discussions. Instead, he gave a brief outline of different views and evidence. Also, he overlooked many issues related to the intention of giving *Zakâh*. Apart from these seven issues, the plan of this thesis does not align with the research above.

The third study:

Research title: The Effect of Intention on Real Estate *Zakâh*.

Researcher's name: Dr. Abdul-' Aziz ibn Fawzân Al-Fawzân.

Type of study: Peer-reviewed research.

Publisher: Journal of the Saudi *Fiqh* Association.

Publication date: 1435 AH.

Study size: 60 pages.

Structure of the thesis:

This study includes nine **sections**:

Section (I): The intention of trading is stipulated for *Zakâh* to be due on real estate.

Section (II): Meaning of the required intention of trading as for real estate.

Section (III): Difference between the intention of preserving the property and that of trading.

Section (IV): Difference between the intention of trading and the intention of selling.

Section (V): The case when intention is indecisive or when there is no specific intention.

Section (VI): Inferring the type of intention from circumstantial evidence.

Section (VII): Combining the intention of trading with other intentions.

Section (VIII): The effect of Changing intention the *Zakâh* due on real estate.

Section (IX): The effect of intention in distinguishing between a managing trader and a monopolizing trader.

Comparison between the study above and the current research including the scientific addition it makes:

In the research above, the researcher addressed nine issues related to intention the *Zakâh* due on real estate. The researcher focused on the intention for real estate to the exclusion of other commercial commodities. He prefaced the research by mentioning the scholarly consensus on stipulating the intention of trading for *Zakâh* to be due on commercial commodities. Then, he addressed the meaning of the intention of trading for real estate and the difference between this intention and the intention of preserving property or the intention of selling. After that, he discussed the issue of buying real estate without intention or with an indecisive intention, citing the views of scholars who addressed this issue. Next, he mentioned circumstantial evidence that identify the type of intention. Furthermore, he quoted Al-Mâwardî's statement in his book: "Al-Hâwî Al-Kabîr" regarding how the intention of trading is identified. He then addressed the issues relating to combining the intention of trading with that of possession, and the intention of trading with that of exploitation upon buying the real estate. Also, he discussed changing from the intention of trading to such other intentions mentioned above. Finally, the researcher concluded his study by distinguishing between a managing trader and a monopolizing trader and the effect of intention in this regard.

The research above agreed with my thesis plan in addressing the following issues:

- 1- The difference between the intention of preserving the property and that of trading.
- 2- The difference between the intention of trading and that of selling.
- 3- The case when intention is indecisive or when there is no specific intention.
- 4- Combining the intention of trading with other intentions.
- 5- The effect of changing the intention on the *Zakâh* due on real estate.

Comparison between the study above and the current research including the scientific addition it makes:

With the exception of the issues above, the plan of my thesis does not align with the research above. In fact, the researcher focused in his research on the

effects of intention on the *Zakâh* due on real estate to the exclusion of other types of property and without making any reference to contemporary issues. Besides, he did not address issues related to the intention of paying *Zakâh*, intention of possessing and disposing of property on which *Zakâh* is due. Furthermore, he did not tackle other intention-related issues as far as *Zakâh* and its contemporary issues are concerned.

Research methodology:

I followed the methodology approved by the *Fiqh* Department at the Faculty of *Shari`ah*, which is as follows:

First: I give a detailed and accurate description of the issue under investigation before stating the ruling on it. By doing so, the objective of studying the case becomes crystal clear.

Second: If the issue is an object of consensus, I state the ruling thereon along with the supporting evidence, in addition to tracing the consensus agreement back to its reliable sources.

Third: If the issue is an object of dispute among scholars, I adopt the following approach:

- 1- In case only some aspects of the issue are object of dispute while other aspects are object of consensus, I determine the areas representing the object of dispute.
- 2- I cite the scholarly views on the issue attributing each view to the scholar who holds it. In doing so, I present the scholarly dispute in accordance with the different *Fiqh* currents.
- 3- I Limit myself to acknowledged schools of thought, paying a special attention to those views of the *Salaf* (righteous predecessors) I could come across. If I don't find the issue in a particular school of thought, I derive it through *Takhrij* (referring the legal rulings to their foundations in the respective school of thought).
- 4- I reference the views through quoting them from the books belonging to the respective school of thought.
- 5- I thoroughly cite the evidence supporting the views, deducing the evidential point from the textual evidence, and citing any counter argu-

ments against the evidence and the reply to them if there is any.

- 6- I weigh the views and chose the preponderant one, explain why I opt for it and state the outcome of scholarly dispute if there is any.

Fourth: I rely on primary sources and authentic references in editing, authenticating, *Takhrij*, and compilation.

Fifth: I focus on the research topic and avoid digressions.

Sixth: I pay a special attention to giving examples, especially realistic ones.

Seventh: I avoid citing unsubstantiated scholarly views.

Eighth: I pay a special attention to studying emerging issues that have a clear connection to the research.

Ninth: Any citation from the Qur'an is referenced with the *Ayah's* number and *Surah's* name.

Tenth: I reference Hadiths and quote their classification as to authenticity from Hadith scholars if they are not related in the two *Sahih* collections of Al-Bukhariy and Muslim or at least in one of them. If they are related in one of these collections, I just reference them.

Eleventh: I reference the narrations through quoting them from their original sources and judging their authenticity.

Twelfth: I define terminology and explain unfamiliar words that relate to the main topic.

Thirteenth: I pay attention to grammar and spelling rules and punctuation marks of the Arabic language.

Fourteenth: I provide biographies for less famous figures at their first mention.

Fifteenth: The research conclusion stands for a summary of the thesis giving a clear idea of its content and highlighting the most important results reached through this research.

Sixteenth: I end the thesis with the conventional technical indexes, including:

- Index of Qur'anic *Ayahs*.
- Index of Hadiths.

- **Index of narrations.**
- **Index of notable figures.**
- **Bibliography.**
- **Table of contents**

Thesis plan:

The research plan is organized into an introduction, preface, five sections, conclusion, and indexes.

Introduction: It includes: Significance of the Thesis, Reasons for Choosing this Topic, Research Objectives, Literature Review, research methodology and research organization.

Preface: It includes defining terms of the title, and is divided into **two chapters:**

Chapter One: Intention - its definition, types, and conditions. It is subdivided into three issues:

First issue: Linguistic and *Shari`ah*-based definitions of intention.

Second issue: Types of intention.

Third issue: Conditions of intention.

Chapter Two: Definition, pillars and conditions of *Zakâh*. It is subdivided into **two issues:**

First issue: Linguistic and *Shari`ah*-based definitions of *Zakâh*.

Second issue: Pillars and conditions of *Zakâh*.

Section (I): The effect of intention on the property on which *Zakâh* is due. It is subdivided into **five chapters:**

Chapter One: The effect of intention on *Zakâh* due on livestock. It is, in turn, subdivided into five treatises:

First Treatise: Effect of the intention of possessing livestock on the amount of *Zakâh*. It is subdivided into five issues:

First issue: Possessing livestock with the intention of benefiting from milk and offspring.

Second issue: Possessing livestock with the intention of benefiting from

their working power.

Third issue: Possessing livestock with the intention of trading.

Fourth issue: Possessing livestock with the intention of exploitation.

Fifth issue: Possessing livestock without intention.

Second Treatise: Changing the intention from benefiting from milk and offspring to benefiting from working power and its effect on the *Zakâh* due on livestock.

Third Treatise: The intention of grazing freely. It is subdivided into three issues:

First issue: The effect of the intention of grazing freely on the *Zakâh* due on livestock.

Second issue: The intention to stop grazing freely and its effect on the *Zakâh* due on livestock.

Third issue: The effect of intention on the *Zakâh* due on livestock if possessed by a usurper who husbands them or lets them graze freely.

Fourth Treatise: The effect of intention on *Zakâh* being due on livestock whose possessor caused their damage after the *Hawl*.

Fifth Treatise: The effect of intention on the rulings of *Khultah* (shared *Zakatâble* property) in livestock, and it includes two issues:

First issue: *Khultah* while partners have different intentions for the possession of livestock.

Second issue: The intention for *Khultah* is stipulated for it to be approved.

Chapter Two: The Effect of Intention in the *Zakâh* due on agricultural yield. It is subdivided into three treatises:

First Treatise: The effect of intention on determining the types of crops and fruits on which *Zakâh* is due.

Second Treatise: *Zakâh* on agricultural land that is possessed with the intention of trading.

Third Treatise: The effect of the intention to benefit from the natural products of crops and fruits on judging whether *Zakâh* is due on them.

Chapter Three: The Effect of Intention in the *Zakâh* on gold and silver and debts. It is subdivided into three treatises:

First Treatise: The effect of intention on interrupting the *Hawl* of either gold or silver if any of them is replaced with the other.

Second Treatise: The effect of intention on the *Zakâh* due on a debt that is gifted to others.

Third Treatise: The effect of intention on enjoining the lender to pay the *Zakâh* due on loans.

Chapter Four: The Effect of Intention on the *Zakâh* due on Jewelry. It is subdivided into three treatises:

First Treatise: The effect of intention on judging whether *Zakâh* is due on jewelry.

Second Treatise: The effect of intention on the *Zakâh* due on broken jewelry prepared for use.

Third Treatise: The effect of changing the intention of why jewelry is possessed on judging whether *Zakâh* is due.

Chapter Five: The Effect of Intention in the *Zakâh* due on commercial commodity. It is subdivided into five treatises:

First Treatise: The effect of intention on the beginning and interruption of the *Hawl* for commercial commodity. It is subdivided into four issues:

First Issue: The intention to trade since the time of possessing the property through exchange, and its effect on the *Hawl*.

Second Issue: The intention to trade since the time of possessing the property without exchange, and its effect on the *Hawl*.

Third Issue: Changing the intention from just acquisition to trading, and its effect on *Zakâh*.

Fourth Issue: Changing the intention from trading to just acquisition during the *Hawl*, and its effect on *Zakâh*.

Second Treatise: Rulings on the intention of bidding the time and management in commercial commodity. It is subdivided into three treatises:

First Issue: *Zakâh* due on a trader's property if he intends managing it then

intends bidding the time.

Second Issue: *Zakâh* due on a trader's property if he intends bidding the time then intends management.

Third Issue: *Zakâh* due on a trader's property if he intends to manage a part of his wealth and keep the possession of the other part.

Third Treatise: Purchasing commercial commodity with the intention of trading in return for a durable commodity.

Fourth Treatise: The case when a speculator purchases a tradable property without the intention of trading.

Fifth Treatise: The effect of intention on the *Zakâh* due on usurped agricultural commodity if the usurper uses it in trading.

Section (II): The Effect of Intention on the issues relating to the payment of *Zakâh*. It is subdivided into twelve **chapters**:

Chapter One: Stipulating the intention of paying the *Zakâh*, its how-to and rulings on it in cases of conflict, indecisiveness, or combination. It is subdivided into **five treatises**:

First Treatise: Stipulating the intention of paying the *Zakâh*.

Second Treatise: The how-to of the intention of paying the *Zakâh*. It is subdivided into two issues:

First Issue: Verbal expression of the intention of paying the *Zakâh*.

Second Issue: The requirement of intending obligatory nature when distributing *Zakâh*.

Third Treatise: Mistakenly expressing a wrong intention when paying *Zakâh*.

Fourth Treatise: Expressing an indecisive intention when paying *Zakâh*.

Fifth Treatise: Combining the intention of *Zakâh* with other intentions.

Chapter Two: The time for the intention of paying the *Zakâh*. It is subdivided into three treatises:

First Treatise: Expressing the intention simultaneously as the time of paying the *Zakâh*.

Second Treatise: Expressing the intention prior to paying the *Zakâh*.

Third Treatise: Expressing the intention after paying the *Zakâh*.

Chapter Three: The case when *Zakâh* is collected by the government while the property owner expresses no payment intention. It is subdivided into two treatises:

First Treatise: The case when *Zakâh* is taken from the property owner willingly.

Second Treatise: The case when *Zakâh* is taken from the property owner unwillingly .

Chapter Four: The intention of specifying the property object of *Zakâh* and the beneficiary thereof. It is subdivided into three treatises:

First Treatise: The intention of specifying the property object of *Zakâh*.

Second Treatise: The intention of specifying a part of the property as *Zakâh*.

Third Treatise: The intention of giving *Zakâh* to a specific beneficiary and then giving it to someone else.

Chapter Five: The intention of paying *Zakâh* on a property that is not in possession. It is subdivided into five treatises:

First Treatise: The intention of paying *Zakâh* due on a property whose owner is inaccessible due to being captured or missing.

Second Treatise: The intention of paying *Zakâh* due on an unpossessed property.

Third Treatise: The intention of paying *Zakâh* by the possessor of an ill-gotten property.

Fourth Treatise: The intention of paying *Zakâh* due on the property of light-minded person.

Fifth Treatise: The intention of paying *Zakâh* due on the property of minors and insane persons.

Chapter Six: The effect of intention on deputizing others to pay *Zakâh*. It is subdivided into five treatises:

First Treatise: The intention of paying *Zakâh* by a person deputized to pay it. It is subdivided into two issues:

First Issue: Paying *Zakâh* from the property of the deputizing person.

Second Issue: Paying *Zakâh* from the property of the deputized person on behalf of the deputizing person.

Second Treatise: The deputized person and the deputizing person expressing different intentions when paying *Zakâh*.

Third Treatise: The effect of intention on preferring to deputize others in paying *Zakâh*.

Fourth Treatise: The effect of intention on the ruling on deputizing a non-Muslim in paying *Zakâh*.

Fifth Treatise: Is the intention of one partner sufficient in paying the *Zakâh* due on a shared property?

Chapter Seven: The intention of counting financial maintenance and charitable gifts in feasts and occasions as part of the *Zakâh*. It is subdivided into two treatises:

First Treatise: The intention of counting financial maintenance imposed by the judge as part of *Zakâh*.

Second Treatise: The intention of counting charitable gifts in feasts and occasions as part of the *Zakâh*

Chapter Eight: Giving charity without the intention of paying *Zakâh*. It is subdivided into two treatises:

First Treatise: Giving the whole property in charity without the intention of paying *Zakâh*.

Second Treatise: Giving a part of the property on which *Zakâh* is due in charity without the intention of paying *Zakâh*.

Chapter Nine: The effect of intention on paying *Zakâh* on behalf of others. It is subdivided into four treatises:

First Treatise: The effect of intention on paying *Zakâh* on behalf of a dead person.

Second Treatise: The effect of intention on paying *Zakâh* on behalf of an-

other person with their permission.

Third Treatise: The effect of intention on paying *Zakâh* on behalf of another without their permission.

Fourth Treatise: The effect of intention on reclaiming the *Zakâh* amount from the person on behalf of whom *Zakâh* was paid with their permission.

Chapter Ten: The intention of paying *Zakâh* due on property vowed for charity. It is subdivided into two treatises:

First Treatise: Ruling on the *Zakâh* due on property vowed for charity.

Second Treatise: The intention of paying both the *Zakâh* and the vow together.

Chapter Eleven: The intention of paying the *Zakâh* amount out of a debt or a deposit. It is subdivided into two treatises:

First Treatise: Referring the beneficiary of *Zakâh* to the debtor with the intention of paying *Zakâh*.

Second Treatise: The depositary taking a part of the deposit with the intention of receiving *Zakâh* from the depositor.

Chapter Twelve: The effect of intention on judging whether *Zakâh* is due on *Luqatah* (a lost item found by someone else). It is subdivided into two treatises:

First Treatise: The basic principle regarding *Zakâh* on *Luqatah*.

Second Treatise: The finder paying *Zakâh* due on *Luqatah* if they intend to keep it for themselves.

Section (III): The intention of paying the *Zakâh* in advance and the intention of evading it. It is subdivided into two chapters:

Chapter One: The intention of paying *Zakâh*, in advance. It is subdivided into six treatises:

First Treatise: The effect of intention on the ruling on paying *Zakâh* in advance before the passage of the *Hawl*.

Second Treatise: The intention of paying *Zakâh* in advance before reaching the *Nisâb*.

Third Treatise: The intention of paying in advance the *Zakâh* due on the possessed *Nisâb* plus the amount expected to be acquired before the passage of the *Hawl*.

Fourth Treatise: The intention to count the extra amount given when paying *Zakâh* as *Zakâh* for the next year. It is subdivided into two issues:

First Issue: The excess is given by the *Zakâh* payer.

Second Issue: The excess is taken by the *Zakâh* collector.

Fifth Treatise: The intention to replace the original *Nisâb* with another *Nisâb* if the former damages after paying *Zakâh* in advance.

Sixth Treatise: The intention of heirs to count the amount of *Zakâh* the deceased had paid in advance as their *Zakâh*.

Chapter Two: The intention of evading *Zakâh*. It is subdivided into three treatises:

First Treatise: Disposing of property with the intention of evading *Zakâh*.

Second Treatise: Excessively purchasing real estate and other goods with the intention of evading *Zakâh*.

Third Treatise: Keeping the debt in the debtor's liability with the intention of evading *Zakâh*.

Section (IV): The effect of intention on *Zakâh* beneficiaries and *Zakâtul-Fitr*. It is subdivided into two chapters:

Chapter One: The effect of intention on *Zakâh* beneficiaries and related issues. It is subdivided into ten treatises:

First Treatise: The case when a *Zakâh* collector takes from it if he intends working voluntarily.

Second Treatise: The effect of intention on giving *Zakâh* to an insolvent debtor. It is subdivided into three issues:

First Issue: The effect of intention on the ruling on giving *Zakâh* to an insolvent debtor with the purpose of settling disputes.

Second Issue: Giving *Zakâh* to an insolvent debtor who borrowed with the intention of committing disobedience.

Third Issue: Giving *Zakâh* to an insolvent debtor who borrowed to take from it.

Third Treatise: Absolving an insolvent debtor of debt and counting it as *Zakâh*. It is subdivided into four issues:

First Issue: Absolving an insolvent debtor with the intention of *Zakâh* due on a possessed property.

Second Issue: Absolving an insolvent debtor of part of the debt with the intention of paying *Zakâh* due on the same debt.

Third Issue: Absolving an insolvent debtor of debt wholly or partially with the intention of paying *Zakâh* due on another debt.

Fourth Issue: Absolving an insolvent debtor of the entire debt with the intention of paying the *Zakâh* due on that debt.

Fourth Treatise: Giving the creditor a part of *Zakâh* with the intention of paying off the debt.

Fifth Treatise: The effect of the intention of undertaking a journey for immoral purposes on giving *Zakâh* to a wayfarer.

Sixth Treatise: The effect of intention on giving relatives priority in giving *Zakâh*.

Seventh Treatise: The effect of intention on giving *Zakâh* to a temporary wage earner.

Eighth Treatise: The effect of intention in reclaiming the paid *Zakâh* from someone to whom it was given it but turned out to be undeserving.

Ninth Treatise: The effect of intention on whether paying *Zakâh* to someone thought to be undeserving, but later turns out to be deserving, will fulfil the obligation.

Tenth Treatise: Ruling on delaying the payment of *Zakâh* with the intention of giving it to a more deserving beneficiary.

Chapter Two: The effect of intention on *Zakâtul-Fitr*. It is subdivided into three treatises:

First Treatise: Paying *Zakâtul-Fitr* on behalf of another person without the latter's intention.

Second Treatise: A non-Muslim's intention to pay *Zakâtul-Fitr* on behalf of a Muslim whom the former has to provide for.

Third Treatise: The effect of intention on the ruling on a *Zakâh* institution distributing the expected amounts of *Zakâtul-Fitr* before receiving them.

Section (V): The Effect of Intention on Contemporary *Zakâh* Issues. It is subdivided into ten chapters:

Chapter One: The Effect of Intention on the *Zakâh* of Shares and Real Estate. It is subdivided into eight treatises:

First Treatise: The effect of intention on the *Zakâh* of company shares.

Second Treatise: The criterion for distinguishing between a speculating shareholder and an investing shareholder.

Third Treatise: The effect of intention on initially judging whether *Zakâh* is due on a joint-stock incorporated enterprise.

Fourth Treatise: The effect of the intention possessing shares and real estate on the *Zakâh* due on them. It is subdivided into six issues:

First Issue: Possessing shares and real estate with the intention of biding the time.

Second Issue: Possessing shares and real estate with the intention of keeping possession of the property.

Third Issue: The difference between the intention to sell and the intention to trade in shares and real estate.

Fourth Issue: Possessing shares and real estate without a specific intention.

Fifth Issue: Hesitation between the intention to trade and the intention to invest in shares.

Sixth Issue: Combining both the intention to trade with the intention to invest in shares.

Fifth Treatise: *Zakâh* on investment shares if their possessor intends to donate their profits.

Sixth Treatise: *Zakâh* on shares suspended from trading which are possessed with the intention of trading.

Seventh Treatise: The effect of intention on the *Zakâh* due on a real estate

under construction.

Eighth Treatise: The effect of the intention to rent out a real estate during its construction on judging whether *Zakâh* is due thereon.

Chapter Two: The Effect of Intention on the *Zakâh* due on Investment *Sukûk* (*Shari`ah*-compliant financial certificates through which investors gain partial ownership on an issuer's assets until maturity). It is subdivided into two treatises:

First Treatise: The meaning of investment *Sukûk*.

Second Treatise: The effect of intention on the *Zakâh* due on investment *Sukûk*.

Chapter Three: The Effect of Intention on the *Zakâh* due on Investment Funds. It is subdivided into three treatises:

First Treatise: The meaning of investment funds.

Second Treatise: The effect of intention on the *Zakâh* due on investment funds.

Third Treatise: The effect of intention on the *Zakâh* due on exchange-traded funds.

Chapter Four: The effect of intention on the *Zakâh* due on Takaful insurance base. It is subdivided into two treatises:

First Treatise: The meaning of Takaful insurance base.

Second Treatise: The effect of intention on judging whether *Zakâh* is due on Takaful insurance base.

Chapter Five: The effect of Intention on the *Zakâh* due on moral rights. It is subdivided into two treatises:

First Treatise: The meaning of moral rights.

Second Treatise: The effect of intention on the *Zakâh* due on moral rights.

Chapter Six: The effect of intention on the *Zakâh* due on *Muṣṭaghallât* (rental and lease income generating assets). It is subdivided into five treatises:

First Treatise: The effect of intention on the ruling on the *Zakâh* due on *Muṣṭaghallât*.

Second Treatise: The effect of intention on the *Zakâh* due on income-generating animals to the exclusion of livestock.

Third Treatise: The effect of intention on the *Zakâh* due on assets leased through finance lease.

Fourth Treatise: The effect of intention on the *Zakâh* due on factories. It is subdivided into two issues:

First Issue: The effect of intention on the ruling on the *Zakâh* due on factories.

Second Issue: The effect of intention on the *Zakâh* due on raw materials.

Fifth Treatise: Combining the intentions of both income-generation and durability, and its effect on the *Zakâh* due on *Mustaghallât*.

Chapter Seven: The effect of intention on the *Zakâh* due on contemporary debts. It is subdivided into two treatises:

First Treatise: The effect of intention on the *Zakâh* due on commodity-related debts. It is subdivided into two issues:

First Issue: The effect of intention on the *Zakâh* due on *Salam* (a sale whereby the seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advanced price fully paid at spot).

Second Issue: The effect of intention on the *Zakâh* due on *Istisnâ`* (a long-term contract whereby a party undertakes to manufacture, build or construct assets, with an obligation from the manufacturer or producer to deliver them to the customer upon completion).

Second Treatise: The effect of the debtor's intention on deducting investment and housing debts from the *Zakâh* base. It is subdivided into two issues:

First Issue: The effect of the debtor's intention on deducting investment debts from the *Zakâh* base.

Second Issue: The effect of the debtor's intention on deducting housing debts from the *Zakâh* base.

Chapter Eight: The intention of considering taxes and fees a part of *Zakâh*. It is subdivided into two treatises:

First Treatise: The intention of considering taxes a part of *Zakâh*.

Second Treatise: The intention of considering fees a part of *Zakâh*.

Chapter Nine: The effect of intention on the *Zakâh* due of public property.
It is subdivided into two treatises:

First Treatise: *Zakâh* on non-invested public property.

Second Demand: *Zakâh* on invested public property.

Chapter Ten: The effect of intention on the ruling on investing *Zakâh* funds.

Conclusion: Includes the most notable results and important recommendations.

Indexes are as follows:

- Index of *Ayahs*.
- Index of Hadiths.
- Index of narrations.
- Index of notable figures.
- Bibliography.
- Index of topics.



Preface

Definitions of the terms used in the title, and is divided into two chapters:

Chapter One: Intention - its definition, types, and conditions. This chapter is subdivided into three treatises:

First Treatise: Linguistic and *Shari`ah*-related definitions.

Topic One: Linguistic definition of (*Niyyah*) “Intention”. Linguistically speaking: The noun “*Niyyah*” is derived from the root verb *nawa*⁽¹⁾. The present form is: *yanwi* and the infinitive is *niyyah* and *nawâh*. About the root of this word, Ibn Faris says,⁽²⁾ “Words that include the combination of the letters: *nûn*, *wâw*, and vowel is a root that indicates two meanings, one of which is intention to do something and the other is the hardness”⁽³⁾.

An example of using this root to denote hardness is the word *Nawâh* (lit. the kernel of the date)⁽⁴⁾.

The word *Niyyah* underwent some morphological change to develop from *Niwiyyah* into *Niyyah*. The more famously used form is the one in which the letter *yaa* is doubled (i.e. *niyyah*).⁽⁵⁾ However, there is a less famous form, having the same meaning, which is ‘*Niyah*’ without doubling the *yaa*⁽⁶⁾.

In Arabic, *Niyyah* is used to denote a variety of meanings, including:

1- **Moving:** The Arabic phrase: “*nawa fulan min makan ila akhar*” means:

(1) See: Al-Sihah, taj All-Lughah wa Sahih Al- ‘Arabiyyah, Al-Farabiy, (2516/6), root (N-w-a).

(2) He is: Ahmad ibn Faris ibn Zakariyya ibn Qazwin Al-Qazwiniy Al-Raziyy, Abul-Hussein, one of the prominent language and literature scholars. He was born in 329 AH. He is originally from Qazvin but lived for a while in Hamedan. then moved to Al-Rayy where he died in 395 A.H. His works include: Maqayis Al-Lughah and Jami‘ Al-Ta’wil. For his biography, see: *Siyar A‘lam Al-Nubala’*, by Al-Dhahabiy (103/17), *Al-A‘lam*, by Al-Zarkaliy (193/1).

(3) Maqayis Al-Lughah, Ibn Faris (366/5), , root (N-w-a).

(4) See: Ibid (239/4), Taj Al- ‘Arus, Al-Zubaidi (62/33), root (A-j-m).

(5) See: Taj Al- ‘Arus (139/40), root (N-w-a).

(6) See: Lisan Al- ‘Arab, Ibn Manzoor (15/347), root (N-w-a).

so-and-so moved from one place to another. In fact, linguists view that this meaning is the original one and that other meaning branch out therefrom⁽¹⁾.

- 2- **Intention:** The Arabic phrase: “*fulan yanwi wajh kadha*” means: someone has a specific intention behind his travel or work. Moreover, the phrase “*nawa al-qawm manzilan bi mawdi` khadha*” means: some people intend to settle in a certain place.⁽²⁾
- 3- **Need:** The Arabic phrase: “*li`inda fulan hajah*” means: I need something from someone⁽³⁾.
- 4- **Seeking relentlessly:** The Arabic phrase: “*nawayt al-shay*” means: I seek something seriously and relentlessly.⁽⁴⁾ To the same effect, `Abdullah ibn Mas`ud (may Allah be pleased with him) is reported as saying: “If someone “*nawa*” (i.e. relentlessly seeks) worldly desires, they will be unattainable to him”⁽⁵⁾⁽⁶⁾.
- 5- **Determination:** The Arabic phrase: “*nawa al-shay*” means: someone is determined to do something.⁽⁷⁾ Actually, this meaning is the most common in usage. The author of the *Al-Misbâh Al-Munîr* states: “*Niyyah* is often used to mean determination of the heart to do something.”⁽⁸⁾
- 6- **Safeguarding:** The Arabic phrase: “*hafizaka Allah*” means: may Allah safeguard you⁽⁹⁾.

(1) Maqayis Al-Lughah, Ibn Faris (5/366), , root (N-w-a).

(2) See: *Tahdhib Al-Lughah*, Al-Harawiy (15/399), root (N-w-a).

(3) See: *Al-Sihah* (6/2516), Lisan Al-`Arab (15/348), root (N-w-a).

(4) See: *Taj Al-`Arus* (40/146), root (N-w-a).

(5) Related by Ibn Abu Shaybah in his Musnad, Book Pertaining to: Renouncing worldly pleasures, Chapter: Narrations from Ibn Mas`ud, No. (34552), (106/7). Also related by Al-Bayhaqi in *Al-Madkhal ila Al-Sunn Al-Kubra*, Chapter: Use of truthfulness in knowledge and in everything, No. (786). Also related by Ibn Hajar in *Al-Matalib Al-`Aliyah*, Book Pertaining to: Heart Softeners, Chapter: Beneficial Advices, No. (3125), (89/13). Its chain of narrators is authentic and all the narrators are trustworthy, Also See: *Al-Matalib Al-`Aliyah*, edited by a group of researchers in 18 university theses. (13/90).

(6) See: *Al-Nihayah fi Gharib Al-Hadith wal-Athar*, by Ibn Al-Athir (5/132), root (N-w-a).

(7) See: *Al-Sihah* (6/2516), *Taj Al-`Arus* (40/139), root (N-w-a).

(8) *Al-Misbâh Al-Munir*, by Al-Fayoumi (2/631), root (N-w-a).

(9) See: *Tahdhib Al-Lughah* (15/399), root (N-w-a).

In fact, the usage of the word “*Niyyah*” that corresponds to the purport of this research is the one that denotes intention and determination.

**Topic Two: *Shari`ah*-related definition:** Scholars of *Shari`ah* stated a variety of definitions for intention reflecting a variety of approaches in this regard.

Below, I will cite the most prominent scholarly definitions of intention according to the approach they followed in defining it.

The first approach: Attaching the linguistic meaning of intention to doing deeds sincerely and solely for the sake of Allah the Almighty:

Among the scholars who attach intention to doing deeds sincerely for the sake of Allah is Al-Qâdy Al-Baydâwiy⁽¹⁾ (may Allah have mercy on him), who defined it as:

“The determination to do something solely for the sake of Allah and in compliance with His judgment.”⁽²⁾

In his book “*Al-Talwîh*”, Al-Taftazâniy⁽³⁾ (may Allah have mercy on him) (defined it as: “Intending to obey Allah the Almighty and get closer to Him by any act a person does.”⁽⁴⁾ Moreover, Al-Qastalâniy⁽⁵⁾ (may Allah have mercy on

(1) He is: ‘Abdullah ibn ‘Umar ibn Muhammad ibn ‘Ali Al-Baydâwiy Al-Shiraziyy Al-Shafi‘i. He is surnamed Abu Sa‘id and Abu Al-Khayr and nicknamed Nassir Al-Din. He was surnamed Al-Baydâwiy as attributed to the city of Al-Bayda’ in Persia. He was a prominent judge and scholar of *Fiqh* and its principles (*Uṣul*). Among his works are: *Minhaj Al-Wusul ila ‘Ilm Al-Uṣul*, *Anwar Al-Tanzil wa Asrar Al-Tawil* (Qur’an exegesis), and *Tuhfat Al-Abrar*. He died in Tabriz in 685 AH or in 691 AH, according to some scholars. For his biography, see: *Tabaqat Al-Shafi‘iyyah*, by Al-Subakiyy (8/158-157), and *Shadharat Al-Dhahab*, by Al-‘Akriyy (7/686).

(2) *Tuhfat Al-Abrar*, by Al-Baydâwiy (1/20).

(3) He is: Mas‘ud ibn ‘Umar ibn ‘Abdullah Al-Taftazaniyy, surnamed Sa‘d Al-Din. He was born in Taftazan in Persia. He was a prominent scholar in a variety of fields of knowledge, and annotated many books. Among his works are: *Al-Talwîh fi Kash Ghawamid Al-Tawdih*, *Tahdhib Al-Mantiq*, and *Sharh Al-Qawa‘id Al-Nasafiyyah*. He died in Samarkand in 791 AH.

For his biography see: *Al-Durar Al-Kaminah fi A‘yan Al-Mi‘ah Al-Thaminah*, by Ibn Hajar (6/112), and *Shadharat Al-Dhahab* (8/547).

(4) *Al-Talwîh ‘ala Al-Tawdih*, by Al-Taftazaniyy (1/175).

(5) He is: Ahmad ibn Muhammad ibn Abu Bakr ibn ‘Abdul-Malik Aal-Qastalaniyy Al-Qutai-biyy Al-Masriyy Al-Shafi‘iyy, surnamed Abu Al-‘Abbas and nicknamed Shihab Al-Din. He was a scholar of Hadith, *Fiqh*, and *Qira‘at* (Qur’anic Modes of Recitation). He mastered=

him) defined it as: "Doing acts while seeking Allah's pleasure and in compliance with His commands."⁽¹⁾

Furthermore, Al-Hajjâwiy⁽²⁾ (may Allah have mercy on him) stated, "As far as *Shari'ah* is concerned, intention means the determination of the heart to do an act of worship in order to draw closer to Allah the Almighty."⁽³⁾

However, it is argued that these definitions are not all-inclusive, since intention in the *Shari'ah*-related context is not confined to doing actions; rather, its scope is extended to include also saying something or abstaining from doing something.⁽⁴⁾

Also, restricting the intention to dedicating acts for the sake of Allah is inappropriate, since such dedication is beyond the scope of intention. To clarify, such dedication might not occur without intention, whereas intention might occur without dedication. In other words, intention may or may not be purely dedicated to Allah the Almighty.⁽⁵⁾

This is indicated by the Hadith that reads, "Deeds are to be judged only by intentions, and a man will have only what he intended. When one's emigration is to God and His Messenger, his emigration is to Allah and His Messenger; but when his emigration is to a worldly end at which he aims, or to a woman whom he marries, his emigration is to that to which he emigrated."⁽⁶⁾

= the art of compilation and editing. Moreover, he was incomparable in preaching. His works include: *Irshad Al-Sari fi Sharh Sahih Al-Bukhariy*, *Al-Mawahib Al-Laduniyyah bil-Minah Al-Muhammadiyyah*. He died in 923 AH. For his biography, see: *Shadharat Al-Dhahab* (10/169), *Al-Kawkitab Al-Sa'irah fi A'yan Al-Mi'ah Al-'Ashirah*, by Al-Ghazi (1/129).

(1) *Irshad Al-Sari*, Al-Qastalani (1/52).

(2) He is: Musa ibn Ahmad ibn Musa Al-Hijjawi Abu Al-Naja Sharaf Al-Din. He was nicknamed Al-Hijjawi as attributed to (Hajjah) one of the villages of Nablus. He was the Mufti of the Hanbalis in Damascus. He was the only scholar of his age to edit the school of Imam Ahmad. Furthermore, he was a practicing scholar who renounced worldly pleasures. Among his works are: *Al-Iqna'*, *Zad Al-Mustaqni'*, and *Hashiyat Al-Tanqih*. He died in 968 AH. For his biography, see: *Al-Kawkitab Al-Sa'irah fi A'yan Al-Mi'ah Al-'Ashirah* (3/192), *Al-A'lam*, by Al-Zarkali (7/320).

(3) *Al-Iqna'*, by Al-Hijawi (1/106).

(4) See: *Al-Niyyah wa Atharuha fil-Ahkam Al-Shar' iyyah*, by Salih Al-Sadlan (1/103).

(5) See: *Al-Ashbah wal-Naza'ir*, by Al-Suyuti (p. 20), *Maqasid Al-Mukallafin*, by Omar al-Ashqar (p. 29).

(6) Referenced above. See p. 7 of this book.

In fact, these definitions quoted above only apply to a special type of intention, i.e. the intention to perform acts of worship such as *Salâh* (prayers), fasting, Hajj, etc.

The second approach: confining the linguistic meaning of intention to the intention that sorts deeds out: Belonging to this category is the definition given by Al-Azhariy⁽¹⁾ to the effect that: "Intention is the determination of the heart to perform either an obligatory or supererogatory act of worship."⁽²⁾ This definition was accredited by Al-Nawawiy⁽³⁾ (may Allah have mercy on him) and others.⁽⁴⁾

Al-Qirâfiy⁽⁵⁾ (may Allah have mercy on him) defined intention as: "Having a specific heart intention behind any act."⁽⁶⁾

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- (1) He is Muhammad ibn Ahmad Al-Azhariy Al-Harawiy, surnamed Abu Mansur. He was a prominent linguist and *Fiqh* scholar. He was born, and died, in Harah in Khurasan, to which he is attributed. He was called Al-Azhariy because his grandfather's name was Al-Azhar. He paid a special attention to *Fiqh* till the extent that he became famous in this field. Then he thoroughly studied the Arabic language and made lengthy journeys seeking knowledge in this field. Moreover, he visited Arab tribes to know more about their traditions. While doing so, he was captured by Al-Qaramitah (a deviating Shiite group). Among his works are: *Gharib Al-Alfaz allati Ista'malaha Al-Fuqahah'* and *Tahdhib Al-Lughah*. He died in 370 AH. For his biography, see: *Siyar A'lam Al-Nubala'*, by Al-Dhahabiy (16/361), *Al-A'lam*, by Al-Zarkaliy (5/311).
 - (2) *Al-Zahir fi Gharib Al-faz Al-Shafi'iyi*, by Al-Azhariy (p. 24).
 - (3) He is Yahya ibn Sharaf ibn Marri, Muhyiddin Abu Zakariya Al-Nawawiy. He was born in Nawa but then moved to Damascu. He is one of the investigating scholars. He used to recite on a daily basis twelve lessons to his teachers in a variety of fields of knowledge. Then, he excelled in *Fiqh*, Hadith and linguistics. He was considered the editor and reviser of the Shafi'i school of thought. His works include: *Al-Majmu' Sharh Al-Muhadhab* and *Rawdat Al-Talibin*. He died in 676 AH. See his biography in: *Tabaqat Al-Shafi'iyin*, by Ibn Kathir (1/909) and *Tabaqat Al-Shafi'iyah*, by Ibn Qadi Shahba (2/153).
 - (4) See: *Al-Majmu'*, Al-Nawawiy (1/310), and *Nihayat Al-Ahkam* (p.8).
 - (5) He is: Ahmad ibn Idris ibn Abdul-Rahman Al-Sanhajiy Al-Qirafiy Al-Magry Al-Malikiy, Abul-'Abbas, surnamed Shihab Al-Din. He was the head of the Maliki school thought and was a prominent scholar in the fields of *Fiqh* and *Uṣul*. He was a student of Al-'Izz ibn 'Abdul-Salam. Among his renowned works are: *Anwar Al-Buruq fi Anwa' Al-Furuq*, *Sharh Tanqih Al-Fuṣul*, and *Al-Dhukhirah*. He died in 684 AH. For his biography, see: *Al-Dibaj Al-Mudh-hab*, by Ibn Farhun (1/236), *Shajarat Al-Nur Al-Zakiah*, by Muhammad Makhluḥ (1/270).
 - (6) *Al-Dhakhirah*, by Al-Qirafiy (1/204).

Similarly, it is argued that these two definitions do not provide an inclusive purport of the *Shari'ah*-related meaning of intention. To clarify, intention, according to scholars, is of a wider scope than just being related to actions and deeds. Moreover, scholars stated that rulings are established by just intention in some cases. For example, one who intends to denounce Islam is judged as disbeliever based on just his intention.⁽¹⁾ Another example, according to some scholars, is judging the one who intends to break the fast to have already broken it.⁽²⁾

The third approach: confining the linguistic meaning of intention to mentioning its time in relation to the deed: This approach is adopted by many Shafi'i scholars including Al-Mawardiyy⁽³⁾ (may Allah have mercy on him), who defined it as: "Making the intention for something simultaneously at the time of doing it."⁽⁴⁾ The same was adopted by a group of Shafi'i scholars⁽⁵⁾ who also limited the scope of intention to that type of intentions that accompanies deeds.

Among the scholars who adopted this approach is Ahmad Bey Al-Husayniyy⁽⁶⁾ (may Allah have mercy on him), who defined intention as: "Intention

(1) See: *Minhaj Al-Talibin*, by Al-Nawawiy (293), and *Al-Manthur fil-Qawa'id Al-Fiqhiyyah*, by Al-Zarkashiy (3/298).

(2) See: *Al-Dhakirah* (2/520), and *Kash-shaf Al-Qina'*, by Al-Buhutiy (3/316).

(3) He is: 'Aliy ibn Muhammad ibn Habib Al-Basriy Al-Mawardiyy Al-Shafi'iy, surnamed Abul-Hassan. He is a prominent scholar, who authored many books and assumed the position of the chief judge in various countries. Then, he settled in Baghdad. He composed many books in *Fiqh*, Qur'an exegesis, *Usul*, and literature. He was well-versed in the principles of his school of thought. Among his works are: "*Adab Al-Dunya wal-Din*", "*Al-Hawi Al-Kabir*", and "*Al-Ahkam Al-Sultaniyyah*". He died in 450 AH. For more about his biography, see: "*Siyar A'lam Al-Nubala'*", (18/64), and "*Tabqat Al-Shafi'iyyah*", by Ibn Qadi Shuhbah (1/230).

(4) Ibn Al-Rafi'ah, Al-Shirbiniy and others reported this definition from him. See: "*Kifayat Al-Nabih*", by Ibn Al-Rafi'ah (1/266), and "*Mughni Al-Muhtaj*", by Al-Shirbini (5/427).

(5) See: "*Asna Al-Matâlib*", by Zakariyya Al-Ansari (1/28), and "*Tuhafat Al-Muhtaj*" by Al-Haythamiy (1/195).

(6) He is: Ahmad ibn Ahmad ibn Yusuf Al-Husayniy, surnamed Shihab Al-Din. He was one of the Shafi'i scholars. He was born and died in Cairo. He spent his free time studying at Al-Azhar. When the courts were established, he practiced the lawyer profession and excelled in it. Then, he devoted himself to composing. Among his works are: "*T'lam Al-Bahith bi Qubh Um Al-Khaba'ith*", "*Al-Bayan fi Asl Takwin Al-Insan*", and "*Nihayat Al-Ihkam fi Bayan Ma lil-Niyyah min Ahkam*". He died in 1332 AH. For more about his biography, =

is an inclusive term that includes the intention and determination accompanying a certain deed.”⁽¹⁾ Following the same approach, Dr. Ṣāliḥ Al-Sadlān⁽²⁾ (may Allah have mercy on him) added the concept that any deed should be preceded by intention. He gave the following definition: “Intention is a respectively inclusive term that includes intention and determination that precedes a certain deed or accompanies it in some cases.”⁽³⁾

However, the same criticism directed to the second approach is directed to this approach, i.e. confining the scope of intention to be related just to deeds makes the definition non-inclusive taking into account that intentions do not necessarily relate to deeds as mentioned above. Moreover, this approach is also criticized from the viewpoint that there is no need to state that intention accompanies the deed in the definition because its time as to the deed is not a part of its identity. By the same token, there are intentions that are not time-bound because they are not related to any deeds.

Perhaps the reason for stipulating the above restrictions in the definition is that those who give such definitions focus on a specific type of intentions, namely intentions related to deeds. An example of this is the intention to do a certain act of worship. Such intention, in fact, accompanies , or slightly precedes such an act of worship.⁽⁴⁾ Undoubtedly, the scope of intention, in a *Shari`ah*-related context, is too wide to be confined to this limit.

The fourth approach: defining intention as knowledge:

Ibn Al-Qayyim⁽⁵⁾ (may Allah have mercy upon him) stated that intention

= See: *Al-A`lam* (1/94), *Mu`jam Al-Mu`allifin*, by Kaḥḥala (1/157).

(1) *Nihayat Al-Iḥkam* (p. 9).

(2) He is: Ṣaliḥ ibn Ghanim ibn `Abdullah Al-Sadlan, a professor of graduate studies at the College of *Shari`ah* at Imam Muhammad bin Saud Islamic University. He is one of the scholars of Saudi Arabia. He was a student of Sheikh Muhammad ibn Ibrahim Al-Sheikh, Sheikh `Abdullah ibn Ḥamid, and Sheikh Abdul `Aziz ibn Baz. He composed many works, including: "*Al-Niyyah wa Atharuha fi Al-Aḥkam Al-Shar`iyyah*", "*Al-Qawa'id Al-Fiqhiyyah Al-Kubra*", and "*Al-Wakalah fi Al-Khususmah min Manzur Shari`iy wa Nizamiy*". He died in 1439 AH. For more about his biography, see: *Al-Sirah Al-Dhatiyyah lil-Sheikh Ṣaliḥ Al-Sadlan*, by Al-Gharriri (16-13), and *Ṣaliḥ Al-Sadlan Al-`Alim Al-Insan*, by `Abduḥ Al-Asmariy in Al-Jazirah newspaper: <https://www.al-jazirah.com/2020/20201207/ln16.htm>.

(3) *Al-Niyyah wa Atharuha fi Al-Aḥkam Al-Shar`iyyah* (1/103).

(4) *Al-Niyyah wa Atharuha fi Al-Aḥkam Al-Shar`iyyah* (1/103).

(5) He is: Abu `AbduAllah Muhammad ibn Abu Bakr ibn Ayyub Al-Zar`iy Al-Dimashqi, =

is: "Being aware of what you do and your objective thereof."⁽¹⁾ This definition aligns with the principle: "Intention follows knowledge," which applies to intentions relating to deeds. Therefore, Ibn Al-Qayyim defined it as such within the context of discussing intentions related to deeds.

In fact, it is inaccurate to make intention equivalent to knowledge. This is because knowledge is a condition for the validity of intention but does not fully capture its essence.⁽²⁾ Al-Haddâd Al-Zubaydiy,⁽³⁾ among others, also defined intention as knowledge in his work "*Al-Jawharah Al-Nayyirah*" (The Shining Gem), stating: "Intention is the knowledge that precedes a subsequent deed."⁽⁴⁾ However, this definition does not apply to intention since knowledge and intention are distinct. To clarify, knowing something does not necessarily mean intending to do it. For example, if someone knows about *Kufr* (disbelief), it does not mean he is a disbeliever unless he intends to be so.⁽⁵⁾

The fifth approach: defining intention in a way that corresponds to its linguistic meaning:

Al-Zarkashiy⁽⁶⁾ says about intention: "It is the connection between inten-

= known as Ibn Qayyim Al-Jawziyyah. He was born in 691 AH. He excelled in all fields of Islamic knowledge and was unrivaled in some of them. Among his teachers was the Sheikh of Islam, Ahmad ibn Taymiyyah, and among his students was Ibn Rajab. He has numerous valuable works, including: '*Ilam Al-Muwaqqi' in*', '*Al-Tabyan fi Aqşam Al-Qur'an*', and '*Zad Al-Ma'ad*'. He died in 751 AH. For more about his biography, see: '*Dhayl Tabaqat Al-Hanabilah*' (5/170), '*Al-Maqṣad Al-Arshad*', by Ibn Muflīh (2/384).

(1) *Badi' Al-Fawa'id*, by Ibn Al-Qayyim (3/189).

(2) See: *Al-Bina' Sharh Al-Hidayah*, by Al-'Ayniy (2/140).

(3) He is: Abu Bakr ibn 'Aliy Al-Haddad Al-Zubaydiy Al-Hanafiy Al-Yamaniy. He excelled in various fields of knowledge and got a high reputation. He authored works on *Hanafi Fiqh* that were unparalleled in Yemen. He was a pious scholar who renounced worldly pleasures. Among his works are: *Al-Siraj Al-Wahhaj* and *Al-Jawharah Al-Nayyirah*, both of them were commentaries on *Mukhtasar Al-Quduriy*. He also authored a Qur'an exegesis called: *Tafsir Al-Haddad*. He died in 800 AH. For more about his biography, see: *Al-Badr Al-Tali'*, by Al-Shawkaniy (1/166), and *Al-A'lam* (2/67).

(4) *Al-Jawharah Al-Nayyirah*, by Al-Haddad Al-Zubaydiy (1/48). Also see: *Al-Kulliyat*, by Al-Kafwi (p. 903).

(5) See: *Al-Bina' Sharh Al-Hidayah* (2/140).

(6) He is: Muhammad ibn Bahadir ibn 'Abdullah Al-Zarkashiy Al-Shafi'iy, surnamed Abu 'Abdullah. He was of Turkish origin but born and died in Egypt. He was a scholar of *Fiqh*, *Uṣul*, Hadith, literature, and Quranic sciences. He was a teacher and a Mufti. He traveled =

tion and what is intended.”⁽¹⁾ Some Hanbali scholars defined it as “Giving a purpose for what is intended.”⁽²⁾ In fact, these two definitions align with the linguistic meaning of intention, which is of a general purport and not restricted to a specific deed, time, or sincere devotion to Allah. However, it is argued these definitions redundantly relate intention to what is intended or to the intended purpose. In fact, it goes without saying that intention serves as the purpose for what is intended. Additionally, the Hanbali definition stands for a circular argument, taking into account that knowing the meaning of what is intended⁽³⁾ depends on knowing the meaning of intention.

Examining the usage of the term "intention" by scholars, we will come to the conclusion that the fifth approach is the preponderant one. Actually, scholars used this term in way that corresponds with its linguistic meaning without any restriction. In fact, there are many examples for this usage. For example, some scholars stated that fasting is invalidated by just intending to break it even if no action is taken.⁽⁴⁾ Other scholars also stated that a freely-grazing animal becomes stall-fed merely by intention.⁽⁵⁾ In fact, this is how the term "intention" is used technically in *Shari`ah*-related contexts. Actually, it is used in a general sense without being restricted to sincere devotion to Allah, to deeds or to time. Noteworthily, the definitions above expressed intention using different words. Some of them expressed intention as "*Irâdah*" (lit. will), others as "*qasḍ*" (purpose) and others as "*‘azm*" (determination). In fact, these three words are close in meaning to "*Niyyah*" (intention). Therefore, Al-Nawawiy said, "Will, purpose, determination, and intention are synonyms and one can be used interchangeably in a metaphorical sense"⁽⁶⁾. Below, I will cite the defi-

= to Halab (Aleppo) where he studied Hadith in Damascus. He composed numerous significant works, including: '*Al-Baḥr Al-Muḥit fi Usul Al-Fiqh*', '*Al-Burhan fi ‘Ulum Al-Quran*', and '*Al-Manthur fi Al-Qawa‘id Al-Fiqhiyyah*'. He passed away in 794 AH. For his biography, refer to: '*Al-Durar Al-Kaminah*' (5/133) and '*Shudhur Al-Dhahab*' (8/572).

(1) *Al-Manthur* (Volume 3, Page 284).

(2) Al-Mardawiy quoted it from *Al-Mustaw‘ab* and *Sharḥ Ibn ‘Ubaydan*. See: *Al-Insaf*, by Al-Mardawiy (1/143).

(3) *Qa‘idat Al-Umur bi Maqasidiha*, by Ya‘qub Al-Baḥsîn (Page 46).

(4) See: *Manāḥij Al-Taḥṣīl*, by Al-Rajrajiy (2/137), and *Maṭālib ‘Ulī Al-Nuḥa*, by Al-Ruḥay-bāniy (2/188).

(5) See: *Fath Al-Qadir*, by Ibn Al-Hammam (2/169), and *Al-Baḥr Al-Ra‘iq*, by Ibn Nujaym (2/226).

(6) *Al-Majmu‘* (1/317).

nitions of each of these terms and explain the difference between them and intention in order to decide on the closest term that can indicate intention most accurately: **First: definition of Irâdah and the difference between it and intention.** Linguistically speaking, *Irâdah* means will. The Arabic expression: “*arada al-shay*” means: someone wills to do something.⁽¹⁾

In a *Shari`ah*-related technical context, it is defined as “an inclination to do something after believing it to be beneficial”.⁽²⁾

Difference between *Irâdah* (will) and intention can be found in the following aspects:

- 1- *Irâdah* is of a more comprehensive meaning than intention. According to Al-Qirâfiy, It includes intention as well as other meanings such as determination, hope, desire, purpose, choice, decree, care and destiny.⁽³⁾ All these ten meanings fall under the scope of will.
- 2- *Irâdah* is broader than intention in terms of its relation to deeds. To clarify, *Irâdah* can be related to the deeds of the person who wills himself, e.g. a person wills to travel, or to the deeds of other persons, e.g. a person wants someone else to do something. Intention, on the other hand, is related to the deeds of only the person who intends.⁽⁴⁾
- 3- *Irâdah* is of a more specific purport than intention in one aspect, namely *Irâdah* is collocated only to possible desires, while intention can collocate both with possible and impossible desires.⁽⁵⁾

In fact, Ibn Al-Qayyim and Dr. `Umar al-Ashqar mentioned this third difference. However, it cannot be taken for granted. In fact, *Irâdah* can also collocate with impossible desires, e.g. a blind person desiring to see.

Second: definition of Qaṣd (purpose) and the difference between it and intention.

Linguistically speaking, *qaṣd* means to go towards something and head for it.⁽⁶⁾ In technical terms, it means a firm will. Other scholars also defined it as

(1) See: *Al-Sihāh*, (2/478), *Lisān Al-`Arab*, (3/191), root 'r-w-d'.

(2) *Al-Ta`rifat*, by Al-Jurjaniy (p. 16). (3) *Al-Umniyah fi Idrak Al-Niyyah* (p. 7).

(4) See: Ibid, *Qa'idat Al-Umur bi Maqasidiha* (p. 40).

(5) See: *Badi' Al-Fawa'id* (3/190), *Maqasid Al-Mukallafin* (p. 28).

(6) See: *Al-Sihāh* (2/524), *Maqayis Al-Lughah* (5/95), *Taj Al-`Arus* (9/36), root 'q-s-d'.

deciding a specific matter.⁽¹⁾

Ibn Al-Qayyim listed two differences between *qasḍ* and intention:

- 1- *Qasḍ* is of a broader purport than intention in one aspect, namely it can collocate with both the deeds of the person who makes *qasḍ* and the deeds of others as well. On the other hand, intention collocates with the deeds of only the person who intends.⁽²⁾

However, some scholars argue that *qasḍ* collocates specifically with the deeds of only the person who makes *qasḍ* to the exclusion of others. Thus, this differentiation is groundless. Accordingly, *qasḍ* and intention cannot be differentiated through this supposition.⁽³⁾

- 2- *Qasḍ* is of a more specific purport than *Niyyah* (intention) from the viewpoint that it only collocates with those things that are within the capability of the one who makes *qasḍ*. As for *niyyaah*, it can collocate with things both within and beyond the capability of the one who makes *qasḍ*.⁽⁴⁾ An example of this is the Hadith narrated on the authority of Abu Kabshah Al-Anmariy⁽⁵⁾ (may Allah be pleased with him) in which the Prophet (peace be upon him) said: *"Indeed, this world is for four types of people: A servant whom Allah has provided with wealth and knowledge, so he fears his Lord with it, maintains ties of kinship with it, and knows Allah's rights in it. This is the best of stations. And a servant whom Allah has provided with knowledge but not wealth, so he is sincere in his intention, saying, 'If I had wealth, I would do as so-and-so did.' So he is rewarded for his intention, and their reward is the same. And a*

(1) See: *Maqasid Al-Mukallafin* (p. 19), *Qa'idat Al-Umur bi Maqasidiha* (p. 28).

(2) See: *Bada'i' Al-Fawa'id* (3/190).

(3) See: *Al-Furuq Al-Lughawiyyah*, by Al-'Askariy (1/126), *Qa'idat Al-Umur bi Maqasidiha* (p. 28).

(4) See: *Bada'i' Al-Fawa'id* (3/190).

(5) He is: 'Umar ibn Sa'd Al-Anmariy Al-Madhaji, surnamed Abu Kabshah, for which he is famous. However, his exact name is an object of dispute among scholars. Some scholars said that his name is: 'Umayr ibn Sa'd, while others said it is: Sa'id ibn 'Umar, among other suggestions. He was a Companion of the Prophet. He also narrated from the Prophet and Abu Bakr. He migrated to Syria with 'Umar (may Allah be pleased with him) and settled there. I could not come across the date of his death. For his biography, see: *Tahdhib Al-Kamal*, by Al-Mazziy (34/213), and *Al-Isabah* (7/283).

servant whom Allah has provided with wealth but not knowledge, so he spends his wealth recklessly without knowledge, neither fearing his Lord with it, nor maintaining ties of kinship with it, nor knowing Allah's rights in it. This is the worst of stations. And a servant whom Allah has not provided with wealth or knowledge, so he says, 'If I had wealth, I would do as so-and-so did.' So he is burdened with his intention, and their sin is the same.⁽¹⁾

Thus, the Prophet (peace be upon him) stated that *niyyah* can collocate with even things beyond the capability of the speaker.

Second: definition of 'Azm (determination) and the difference between it and intention. Linguistically speaking, *'azm* indicates determination and decisiveness. The Arabic expression: "*'azm 'ala amr*" means: to be determined decisively and firmly to do something.⁽²⁾

In technical terms, *'azm* is resolving with determination and without hesitation.⁽³⁾

Scholars listed the following differences between 'azm and intention:

- 1- *'Azm* indicates resoluteness and decisiveness unlike *niyyah* (intention). Accordingly, *'azm* is higher in rank than *niyyah*.⁽⁴⁾
- 2- *'Azm* is of a more specific purport than *niyyah* from the perspective that it precedes the deed and relates to the future. In other words, it does not occur simultaneously with the deed. In contrast, *niyyah* often accompanies the deed and may precede it and relate to the future.⁽⁵⁾

After explaining the meanings of these three terms and differentiating them from intention, it becomes apparent that the terms: "*irâdah*" and "*qasḍ*" are very close in meaning. However, *irâdah* is of a more general purport, while

(1) Related by Al-Tirmidhiy in his *Jami'*, Books Pertaining to: renouncing worldly pleasures, chapter: The Hadith: The similitude of this world is four people..., No. (2325), (4/562), and commented, 'This Hadith is good and authentic,' *Jami' Al-Tirmidhiy* (4/563). Also related by Ibn Majah in his *Sunan*, Book Pertaining to: renouncing worldly pleasures, chapter: intention, No. (4228), (2/1413).

(2) See: *Al-Sihah* (5/1985), *Lisan Al-'Arab* (12/399), root "'a-z-m'.

(3) See: *Al-Ta'rifat* (p. 16).

(4) See: *Al-Dhakhirah* (1:240), *Qa'idat Al-Umur bi Maqasidiha* (p. 42).

(5) See: *Al-Furuq Al-Lughawiyah* (1/124), and *Hashiyat Ibn 'Abidin* (1/105).

intention is of a more specific one as the latter does not collocate with impossible things. As for "*azm*", it is stronger than *niyyah* as it indicates determination and decisiveness. Accordingly, it is oversimplifying to consider *niyyah* and *azm* synonyms.

In fact, *irâdah* is used to express intention in many occurrences in the Quran, as in the Ayah that reads: {**"Among you are some who desire the worldly life, and among you are some who desire the Hereafter"**}. [Âl- 'Imrân (The Household of 'Imrân): 152]. The same applies to the Ayah that reads: {**"If they intend to do right, Allah will bring them together..."**}. [An-Nisâ' (Women): 35]. As we see in the Ayah above, the word "*yurida*" (a present verb derived from *irâdah*) in the original Arabic Qur'an is translated into: "intend".⁽¹⁾

Based on the facts above, intention can be defined as: "Willing and intending something, whether it is within or beyond capability." The phrase "intending something" in the definition is added to exclude other types of *irâdah* that do not coincide in meaning with intention. The phrase: "whether it is within or beyond capability" is added as a qualification to exclude *qasḍ* in its technical sense, which does not apply to things beyond capability.

Second Treatise: Types of Intention:

Intention is divided into two main types and several subcategories. These subcategories vary in regard to generality and specificity. To clarify, some subcategories have a general purport that includes all types of intention, others are of a specific purport indicating a particular type, such as the intention for acts of worship or verbal intention. Following is an explanation of such a division:

First: The Main Division of Intention:

Scholars state that intentions of a *Mukallaf* are divided into two main types:

Firstly, an intention that indicates willing to embark on something, were it practical, verbal, omissive, or relating to belief. Actually, this is the type of intention meant by the scholarly term of *Niyyah*. It is called direct intention because it is related to what is intended directly.⁽²⁾ Among the purposes of this type of intentions is to distinguish between such things the reasons and motives for performing actions. For example, presenting a product for sale may

(1) See: *Al-Tahrir wal-Tanwir*, by Ibn 'Ashur (5:47).

(2) See: *Maqasid Al-Mukallafin* (p. 109).

be done with the intention of trading or with the intention of just getting rid of it. Although the action is the same in both cases, the intention is what makes each of them distinct. Likewise, it is intention that distinguishes between the different indications of words used in oaths and vows.⁽¹⁾

Secondly, an intention that indicates doing acts sincerely for the sake of Allah and seeking His satisfaction to the exclusion of any other purpose.

Such other purposes include for example associating partners with Allah, showing off, seeking reputation, or flattering people to gain their praise and affection, etc. This type of intentions is called indirect intention because it is not related to the action itself but to the purpose behind performing the action. Moreover, it does not distinguish a type of actions from other types; rather, it distinguishes the one for the sake of whom the action is performed.⁽²⁾

About this classification, Sheikh Al-Islam Ibn Taymiyyah⁽³⁾ (may Allah have mercy on him) said: “*Niyyah* in the scholarly jargon generally falls within two types. To clarify, they sometimes use it to indicate such an intention that distinguishes one act of worship from another. On the other hand, they sometimes use it to indicate such an intention that distinguishes the deity for whom the act is done from another. Examples of the first type of usage include answering such questions as: whether intention is required for ending the state of ritual impurity, whether it is required for the validity of the fasting intention to be specified and made at night, and similar issues. Examples of the second type of usage include distinguishing between doing action sincerely for the sake of Allah and showing off or seeking reputation.”⁽⁴⁾

(1) See: *Qa'idat Al-Umur bi Maqasidiha* (p. 87).

(2) See: *Majmu' Al-Fatawa*, by Ibn Taymiyyah (18/256), *Maqasid Al-Mukallafin* (p. 109).

(3) He is: Ahmad ibn 'Abdul-Halim ibn 'Abdul-Salam Al-Harraniy, nicknamed Taqiyy Al-Din, Shaykh Al-Islam, surnamed Abu Al-'Abbas, known as Ibn Taymiyyah. Born in Harran, he later moved to Damascus, where he excelled and gained fame. He then moved to Egypt, where he faced hostility from some groups and was imprisoned but was later released and returned to the Levant. He was a distinguished scholar in *Fiqh*, *Usul*, Qur'an exegesis, Hadith, and creed. He is considered one of the prominent scholars of the *Ummah*, with many significant works, including: *Minhaj Al-Sunnah*, *Dar' Ta'arud Al-'Aql wal-Naql*, and *Majmu' Al-Fatawa*. He passed away in Damascus in 728 AH. For more about his biography, see: *Al-Durar Al-Kaminah* (1/168), *Shadharat Al-Dhahab* (8/142).

(4) See: *Majmu' Al-Fatawa* (18/256).

In fact, first type is the most commonly discussed in this thesis and is usually the focus when dealing with subsidiary *Shari'ah* rulings. As for the second type, which is the intention indicating dedicating actions for the sake of Allah, it can be sought in books on monotheism, spirituality, and ethics.⁽¹⁾

Second: general classification of the forms of intention:

This classification covers all the forms of intention, including intentions for acts of worship and for such other things as transactions and the like. Also, it includes the intention for things that are practical, verbal, or relating to belief. In this regard, intention is classified based on two considerations:

The first consideration: Classification of intention based on its actual existence or non-existence.

Under this consideration, intention is divided into two types:

- 1- **Actual explicit intention:** This is an intention that is present, thought of, and expressed without vagueness. This type of intentions is required at the beginning of acts of worship but not necessarily throughout their duration. This is because it is difficult to constantly maintain and express the intention throughout the entire duration of the act of worship.
- 2- **Implicit intention:** This refers to a type intention that is not explicitly expressed in any way. Rather, they are considered by *Shari'ah* to be existent so long as there is nothing to contradict it after the actual explicit intention is expressed.⁽²⁾

An example of this type in performing acts of worship is expressing the intention for fasting at night. Doing so is a condition for the validity of fasting and thus must be explicitly expressed. After doing so, not expressing the actual intention during daytime does not invalidate fasting since the implicit intention will be existent.⁽³⁾ Apart from acts of worship, there is the example of the intention for trading in commercial commodity. To clarify, these are considered for trading only if there is an explicit intention to this effect. Accord-

(1) See: *Maqasid Al-Mukallafin* (p. 110), *Al-Niyyah wa Atharuha fi Al-Ahkam Al-Shar'iyah* (1/213).

(2) See: *Al-Furuq*, by Al-Qirafiy (1/200), *Al-Umniyyah fi Ahkam Al-Niyyah* (p. 42), *Qa'idat Al-Umur bi Maqasidiha* (p. 105).

(3) See: *Al-Mubdi'*, by Ibn Muflih (1/368).

ingly, if a merchant forgets to express this intention explicitly, intention is still assumed to be effective since implicit intention will be considered existent.

Moreover, some scholars state that the reason why believers will abide eternally in Paradise and disbelievers will abide eternally in Hell is the implicit intention. To explain, a believer intends to have faith in Allah as long as they are alive and a disbeliever intends to continue as disbelievers all along their life and both parties died as such. Thus, they will abide eternally either in bliss or torment based on their intention to maintain their positions.⁽¹⁾ {“...*And your Lord is not unjust to anyone*”}. [Al-Kahf (The Cave): 49].

The second consideration: Classification of intention based on generality and specificity.

Under this consideration, intention is divided into two types:

- 1- **General undetailed intention:** This is a type of intention that does not include the details of what is intended. For example, regarding the performance of acts of worship, expressing a single general intention at the beginning of an act of worship that consists of a group of pillars, such as prayer and Hajj, is sufficient. In other words, there is no need to single out each individual pillar with a separate intention.⁽²⁾ Apart from acts of worship, trading in commercial commodity is intended through expressing one general intention. Accordingly, a merchant does not have to express a separate intention for each specific act of trade such as announcing a sale, bargaining or the like.
- 2- **Specific detailed intention:** This is a type of intention that distinguishes one thing from similar or comparable things. For example, in acts of worship, a specific intention is needed to distinguish whether a specific *Salâh* (prayer) is *Dhuhr* (noon) or *‘Asr* (afternoon), or whether it is obligatory or supererogatory. Thus, the general prayer intention is not sufficient in this regard.⁽³⁾ Apart from acts of worship, to possess livestock it is enough for anyone to express a general undetailed intention. However, a specific intention would be needed to specify whether the purpose of possessing

(1) See: *Al-Ashbah wal-Naza’ir*, by Al-Suyuti (p. 11), and *Al-Niyyah wa Atharuha fi Al-Ahkam* (1/212).

(2) See: *Al-Ma’tthur fil-Qawa’id* (3/105), *Al-Ashbah wal-Naza’ir*, by Ibn Nujaym (p. 38).

(3) See: *Al-Niyyah wa Atharuha fi Al-Ahkam* (1/210), *Qa’idat Al-Umur bi Maqasidiha* (p. 107).

livestock is trading, work or yielding benefit or offspring.

Third: classification of the type intention related to acts of worship:

This classification pertains to the intention for acts of worship as well as other acts that can belong to worship in any way. In this regard, intention is divided accordingly based on two different considerations:

The first consideration: classification of intention according to what it is to distinguish.

In this regard, it is divided into two divisions:

The first division: The intention expressed to differentiate habits from acts of worship. For example, paying money to other may be either as a gift, alimony, or deposit, and may be an act of worship done with the aim of getting closer to Allah the Almighty, such as *Zakâh*, charity, and expiation. Choice among these alternatives is determined only by intention. Likewise, abstaining from things that nullify the fast may be either a diet or an act of worship. Also, choice here is determined only by intention.⁽¹⁾

The second division: intention that distinguishes between the different types and ranks of acts of worship. For example: *Salâh* may be either *Dhuhr*, *ʿAṣr*, or so on. Also, choice here is determined only by intention. By the same token, fasting for two consecutive months may be an expiation either for *Zhihar* (a man likening his wife to an unmarriageable relative) or for involuntary manslaughter. Again, only intention can determine the choice. In other words, this type of intention is the one that distinguishes one type of acts of worship from another type if both have a similar form.

As for the intention that distinguishes between the different ranks of acts of worship, it appears in the following example. *Salâh*, fasting, Hajj, etc, as acts of worship, may be either obligatory or supererogatory. Again, only intention can determine the case.⁽²⁾

Al-Shâtibiyy⁽³⁾ (may Allah have mercy on him) says about this division: “The

(1) See: *Qawaʿid Al-Aḥkam*, by Ibn ʿAbdul-Salam (1/208), *Al-Ashbah wal-Nazaʿir*, by Al-Suyutiyy (p. 12), *Qaʿidat Al-Umur bi Maqasidiha* (p. 88).

(2) See: *Al-Umniyyah fi Idrak Al-Niyyah* (p. 20), *Qaʿidat Al-Umur bi Maqasidiha* (p. 87).

(3) He is: Ibrahim ibn Musa ibn Muhammad Al-Lakhamiy Al-Gharnatiyy Al-Malikiyy Al-Shâtibiyy, surnamed Abu Ishaq. He is one of the investigating scholars in *Fiqh* and *Uṣul*. =

function of intentions is to differentiate between what is considered a habit and what is considered an act of worship, and differentiate regarding acts of worship between what is obligatory and what is supererogatory.”⁽¹⁾

The Second consideration: Classifying intentions according to whether they are inevitable to judging a certain act as valid or just add to its virtuousness.⁽²⁾

Under this consideration, they fall into one of two categories:

The first category: includes intentions on which the validity of a certain act is conditional. Such a type of intention relates to acts that can be considered nothing but acts of worship such as *Ṣalāh*, fasting, Hajj, etc. Thus, if such acts of worship done without intention, they will be judged as invalid.

The second category: includes intentions that just add to the virtuousness of a certain act. In other words, the validity of such an act is not conditional on the intention. Such a type of intention relates to conditions required for the validity of other acts and at the same time can be performed as an act of worship with the purpose of getting closer to Allah. For example, removing impurity from body and clothes, and performing *Wudu’* (ablution) according to *Hanafis*,⁽³⁾ can be performed without intention. However, intention can only add to their virtuousness and reward.⁽⁴⁾

Fourth: classification of intentions based on verbal expression:

Under the consideration of verbal expression, intentions are divided into two types:

The first type: includes intentions that confirms the verbal expression. In other words, intentions under this category agree with the verbal expres-

= He is considered one of the Maliki prominent scholars and was pious and renounced worldly pleasures. In his works, there are great inferences and benefits. His works include: *Al-Muwafaqat*, *Al-I’tisam*, and *Al-Majalis*. He died in 790 AH. For his biography, see: *Nayl Al-Ibtihaj*, by Al-Tanbaktiy (17/48), *Shajarat Al-Nur Al-Zakiyyah*, by Ibn Salim Makhloof (1/332).

(1) *Al-Muwafaqat* (3/8).

(2) I could not come across anyone who suggested this classification before Prof. Dr. Ya’qub Al-Bahsin. See: *Qa’idat Al-Umur bi Maqasidiha* (p. 108).

(3) See: *Al-Mabsut*, by Al-Sarkhasiy (1/72), and *Tabyin Al-Haqiqah*, by Al-Zayla’iy (1/105).

(4) See: *Qawa’id Al-Ahkam* (1/211), *Al-Umniyyah fi Idrak Al-Niyyah* (44), *Qa’idat Al-Umur bi Maqasidiha* (p. 108).

sion as far as generality and specificity is concerned. For example, if someone swears not to wear a garment and intends all garments, his intention confirms his verbal expression. To explain, his expression is general and the intention is also general as well.⁽¹⁾

The second type: includes intentions that go contrary to the literality of the verbal expression. It is subdivided into several categories, including:

- 1- Intention that specifies the generality of the verbal expression. For example, if a person swears not to eat meat while his intention was restricted to mutton, his oath will not be considered broken by eating any other type of meat because the intention specifies the generality of the verbal expression.⁽²⁾
- 2- Intention that generalizes the specificity of the verbal expression. For example, if a person swears not to drink water given by a certain person even if he is thirsty while his intention is to refuse anything the latter offers him, his oath will be considered broken by eating from the food offered by the latter, because his intention generalizes the specificity of the verbal expression.⁽³⁾
- 3- Intention qualifying the scope of an absolute verbal expression. For example, if a person vows to pray and intends to pray two *rak'ahs* (units of prayer), performing what he intends fulfils the obligation, because his intention qualified the scope of his absolute verbal expression.⁽⁴⁾

The Third Treatise: Conditions of Intention:

Linguistically speaking, *Shart* (condition) means sign.⁽⁵⁾ As a *Shari'ah*-related term, it is something that must be present for something else to exist, but its presence alone does not guarantee the existence of that other thing.⁽⁶⁾

In fact, there are some conditions for the validity of intention. Some of these conditions are required generally in all types of intention, while other

(1) See: *Al-Furuq* (1/178), *Qa'idat Al-Umur bi Maqasidiha* (p. 109).

(2) See: *Al-Mughni* (9/564).

(3) See: *Kashshaf Al-Qina'* (6/245).

(4) See: *Al-Kafi*, by Ibn Qudamah (4/217).

(5) See: *Al-Sihah* (3/1136), *Maqayis Al-Lughah* (3/260), root (Sh-r-t).

(6) See: *Sharh Tanqih Al-Fusul*, by Al-Qirafiy (p. 82), *Al-Bahr Al-Muhit*, by Al-Zarkashiy (4/437).

conditions are required specifically for intentions regarding acts of worship and other acts that gets one closer to Allah.

Actually, I could not come across any work that deals with drawing a comparison between conditions that are required generally and those conditions that are required specifically for intentions regarding acts of worship.⁽¹⁾ However, it is more appropriate to draw this distinction.

Following is a list of the conditions that are required for the validity of intention accordingly:

First: conditions that are required generally in all types of intention:

The first condition: Eligibility of the one who intends:

This refers to the performance eligibility.⁽²⁾ To explain, it refers to the eligibility of a human being to perform deeds in a way that holds him legally accountable for them.⁽³⁾ Eligibility here requires discernment⁽⁴⁾ and sound mind. So, intention is not valid from a non-discerning person,⁽⁵⁾ or from a person lacking mental capacity such as insane or drunk persons. This is because they lack in eligibility and thus their intention is inconsiderable.⁽⁶⁾ As to the scholarly view to the effect of validating the Hajj of a discerning child, it represents

(1) See: *Al-Umniyyah fi Idrak Al-Niyyah* (pp. 41-39), *Nihayat Al-Ihkam* (p. 10), *Al-Niyyah wa Atharuha fil-Ahkam Al-Shar' iyyah* (1/369-367), *Qa'idat Al-Umur bi Maqasidiha* (pp. 61-74).

(2) Eligibility is divided into two types: eligibility for obligation and eligibility for performance. Eligibility for obligation means: the eligibility of a for the obligation of the rights enacted for or against him. See: *Uṣul* by Al-Sarkhasiy (2/332), *Kashf Al-Asrar*, by 'Ala'uddin Al-Bukhariy (4/237), *Qa'idat Al-Umur bi Maqasidiha* (p. 63).

(3) See: *Qa'idat Al-Umur bi Maqasidiha* (p. 63), *Uṣul Al-Fiqh Alladhi la Yasa' Al-Faqih Jahluh*, by Al-Sulamiy (p. 79).

(4) Discernment is the age at which a child can give answers to questions and respond in a dialogue. Some scholars said: It is the age when a child knows how to buy and sell without being easily deceived. Most scholars define the age of discernment as seven years. See: *Sharh Al-Kharshiy* (2/276), *Al-Majmu'* (7/28), *Al-Qwa'id*, by Ibn Al-Lahham (p. 34), and *Al-Qamus Al-Fiqhiy*, by Dr. Sa'd Abu Habib (p. 207).

(5) A non-discerning child is the one who does not understand how to sell and buy. In other words, he does not understand that selling causes transferring the ownership from a seller to a buyer. Also, he cannot understand whether he is overcharged or not. See: *Al-Qamus Al-Fiqhiy*, (p. 207).

(6) See: *Maqasid Al-Mukallafin* (p. 220), *Al-Niyyah wa Atharuha fil-Ahkam Al-Shar' iyyah* (1/369).

an exception. Even so, the intention should be expressed by his guardian since the discerning child is not entitled to express it.⁽¹⁾

The second condition: Expressing the intention in a decisive form:

In fact, indecisive or doubtful intention is not valid, because intention is to indicate specificity, which cannot be achieved by an indecisive form.⁽²⁾ Moreover, indecisive intention regarding the performance of an act of worship invalidates it if it is felt during the performance. An example is the case when a person while performing *Ṣalâh* hesitates whether to complete it or not. Moreover, indecisiveness before starting an act of worship has the effect of invalidating it. An example is the case when a person starts *Ṣalâh* after a period of hesitating whether to intend *Dhuhr* or 'Aṣr. Another example is the case when a person gives his money in charity after a period of hesitating whether to intend *Zakâh* or gift.⁽³⁾ Apart from the context of performing acts of worship, intention is not considered valid unless it is expressed in a decisive form.

Thus, if someone buys a property with an indecisive intention whether to trade with it or just possess it, the intention of trading will not be considered because it is indecisively expressed.⁽⁴⁾

The Third Condition: abstaining from anything that changes the course of the intention:

This means maintaining what is intended without changing or replacing.⁽⁵⁾ For example, if someone intends to perform the *Dhuhr* prayer and then changes their intention to a supererogatory *Ṣalâh*, the intention for the *Dhuhr* prayer becomes invalid.⁽⁶⁾ Similarly, if someone buys a certain property with

(1) See: *Hashiyat Ibn 'Abidin* (2/527), *Al-Taj wal-Ikkilil*, by Al-Muwaq (3/426), *Asna Al-Matâlib* (1/502), *Al-Mubdi'* (3/83).

(2) See: *Bada'i' Al-Ṣana'i'*, by Al-Kasaniy (2/78), *Al-Dhakhirah* (246/1), *Al-Bayan* (3/401), *Al-Mughni* (1/84, 337).

(3) See: *Maqasid Al-Mukallaḥin* (p. 236), *Qa'idat Al-Umur bi Maqasidiha* (p. 72).

(4) See: *Bada'i' Al-Ṣana'i'* (2/13), *Al-Baḥr Al-Ra'iq* (2/46), *Al-Taj wal-Ikkilil* (2/182), *Rawḍat Al-Talibin*, by Al-Nawawiy (2/267), *Al-Ashbah wal-Naza'ir*, by Al-Suyutiyy (p. 41), *Al-Mughni* (3/62), *Kashshaf Al-Qina'* (2/241).

(5) See: *Nihayat Al-Iḥkam* (p. 10), *Maqasid Al-Mukallaḥin* (p. 238), *Qa'idat Al-Umūr bi Maqasidihā* (p. 73).

(6) See: *Al-Ashbah wal-Naza'ir*, by Ibn Nujaym (p. 44), *Al-Ashbah wal-Naza'ir*, by Al-Suyutiyy (p. 38).

the intention of trading in it and then changes their intention to just possession, the intention of trading will become invalid.⁽¹⁾

The Fourth Condition: it should be free from anything that contradicts it:

This condition is stipulated by Ibn Al-Subkiy,⁽²⁾ who described it as the "context's appropriation for the intended purpose." For instance, if someone intends to perform an act of worship as a non-traveler while they are already on a journey, the intention is invalid because being on a journey contradicts it.⁽³⁾ Similarly, if a woman is trading in jewelry after expressing the intention of possessing it for adornment, the intention of possessing it for adornment is invalid because the action of trading contradicts it.⁽⁴⁾

The Fifth Condition: Knowledge about the intended purpose: This means understanding the nature and characteristics of what is intended, were it a statement, an action, or a belief. The reason why this condition is stipulated is the fact that someone who does not understand the nature of something cannot truly intend it.⁽⁵⁾ Included under this stipulation the necessity of specifying and particularizing what is intended. In fact, you cannot specify something that is not known and vice versa.⁽⁶⁾

The Sixth Condition: intention must relate to something that is to be done by the person who intends:

This condition is stipulated by Al-Qirāfiy in his book *Al-Dhakīrah wal-Umniyyah*. To justify this stipulation, he said, "Intention should be specified, and

(1) See: *Al-Majmū'* (6/48), *Al-Mughni* (3/63), *Kashshāf Al-Qinā'* (2/242).

(2) He is: 'Abdul-Wahhāb ibn 'Aliy ibn 'Abdul-Kāfi Al-Anṣāriy Al-Shāfi'iy, surnamed Abū Naṣr Tāj Al-Dīn ibn Al-Subkiy. Born in Cairo, he moved with his father to Damascus and learned from Imam Al-Dhahabiy. He held the positions of judge, preacher of the Umayyad Mosque in addition to and teaching. He was known for his eloquence and irrefutable arguments. His works include: *Raf' Al-Hājib 'an Sharḥ Mukhtaṣar Ibn Al-Hājib*, *Jām' Al-Jawāmi'*, and *Al-Ibhāj fī Sharḥ Al-Minhāj*. He passed away in 771 AH. For more about his biography, see: *Tabaqāt Al-Shāfi'iyyah*, by Ibn Qāḍī Shuhbah (3/104), and *Al-Durar Al-Kāminah* (3/232).

(3) See: *Al-Ashbāh wal-Nazā'ir*, by Ibn Al-Subkiy (1/62).

(4) See: *Al-Mughni* (3/41).

(5) See: *Al-Dhakīrah* (1/246), *Nihāyat Al-Ihkām* (p. 10), *Maqāṣid Al-Mukallaḥīn* (p. 261), *Al-Niyyah wa Atharuhā fī Al-Ahkām* (p. 367), *Qā'idat Al-Umūr bi Maqāṣidihā* (p. 73).

(6) See: *Qā'idat Al-Umūr bi Maqāṣidihā* (p. 68).

it should be taken into account that it is impossible to specify something one will not do.”⁽¹⁾ However, some researchers have argued that this condition is redundant since it is inconceivable to intend something one will not do. In fact, it is impossible for a person to intend something that is to be done by others.⁽²⁾

Second: Conditions Specific to Acts of Worship:

The First Condition: The intending person must be a Muslim:

Thus, the intention of a non-Muslim, as far as acts of worship and acts of devotion to Allah are concerned, does not count.⁽³⁾ To clarify, since intention is a condition for the validity of acts of worship, and since acts of worship done by a non-Muslim are not valid, intentions expressed by them are invalid. Allah says: **{“And nothing prevented their contributions from being accepted from them except that they disbelieved in Allah and His Messenger”}**. [At-Tawbah (Repentance): 54].

However, the intention of a non-Muslim is valid for anything else other than acts of worship. For example, Hanafis stated that a non-Muslim's intention of being in a state of travel is valid. Based on this is the ruling that if they convert to Islam while traveling, they will allowed to shorten their *Salâh*.⁽⁴⁾ Similarly, according to the Shafi`is and Hanbalis, a non-Muslim's intention for the expiation of *Zihâr* is valid. However, their intention serves the purpose of distinguishing the act, but will not accepted as an act that gets them closer to Allah.⁽⁵⁾ Ibn Qudâmah says: “Intention is considered only for specifying the act as far as expiations are concerned. Accordingly, this is unobjectionable for a non-Muslim. An example of this is the intention required for indecisive utterances of divorces.”⁽⁶⁾

The Second Condition: there should be no interval between intention and the act intended:

This condition is specific to the intention for performing acts of worship. In

(1) See: *Al-Dhakîrah* (1/246). Also refer to: *Al-Umniyyah fi Idrak Al-Niyyah* (p. 39).

(2) See: *Maqâsid Al-Mukallaftin* (p. 258).

(3) See: *Al-Ashbâh wal-Nazâ'ir*, by Al-Suyûtiy (p. 35), *Al-Ashbâh wal-Nazâ'ir*, by Ibn Nujaym (p. 42), *Al-Niyyah wa Atharuhâ fi Al-Ahkâm* (p. 369), *Qâ'idat Al-Umûr bi Maqâsidhâ* (p. 61).

(4) See: *Durar Al-Hukkâm*, by Mullâ Khusraw (1/136), *Ghamz 'Uyûn Al-Basâ'ir* (1/177).

(5) See: *Rawdat Al-Tâlibîn* (8/281), *Al-Ashbâh wal-Nazâ'ir*, by Al-Suyûtiy (p. 35), *Al-Mughni* (8/4), *Al-Mubdi'* (7/8).

(6) See: *Al-Mughni* (8/4).

fact, scholars stipulate that intention should be expressed simultaneously at the beginning of the act of worship. However, some scholars consider it permissible that intention be expressed shortly before starting the act.⁽¹⁾ However, intention is not valid if expressed long before the start of the act of worship. Thus,

if someone, after giving a sum of money in charity, intends it as *Zakâh*, their intention will not be valid.⁽²⁾ An exception to this condition, based on a textual evidence,⁽³⁾ is the intention for supererogatory fasting, which can be made during daytime according to the majority of scholars.⁽⁴⁾

The Third Condition: not particularizing each part of an act of worship with a separate intention:

This condition was stipulated by Al-'Izz ibn 'Abdul-Salâm⁽⁵⁾ (may Allah have mercy on him). It is specific to the intention for acts of worship that consist of integrated parts, where the validity of the whole act depends on the integrity of each part, such as in *Salâh* and fasting. In brief, intention should be made once for the entire act of worship. For example, in *Salâh*, it is impermis-

(1) These are the Hanafis and Hanbalis. See: *Badā'i' Al-Sanā'i'* (1/129), *Al-Ishrāf*, by Al-Qâdî 'Abdul-Wahhâb (1/424), *Mawāhib Al-Jalîl*, by Al-Hattâb (1/235), *Nihāyat Al-Matlab*, by Al-Juwayniy (1/85), *Al-Ashbāh wal-Nazā'ir*, by Al-Suyûtiy (p. 24), *Al-Mughni* (1/339), *Al-Furû'*, by Ibn Muflîh (4/252), *Maqāsid Al-Mukallafîn* (p. 261).

(2) See: *Al-Muhadhdhab*, by Al-Shirâziy (1/312), *Al-Mughni* (2/477), *Al-Furû'* (4/252).

(3) This is the Hadith narrated on the authority of 'Ā'ishah (may Allah be pleased with her) who said: "The Prophet (peace be upon him) came to me one day and asked, 'Do you have anything?' We said, 'No.' He said, 'Then I am fasting.'" It is reported in *Sahîh* Muslim, Book Pertaining to: Fasting, Chapter: the Permissibility of Voluntary Fasting with an Intention Made During Daytime Before Noon, and the Permissibility of Breaking a Voluntary Fasting Without Excuse, No. (1154), (2/809).

(4) See: *Badā'i' Al-Sanā'i'* (2/85), *Tibyan Al-Haqā'iq* (314/1), *Al-'Azîz*, by Al-Râfi'iy (3/186), *Al-Majmû'* (6/292), *Al-Mughni* (3/113), *Al-Furû'* (4/457), *Qā'idat Al-Umûr bi Maqāsidihā* (p. 71).

(5) 'Abdul-'Azîz ibn 'Abdul-Salâm ibn Abul-Qâsim: Known as the Sultan of Scholars, 'Izz Al-Dîn Abu Muhammad Al-Sulamîy Al-Dimashqîy and later Al-Misriy. He learned *Fiqh* from Ibn 'Asâkir and *Uṣul* from Al-Âmidîy. He excelled in the Shafi'i school and was proficient in various branches of knowledge. He was known for commanding good, forbidding evil, and refuting innovations. His student was Ibn Daqîq Al-'Îd. His works include: *Qawā'id Al-Ahkâm fî Masāliḥ Al-Anām*, *Al-Fawā'id fî Ikhtisār Al-Maqāsid*. He passed away in 660 AH. For more about his biography, see *Tabaqāt Al-Shāfi'iyyah*, by Al-Subkiy (8/209), *Tabaqāt Al-Shāfi'iyyah* by Ibn Qâdî Shuhbah (2/109).

sible to particularize *Takbir* (saying: "*Allahu Akbar* [Allah is the Greatest]") with a separate intention then do the same for standing and so. Similarly, in fasting, it is impermissible to particularize the first hour with a separate intention then do the same for then do the same for the subsequent hours. Considering what is intended in such a case separately, it cannot not be considered an act of worship.⁽¹⁾

Chapter Two: Definition, Pillars, and Conditions of Zakâh

It is subdivided into two treatises:

First Treatise: Linguistic and *Shari`ah*-related definitions of *Zakâh*:

Topic one: Linguistic Definition of *Zakâh*:

Zakâh is an infinitive derived from the root *zaka*. Other derivatives are *zakka* (past verb), *yuzakki* (present verb), *zakah* and *tazkiyah* (infinitives). Morphologically, its origin goes back to "*zakawah*", having the same morphological pattern as *ṣadaqah*. However, it changed to *Zakâh* to be simpler in pronunciation. The plural form is *Zakawât*.⁽²⁾

Its linguistic basic meaning is growth and increase. Ibn Fâris states: "The root letters *zâ'* and *kâf* plus a vowel indicate growth and increase."⁽³⁾

Linguistically speaking, the term *Zakâh* indicates several meanings, including:

- 1- **Growth and Increase:** For example, the Arabic phrase: "*zaka al-zar*" means crops grow.⁽⁴⁾ This meaning is also found in the statement of `Aliy ibn Abu Tâlib (may Allah be pleased with him): "*Al- 'Ilm yazku `ala al— infaq*"⁽⁵⁾ (Knowledge increases through expenditure).⁽⁶⁾

(1) See: *Qawâ'id Al-Ahkâm* (1/219), *Maqâsid Al-Mukallafîn* (p. 259).

(2) See: *Al-Fâ'iq fî Gharîb Al-Ḥadîth*, by Al-Zamakhshariy (2/119), *Al-Nihāyah fî Gharîb Al-Ḥadîth* (2/307), *Lisân Al- 'Arab* (14/358), root z-k-a.

(3) See: *Maqāyis Al-Lughah* (3/18), root z-k-a.

(4) See: *Al-Sihāh* (6/2368), root z-k-a.

(5) There is a variant narration that reads: "Knowledge increases with action." Related by Abu Na`im in *Hilyat Al-Awliyā'* (1/79), Al-Khatîb Al-Baghdâdiy in *Al-Faqîh wal-Mutafaqqih* (1/182), and Al-Dhahabiy in *Tadhkirat Al-Huffāz* (1/14-15) who said, "Its chain of narrators is unreliable." Also related by Al-Suyûtîy in *Jām' Al-Jawāmi'* (17/697). Ibn `Abdul-Bar said, "This hadith is well-known among scholars and thus they do not mention its chain of narrators because of its familiarity." See also: *Jāmi' Bayān Al- 'Ilm wa Fadlih* (2/984).

(6) See: *Miftāh Dār Al-Sa`ādah*, by Ibn al-Qayyim (1/129).

- 2- **Purity:**⁽¹⁾ This meaning can be found in the Qur'anic *Ayah*: “*Khudh min amwalihim sadaqatan tutahhiruhum wa tuzakkihim biha*” {“**Take from their wealth a charity by which you purify them and cause them to increase**”}. [At-Tawbah (Repentance): 103]. Here the word “tuzakkihim” indicates to purify them.⁽²⁾ Another example is the *Ayah* that reads: “*Qad aflaha man tazakka*” {“**Successful is the one who purifies himself...**”} [Al-A‘lâ (The Most Exalted): 14]. Here the word “tazakka” indicates purification from polytheism.⁽³⁾
- 3- **Luxurious Life or Prosperity:** The Arabic phrase: “*zaka al-rajul*” means that a man enjoys a state of affluence or prosperity.⁽⁴⁾
- 4- **Righteousness:**⁽⁵⁾ This meaning is found in the Qur'anic *Ayah* that reads: “*Wa hananan min ladunna wa zakatan wa kan taqiyya*” {“**And affection from Us and purity, and he was fearing of Allah.**”} [Maryam (Mary): 13]. Here, the word: “zakatan” implies righteousness.⁽⁶⁾ The same meaning can be also found in the *Ayah* that reads: “*Wa lawla fadlu Allahi ‘alay-kum wa rahmatuhu ma zaka minkum min ahadin abadan*” {“**And if it had not been for the favor of Allah upon you and His mercy, not one of you would have ever been purified**”}. [An-Nûr (The Light): 14]. Here, the word “ma zaka” indicates not one of you would have ever been righteous.⁽⁷⁾
- 5- **Praise:** The Arabic phrase: “*zakka nafsahu*” means to praise oneself.⁽⁸⁾ This meaning can be found in the Qur'anic *Ayah* that reads: “*Fala tuzakku anfusakum*” {“**Do not claim yourselves to be pure;**”}. [An-Najm (The Star): 32].
- 6- **Goodness:** The Arabic phrase: “*ard zakiyyah*” means good or high quality land.⁽⁹⁾ This meaning can be found in the *Ayah* that reads: “*Falyanzur*

(1) See: *Maqāyis Al-Lughah* (3/18), root z-k-a, *Al-Nihāyah fī Gharīb Al-Ḥadīth* (2/307), root z-k-a.

(2) See: *Fath Al-Qadīr*, by Al-Shawkāniy (2/455).

(3) See: *Tafsīr Al-Baghawiy* (5/242).

(4) See: *Al-Sihāh* (6/2368), *Lisān Al-‘Arab* (14/359), root z-k-a.

(5) See: *Lisān Al-‘Arab* (14/358), root z-k-a, *Tāj Al-‘Arūs* (38/223), root z-k-w.

(6) See: *Tafsīr Ibn Kathīr* (5/192).

(7) See: *Tafsīr Al-Qurtubiy* (12/207).

(8) See: *Mukhtār Al-Sihāh* (136), *Lisān Al-‘Arab* (14/358), root z-k-a.

(9) See: *Lisān Al-‘Arab* (358/14), root z-k-a, *Tāj Al-‘Arūs* (38/223), root z-k-w.

ayyuha azka ta 'aman" {"Let them look at their food, what is purer..."}
[Al-Kahf (The Cave): 19]. Here, the word "*azka*" indicates better in quality.⁽¹⁾

- 7- **Giving Money In Charity:** The Arabic phrase: "*zakka malahu*" means to give money in charity to get closer to Allah.⁽²⁾ In this sense, it is a homonymy, referring both to the act of giving and the money given.⁽³⁾

Topic Two: Shari`ah-related definition:

There is a variety of scholarly definitions of *Zakâh* as a *Shari`ah*-related term. Below are the most important definitions of *Zakâh* as reported from each of the four major schools of thought:

First: The Hanafi School:

The Hanafis define *Zakâh* based on the consideration that it is the act of the person who pays it. The most well-known definition among the Hanafis, attributed to Al-Nasafiy⁽⁴⁾ (may Allah have mercy on him), is: "Transferring ownership of a property to a poor Muslim who is neither a Hashimite nor a freed slave affiliated to Hashimites, on condition that the giver yield no benefit whatsoever from it as it is given only for the sake of Allah the Almighty."⁽⁵⁾ This definition was widely discussed by Hanafi scholars, who suggested the following edit: transferring the ownership of a part of a property.⁽⁶⁾ In fact, this is an appropriate suggestion since *Zakâh* involves only a part of the property. However, this definition is not all-inclusive because it limits *Zakâh* to giving to the poor, which excludes other beneficiaries of *Zakâh*.

(1) See: *Tafsîr Ibn Kathîr* (5/132).

(2) See: *Mukhtâr Al-Sihâh* (136), root z-k-a, *Tâj Al-'Arûs* (38/223), root z-k-w.

(3) See: *Al-Fâ'iq fî Gharîb Al-Ḥadîth* (2/119), *Al-Nihâyah fî Gharîb Al-Ḥadîth* (307/2), root z-k-a.

(4) He is: 'Abdullah ibn Ahmad ibn Mahmûd Al-Nasafiy Al-Hanafiy, known as Hâfiz Al-Dîn, Abû Al-Barakât. Al-Nasafis is named after the region of Nasaf in the land of Sindh. He was a scholar of Fiqh and a Qur'an exegete who learned from his contemporary scholars, including Shams Al-Dîn Al-Kurdiy and Ahmad Al-'Attâbiy. He renounced worldly pleasures and was a practicing scholars. He composed notable books in *Fiqh*, *Uṣul*, and Qur'an exegesis. These include: *Madârik Al-Tanzîl wa Ḥaqâ'iq Al-Ta'wîl*, which is a medium-sized Qur'an exegesis, and *Kanz Al-Daqâ'iq*. He passed away in 701 AH. For more on his biography, see: *Al-Jawâhir Al-Muḍî'ah* (1/270) and *Al-Durar Al-Kâminah* (3/17).

(5) *Kanz Al-Daqâ'iq* (203).

(6) See: *Al-Binâyah* (3/288), *Durar Al-Hukkâm* (1/171), *Al-Bahr Al-Râ'iq* (2/216).

However, the author of *Al-Lubâb*, to remedy this shortcoming, defined *Zakâh* as: “Transferring a specific portion of a certain property to a specific beneficiary for the sake of Allah the Almighty.”⁽¹⁾ Actually, this is one of the best definitions given by the Hanafis. Nevertheless, it is criticized for not explicitly mentioning the conditions for *Zakâh* (such as being given in a specific manner) and for not including *Zakâtul-Fitr*, since the latter is not due on a specific property.

Second: The Maliki School:

Maliki scholars define *Zakâh* based on both the two considerations, i.e. the act of giving and the property given. Among the definitions that are based on the first consideration is: “Paying a specific portion of a certain property that reaches the *Nisâb* to rightful beneficiaries on condition that it is fully possessed, one lunar year have passed after the possession of all the types of property except minerals and crops.”⁽²⁾ However, it is criticized for dealing with some conditions at length. In fact, it would be sufficient to refer to the existence of special conditions. It is also criticized for not referring to the beneficiaries of *Zakâh* and for not including the *Zakâtul-Fitr*.

Among the definitions based on the second consideration, i.e. the property given, is the definition that states: “A name for a certain amount of property paid out by a Muslim allocated to specific beneficiaries with intention.”⁽³⁾ However, this definition is criticized for not being preclusive, i.e. it does not preclude expiations since they stand for an amount of property to be given to the poor and needy at a specific time, which is the time at which expiation is due.

Third: Shafi`is:

Shafi`is defined *Zakâh*, based on the consideration that it is the act of giving, as: “an explicit name for taking a specific portion from a specific amount of property, having specific characteristics, to specific beneficiaries.”⁽⁴⁾

However, this definition is criticized for using the expression “taking”, which is inaccurate because *Zakâh* is paid since it is an act of the payer. Thus, using the expression “taking” makes it an act of the recipient.

(1) *Al-Lubâb fî Sharh Al-Kitâb*, by Al-Ghunaymiy (1/136).

(2) *Minah Al-Jalil*, ‘Ilîsh (2/3).

(3) *Mawâhib Al-Jalil* (2/255).

(4) *Al-Hawi Al-Kabir* (3/71). See also: *Al-Majmu’* (5/325).

Most Shafi`is define *Zakâh* as the property that is paid off. Following is their most common definition: "A name for the amount paid that is due on a property or a human being in a specific way".⁽¹⁾ In fact, this definition has the advantage of combining both *Zakâh* due on property and *Zakâtul-Fitr*. However, it has the disadvantage of not referring to the fact that a specific portion is given and not referring to beneficiaries.

Fourth: The Hanbalis:

Ibn Qudâmah⁽²⁾ defined *Zakâh* as: "a right that is due on property".⁽³⁾ However, this definition does not preclude expiations. Therefore, the author of *Al-Furu`* modified the definition to be: "a right that is due on a specific property".⁽⁴⁾ However, the definition remains deficient because it defines *Zakâh* though stating the ruling thereon and because it does not include *Zakâtul-Fitr*. Moreover, it does not make any reference to the conditions and beneficiaries of *Zakâh*.

The most famous definition of *Zakâh* given by Hanbalis is that it is: "a right that is due on a specific property for specific beneficiaries at a specific time".⁽⁵⁾ However, this definition is criticized for not including *Zakâtul-Fitr* and for making no reference to the fact that *Zakâh* is estimated by *Shari`ah*.

Reasons for difference in definition:

Scholarly dispute on the definition of *Zakâh* is due to a number of reasons, including:

- 1- Disagreement on the identity of *Zakâh*, whether it refers to the act of giving or to the money that is given out.

(1) *Asna Al-Matâlib* (1/338). See also: *Tuhfat Al-Muhtaj*, by Al-Haytamiy (3/208).

(2) He is: 'Abdullah ibn Ahmad ibn Muhammad ibn Qudamah Al-Maqdisiy Al-Dimashqiy Al-Hanbaliy, nicknamed Muwaffaq Al-Din. He was a great scholar and one of the geniuses of the era. He was the Imam of the Hanbalis in Damascus and authored significant works including: *Al-Mughni*, *Al-Kafi*, *Al-Muqni`*, and *Rawdat Al-Talibin*. This is in addition to other books on creed. He passed away in Damascus in 620 AH. For more on his biography, see: *Siyar A`lam Al-Nubala`* (22/165), *Al-A`lam* (67/4).

(3) *Al-Mughni* (2/427).

(4) *Al-Furu`* (3/437).

(5) *Al-Iqnâ`* (1/242). See also: *Muntahâ Al-Irâdât*, by Ibn Al-Najjar (1/435), and *Al-Rawd Al-Murabba`*, by al-Buhutiy (p. 195).

Hanafis,⁽¹⁾ some Malikis⁽²⁾ and some Shafi'is⁽³⁾ opt for the former arguing that *Zakâh* is classified as obligatory, which is a defining law of *Shari'ah* that relates rather to persons than to objects.⁽⁴⁾

The second option was chosen by some Malikis,⁽⁵⁾ the majority of Shafi'is⁽⁶⁾ and Hanbalis.⁽⁷⁾ They supported their choice by the *Ayah* that reads: {***And establish the prayer and give Zakâh...***}. [*Al-Baqarah (The Cow): 110*]. No doubt, the object of giving is property.⁽⁸⁾

However, some scholars reconciled the two views through stating that using the term *Zakâh* to refer to the act of giving is common among scholars, whereas using it to refer to the property given is the usage of the Lawgiver. However, both usages are acceptable.⁽⁹⁾

- 2- Scholars adopt different positions as to stating some of the conditions of *Zakâh* explicitly or generally or making no reference to them in the definition. They also hold different attitudes regarding referring, or making no reference, to the time and beneficiaries of *Zakâh*.
- 3- Scholars adopt different positions as to including *Zakâtul-Fitr* in the definition, which is the *Zakâh* due on persons.⁽¹⁰⁾ We noticed that some scholars make no reference to it and limit the definition to the *Zakâh* due on property, a position adopted by most scholars, as we will discuss later.

(1) See: *Al-Bināyah*, by Al-'Ayniy (3/288), *Majma' A-Anhur*, by Shaykhî Zâdah (1/192), and *Al-Lubāb*, by Al-Ghunaymiy (1/136).

(2) See: *Minaḥ Al-Jalil*, by 'Ilish (2/3).

(3) See: *Al-Hawi Al-Kabir* (3/71). See also: *Al-Majmu'* (5/325).

(4) See: *Al-'Ināyah*, by Al-Babarti (2/153).

(5) See: *Mawāhib Al-Jalil* (2/255), and *Sharḥ Al-Kharashiy* (2/147).

(6) See: *Asna Al-Matālib* (1/338), *Tuhfat Al-Muhtaj*, by Al-Haytamiy (3/208), and *Mughni Al-Muhtaj* (2/62).

(7) See: *Al-Mughni* (2/427), *Al-Furu'*, by Ibn Muflih (3/437), and *Al-Iqnā'*, by Al-Hijawiy (1/242).

(8) See: *Al-'Ināyah* (2/153) and *Al-Baḥr Al-Ra'iq* (2/216).

(9) See: *Tabyin Al-Haqā'iq*, by Al-Zayla'iy (1/250), and *Al-'Ināyah* (2/153).

(10) It is referred to as *Zakat Al-Badan* (*Zakâh* on body), *Zakat Al-Ra's* (*Zakâh* on head), and *Zakat Al-Raqabah* (*Zakâh* on neck); because it is due rather on persons than on property. Thus, it is obligatory for a slave and a child as well as moneyless people. See: *Badā'i' Al-Sanā'i'* (2/2), *Mawāhib Al-Jalil* (2/327), *Asna Al-Matālib* (1/392), and *Sharḥ Al-Zarkashiy* (2/456).

The Chosen Definition:

Based on the aforementioned facts, *Zakâh* can be defined as: “a name for a *Shari`ah*-specified amount of property that is to be paid out of a specific property or due on persons to specific categories of beneficiaries in a specific manner”.

Explanation of the definition:

(A name of amount of property): This is a genus in the definition that describes the identity of *Zakâh*.

(*Shari`ah*-specified amount): This refers to the fact that *Zakâh* is specified and estimated by the *Shari`ah*, unlike supererogatory charity.

(To be paid out of a specific property): This refers to the types of property on which *Zakâh* is due, which are livestock, agricultural crops, monetary units and commercial commodity.⁽¹⁾

(Or due on persons): This refers to *Zakâtul-Fitr*, which is due rather on persons than on property.

(To specific categories of beneficiaries): This refers to the eight categories of beneficiaries mentioned in the *Ayah* that reads: {“***Zakâh expenditures are only for the poor and for the needy and for those employed for it and for bringing hearts together [for Islâm] and for freeing captives [or slaves] and for those in debt and for the cause of Allâh and for the [stranded] traveler...***”} [At-Tawbah (Repentance): 60].

(In a specific manner): This refers to the conditions and time of *Zakâh*.

The relationship between the linguistic, idiomatic and terminological meanings:

Based on what we mentioned above, it becomes clear that the *Shari`ah*-related meaning of *Zakâh* is more specific than one of the linguistic meanings of *Zakâh*, which is giving money in charity to get closer to Allah. In fact, this linguistic meaning indicates both *Zakâh* as a *Shari`ah*-related term and supererogatory charity. Furthermore, all the other linguistic meanings of *Zakâh*, namely: growth, purity, praise and goodness, are connected in some way with the *Shari`ah*-related meaning of the term as the latter implicitly includes them

(1) See: *Al-Mubdi`* (2/292).

all. To explain, *Shari'ah*-related has the meaning of growth because property grows by the blessing of paying it and the supplication of the recipient. Also, it has the meanings of purity, softness and goodness as it purifies one who gives it from sins and causes him to be blessed in the Hereafter. In addition, it has the meaning of praise because it praises the one who gives it through serving as a sign of a truthful faith. Besides, it has the meaning of goodness because it should be paid out of rather lawfully-gotten than ill-gotten property.⁽¹⁾

Zakâh in the Quran:

Allah the Almighty used a variety of terms to refer to *Zakâh* in its *Shari'ah*-related sense.⁽²⁾ For example, he used the term *Zakâh* in the *Ayah* that reads: {***And establish prayer and give Zakâh...***} [Al-Baqarah (The Cow): 110]. He also used the term *Sadaqah* (charity) to refer to it as in the *Ayah* that reads: {***Sadaqat (Zakâh) expenditures are only for the poor and for the needy...***} [At-Tawbah (Repentance): 60].

In another occurrence, He says: {***Take from their wealth a Sadaqah (charity) by which you purify them and cause them to increase***}. [At-Tawbah (Repentance): 103]. Furthermore, Allah used the term *Haqq* (right), as in the *Ayah* that reads: {***...and give its Haqq (due) [Zakâh] on the day of its harvest...***} [Al-An'âm (Cattle): 141]. Besides, Allah used the term: "nafaqah" (spending) as in the *Ayah* that reads: {***...And those who hoard gold and silver and spend it not in the way of Allah...***} [At-Tawbah (Repentance): 34]. In addition, Allah used the term: "'Afw", which according to some exegetes of the Qur'an means what is given freely,⁽³⁾ as in the *Ayah* that reads: {***Take 'Afw (what is given freely)...***} [Al-A'râf (The Battlements): 199].

Second Treatise: Pillars and Conditions of Zakâh:

Zakâh is one of the pillars and obligations of Islam. Moreover, Muslims are unanimous that it is obligatory,⁽⁴⁾ based on many textual evidence from the Qur'an and the Sunnah, including:

(1) See: *Lisân Al-'Arab* (14/358), root (Z-k-a), and *Mughni Al-Muhtaj* (2/62).

(2) See: *Al-Dhakhîrah* (3/6) and *Manâhij Al-Tahsîl* (2/181).

(3) See: *Zâd Al-Masîr*, by Ibn Al-Jawziy (2/180), and *Tafsîr Al-Qurtubiy* (2/346).

(4) See: *Al-Iqnâ'*, by Ibn al-Mundhir (1/165), *Al-Iqnâ' fi Masa'il Al-Ijma'*, by Ibn Al-Qattan (193), *Badâ'i' Al-Sanâ'i'* (2/3), *Bidāyat Al-Mujtahid*, by Ibn Rushd (2/5), *Al-Majmu'* (5/326), and *Al-Mughni* (2/427).

- 1- Allah the Almighty says: {“**And establish the prayer and give Zakâh...**”}. [Al-Baqarah (The Cow): 110].
- 2- Allah the Almighty says: {“**Take from their wealth a Sadaqah (charity) by which you purify them and cause them to increase**”}. [At-Tawbah (Repentance): 103].
- 3- The Prophet (peace be upon him) said: “*Islam is built on five pillars: The testimony that there is no god but Allah and that Muhammad is the messenger of Allah, the establishment of prayer, the payment of zakat, the pilgrimage, and the fasting of Ramadan.*”⁽¹⁾

In fact, Zakâh has four pillars:⁽²⁾ namely: Zakâh giver, property on which Zakâh is due, beneficiaries, and Zakâh amount.

Each of these pillars has its own conditions either for the obligation or for the validity of Zakâh. Below are the details:

The first pillar: Zakâh giver:

This refers to the one on whose property Zakâh is due. Related to this pillar are two conditions for obligation and one condition for validity. Following is the detail:

The First Condition: Islam:

This is a condition for the obligation of Zakâh, according to the unanimous agreement of scholars.⁽³⁾ Thus, it is not obligatory on disbelievers, who are not required to pay it because they are not eligible for it. Imam Malik (may Allah have mercy on him) said: “Neither a *Dhimmy* (protected non-Muslim living

(1) Related by Al-Bukhâriy in his *Sahîh*, Book Pertaining to: Faith, Chapter: The Prophet's (peace be upon him) saying: "Islam is built upon five pillars," No. (8), (1/11). Also related by Muslim in his *Sahîh*, Book Pertaining to: Faith, Chapter: The Prophet's (peace be upon him) saying: "Islam is built upon five pillars," No. (16), (1/45).

(2) Linguistically speaking, "*rukn*" (pillar) refers to the strongest side of something. As a *Shari'ah*-related term, it is an integral part of something without which it cannot be complete. The pillars of acts worship are their essential components. See: *Al-Sahîh* (5/2126), *Maqāyis Al-Lughah* (2/430), root (R-k-n), and *Al-Ta'rifāt Al-Fiqhiyyah* (p. 106).

(3) Consensus was reported by Al-Kâsânîy. See: *Badā'î' Al-Sanā'î'* (2/4). It is also reported by Al-Nawawîy in *Al-Majmū'* (5/328). Also refer to: *Tabyîn Al-Haqā'iq* (1/252), *Al-Bināyah* (3/292), *Bidāyat Al-Mujtahid* (2/5), *Aqd Al-Jawāhir* (1/212), *Al-Bayān* (3/134), *Asna Al-Matālib* (1/338), *Al-Hidāyah* (p. 124), and *Al-Mughni* (2/464).

under Islamic rule) nor a Magi is dutybound to give *Zakâh* as regards their palm trees, grapes, crops or livestock. This is because *Zakâh* is imposed on Muslims to purify them and to be given to the poor from among them. However, *Jizyah* (poll tax required from non-Muslims living in an Islamic state) is imposed on the People of the Book to subject them under the Islamic authority.”⁽¹⁾ Following is the textual evidences supporting this condition:

- 1- The Prophet (peace be upon him) said to Mu`adh ibn Jabal upon sending him to Yemen: “*Invite them to testify that there is no god but Allah and that I am the Messenger of Allah, and if they obey, then inform them that Allah has imposed five prayers every day and night, and if they obey, then inform them that Allah has imposed on them a charity in their wealth, which is taken from their rich and returned to their poor.*”⁽²⁾ Here, the Prophet (peace be upon him) order him to impose *Zakâh* on them after they accept Islam.
- 2- The letter of Abu Bakr (may Allah be pleased with him) regarding charity included the following statement, “This is the duty of *Zakâh* that the Messenger of Allah (peace be upon him) imposed on Muslims.”⁽³⁾

The Second Condition: Freedom:

This stands for a condition for obligation. To explain, *Zakâh* is not obligatory on a slave, because he cannot own and all his property belongs to his master. Moreover, is it obligatory on a *Mukatab/ah* (a slave with an agreement to buy his/her freedom), because it stands for an act of sympathy taking into account that he is not enjoined to do as such.⁽⁴⁾

Actually, scholars differ as to whether adulthood and sound mind are conditions for the obligation of *Zakâh*. Hanafis⁽⁵⁾ stipulate them. Accordingly,

(1) *Al-Muwatta'* (2/398).

(2) Related by Al-Bukhâriy in his *Sahîh*, Book Pertaining to: *Zakâh*, Chapter: The Obligation of *Zakâh*, No. (1395), (2/104). Also related by Muslim in his *Sahîh*, Book Pertaining to: Faith, Chapter: Inviting to the Testimonies of Faith and the Principles of Islam, No. (19), (1/50).

(3) Related by Al-Bukhâriy in his *Sahîh*, Book Pertaining to: *Zakâh*, Chapter: *Zakâh* on Sheep, No. (1454), (2/118).

(4) See: *Badâ'i' Al-Sanâ'i'* (2/6), *Tabyîn Al-Haqâ'iq* (1/252), *Bidāyat Al-Mujtahid* (2/6), *Al-Tāj wal-Iklîl* (3/150), *Al-Muhadhdhab* (1/260), *Asna Al-Matâlib* (1/338), *Al-Mughni* (2/466), and *Al-Mubdi'* (2/294).

(5) See: *Al-Hidāyah* (1/95) and *Al-Bahr Al-Rā'iq* (2/217).

they impose no *Zakâh* on the property of a child or an insane person. However, the majority of scholars disagree with them.⁽¹⁾ One of the most important reasons for this scholarly dispute is difference regarding the concept of *Zakâh*. To clarify, Hanafis consider it an act of worship such as *Salâh* and fasting. So, they do not consider it obligatory on a child or an insane person.

As to the majority of scholars, they consider it a right of the poor due on the rich. Thus, they imposed it on the latter.⁽²⁾ This issue will be further detailed when discussing the issue of the intention for paying *Zakâh* on behalf of a child or an insane person.⁽³⁾

The third condition: Intention:

It is a condition for the validity of *Zakâh*.⁽⁴⁾ The Prophet (peace be upon him) said: **“Deeds are to be judged only by intentions.”**⁽⁵⁾ Only Imam Al-Awzâ’iy⁽⁶⁾ (may Allah have mercy on him) and some Maliki scholars⁽⁷⁾ did not stipulate it. We will deal with the issues of the ruling on the intention for paying *Zakâh*, its time, how-to and other rulings at length under the first chapter of Section II of this thesis.

The second pillar: property on which Zakâh is due:

Related to this pillar are four conditions for the obligation of *Zakâh*:

The first condition: full ownership:

There is no *Zakâh* due on a property that is not fully owned or on a prop-

(1) See: *Al-Tāj wal-Iklīl* (3/140), *‘Aqd Al-Jawāhir* (1/212), *Al-Hāwī Al-Kabīr* (3/152), *Al-Wasīṭ* (2/400), *Al-Mughni* (2/465), and *Al-Furū’* (3/439).

(2) See: *Bidāyat Al-Mujtahid* (2/6). (3) See: p. (291) of this book.

(4) See: *Badā’i’ Al-Sanā’i’* (2/40), *Al-Bahr Al-Rā’iq* (2/226), *Al-Dhakhīrah* (3/136), *Minah Al-Jalīl* (2/95), *Al-Bayān* (3/339), *Al-Majmū’* (6/179), *Al-Furū’* (4/249), and *Muntahā Al-Irādāt* (1/447).

(5) Referenced above. See (p. 7) of this book.

(6) He is: Abū ‘Amr ‘Abdul-Rahmān ibn ‘Amr ibn Yaḥmad Al-Awzā’iy Al-Dimashqiy, surnamed Abū ‘Amr. He was the Imam of the people of the Levant (Syria) and one of the prominent scholars. Born in 85 AH, he was the most knowledgeable in the Levant, and his opinions were followed in Andalusia until the reign of Al-Ḥakam ibn Hishām. He authored a book on *Fiqh* titled "*Al-Sunan*". He passed away in Beirut in 157 AH. For more on his biography, see: *Wafayāt Al-‘Ayān* (3/127) and *Al-A‘lām* (3/320).

(7) See: *Al-Dhakhīrah* (136/3), *Mawāhib Al-Jalīl* (2/356), *Al-Bayān* (3/339), and *Al-Majmū’* (6/108).

erty that has no specific owner. Full ownership refers to the situation in which something is completely owned by a person, without any right to others, can dispose of it according to his choice, and its benefits accrue to him.⁽¹⁾

This condition is unanimously stipulated by all scholars.⁽²⁾ However, they differ regarding the realization of its scope in subsidiary issues. Therefore, it is one of the reasons why they disagree on the *Zakâh* due on *Dimar* (a property which has slipped out of one's possession with little chance of recovery) and on debt as well as other issues.⁽³⁾

Evidence supporting the stipulation of this condition:

- 1- Allah says: {**“Take from their wealth a charity by which you purify them and cause them to increase”**}. [At-Tawbah (Repentance): 103]. Wealth in this Ayah refers to the property that they own and, to the exclusion of others, have the right to dispose of and utilize it.⁽⁴⁾
- 2- A property that is not fully owned is not a complete blessing. It should be taken into account that *Zakâh* is due only on a complete blessing.⁽⁵⁾

The second condition: Growth:

This means that the property must be revenue-generating on its own or capable of accruing revenue. In fact, revenue-generation is divided into two types: namely, actual revenue-generation, such as trading in commercial commodity and reproduction in livestock, and implicit revenue-generation, such as gold and silver whose value increase gradually under the possession of their owner.⁽⁶⁾ Included under this condition is the requirement, stipulated by some scholars, that the amount of the property should exceed basic needs, because basic needs are not usually revenue-generating either actually or implicitly.⁽⁷⁾ Actually, stipulating that the property be revenue-generating is an

(1) See: *Al-Mubdi'* (2/296) and *Kashshf Al-Qinā'* (2/170).

(2) See: *Badâ'i' Al-Sanâ'i'* (2/9), *Hāshiyat Ibn 'Ābidīn* (2/259), *Al-Fawākih Al-Dawānī*, by Al-Nafrawī (1/326), *Mawāhib Al-Jalīl* (2/295), *Al-Hāwī Al-Kabīr* (3/130), *Al-Majmū'* (5/327), and *Al-Kāfi fī Fiqh Al-Imām Ahmad*, by Ibn Qudāmah (1/379).

(3) See: *Badâ'i' Al-Sanâ'i'* (2/9), *Al-Majmū'* (6/21), and *Al-Mughni* (3/73).

(4) See: *Zakat Al-'Aqar*, by Mahajnah (p. 34).

(5) See: *Al-Mubdi'* (2/296).

(6) See: *Fath Al-Qadīr* (2/215), *Majma' Al-Anhur* (1/193), and *Al-Mughni* (2/467).

(7) See: *Badâ'i' Al-Sanâ'i'* (2/11) and *Al-Bahr Al-Rā'iq* (2/225).

object of agreement among scholars. In fact, Hanafis⁽¹⁾ stipulated it explicitly and stipulation could also be deduced implicitly from the explanations of the other schools of thought.⁽²⁾ However, the wisdom behind stipulating it is that *Zakâh* aims at helping the poor, a goal which can be achieved only if the *Zakâh* payer gives it out of a surplus that represents a small percentage compared to the remainder in such a way that does not cause him to be poor. Accordingly, enjoining *Zakâh* on a property that is not revenue-generating leads to the opposite of this objective.⁽³⁾

Stipulating this condition is supported by the Hadith that reads: “No *Zakah* is to be paid on one’s horse (that he rides) or one’s slave.”⁽⁴⁾

The Hadith indicates that no *Zakâh* is due on the property that is not revenue-generating either actually or implicitly.⁽⁵⁾

The third condition: Reaching the *Nisâb*:

Nisâb is: “the minimum amount on which *Zakâh* is due”.⁽⁶⁾ Its amount varies depending on the type of the property. Consequently, no *Zakâh* is due on a property that did not reach the *Nisâb*.

Stipulating this condition is an object of agreement among scholars in general.⁽⁷⁾ However, Abu Hanifah broke this agreement as regards the case of crops, fruits, and minerals. To explain, he did not stipulate reaching the *Nisâb* for imposing *Zakâh* on such things.⁽⁸⁾

Stipulating this condition is supported by the Hadith that reads: “There is

(1) See: *Badâ’i’ Al-Sanâ’i’* (11/2) and *Al-Hidâyah* (1/103).

(2) See: *Bidâyat Al-Mujtahid* (2/13), *Al-Fawâkih Al-Dawâni* (1/341), *Al-Majmû’* (5/337), *Asna Al-Matâlib* (1/339), *Al-Mughni* (467/2), and *Kashshaf Al-Qinâ’* (2/117).

(3) See: *Fath Al-Qadîr* (2/155).

(4) Related by Al-Bukhâriy in his *Sahîh*, Book Pertaining to: *Zakâh*, Chapter: There is no *Zakâh* on a Muslim’s horse, No. (1463), (2/120). Also related by Muslim in his *Sahîh*, Book Pertaining to: *Zakâh*, Chapter: There is no *Zakâh* on a Muslim’s slave and horse, No. (982), (2/675).

(5) See: *Al-Majmû’* (5/337) and *Al-Kâfi fî Fiqh Al-Imâm Ahmad* (1/383).

(6) *Mawâhib Al-Jalîl* (2/255), and see: *Al-Muṭṭali’ ‘alâ Alfāz Al-Muṣṭafî’*, by Al-Ba’liy (p. 156).

(7) See: *Badâ’i’ Al-Sanâ’i’* (2/15), *Majma’ Al-Anhur* (1/192), *Mawâhib Al-Jalîl* (2/255), *Al-Fawâkih Al-Dawâni* (1/326), *Al-Bayân* (3/154), *Asna Al-Matâlib* (1/339/1), *Al-Mubdi’* (2/295), and *Kashshaf Al-Qinâ’* (2/169).

(8) See: *Badâ’i’ Al-Sanâ’i’* (2/67), *Al-‘Inâyah* (2/246), and *Hâshiyat Ibn ‘Ābidîn* (2/325).

no Zakâh to be paid on less than five ounces⁽¹⁾ of silver, less than five camels⁽²⁾ or less than five Awsuq⁽³⁾ of dates.”⁽⁴⁾ The wisdom behind stipulating this condition is that “Zakâh is obligatory only on the wealthy, taking into account that being wealthy necessitates that one’s property exceeds basic needs and that a property that is less than the amount of Niṣâb does not exceeds basic needs.”⁽⁵⁾

The fourth condition: passage of one lunar year:

This takes place when the one lunar year passes after the possession of the amount of Niṣâb.⁽⁶⁾ Stipulating this condition is supported by the consensus of scholars⁽⁷⁾ and by the Hadith that reads: “There is not Zakâh on wealth until *Hawl* (one lunar year) has passed.”⁽⁸⁾ The wisdom behind stipulating this condition is giving the Zakâh payer a chance till his money generates revenue

- (1) The term “awāqī” for the English equivalent “ounce” is the plural of “uqiyyah,” which is forty dirhams. See: *Gharīb Al-Hadīth*, by Ibn Al-Jawziy (2/480).
- (2) “Al-Dhawā” refers to the number of camels between two and nine, and it is also said to be between three and ten. See: *Al-Sihāh* (2/471), and *Al-Nihāyah fī Gharīb Al-Hadīth* (2/171), root (dh-w-d).
- (3) It is the plural of “Wasāq” which equals sixty ṣa’s. See: *Al-Nihāyah fī Gharīb Al-Hadīth* (5/185), root (w-s-q).
- (4) Related by Al-Bukhārī in his *Saḥīḥ*, Book Pertaining to: Zakâh, Chapter: What is Given as Zakâh is Not Considered Treasure, No. (1405), (2/107). Also related by Muslim in his *Saḥīḥ*, Book Pertaining to: Zakâh, No. (979), (2/673).
- (5) See: *Badā’i’ Al-Sanā’i’* (2/15).
- (6) See: The Kuwaiti Encyclopedia (23/242).
- (7) See: *Al-Ijmā’*, by Ibn Al-Mundhir (p. 47), *Badā’i’ Al-Sanā’i’* (2/13), *Al-Hidāyah* (95/1), *Bidāyat Al-Mujtahid* (2/32), *Al-Dhakhīrah* (3/23), *Al-Wasīṭ* (2/433), *Al-Majmū’* (2/468), *Al-Mubdi’* (2/302), and *Kashshaf Al-Qinā’* (2/177).
- (8) Related by Ibn Mājah in his *Sunan* on the authority of ‘Ā’ishah (may Allah be pleased with her), Book Pertaining to: Zakâh, Chapter: One Who Acquires Property..., No. (1792), (1/571). Also related by Abū Dāwūd in his *Sunan* on the authority of ‘Alīy (may Allah be pleased with him), Book Book Pertaining to: Zakâh, Chapter: Zakâh on Grazing Livestock, No. (1573), (2/100). Also related by Al-Tirmidhiy in his *Jāmi’* on the authority of Ibn ‘Umar (may Allah be pleased with him), Book Pertaining to: Zakâh, Chapter: Narrations About: No Zakâh on Acquired Wealth Until a Lunar Year Passes, No. (631), (2/18). The hadith is more authentic if considered the wording of the Companion (i.e. ‘Ā’ishah). However, some scholars judge the Hadith narrated on the authority of ‘Alīy to be of a *Hasan* (good) chain of narrators. Ibn Hajar said: “The Hadith of ‘Alīy has a reliable chain of narrators, and is supported by similar narrations. Thus, it is acceptable as evidence.” See: *Al-Talkhīṣ Al-Habīr* (2/351) and *Al-Badr Al-Munīr* (4/453).

and this can use it to help others. Moreover, *Zakâh* is recurring and thus have to be under control taken into account that enjoining *Zakâh* on a monthly or weekly basis would put *Zakâh* payers into difficulty. On the contrary, if it were enjoined once in lifetime, it would put beneficiaries into difficulty. Thus, it is the proper position to enjoin *Zakâh* once a year.⁽¹⁾

An exception to this stipulation is the outcome of agricultural land.⁽²⁾ This is based on the *Ayah* that reads: {“...Eat of [each of] its fruit when it yields and give its *Haqq* (due) [*Zakâh*] on the day of its harvest...”} [Al-An‘âm (Cattle): 141]. The wisdom behind this stipulation is that such a type of property is revenue-generating on its own. So, it does not need the passage of one lunar year to integrate revenue-generation.⁽³⁾

The third pillar: beneficiaries:

Beneficiaries are those who derive advantage from *Zakâh*. Concerning this pillar, one condition for the validity of *Zakâh* is stipulated, namely, beneficiaries have to belong to one of the eight categories of beneficiaries specified by Allah the Almighty as stated in the *Ayah* that reads: {“*Zakâh expenditures are only for the poor and for the needy and for those employed for it and for bringing hearts together [for Islâm] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveler...*”} [At-Tawbah (Repentance): 60]. In the original Arabic text, Allah used definitive and restrictive tools such as *innama* and the letter *lâm*, which indicates that these are the only deserving categories to the exclusion of others.⁽⁴⁾

The fourth pillar: Zakâh amount: Concerning this pillar, two conditions are stipulated for the validity of *Zakâh*:

The first condition: transferring its ownership it to the beneficiary:

This takes place when the beneficiary takes possession of the *Zakâh* amount

(1) See: *Badâ'i' Al-Sanâ'i'* (2/13), *Kashshaf Al-Qinâ'* (2/177), and *Zâd Al-Ma'âd* (2/5).

(2) See: *Badâ'i' Al-Sanâ'i'* (2/62), *Al-Hidāyah* (1/108), *Al-Tamhîd*, by Ibn ‘Abdul-Barr (20/155), *Al-Fawākih Al-Dawānî* (1/335), *Al-Bayân* (3/153), *Rawḍat Al-Tālibîn* (2/210), *Al-Mughni* (2/467), and *Al-Mubdi'* (2/302).

(3) See: *Al-Hidāyah* (1/108) and *Al-Mughni* (2/467).

(4) See: *Badâ'i' Al-Sanâ'i'* (43/2), *Majma' Al-Anhur* (1/219), *Al-Kāfi fî Fiqh Ahl Al-Madīnah* (1/325), *Al-Dhakhīrah* (3/104), *Al-Hāwî Al-Kabîr* (8/478), *Al-Mughni* (4/173), *Al-Furû'* (4/297), and *Sharḥ Al-Zarkashiy* (2/446).

and has the exclusive right of disposing of it.⁽¹⁾ Stipulating this condition is an object of agreement among scholars in general. However, Mālikis excluded three categories of beneficiaries, namely for freeing captives [or slaves], for those in debt and for the cause of Allah, from stipulating ownership.⁽²⁾

To support stipulating ownership transfer, scholars cited some pieces of evidence, including:

- 1- Allah says: ***{“Zakâh expenditures are only for the poor and for the needy and for those employed for it and for bringing hearts together [for Islām] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveler...”}*** [At-Tawbah (Repentance): 60]. Here, Allah used the preposition *lam* (translated as for) before the “poor” to genitively modify *Zakâh* expenditures, which implies ownership. Then, He used coordinating conjunctions to connect the other categories to the “poor”.⁽³⁾
- 2- Allah the Almighty says: ***{“And establish the prayer and give Zakâh...”}***. [Al-Baqarah (The Cow): 110]. Here, giving refers to ownership transfer.⁽⁴⁾

The second condition: The paid *Zakâh* amount must be of the same type as that of property on which *Zakâh* is due.

Accordingly, if the property on which *Zakâh* is due is livestock, currency, crops or the like, the *Zakâh* amount has to be paid out of the same kind respectively. Thus, it is not permissible to give the monetary value as the *Zakâh* amount instead of the respective property type except in commercial commodity.⁽⁵⁾ In fact, this is the opinion of the majority of scholars in general,⁽⁶⁾

(1) See: *Al-Tamlik wal-Maslahah Fih*, by Dr. Muhammad Shubayr (p. 217).

(2) See: *Badâ'i' Al-Sanâ'i'* (2/39), *Tabyîn Al-Haqâ'iq* (1/251), *Al-Kâfi fî Fiqh Ahl Al-Madīnah* (1/327), *Jami' Al-Ummahât* (p. 165), *Al-Dhakhīrah* (3/148), *Al-Tanbīh*, by Al-Tanūkhīy (2/851), *Asnā Al-Matālib* (1/398), *Kifāyat Al-Nabīh* (6/142), *Al-Furū'* (4/342), and *Sharh Muntahā Al-Irādāt* (1/460).

(3) See: *Tabyîn Al-Haqâ'iq* (1/299) and *Al-Muhadhdhab* (1/313).

(4) See: *Badâ'i' Al-Sanâ'i'* (2/39) and *Tabyîn Al-Haqâ'iq* (1/251).

(5) See: *Al-Dhakhīrah* (3/20), *Mawāhib Al-Jalīl* (2/120), *Al-Bayān* (3/324), *Asnā Al-Matālib* (1/383), *Al-Kâfi fî Fiqh Imām Aḥmad* (1/412), and *Al-Furū'* (4/193).

(6) See: *Mawāhib Al-Jalīl* (2/356), *Manāhij Al-Taḥṣīl* (2/318), *Al-Hawā' Al-Kabīr* (3/179), *Al-Bayān* (3/207), *Al-Furū'* (4/14), and *Kashshaf Al-Qinā'* (2/195).

with the exception of Hanafis and one of two views expressed by Hanbalis.⁽¹⁾

Stipulating this condition is supported by the following evidence:

- 1- The Prophet (peace and blessings be upon him) said: *“As to the one who had to pay one Bint Makhad (i.e. one year-old she-camel) as Zakâh, and he did not have it but had got Bint Labun (two year old she-camel), it could be accepted from him as Zakâh, and the collector of Zakâh would return him 20 Dirhams or two sheep.”*⁽²⁾ Here, the Prophet (peace be upon him) stated that an alternative from the same type can replace the essential property if not available. Were the monetary value permissible, he would not suggest the alternative.⁽³⁾
- 2- It is narrated that the Prophet (peace be upon him) said to Mu`âdh ibn Jabal: *“Take grains from grains, sheep from sheep, camels from camels and cows from cows.”*⁽⁴⁾ Here,

the Prophet (peace be upon him) used the imperative form which implies prohibiting anything to the opposite.

Accordingly, the *Zakâh* amount must be paid out of the same type as that of property on which *Zakâh* is due.⁽⁵⁾

The wisdom behind stipulating that the *Zakâh* amount be paid out of the same type as that of property on which *Zakâh* is due is that *Zakâh* is enacted to address the needs of the poor, which are varied. Therefore, it is more appropriate for the *Zakâh* to be of diverse resources so that the poor can satisfy their needs through the multiple resources of *Zakâh* they receive.⁽⁶⁾

(1) See: *Al-Tajrid*, by Al-Qudûriy (3/1243), *Al-Bināyah* (3/348), *Al-Furû`* (4/267), and *Al-Mub-dî`* (2/322).

(2) Related by Al-Bukhâriy in his *Ṣaḥîḥ*, Book Pertaining to: *Zakâh*, Chapter: Commercial Commodity in *Zakâh*. (1448), (2/116).

(3) See: *Al-Majmû`* (5/430).

(4) Related by Ibn Mâjah in his *Sunan*, Book Pertaining to: *Zakâh*, Chapter: Which type of property on which *Zakâh* is due?, No. (1814), (1/580). Also related by Abû Dâwûd in his *Sunan*, Book Pertaining to: *Zakâh*, Chapter: *Zakâh* on Crops, No. (1599), (2/109). There is a break in the Hadith's chain of narrators since 'Atâ' ibn Yâsâr narrated it from Mu`âdh ibn Jabal, who was not his contemporary. See: *Al-Badr Al-Munîr* (5/534) and *Al-Talkhîṣ Al-Ḥabîr* (2/375).

(5) See: *Al-Ishrâf*, by Al-Qâḍî 'Abdul-Wahhâb (1/391), and *Kashshâf Al-Qinâ`* (2/195).

(6) See: *Al-Mugni* (3/88).

Chapter One

Effect of Intention in Zakâh Wealth

In it are five treatises:

First Treatise: Effect of Intention in the Zakâh of Livestock

Second Treatise: Effect of Intention in the Zakâh of Agricultural Produce

Third Treatise: Effect of Intention in the Zakâh of Cash and Debts

Fourth Treatise: Effect of Intention in the Zakâh of Jewelry

Fifth Treatise: Effect of Intention in the Zakâh of Trade Goods

First Treatise

Effect of intention in the zakâh of livestock

Topic (1): The effect of owning livestock and its zakâh

In it are five issues:

There is no disagreement among scholars of the obligation of the zakâh on livestock (which are camels, cows and sheep)⁽¹⁾ but the disagreement lies in some conditions of its obligation, like being grazing or not being used for work, details of the disagreement will be discussed in the topics of this treatise.

And the basis for the consensus on the obligation of zakâh in it is supported by many texts, including the saying of prophet Muhammad (peace and blessings of Allah upon him): {**“There is no now owner of camels, sheeps or livestock who does not pay zakâh on them, but they will come on the Day of Resurrection as big and as fat as they ever were, butting him with their horns and trampling him with their hooves. Every time the last of them has passed, the first of them will come back to him, until judgment is passed upon the people.”**}⁽²⁾

First issue: owning livestock with the intention of milk and offspring

The issue:

If someone owns livestock with the intention of increasing it and benefit-

(1) See: *“Al-Ijmâ”* by Ibn Al-Mondher, [page 45]; *“Al-Iqnâ` Fî Masâ’il Al-Ijmâ”* by Ibn Al-Qatân, [1: 197]; *“Bada’i` Al-Sana’i”*, [2: 26]; *“Tabayîn Al-Haqâ’iq”*, [1: 259]; *“Bidayat Al-Mojtahid”*, [2: 11]; *“Adh-Dhakhirah”*, [3: 93]; *“Al-Madhhab”*, [1: 261]; *“Rawdat Al-Tâlibîn”*, [2: 151]; *“Al-Mobdi”*, [2: 309]; *“Kashâf Al-Qinâ”*, [2: 167].

(2) Related by Al-Bukhari in his *“Sahîh”*, Book: zakâh, chapter: cows zakâh. [of the prophet (PBUH)], hadîth no(.1460.) . And Muslim in his *“Sahîh”* and the wording is his, Book: zakâh, chapter The aggravation of the punishment for one who does not pay zakâh [of the prophet (PBUH)], hadîth no(.990.) ,[2: 686]

ting from its milk⁽¹⁾ and offspring⁽²⁾ and not with the intention of trading it by buying and selling, or with the intention of using it for riding, plowing, loading, watering⁽³⁾ and other similar purposes, is zakâh obligatory on it?

The ruling of the issue:

Firstly: scholars agreed on the obligation of zakâh on livestock owned with the intention of milk, offspring, and fattenin

If it was grazing⁽⁴⁾, which is one that feeds on permissible pasture⁽⁵⁾.

Their evidence is the commonness of texts indicating the obligation of zakâh on livestock, and livestock owned with the intention of producing milk and offspring grow in the possession of its owner, making zakâh obligatory on them⁽⁶⁾, what's meant by owning them for milk and offspring is that they are not used for work, trade, or utilization⁽⁷⁾, thus, zakâh is obligatory on them even if they are all males, which no milk nor offspring would be produced, and for that some scholars have added fattening to include male animals in the obligation of zakâh⁽⁸⁾

Secondly: scholars disagreed on the obligation of zakâh on livestock owned for milk and offspring if it is fed, which are animals that its owner buys or harvests feed for them⁽⁹⁾, with two opinions:

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- (1) Ad-Dar: Milk. See: "*As-Sihah*", [2: 655], entry: Darar; "*Maqaîs Al-Lugha*", [2: 255], entry: Dar.
- (2) An-Nasl: offspring. See: "*As-Sihah*", [5: 1829]; "*Al-Qamos Al-Mohît*", page: 1062, entry: Nasal.
- (3) An-Nadh: spraying water and watering plants. See: "*As-Sihah*", [1: 411]; "*Lisan Al-Arab*", [2: 619], Entry: Nadah.
- (4) See: "*Tohfât Al-Foqaha*" by As-Samarqandy, [1: 285]; "*Bada'i' Al-Sana'i*", [2: 30]; "*Bidayat Al-Mojtahid*", [2: 11]; "*Adh-Dhakhîrah*", [3: 93]; "*Al-Hawy Al-Kabîr*", [3: 188]; "*Al-Furû*", [4: 5]; "*Kashâf Al-Qinâ*", [2: 183].
- (5) See "*Mohît Al-Burhany*", [2: 253]; "*Hashyat Ad-dusûqy*", [1: 432]; "*Kefayat An-Nabîh*", [5: 244]; "*Al-Mobdi*", [2: 310].
- (6) See: "*Bada'i' Al-Sana'i*", [2: 30]; "*Al-Hawy Al-Kabîr*", [3: 189].
- (7) Utilizing livestock is seeking profit and income from it. See "*Lisan Al-Arab*", [11: 244], entry (Ghalal)
- (8) See: "*Al-Bahr Ar-Ra'iq*", [2: 229]; "*An-Nahr Al-Fa'iq*", [1: 420]; "*Al-Madhhab*", [1: 276]; "*Al-Furû*", [5: 4].
- (9) See: "*Ash-Sharh Al-Momti*" by Ibn 'othymîn, [6: 50].

First opinion: zakâh is not obligatory on them. And that is what most scholars agreed on⁽¹⁾, including Al-Hanafia⁽²⁾, and Ash-Shafi`îa<sup>(3)</sup>, and it is the doctrine of the Hanâbila<sup>(4)</sup>, this was also given as an opinion from The Permanent Committee for Scholarly Research and Ifta in the kingdom of Saudi Arabia<sup>(5)</sup>, and it was endorsed by The Shar`i Standard issued regarding zakâh by the Accounting and Auditing Organization for Islamic Financial Institutions.⁽⁶⁾

Second opinion: zakâh is obligatory on them, and this is the opinion of Al-Layth Ibn Sa`d⁽⁷⁾, the doctrine of Al- Malikîa, and the opinion –

Of Al-Hanâbila⁽⁸⁾ and it was issued as a Fatwah by the 12th Symposium on Modern zakâh Issues⁽⁹⁾.

Evidences and Discussions:

Evidences of the first opinion: the majority of scholars inferred that zakâh is not obligatory on fed livestock with evidences, including:

First evidence: the prophet (peace and blessings of Allah upon him) said: *“For every forty camels, one ‘bint labûn’ (a young female camel which is two years old and already starting the third year), is due as zakâh.”*⁽¹⁰⁾ and also

(1) See: *“Bidayat Al-Mojtahid”*, [2: 13].

(2) See: *“Al-Mabsûr”*, [2: 165]; *“Bada’i’ Al-Sana’i”*, [2: 10]; *“Al-Bahr Ar-Ra’iq”*, [2: 234].

(3) See: *“Al-Hawy Al-Kabîr”*, [3: 188]; *“Al-Wasîr”* by Al-Ghazaly, [2:435]; *“Rawdat Al-Tâlibîn”*, [2: 190]

(4) See: *“Al-Moghny”*, [2: 430]; *“Al-’insaf”*, [3: 45]; *“Kashâf Al-Qinâ”*, [3: 184].

(5) See: *“Fatâwa Al-Lagna Ad-Da’ima”* First installment, [9: 203]

(6) See: *“M`âir Ash-Sharî`ah”* [Page 480]

(7) See: *“Al-Mahaly”* by Ibn Hazm, [4: 144]; *“Al-’istidhkar”* by Ibn `Abd Al-Bar, [3: 184]; *“Bidayat Al-Mojtahid”*, [2:13]. Al-Layth ibn Sa`d is Al-Layth ibn Sa`d ibn `Abd Al-Rahmân, Abû Al-Hârith Al-Fahmî, the freedman of Qays ibn Rifâ`ah, the imam and jurist of his time. He was born in Egypt in the year 94 AH. Imam Al-Shâfi`î said about him: "Al-Layth is more knowledgeable than Mâlik, except that his companions did not uphold him." He passed away in the year 175 AH.

(8) See: *“Al-Furû”*, [4: 5]; *“Al-’insaf”*, [3:45].

(9) See: *“Abhâth wa A`mâl Al-Nadwah Al-Thâniyat `Ashrah li-Qadâya Al-zakâh Al-Mu`âsirah”* [page 309]

(10) Related by Abu Dâwûd in his *“Sunan”*, in the book zakâh, hadîth no. (1575), [2: 101], and An-Nisa’y in his *“Sunan”* book of zakâh, Chapter: The Punishment for Withholding zakâh, hadîth no. (2444), [5: 15]; And Ibn Khuzaymah in his *“Sahîh”*, Book of zakâh, =

said: “Regarding the zakâh of grazing sheep, if they are between forty and one hundred and twenty, one sheep is due as zakâh.”⁽¹⁾

Aspect of the evidence: there are two characteristics for livestock: grazing and feeding, and the prophet (peace and blessings of Allah upon him) discussed the obligation of zakâh on livestock characterized by grazing, implying the non-obligation of the other case⁽²⁾, and cows are included with camels and sheep for the lack of difference⁽³⁾.

It has been discussed from three perspectives:

First perspective: the characterization of grazing in the Hadîth denotes a common situation, for most livestock in Hijaz and elsewhere graze, the characterization is meant to state the reality and not a description of it⁽⁴⁾.

Second perspective: the Hadîth includes no evidence that zakâh is not obligatory on fed livestock, because it grazes by nature and has the power to graze⁽⁵⁾

Third perspective: the Hadîth came as an answer to a question: is there zakâh on grazing sheep? and the answer acknowledged the question and was specific to its motive, for there is no evidence that there is no zakâh on fed livestock⁽⁶⁾

Answering these three perspectives: mentioning the characteristic after a proper noun indicates that the intention is to negate anything other than it, and the possibilities they mentioned have no evidence supporting them.

Second evidence: zakâh is made obligatory on grazing livestock because they require minimal sustenance, while livestock being fed require greater

= Chapter: Mentioning the evidence of zakâh being obligatory on grazing camels and sheep only, hadîth no. (2266), 4: 18; Said by Imam Ahmed in his book: Salih Al-'isnad, See: “*At-Talkhîs Al-Habîr*”, [2: 357].

(1) Related by Al-Bukhary in his “*Sahîh*”, the book of zakâh, Chapter: the zakâh of Sheep, hadîth no. (1454), [2: 118]

(2) See: “*Al-Mabsûr*”, [2: 165]; “*Al-Hawy Al-Kabîr*”, [3: 189].

(3) See: “*Al-Bayân*”, [3: 150]; “*Al-Majmû'*”, [5: 357]

(4) See: “*Adh-Dhakhîrah*”, [1:102]; “*Al-Fawakih Ad-Dawâny*”, [1:341].

(5) See: “*Al-Moqadimât Al-Momahidât*”, [1: 325]; “*Lawami' Ad-Durar Fi Hatk 'ird Al-Mokhtasar*” by Al-Majlisî, [3: 249].

(6) See: “*AlBayân wa At-Tahsîl*” by Ibn Rushd Al-Jad, [2: 436].

sustenance from its owner, making zakâh on it non-obligatory⁽¹⁾.

Discussed: there is consensus by scholars that heavy sustenance does not negate the obligation of zakâh, but rather reduces it, like in the case of zakâh on agricultural produce⁽²⁾.

Third evidence: the reason for zakâh is growing wealth, and the indication of growth is grazing or preparation for trade, and neither of them exist, making zakâh non-obligatory on non-grazing livestock for the lack of growth like clothes⁽³⁾.

Discussed from perspectives:

First perspective: the rejection of the claim that there is no growth in non-grazing livestock, as fodder nourishes the body and with it comes growth in milk and offspring.⁽⁴⁾

Answered: fed livestock consumes the equivalent of its growth, the gift of growth is not fully realized in them⁽⁵⁾.

Second perspective: Feeding does not nullify the growth of livestock prepared for trade, if someone buys livestock with the intention of trade and fed them all year, this obligates zakâh on them, so why would growth be nullified for animals prepared for milk and offspring?⁽⁶⁾

Answered: growth in livestock prepared for trade is greater, and is not consumed by fodder, to the contrary of livestock prepared for milk and offspring.

Evidence for second opinion: those who advocated for the obligation of zakâh on livestock, whether grazing or fed, have provided evidence, including:

First Evidence: the general statement of the prophet (peace and blessings of Allah upon him) *“For each twenty-four camels, or less, their zakâh is to be paid as sheep”*⁽⁷⁾, the Prophet (peace and blessings of Allah upon him) also

(1) See: *“Al-Mabsût”*, [2: 165]

(2) See: *“Adh-Dhakhîrah”*, [3: 97]; *“Al-Mohalâ Bel-Âthâr”*, [4: 149]

(3) See: *“Al-Bahr Ar-Ra’iq”*, [2: 234]; *“Al-Kâfy Fi Fiqh AL-Imam Ahmed”*, [1:385]

(4) See: *“Adh-Dhakhîrah”*, [3: 97].

(5) See: *“Al-Moghny”*, [2: 430].

(6) See: *“Al-’inaya”*, [2: 194].

(7) See: has already been related, see page (69) of this book

said: “one sheep (is due) for every forty sheeps”⁽¹⁾

Aspect of the evidence: the literal meaning of these texts is inclusive of both grazing and non-grazing livestock, and the literal meaning is given precedence over the implied meaning by consensus⁽²⁾

Discussed: these texts are unrestricted, so they are to be applied in the light of the restricted, because the Hadîths discuss a single reason and a single ruling, so the implied meaning specifies the literal meaning⁽³⁾.

Second evidence: Fed livestock is an animal that gets split in the case of a sacrifice, thus permitting zakâh to be obligatory on it like grazing livestock⁽⁴⁾

Being discussed: this analogy is invalid due to the difference between sacrifice and zakâh, and between splitting and obligation.

Preference:

After contemplating laws, evidences, and discussions related to them, it appears that the preferred -and Allah is the all-knowing- is that the consensus of scholars speak of the non-obligation of zakâh on fed livestock.

The reason for the preference:

The strength of the evidence used by the consensus from Hadîths which restrict the obligation of zakâh to grazing livestock, and supporters of the second opinion use unrestricted texts as evidence, while the foundational principle is to apply the unrestricted in the light of the restricted if they share the same reason and ruling⁽⁵⁾, and the Malikîs applied that principal in the expiation for “*dhihard*”, so they specified freeing a slave being of faith, restricting the unrestricted verse about the expiation of *dhihar* in the light of the restricted

(1) Related by Ibn Majah in his “*Sunan*”: the book of zakâh, chapter zakâh of sheep, Hadîth no. (1805), [1: 577]; and Abû Dawûd in his “*Sunan*”, the book of zakâh, chapter: the zakâh of grazing livestock, Hadîth no. (1568), [2: 98], and Al-Tirmidhî in his “*Sunan*”, the book of zakâh, chapter: what has been mentioned about the zakâh of camels and sheep, Hadîth no. (621), [2: 10], and Al-Tirmidhî said “*Hadîth hassan*” (good Hadîth), “*Sunan Al-Tirmidhî*”, [2: 11]

(2) See: “*Adh-Dhakhîrah*”, [3: 96]; “*Sharh Al-Khurashy*”, [2: 148]

(3) See: “*Al-Mabsût*”, [2: 165]; “*Al-Moghny*”, [2: 430]

(4) See: “*Al-Hawy Al-Kabîr*”, [3: 188]

(5) See: “*Rawdat Al-Nadhir*” by Ibn Qudamah, [2:103]; “*Sharh Tafsîl Al-Fusûl*” by Al-Qrafy, page [266]

verse about the expiation of murder, and they disagreed with the literal text of the verse about expiation of Dhihar even though the cause is different. And in this case the cause is the same, prioritizing applying the unrestricted in the light of the restricted

Reasons for disagreement:

The disagreement on this issue stems from various reasons, the most notable two being:

- 1- the contradiction of the unrestricted which is the saying of the prophet (peace and blessings of Allah upon him) *“one sheep (is due) for every forty sheeps”*⁽¹⁾ with the restricted *“As regards the Zakâh for the (flock) of sheep; if they are between forty and one-hundred-and-twenty sheep, one sheep is to be paid; and if they are between one-hundred-and-twenty to two hundred (sheep)”*⁽²⁾

As the majority prioritized the restricted over the unrestricted and obligated zakâh on grazing livestock only, and the supporters of the second opinion prioritized the unrestricted over the restricted and obligated zakâh on both grazing and fed livestock.

- 2- Supporters of the second opinion considered the implied meaning to be opposite to the literal meaning of the two hadîths aforementioned (based on Mafhûm al-Mukhalafah), so they gave precedence to the literal wording and disregarded the implied meaning, and the majority said that there is no contradiction between the literal wording and the implied meaning (Mafhûm al-Mukhalafah), but rather, the literal wording is general (unrestricted) and the implied meaning specifies it (restricts it)⁽³⁾

Branch owning livestock with the intention of fattening for food:

Some scholars have distinguished between livestock owned for mild and offspring and livestock owned for fattening, and obligated zakâh on the first without the latter. The following presents the disagreement on the issue of grazing livestock owned for fattening:

(1) Already related. See: Page [70] of that book

(2) Already related. See Page [69] of that book

(3) See: *“Bidayat Al-Mojtahid”*, [2: 13]; *“Al-Mahsûl”* by Ibn Al-`araby [Page 94]

The issue:

Is zakâh obligatory on grazing livestock owned with the intention of slaughtering them for food?

Sayings on the issue: scholars have differed regarding the issue, presenting two opinions:

First opinion: zakâh is obligatory on it

This is one of the opinions stated by *Al-Hanîfah*⁽¹⁾, and is supported by *Al-Mâlikîah*⁽²⁾, *Ash-Shâfi`îah*⁽³⁾, and doctrine for *Al-Hanâbilah*⁽⁴⁾

Second opinion: zakâh is not obligatory on it. Claimed by *Sufyan*⁽⁵⁾ *Ath-Thawrî*⁽⁶⁾ And the other opinion of *Al-Hanîfah*⁽⁷⁾, *Al-Kasâny* said⁽⁸⁾: “If

(1) See: “*Al-Mabsûr*”, [2: 166]; “*Fath Al-Qadîr*”, [2: 194].

(2) Since I did not find a specific text from them on this matter, and this opinion is derived from their statement about the obligation of zakâh on livestock without exceptions, that would then include livestock owned for fattening and consuming their meat, It is also derived from their statement that the zakâh collector does not take from the fattened animals prepared to be eaten, which indicates that they are included in the Nisâb and that zakâh is obligatory on them. See: “*Sharh Al-Khurashy*”, [2: 152]; “*Hashiyat Al-`adawy Ala Kifayat At-Taleb Ar-Rabânî*”, [1:507]

(3) I have not found a specific text on the matter and it is derived from their text that the collector does not collect zakâh from the fattened, ready to be eaten livestock, which indicates that it is included in the Nisâb and zakâh is obligated on it. See: “*Al-Hawy Al-Kabîr*”, [3: 112]; “*Kashâf Al-Qinâ`*”, [2: 183].

(4) See: “*Al-Furû`*”, [4: 5]; “*Dalîl At-Tâlib*”, [Page 76]; “*Sharh Montaha Al-`iradat*”

(5) He is *Sufyan ibn Sa'id ibn Masruq al-Thawri al-Kufi*, *Abu Abdullah*. He was a trustworthy, reliable, and knowledgeable scholar, a devout worshiper, and an imam with assertion. He was an imam in the science of hadith and other fields of knowledge, and one of the diligent jurist imams. *Ibn `ainah*: I have never seen a man more knowledgeable about what is Halal and what's Haram than *Sufyan al-Thawri*. *Ibn al-Mubarak* said: 'We do not know anyone on the face of the earth more knowledgeable than *Sufyan*.' He passed away in Basra in the year of 161 AH. See his translations: “*Tabaqât Al-Fuqaha`*” page [84]; “*wafiat Al-A`yan*”, [2: 386]

(6) See: “*Al-Mahaly*”, [4: 146].

(7) See: “*Bada'i` Al-Sana'i`*”, [2: 30]; “*Al-Bahr Ar-Ra'iq*”, [2: 229]; “*Al-Fatawâ Al-Hindîah*”, [1: 176]

(8) *Abu Bakr ibn Mas'ud ibn Ahmed, `Alâ' Ad-Din al-Kasani*, Prince of Kasân, a town beyond the river in the land of the Turks, was a Hanafi scholar and jurist. He resided in Bukhâra, where he sought knowledge under his teacher, `Alâ' Ad-Din *Al-Samarqandi*. =

they were raised for breeding, riding, or meat, then zakâh is non-obligatory on them”⁽¹⁾, and Ibn ‘abdîn said⁽²⁾: by meat it means consumption, meaning that if they were raised so he and his guests can eat their meat, it is as if they were raised for breeding and riding”⁽³⁾

Evidences and Discussions:

Evidences on the first opinion: and they are who claim zakâh is obligatory on livestock owned for fattening and food:

First evidence: the commonness of texts indicating the obligation of zakâh on livestock, like what the Prophet (peace and blessings of Allah upon him) said: “for twenty-four camels or less, sheep are to be paid as Zakâh; for every five camels one sheep is to be paid...As regards the Zakâh for the (flock) of sheep; if they are between forty and one-hundred-and-twenty sheep, one sheep is to be paid”⁽⁴⁾

Aspect of the evidence: that these texts did not distinguish between livestock owned with the intention of milk and offspring and livestock owned with the intention of fattening.

Second evidence: ‘Omar Ibn Al-Khattab saying to his listeners “Yes, you include a sakhla⁽⁵⁾ which the shepherd is carrying, but you do not take it.

= He explained his teacher's book “*Tuhfat Al-Fuqaha*” in his own famous work “*Bada’i’ As-Sana’i*” in jurisprudence. For that, As-Samarqandi married him to his daughter Fatima, the knowledgeable jurist. He taught in Damascus and authored several works, including “*Bada’i’ As-Sana’i*” and “*As-Sultân al-Mubîn fi Usul Ad-Dîn*”. He passed away in Aleppo in the year 587 AH. See his translations: “*Baghîat At-Talab fi Tarîkh Halab*” by Al-‘iqely, [10: 4347]; “*Al-Jawaher Al-Mudeya*”, [2: 244]

(1) “*Bada’i’ As-Sana’i*”, [2: 30]

(2) He is Muhammad Amin ibn ‘Umar ibn ‘Abd al-‘Aziz ibn ‘Abidin al-Dimashqi al-Hanafi, known as Ibn ‘Abidin due to his lineage being connected to Imam Zayn al-‘Abidin Ali ibn al-Husayn. He was the Hanafi Imam of his time and a jurist of the Syrian lands. He was known for his knowledge in jurisprudence and the principles of Islamic law, as well as in exegesis. He authored several significant works, the most prominent of which are: ‘Radd al-Muhtar ‘ala Al-Durr Al-Mukhtar,’ ‘Minhat Al-Khaliq,’ and a commentary on Al-Baydawi’s Tafsir. He passed away in Damascus in the year 1252 AH. See his Translation: “*Hilyat Ash-Shar*” by Al-Bîtâr, [Page 1230], “*Mu’jam Al-Mo’alifîn*”, [9: 77]

(3) “*Hasheyat Ibn ‘abidîn*”, [2: 276].

(4) Already related, See: [page 69] of that book

(5) As-Sulkha: offspring of both sheep or goat, male or female. See: “*Mukhtar As-Sihah*”, [Page 144]

Neither do you take an akula, or a rubba⁽¹⁾, or a makhid, or male sheep and goats in their second and third years, and this is a just compromise between the young of sheep and goats and the best of them.”⁽²⁾

Aspect of the evidence: the animal that eats a lot is the one that is fattened for eating⁽³⁾, and forbidding the collector from taking it is an indicator that it is included in the ‘Nisâb’ of zakâh.

Evidence of the second opinion:

The proponents of the second opinion argue that livestock prepared for eating are occupied with fulfilling the owner’s needs, so they are considered like those prepared for riding, clothing the body, and servants for service⁽⁴⁾.

Discussed: fattening livestock results in the growth of it, and the intention of eating it does not prevent the obligation of zakâh on it, like grains and fruit.

Preference:

The preferred is -and Allah is the all-knowing- is the opinion of the majority who obligate zakâh on grazing livestock owned with the intention of fattening to be slaughtered and eaten

Reason for the preference:

The original ruling is the obligation of zakâh on grazing livestock, and this ruling should not be deviated from unless with evidence, and the evidence provided by the proponents of the second opinion is not free from discussions.

The fruit of the disagreement:

The disagreement in this matter is abstract, and its impact appears in the case of someone who intends, by owning grazing livestock, to fatten them for eating. Does zakâh become obligatory on them, and do they count towards the nisab?

(1) Ar-Ruba which is followed by its offspring, as it raises it. See: “*Sharh As-Sunah*” by Al-Baghaw, [6: 21]

(2) Related by Malik in “*Al-Mawta*” I, book of zakâh, Chapter: what has been mentioned about the zakâh of Sakhl, Hadîth no. (909), [2: 372]; And Abd Ar-Razaq in his “*Musanaif*”, book of zakâh, Chapter: what is and how to collect zakâh?, Hadîth no. (6806), [4: 10]; And Al-Bîhiqî in “*Alkubrâ*”, book of zakâh, Chapter: the age at which sheep is taken as zakâh, Hadîth no. (7301), [4: 169] affirmed by An-Nawawy, See: “*Al-Majmû*”, [5: 427]

(3) See: “*Al-Mawta*”, [2: 374]; “*Al-Madhab*”, [1: 277].

(4) See: “*Hashiyat Ibn `abidîn*” [2: 276].

According to the majority, zakâh is obligatory on it and it is included in the nisab, and according to the second opinion, zakâh is not obligatory on them and it is not included in the nisab, thus, if someone owned forty sheep and intended to fatten one of them for food, zakâh would not be obligatory on it for the incompleteness of the nisab.

Second issue: owning livestock with the intention of work.

The issue: if someone owns camels or cows⁽¹⁾ with the intention of using them for riding, loading, plowing, or irrigation, is zakâh obligatory on them?

opinions on the issue: scholars are divided on the ruling on the zakâh of working camels and cows into two opinions:

First opinion: zakâh is not obligatory on them. This is the opinion of Ali Ibn Abi Talib, Moadh Ibn Jabal, Jabir

Ibn Abd Allah⁽²⁾, Ath-Thawry and Al-Awza'î⁽³⁾, Hanîfah doctrine⁽⁴⁾ and the ruling for the Shâfi'îah⁽⁵⁾ and Al-Hanâbilah⁽⁶⁾, and with it came a fatwa from the 12th Symposium on Modern zakâh Issues⁽⁷⁾, and it was adopted as the rightful standard issued by the Accounting and Auditing Organization for Islamic Financial Institutions⁽⁸⁾

Second opinion: zakâh is obligatory on it. And this is the opinion of Mak hûl⁽⁹⁾,.....

(1) Sheep are not suitable for work, but if it was used for plowing and so on, it is to be included in the matter

(2) See: "*At-Tamhîd*", [20: 142]; "*Al-Moghny*" [2: 443]; "*omdat Al-qary*" by Al-'ainy, [9: 22]

(3) Attributed to Ath-Thawry, and Al-Awza'y Ibn 'abd Al-bar in "*At-Tamhîd*", See: "*At-Tamhîd*", [20: 141]

(4) See: "*Tohfah Al-Foqahâ*", [1: 285]; "*Al-Ikhteyar Leta'îl Al-Mokhtar*", [1: 105]; "*Tabyîn Al-Haqâ'iq*" [1: 259]

(5) See: "*Al-'um*", [2: 25]; "*Al-Hawy Al-Kabîr*", [3: 189]; "*Al-Majmû'*", [5: 385]

(6) See: "*Al-Muharrir*" by Al-Majd Ibn Taymiyah, [1: 214]; "*Al-Iqna'*" [1: 248]; "*Sharh Montaha Al-'iradat*", [1: 399].

(7) See: researches and works of Accounting and Auditing Organization for Islamic Financial Institutions [page: 309]

(8) See: "*Al-M'âîr Ash-Shar'îah*" [page 480]

(9) He is Makhûl Bin 'abd Allah Ash-Shamî, Abu 'abd Allah, he was a captive of kabul, and he is originally from the Sind, he became the jurist and mufti of the Levant, and he was unparalleled in Ifta' in his time, Al-Zahry said: "*the jurists are four, Sa'id Ibn Al-Masib=*

Qutadah⁽¹⁾, Maliki doctrine⁽²⁾, and a opinion from amongst the Shâfi'îah⁽³⁾ Al-Hanâbilah⁽⁴⁾

Evidences and discussions:

Evidences of the first opinion: those who advocated for the first opinion of the non-obligation of zakâh on livestock used for work with evidences, including

First evidence: Ali reported the Prophet as saying “*nothing is payable on working animals*”⁽⁵⁾

Amr Ibn Shu'ayb Narrated⁽⁶⁾ from his father and grandfather, that the

= in *Al-Madînah*, *Ash-Shu'aby* in *Al-Kûfah*, *Al-Hassan* in *Al-Basrah*, and *Makhûl* in *Ash-Shâm*. His death was disputed upon, the dominant is that he died in 112 AH. See his translations: “*Wafeyât Al-'a'yan*”, [5: 280]; “*Siyar A'lam An-Nubala*” [5: 157].

(1) Attributed to Makhûl and Qutadah Ibn 'abd Al Bar in “*At-Tamhîd*.”, see: “*At-Tamhîd*.”, [20: 141]; “*omdat Al-Qary*” [9: 22], and Qatâda is Qatâdah Ibn Di'âma Ibn Qatâdah Ibn 'Azîz Al-Sadûsi Al-Basrî, Abû Al-Khatâb. He was trustworthy, reliable, and an authority in hadith, tafsîr, and fiqh. He was among the most knowledgeable and memorized of people, particularly in Arabic, linguistics, the history of the Arabs, and genealogy. Imam Ahmad praised him highly. He passed away due to the plague 117 AH. See his translations: “*At-Tabaqat Al-Kubra*”, [7: 171], “*Tadkhîrat Al-Hifadh*”, [1: 91].

(2) See: “*Al-Mudawanah*”, [1: 357]; “*Al-Qaqanîn Al-Fiqhîah*” by Ibn Al-Jazî [Page 73]; “*Sharh Al-Khurashy*” [2: 148]

(3) See: “*At-Tahdhîb*”, [3: 65]; “*Al-Bayân*”, [3: 150], “*Al-Majmû'*”, [5: 385].

(4) See: “*Al-Furû'*”, [4: 5]; “*Al-Mubdî'*”, [2: 310], “*Al-'insaf*”, [3: 46]

(5) Related by Abu Dawûd in his “*Sunan*”: book of zakâh, chapter: the zakâh of grazing sheep, Hadîth no. (1572), [2: 99]; and Ibn Khuzaymah in his “*Sahîh*”, book of zakâh, chapter: mentioning the detailed account for the vague term he mentioned, along with the proof that the Prophet (peace and blessings of god be upon him) only obligated zakâh on grazing cows and not workers, Hadîth no. (2270), [4: 20] and Al-Bîhiqy in his “*As-Sunan Al-kubra*”, book of zakâh, chapter: how was the zakâh obligated, Hadîth no. (7294), [4: 166] and the Hadîth was labeled “*Sahîh*” by Ibn Al-Qatan, labeled “*Hassan*” by Az-Zile'y and labeled “*Sahîh*” by Ibn Al-Almulaqan, see: “*Nasb Ar-Râyah*” by “*Az-Zile'y*” [2: 353]; “*Al-Badr Al-Monîr*” by Ibn Al-Molaqin, [5: 462].

(6) He is: Amr ibn Shuayb ibn Muhammad ibn Abdullah ibn Amr ibn al-Âs al-Qurashî al-Sahmî, also known as Abû Ibrâhîm. He narrated from his father, with the majority of his narrations being from him, and also transmitted hadiths from the senior Tâbiûn. Abû Zur'ah said about him: “He is trustworthy in himself, although he has some hadiths that are considered “*Monkarah*”, he passed away in 80 AH, See his biography: “*Siyar A'lam An-nubala*”, [5: 165]; “*Tahdhîb At-Tahdhîb*, [8: 48].

prophet (peace and blessings of Allah upon him) said: “*there is no zakâh on working camels*”⁽¹⁾, And Jabir narrated that the prophet (peace and blessings of Allah upon him) said: “*there is no zakâh Al-Muthirah*”⁽²⁾”⁽³⁾

Discussed from three perspectives

First perspective:

The hadîth by Ali is Sahîh The hadith of Ali (may Allah be pleased with him) is narrated by `Asim Ibn Damrah<sup>(4)</sup> and Al-Harith Ibn Al-A`war⁽⁵⁾, both of whom are considered weak hadîths. The hadîth of `Amr Ibn Shu`ayb from his father from his grandfather is incompletely transmitted (mursal)⁽⁶⁾, and the hadîth of Jabir has a weak chain of narration.

Response: The hadîth of Ali (may Allah be pleased with him) is of authentic chain of narration through Asim Ibn Dhamrah, and Asim has been

- (1) Related by Ad-Daraqutni in his “*sunan*”, book of zakâh, chapter: there is no zakâh on working animals, Hadîth no. (1938), [2: 492] and Al-Bîhiqy in “*Al-Kubra*”, book of zakâh, chapter: what nullifies zakâh from livestock, Hadîth no.(7391), [4: 195]. The hadith includes Ghâlib ibn Abdullâh, who is considered unreliable, see “*Nasb Ar-Râyah*” [2: 360]; “*Al-Badr Al-Monîr*”, [5: 461]
- (2) Is what moves the earth, meaning “*plowing*”, and “*itharah*” is moving, See “*Al-Binâyah Sharh Al-Hidayah*” [3: 351]
- (3) Related by Ad-Daraqutni in his “*sunan*”, book of zakâh, chapter: explaining the Two Partners and What Has Been Said About Zakâh on the Two Partners, Hadîth no. (1944), [2: 494], and Al-Bîhiqy in his “*As-Sunan Al-kubra*”, book of zakâh, chapter: what nullifies zakâh from livestock, Hadîth no. (7396), [4: 196], Al-Bîhiqy said “*there is weakness in its “isnad”* and the correct view is that it is a statement attributed to a Companion (mawqûf)”, “*As-Sunan Al kubra*”, [4: 196].
- (4) He is: `Asim ibn Dhamrah al-Sulali, from Qays `Aylan. He narrated about Ali (may Allah be pleased with him) and was trustworthy. He has hadiths and was reported by the compilers of the Sunan. He died in Kufa during the governorship of Bishr ibn Marwan in the year 74 AH. See his biography: “*At-Tabaqât Al-Kubrâ*”, [6: 245]; “*Tahdhîb Al-Kamâl*”, [13: 498]
- (5) Harith ibn Abd Allah al-Hamdani al-Kharifi al-Awar, known as Abu Zahir, was from Kufa. He narrated from Ali (may Allah be pleased with him). He was known for his extreme Shiism and was weak in hadith. He was accused of lying and was criticized by most scholars. He was knowledgeable in fiqh and obligations. He died in the year 65 AH. Refer to his biography: “*Al-Magrûhîn*” by Ibn Habân, [1: 264]; “*Mizân Al-`i tidâl*” by Adh-Dhahabî, [1: 437]
- (6) See: “*Sharh Sahîh Al-Bukhâry*” by Ibn Batâl, [3: 467].

authenticated by a group of scholars⁽¹⁾.

Second Perspective: the exemption of zakâh on working animals in these texts is due to not reaching the zakâh threshold (An-Nisâb), because.

Working animals usually do not reach the Nisâb⁽²⁾

Answered: even if we accepted that it is common for working cows not to reach the Nisâb, we would not accept that for camels, and a person may own enough working animals to reach the Nisâb on behalf of the others. Furthermore, texts specified working animals to be exempted from zakâh, and applying that to those below Nisâb negates the specification. That is because working and non-working animals would be treated the same in terms of the non-obligation of zakâh beneath the Nisâb threshold⁽³⁾

Third perspective: what is intended is exempting the fed, working animals from zakâh, because the common for working animals to be fed⁽⁴⁾.

Answered: there is no proof for this specification, the text is general about workers and includes both grazing and fed.

Second evidence: what has been narrated that the prophet (peace and blessings of Allah upon him) said: *"I have relieved you of zakâh on horses⁽⁵⁾, donkeys⁽⁶⁾ and working cows⁽⁷⁾"*⁽⁸⁾

Aspects of the evidence: the prophet (peace and blessings of Allah upon him) denied the obligation of zakâh for *"Nukhah"* which are working cows, and as stated by linguists: every working animal is called *"Nukhah"*, which includes camels and cows⁽⁹⁾.

(1) See *"Tahdhîb Al-Kamâl"*, [13: 498]; *"Taqrîb At-Tahdhîb"* by Ibn Hajar, [page 285]

(2) See: *"Al-Hawy Al-Kabîr"*, [3: 189] (3) See the previous reference

(4) See: *"Kifayat An-Nabîh"*, [5: 244]

(5) They are horses. See: *"Gharîb Al-Hadîth"* by Al-Qasim Bin Salâm, [1: 7]

(6) They are donkeys, see the previous reference

(7) It was said, they are slaves, and it was also said that they are working cows, every animal used is considered a *"Nukhah"*. See: the previous reference, *"An-Nihayah Fi Gharîb Al-Hadîth"*, [5: 31]

(8) Related by Al-Bîhiqy in his *"As-Sunan Al-Kubra"*, book of zakâh, Chapter: no zakâh on horses, Hadîth no. (7409), and it was mentioned that Sulaymân ibn Arqam was included, Matrûk. See: *"As-Sunan Alkubra"*, [4: 199]

(9) See: *"Sharh Mukhtasar At-Tahâwy"*, [2: 277]; *"Al-Mabsût"*, [2: 165]; *"An-Nihayah Fi Gharîb Al-Hadîth"*, [5:31]

Discussed: that the hadîth is not valid, for it was weakened⁽¹⁾ by Al-Bîhi`y⁽²⁾

Third evidence: the prophet's (peace and blessings of Allah upon him): "*For every forty camels, one 'bint labûn' "*"⁽³⁾, and also said "*Regarding the zakâh of grazing sheep, if they are between forty and one hundred and twenty, one sheep is due as zakâh.*"⁽⁴⁾

Aspect of the evidence: the prophet peace and blessings of Allah upon him specified the obligation of zakâh on "*As-Sa'imah*" which is the grazing whose growth is sought in their offspring and milk, and his implication exempted zakâh on the working⁽⁵⁾.

Discussed: the characteristic of grazing is called upon the animals that graze in the permissible pasture, whether it was owned for milk and offspring or for working, and there is no evidence on specifying grazing exclusively to animals owned for milk and offspring.

Forth evidence: the prophet (peace and blessings of Allah upon him) said: "*No sadaqa is due from a Muslim on his slave or his horse.*"⁽⁶⁾

Aspect of the evidence: the prophet (peace and blessings of Allah upon him) denied the obligation of zakâh on the slave and the horse. Because they are common property not owned for growth, the same ruling applies to working livestock as them. As they are utilized not for the sake of growth, so it is

(1) See: "*As-Sunan Alkubra*", [4: 199]

(2) Aḥmad ibn al-Ḥusayn ibn 'Alī ibn Mūsā al-Bayhaqī, Abū Bakr, was born in Nishapur and raised in Bayhaq. He traveled to Baghdad, Kufa, Mecca, and other places. He was among the leading scholars of Hadith and Fiqh. Al-Dhahabī said about him, "If al-Bayhaqī had wanted to establish his own doctrine through ijtihād, he would have been capable of it due to the vastness of his knowledge and his understanding of differences in opinion." He authored many significant works, among them "*As-Sunan Alkubra*", "*As-Sunan As-Sughra*" and "*Al Asmaa' wa As-Sifāt*". He passed away in 458 AH. See his biography "*At-Taḥqīd Le Ma'rifat Ruwat As-Sunan wa Al-Masânīd*" [page 137], "*Siyar A'lam An-Nubala'*", [18: 163]

(3) Already related, see page [69] of that book

(4) Already related, see page [69] of that book

(5) The definition of Sawm according to them applies to livestock that grazes on permissible pasture for the intention of milk and offspring, however, if they graze for work or trade it cannot be called sâ'ima legally. See: "*Fath Al-Qadîr*", [2: 171]; "*Kefayat An-Nabîh*", [5: 244]

(6) Already related, see page [59] of that book

similar to the slave and the horse⁽¹⁾.

Discussed: growth in offspring is fulfilled from working animals and it is limited to work.

Fifth evidence: the non-obligation of zakâh on working animals is the saying of `Ali Ibn Abi Talib, Mo`adh Ibn Jabal and Jabir Ibn `abd Allah (may god be pleased with them) and there were no dissenting opinions among the Sahabah, so it is a consensus⁽²⁾

Sixth evidence: the need to know the obligation of zakâh on working animals is prevalent, and if the prophet (peace and blessings of Allah upon him) stated the obligation of zakâh on it or taking zakâh from it, it would have been transmitted, And since it is not the case, we knew that there is no zakâh in it⁽³⁾. Imam Ash-Shafi`i said *“there were water-drawing animals during the time of the prophet of Allah (peace and blessings of Allah upon him) and later his successors, yet I am did not know of anyone narrating that the prophet of Allah (peace and blessings of Allah upon him) took zakâh from it, nor any of his successors”*⁽⁴⁾

Evidence of the second opinion: those who advocated for the second opinion of the obligation of zakâh on livestock used for work with evidences, including:

First evidence: the generalization statement of the prophet (peace and blessings of Allah upon him): *“for twenty-four camels or less,*

sheep are to be paid as Zakâh; for every five camels one sheep is to be paid,”⁽⁵⁾ and the hadîth said by Mo`adh Ibn Jabal (may god be pleased with him) said: *“the Prophet sent him to the Yemen he ordered him to take a male or female calf of a year old for every thirty livestock and a cow in its third year for every forty.”*⁽⁶⁾

(1) See: *“Al-Mabsûr”* [2: 165]; *“Al-Hawy Al-Kabîr”*, [3: 189]; *“Fath dhi Al-Jalâl Wa Al-Iqrâm”* by Ibn `thymîn, [3: 52]

(2) See: *“At-Tamhîd”*, [20: 142]

(3) See: *“Sharh Mukhtasar At-Tahâwy”*, [2: 276]

(4) See: *“Al-`om”*, [2: 25]

(5) ¹ Already related, See page [69] of that book

(6) ²Related by Ibn Majah in his *“Sunan”*, book of zakâh, chapter: the zakâh of vows, Hadîth no. (1576), [1: 576] ; and Abu Dawûd in his *“Sunan”*, book of zakâh, chapter: the zakâh=

Aspect of the evidence: these are generalized about the obligation of zakâh on camels and livestock, and it includes working animals and others⁽¹⁾.

Discussed: what specifies this generalization has been mentioned, which are the texts that exempt working animals⁽²⁾ from zakâh, and the specific takes precedence over the general⁽³⁾.

Second evidence: the opinions of Yahya Ibn Sa'id⁽⁴⁾ and Rabî'ah Al-Ra'y⁽⁵⁾: *"Rental camels are still subject to zakâh here in Medîna."* It is the consensus of the people of Medîna⁽⁶⁾

Discussed: the consensus of the people of Medîna is not proof⁽⁷⁾ especially that it opposes what has been reported by the companions, among them are Ali, Mu'adh, and Jabir (may Allah be pleased with them) and no opposition to their view have been known⁽⁸⁾.

Third evidence: working animals are of the same type as growing wealth, and they are more deserving of zakâh obligation, because the utilization Of it is greater and its benefit is bigger⁽⁹⁾

= of the grazers, Hadîth no. (1576), [2: 101] and At-Tirmidhy in his "*Jami`*", book of zakâh, chapter: what has been mentioned about the zakâh of cows, Hadîth no. (623), [2: 13], and An-Nisa'i in his "*Sunan*", book of zakâh, chapter, zakâh of cows, Hadîth no. (2450), [5: 25], At-Tirmidhy said, "*Hadîth Hasan*", "*Jami` At-Tirmidhy*", [2: 13].

(1) See: "*At-Tamhîd*", [20: 142] (2) See: "*Al-Mughny*", [2: 443]

(3) See: "*At-tahîr Sharh At-Tahrîr*" by Al-Maradâwy, [8: 4218]

(4) Yahyâ ibn Sa'id ibn Qays ibn 'Amr al-Khazrajî al-Ansârî, known as Abû Sa'id, was the scholar of Madînah in his time and a student of the Seven Jurists. He was a distinguished Tâbi'i who learned from Anas ibn Mâlik. Among those who narrated from him were 'Urwa ibn Al-Zubayr and others from the Tâbi'in. Imâm Ahmad said: "Ibn Sa'id was the most reliable of people." he passed away in 143 AH, see his biography: "*At-Tabaqât Al-Kubrâ*" page [335], "*Sayr A'mâl An-Nubalâ`*" [5: 468]

(5) Rabî'ah ibn Abî 'Abd al-Rahmân Farrûkh al-Taymî al-Madanî, known as Abû 'Uthmân and famously as Rabî'ah al-Ra'y, was a distinguished Tâbi'i. He met the Companions Anas ibn Mâlik and al-Sâ'ib ibn Yazîd. Rabî'ah was one of the most knowledgeable people in Madînah and the teacher of Imâm Mâlik. Imâm Mâlik said, "The sweetness of fiqh disappeared with the death of Rabî'ah al-Ra'y." he passed away in 136 AH. see his biography: "*Tabaqât Al-Fuqahâ`*" page (65), "*wafeyât Al-A'yan*", [2: 288]

(6) see: "*Sharh Sahîh Al-Bukhârî*" by Ibn Batâl, [3: 469]

(7) "*Al-Mahsûl*" by Ar-Râzy, [4:162]; "*Rawdat An-Nadhir*", [1: 411]

(8) See: "*At-Tamhîd*", [20: 142]

(9) See: "*Al-Mabsûl*", [2: 165]; "*Al-Majmû`*", [5: 358]

Discussed: benefitting from working animals is not a type of growth, like benefitting from real estate used for accommodation, and the permissible use of jewelry, and such benefits do not necessitate zakâh⁽¹⁾

Answered: in addition to benefitting from working animals in labor, its growth could happen through reproduction, thus, considering it among growing assets.

Fourth evidence: the variation of traits in livestock is like the variation of teeth, and since the difference in teeth does not affect the zakâh, obligating it whether young or old. And so, the variation of traits does not affect the zakâh of working and non-working animals⁽²⁾.

Discussed: by not approving that the variance in traits is like the variance in teeth, for teeth are changing while traits could last. Moreover, texts have differentiated between traits excluding teeth, mandating zakâh on grazing animals and exempting it from fed and working animals.

Preference: after contemplating both opinions, evidences and discussions, it appears that the preferred -and Allah is the all-knowing- is the first opinion, which is the non-obligation of zakâh on working livestock.

Reasons for the preference:

- 1- the strength of some evidences of the first opinion and its immunity from criticism, and on the other side, the weakness of the evidences of the second opinion and not being free from criticism.
- 2- the consensus of the companions (As-Sahâbah) on the non-obligation of zakâh on working livestock, and it is not known of anyone who opposed the opinion of Ali, Mo`adh and Jabir (may Allah be pleased with them)⁽³⁾ despite the importance of the issue and the need to clarify its ruling.

The reasons for the disagreement of the in the issue:

The most prominent reasons for the disagreement are as follows:

- 1- the disagreement on the authenticity of the reported Hadîths regard-

(1) See: “*Al-Hawy Al-Kabîr*”, [3:189]

(2) See: “*Al-Ma`ûnah*” by the judge `abd Al-Wahab (p.397)

(3) See: “*At-Tamhîd*”, [20: 142]

ing the exemption of working animals of zakâh. Advocates of the first opinion abide to these Hadîths, while the supporters of the second opinion question their authenticity and abide to the general texts indicating the obligation of zakâh on livestock.

- 2- the disagreement in the evidentiary value of the consensus of the people of Medina. The Maliki school considers it authoritative and cites the practice of the people of Medina in collecting zakâh from working animals as evidence, but the majority consider the consensus of the people of Medina to not be a valid proof.

Third issue: owning livestock with the intention of trade

The issue:

Livestock owned with the intention of trade by flipping it through selling and buying, if they meet the conditions of zakâh of trading goods, is zakâh obligatory on it? And would it be under the zakâh of individual assets or trading goods?

Clarification of the agreement

Firstly: scholars agreed that zakâh is obligated on livestock owned with the intention of trade if it reached the threshold (Nisab) of either considerations (the consideration of its original value or what it has become from trading in it)⁽¹⁾.

Secondly: scholars agreed that livestock owned with the intention of trade is not subject to the zakâh of individual assets and the zakâh of trading goods, but rather one of them.⁽²⁾ so that duplication in zakâh does not occur⁽³⁾ which the prophet (peace and blessings of Allah upon him) has prohibited by saying: “no duplication in zakâh”⁽⁴⁾.

(1) See “*Al-Mabsût*”, [2: 170]; “*Al-Binayah*”, [3: 352], “*Adh-Dhakhîrah*”, [3: 22]; “*At-Tâj wa Al-Iklîl*”, [3: 96]; “*Al-Om*”, [2: 52]; “*Al-Hawy Al-Kabîr*”, [3: 303]; “*Al-Moghny*”, [3: 61]; “*Al-Insâf*”, [3: 157].

(2) See “*Al-Mabsût*”, [2: 170]; “*Al-Mohît Al-Burhâny*”, [2: 322]; “*Al-Mudawanah*”, [1: 358]; “*Adh-Dhakhîrah*”, [3: 22], “*Al-Hawy Al-Kabîr*”, [3: 303]; “*Nihayat Al-Matlab*” [3: 316]; “*Al-Ma`âny Al-Badî`ah*” [1: 291]; “*Al-Mughny*” [3: 62]; “*Ash-Sharh Al-Kabîr*”, [2: 630]

(3) Al-Thinâ refers to the repetition of zakâh on the same wealth within the same year. See: *Talabatu al-Talabah* by An-Nasfy, page [17]; “*An-Nihayah*”, [1: 224]

(4) Related by Ibn Aby Shaybah in his “*Musanaf*”, book of zakâh, chapter: zakâh is to be taken only once a year, *hadîth* no. (10734), [2: 431], and the *hadîth* is “*Munqati`*” and is=

Thirdly: scholars agreed that if livestock owned with the intention of trade reaches the threshold of trading goods but not that of individual assets, it should be subjected to zakâh as trade goods, so that the right for zakâh on it is not forfeited⁽¹⁾. And if it reaches the threshold of individual assets and not that of trading goods, should be subjected to zakâh as of individual assets by the consensus of the Mâlikîah, Shâfi`îah and the doctrine of Hanabila, so that the right for zakâh on it is not forfeited⁽²⁾. It is the doctrine of Hanîfah and a opinion of Hanabila that it is not subject to zakâh⁽³⁾.

Example: it is by consensus that who owns thirty nine sheep costing twenty dinars or two hundred dirhams should give zakâh on them as trading goods, because they reached the zakâh threshold (An-Nisâb) of trade goods, but did not reach it as grazing livestock subject to zakâh. And who owns 5 camels with a value less than twenty dinars or two hundred dirhams, should give zakâh on them as individual assets by consensus, because it reached the threshold (An-Nisâb) of individual assets of the type of grazing livestock, but not as trade goods.

Fourthly: scholars disagreed about livestock owned with the intention of trade; if it reached both thresholds, would the zakâh be as individual assets or as trade goods? They presented four opinions:

First opinion: the zakâh paid on it is zakâh of trading goods, this is the Hanîfah doctrine⁽⁴⁾,.....

= narrated by Al-Hasan Ibn Al-Hasan Ibn `Ali Ibn Abi Talib (may Allah be pleased with them) from his grandmother Fatimah (may Allah be pleased with her), the daughter of the Prophet (PBUH), but he did not meet her

(1) See: Al-Asl [2: 19,25]; "*Al-Mabsûr*", [2: 170,178]; "*Adh-Dhakhîrah*", [3: 22]; "*At-Tâj wa Al-Iklîl*", [3: 96]; "*Al-Hawy Al-Kabîr*", [3: 303]; "*Al-madhab*", [1: 294]; "*Al-Kafy Fi Fiqh Al-Imam Ahmed*", [1: 411]; "*Al-Furû'*", [4: 201].

(2) See: "*Adh-Dhakhîrah*", [3: 22]; "*At-Tâj wa Al-Iklîl*", [3: 96]; "*Al-Hawy Al-Kabîr*", [3: 303]; "*Al-madhab*", [1: 294]; "*Al-Kafy Fi Fiqh Al-Imam Ahmed*", [1: 411]; "*Al-Mu-harir*", [1: 218].

(3) They based their argument on what will be mentioned in the evidence supporting the first opinion in this issue. Among the points: the intention of trade nullifies the ruling of grazing, which is the reason why zakâh was due on the asset. Therefore, if the livestock does not reach the nisab (threshold) for trade, then no zakâh is required on it. See: "*Al-Asl*", [2: 19,25]; "*Al-Mabsûr*", [2: 170,178], "*Al-Binayah*", [3: 352], "*Al-Insaf*", [3: 158].

(4) according to them, if the livestock intended for trade reaches the nisab for pasturing =

an old opinion of Shâfi`îah<sup>(1)</sup> and doctrine of the Hanâbilah<sup>(2)</sup> and with it, a fatwa was issued by the 12th Symposium on Modern zakâh Issues<sup>(3)</sup>, and it has been adopted as The Shar`i Standard issued regarding zakâh by the Accounting and Auditing Organization for Islamic Financial Institutions⁽⁴⁾.

Second opinion: the zakâh paid on it is zakâh of individual assets. This is the Mâlikîah doctrine⁽⁵⁾, the modern opinion of Shâfi`îah and what is Sahih for them⁽⁶⁾, and an opinion of the Hanâbilah⁽⁷⁾.

Third opinion: zakâh is paid in the manner most beneficial to the poor, whether individual assets or trade goods. This is an opinion of the Shâfi`îah⁽⁸⁾ and an opinion of the Hanâbilah⁽⁹⁾

Fourth opinion: zakâh is paid in the manner of which is due first. If the trade goods reach their due first, it is paid as trade goods. And if individual assets reach their due first, it is paid as individual assets. This is an opinion of the Shâfi`îah⁽¹⁰⁾, and an opinion of the Hanâbilah⁽¹¹⁾.

= but does not reach the nisab for trade—such as having five camels whose value does not reach 200 dirhams—then no zakâh is due on it. See: “*Al-Asl*”, [2: 19,25]; “*Al-Mabsût*”, [2: 170,178]; “*Al-Binâyah*”, [3: 352]

(1) See: “*Al-Hawy Al-Kabîr*”, [3: 303]; “*Al-Bayân*”, [3: 310], “*Al-Majmû`*”, [6: 50]

(2) See: “*Masâ`il Al-Imam Ahmed wa Ishâq Bin Rahweh*”, [3: 1148]; “*Al-Mughny*”, [3: 61]; “*Al-Insâf*”, [3: 157]

(3) See Research and Proceedings of the 12th Symposium on Modern zakâh Issues page [310]

(4) See: “*Al-M`âyîr Ash-Shar`îah*” page [480]

(5) See: “*Al-Mudawanah*” page [375]; “*Al-Montaqa Sharh Al-Mawta`*” by Az-Zarqany, [2: 121]; “*Manâhij At-Tahsil*”, [2: 211]

(6) *If animals were grazing*, See: “*Al-Om*”, [2: 52]; “*Al-Hawy Al-Kabîr*”, [3: 303]; “*Al-Bayân*”, [3: 310].

(7) See: “*Al-Furû`*”, [4: 199]; “*Al-Mubdi`*”, [2: 371]

(8) See: “*Bahr Al-Madhhab*”, [3: 161]; “*Kefayat An-Nabîh*”, [5: 473]

(9) See: “*Al-Furû`*”, [4: 199]; “*Al-Mubdi`*”, [2: 371]

(10) And according to the Shafi`i and Hanbali schools, there is an opinion that if one of the two years precedes the other, the zakâh should be paid based on which one comes first. If the trade lunar year precedes, then zakâh of trade goods is paid, and if the asset lunar year precedes, then zakâh of assets is paid. See: “*Al-Bayân*”, [3: 311]; “*Asna Al-Matâlib*”, [1: 384]; “*Al-Ghurur Al-Bahîah*” by Zakaria Al-Ansâry, [2: 156]; “*Kefayat An-Nabîh*”, [5: 473]; “*Al-Mughny*”, [3: 61]; “*Al-Furû`*”, [4: 201].

(11) See: “*Al-Bayân*”, [3: 311]; “*Kefayat An-Nabîh*”, [5: 473]; “*Asna Al-Matâlib*”, [1: 384]; “*Al-Ghurur Al-Bahîah*” [2: 156].

Evidences of the opinions and discussions:

Evidences of the first opinion: those who claim that livestock intended for trade should be subject to zakâh as trade goods based their arguments on the following:

First evidence: the hadîth by Samurah Ibn Jundub (may Allah be pleased with him)⁽¹⁾ saying: “*The Messenger of Allah (peace and blessings of Allah upon him) used to command us to pay zakâh from (the goods) we had prepared for sale*”⁽²⁾

Aspect of the evidence: these animals are prepared for sale, thus its zakâh would be the zakâh of what it is prepared for⁽³⁾.

Discussed: there are specific texts regarding the obligation of zakâh on livestock individually, so it is not to be treated as other trade goods.

Second evidence: the prophet (peace and blessings of Allah upon him) “*bring one quarter of one-tenth...*”⁽⁴⁾

Aspect of the evidence: the prophet (peace and blessings of Allah upon him) instructed to give quarter of the tenth of the wealth, which indicates that this is the standard practice, and this does not apply to zakâh of individual assets⁽⁵⁾

Discussed: that it has been mentioned in the same hadîth by the prophet (peace and blessings of Allah upon him): “*one sheep (is due) for every forty*

(1) See: “*Al-Mughny*”, [3: 61]; “*Al-Furû*”, [4: 201].

(2) Samura ibn Jundub ibn Hilâl ibn Hurayj ibn Murra al-Ghatafânî al-Fazârî was a noble companion and one of the scholars among the Sahabah. He participated in several battles alongside the Prophet and later settled in Basra. Ziyad ibn Abihi would appoint him as a governor there, where he was known for his sternness against the Khawarij, having killed many of them. Both Hasan al-Basri and Ibn Sirin praised him. He passed away in the year 58 AH, and some say 59 AH. See his discography: “*Asd Al-Ghaba*”, [2: 554]; “*Siyar A'lâm An-Nubala*” [3: 186]. if goods were for trade, is there zakâh on them? , Hadîth no. (1562), [2: 95], And Al-Bîhiqy in his “*Sunan*”, book of zakâh, chapter: zakâh of trading goods, Hadîth no. (7597), [4: 247]. Its chain of transmission was weakened by Ibn al-Qat-tân and al-Dhahabî, while it was graded as good by Ibn Abd al-Barr and Ibn al-Mulaqqin. See: “*Al-Badr Al-Munîr*” [5: 594], and Al-Albany said: weak, “*Irwa' al-Ghalîl*” [3: 311]

(3) See “*Al-Bayân*” [3: 310].

(4) Already related, see page [70] of that book.

(5) See: “*At-Tajrîd*”, [3: 1347]

sheeps until one hundred and twenty”⁽¹⁾ which indicates that livestock is excluded from donating the quarter of the tenth.

Third evidence: the intention of trade overrules the ruling of grazing and for it zakâh of individual assets is required, which is possessing for the sake of growth, which only occurs with through retention, whereas trade involves buying and selling, not retention⁽²⁾.

Fourth evidence: if livestock intended for trade do not reach the threshold of individual assets, then the zakâh of trade goods would be obligated, due to the validity of the intention of trading. And any wealth for which the intention of trade is valid behooves paying the zakâh of trade goods regardless of the amount⁽³⁾.

Fifth evidence: if the value of livestock intended for trade reached the threshold of trade but not the threshold of individual assets, and the number increases to reach the threshold of individual assets during the course of the trade year, if it is said that the due time changes, it would be incorrect as the due time does not change with the increase in wealth, and if it is said that zakâh should be paid as individual assets at the end of the year, it would be incorrect because a complete year has not passed on the threshold for individual assets, and if it is said that zakâh should be paid as trade goods at the end of the year, we would say that any property for which zakâh as trade goods is due at the end of the year on a specific condition, zakâh would be obligatory on it if it was on that same condition at the beginning of the year⁽⁴⁾.

Sixth evidence: the zakâh of trade goods is more beneficial and advantageous for the recipients of it zakâh, because it increases with the increase of value and is due on the total amount, unlike the zakâh of individual assets which does not increase with the number of the animals until it reaches a specific limit, making the amount of zakâh on a hundred and twenty sheep the same as forty⁽⁵⁾.

Seventh evidence: the zakâh of trade is more significant than the zakâh of individual assets for being obligatory on all trade goods, while the zakâh of

(1) Already related, see page [70] of that book

(2) See: “*Al-Mabsûṭ*”, [2: 170]; “*Al-Furû’*”, [4: 199]

(3) See: “*At-Tajrîd*” [3: 1347]; “*Al-Muhîṭ Al-Burhany*”, [2: 322]; “*Al-Mughny*”, [3: 61]

(4) See: “*At-Tajrîd*” [3: 1348].

(5) See: “*At-Tajrîd*” [3: 1350]; “*Al-Mughny*”, [3: 61].

individual assets is specific to some certain assets only⁽¹⁾.

Discussed: to not approve that the zakâh of trading goods is more significant than the zakâh of individual assets, and what they mentioned is contradicted by that the zakâh of individual assets is agreed upon, while the zakâh of trade goods is disputed upon. And what is agreed upon is more significant.

Evidence of the second opinion: Those who argue that livestock intended for trade is to be subjected to zakâh as individual assets support their view with the following evidence:

First evidence: the prophet (peace and blessings of Allah upon him) saying: *“for twenty-four camels or less, sheep are to be paid as Zakâh; for every five camels one sheep is to be paid”*⁽²⁾ and also *“one sheep (is due) for every forty sheep”*⁽³⁾

Aspect of the evidence: the prophet (peace and blessings of Allah upon him) mandated the zakâh of individual assets on livestock, and did not differentiate it from livestock owned for the purpose of possession⁽⁴⁾ or trade⁽⁵⁾.

Discussed from two perspectives:

First perspective: these texts are general, made specific by the evidence of the obligation of zakâh on trade goods.

Second perspective: these texts are concerned with livestock owned for preservation for growth out of their individual selves, and for that the zakâh of individual asset is obligatory on them. However, if they are intended for trade and flipping through buying and selling and seeking growth from their prices, they become like all other trade goods.

Second evidence: the zakâh of individual assets is proven by text and consensus, and the zakâh of trade goods is based on independent reasoning and was subject to disagreement. Therefore, if one must be prioritized over the other, zakâh of individual assets takes precedence because it is more affirmed⁽⁶⁾.

(1) See: *“Al-Hawy Al-Kabîr”*, [3: 303]

(2) Already related, see page (69) of that book

(3) Already related, see page (70) of that book

(4) Al-Quniah: refers to holding onto wealth with the intention of benefiting from the asset itself. See: *“Kashâf Al-Qinâ”*, [2: 241]

(5) See: *“Al-Ishraf `ala Nukat Masâ'il Al-Khilâf”*, [1: 405]; *“Al-Bayân”*, [3: 310]

(6) See: *“Al-Ishraf `ala Nukat Masâ'il Al-Khilâf”*, [1: 405]; *“Al-Hawy Al-Kabîr”*, [3: 303]

Discussed: this preference is only valid if a reason for the validity of both types of zakâh exists. However, the reason for the validity of the zakâh on individual assets does not exist because zakâh on individual assets is due on wealth designated for the purpose of growth from its own value, where as livestock owned for the sake of trade is designated for the purpose of growth from its price⁽¹⁾.

Third evidence: the zakâh of individual assets is measured based on the asset itself, and the zakâh for trade is measured based on its value. And what is directly related to the asset itself takes precedence over what is related to something else⁽²⁾.

Discussed: with what the second evidence has been discussed

Fourth evidence: the growth of livestock from the aspects of mild and offspring persists and is not hindered by trading them, thus, obligating the zakâh of individual assets on them.

Discussed: milk and offspring produced by livestock owned with the intention of trade is not the primary intention, but rather a byproduct. And the primary intention is seeking growth from their prices not their individual selves⁽³⁾.

Fifth evidence: obligation of zakâh on tangible assets is more beneficial for the poor, because the collector takes it directly, whereas the zakâh of trade is entrusted to its owner, who might not pay it⁽⁴⁾.

Discussed: the right to collect zakâh established for the collector whether the zakâh is on an asset or on trade goods, as livestock are of the visible assets⁽⁵⁾.

Sixth evidence: the threshold for the zakâh of tangible assets is explicitly stated is known definitively through observation, whereas the threshold for zakâh on trade goods is based on individual interpretation and known as assumption. Therefore, it is preferred to adhere to the explicit text and what is definitive⁽⁶⁾.

(1) See: *"At-Tajrîd"*, [3: 1349].

(2) See: *"Al-Ishraf `ala Nukat Masâ'il Al-Khilâf"*, [1: 405]; *"Al-Hawy Al-Kabîr"*, [3: 304]

(3) See: *"Al-Muntaqa Sharh Al-Mawta'"*, [2: 123].

(4) See: *"Al-Mabsûr"*, [2: 170]

(5) See: previous reference

(6) See : *"Al-Ishraf `ala Nukat Masâ'il Al-Khilâf"*

Discussed: with what the second evidence has been discussed.

Evidence of the third opinion: I have not stumbled across any evidence from those who claim that zakâh of livestock owned with the intention of trade should be what is best for the poor and needy, whether it is on assets or trade goods. And an evidence on their behalf could be that two reasons for the obligation of zakâh have appeared with no precedence of one over the other, so we consider what is best and most generous for the recipients of zakâh.

Discussed: the denial of the obligation of the two reasons simultaneously, as the reason for the zakâh of assets has been nullified by the zakâh of trade as mentioned earlier.

Evidence of the forth opinion: proponents of zakâh based on the previous year's cycle use evidence like:

A justification for zakâh is present based on the lapse of the complete year's cycle without any conflicting reasons, and for that it is obligatory⁽¹⁾.

Discussed: a conflicting reason exists which is the intention of trade in livestock that the due cycle of the zakâh of tangible assets has already passed.

Preference:

After contemplating the opinions and evidences, it appears that both have merit, and the issue is purely a matter of individual reasoning, but what is closer to the truth -and Allah is the all-knowing- is the first opinion, which is that zakâh on livestock owned with the intention of trade is of the trade goods type.

Reasons for the preference:

- 1- the strength of evidences of the first opinion, and on the other side, the weakness of the evidence of the other two opinions and that it faced discussions
- 2- The intention of trade in livestock turns them into trade goods, where growth is sought from their value rather than their physical form, And that which has its growth sought from its value should more justly be subject to the zakâh of trade goods, as it increases with the increase in value, unlike the zakâh on physical assets.

(1) See: "*Al-Mughny*", [3: 61]

Reasons for the dispute

- 1- The proponents of the second opinion adhered to the general texts that mandate zakâh on physical assets in livestock. While the proponents of the first opinion believed that those texts are specifically related to livestock owned for the purpose of seeking growth from its selves, in the form of milk, offspring and the like, and do not include livestock owned with the intention of trade.
- 2- the proponents of the first opinion prioritized the aspect of intention and said: the intention of trade nullifies the description of grazing, while the proponents of the second opinion prioritized the original ruling -which is that zakâh is obligatory on the animals themselves as assets- and said: the presence of the intention of trade cannot nullify the original ruling⁽¹⁾. And as of the proponents of the third opinion, they prioritized the benefit and what is more advantageous to the beneficiaries.

Fourth issue: owning livestock with the intention of utilization, in it are three branches

Istighlâl linguistically: the origin of the verb “*Istaghal*” is from “*Al-Ghahlah*” which is “*revenue*”. We say: “*a man utilized his house*”, meaning: he rented it to generate revenue from it⁽²⁾.

In the terminology of the jurists, utilized assets are those that are not designated for sale or trade but rather for generating benefit and profit from them⁽³⁾.

It was also defined as: assets owned without the intention of trade, and generating recurring revenue⁽⁴⁾.

And utilizing livestock is keeping it and seeking benefit and revenue from it, and it has multiple forms to be discussed in the upcoming branches:

First branch: owning livestock with the intention of selling its produce

(1) See: “*zakâh Al-An`am*”, by doctor Al-Khidr Edris, among the researches of the twelfth symposium of modern zakâh issues [page 218]

(2) See: “*Lisan Al-`arab*”, [11: 504]; “*Al-Qamus Al-Mohit*”, [Page 1039], entry (Ghulal)

(3) See: “*Zakâh Al-Mushtaghat*” by Al-Sayf, Journal of the Fiqh Academy, issue [5], [page 236]

(4) See “*Hukm zakâh Al-Arady*” by Al-Fuzan, Journal of the Fiqh Academy, issue [18] [page 276].

Aspect of the issue:

If someone owns livestock with the intention of utilizing it by selling its products such as milk, offspring, or wool, like companies which sell livestock products like wools or dairy and cheeses and the like, is zakâh obligatory on the actual animals? And is it a zakâh of assets or zakâh of trade?

The ruling of the issue:

In the first issue of this topic, we encountered a consensus among jurists regarding livestock owned with the intention of benefitting from its milk and offspring that it is subject to zakâh on its assets if it grazes, and if it is fed then it is not subject to zakâh with the majority of jurists, except for the Mâlikîah scholars and those who agree with them⁽¹⁾.

Earlier jurists did not distinguish between whether the produce was intended for sale or possession⁽²⁾ despite the fact that selling animal produce such as milk and the like was common at their time. And this issue is not a newly emerging matter, for their obligation of the zakâh of assets on animals used for milk and offspring is absolute and indicates that there is no difference between which ones' milk is sold and which ones' milk is used for personal benefit. And there is an opinion of the Mâlikîah that animals which their produce is sold are under the category of trade goods, and zakâh paid on it is the zakâh of trade goods if they did not reach the threshold of zakâh of livestock, and if the threshold is reached, the zakâh given would of assets. They justified that utilizing it by buying their produce is a form of trade⁽³⁾.

And some modern jurists agreed on that opinion and said that livestock used for selling their produce of milk and the like is subject to the zakâh of trade goods, whether it was grazing or fed, they inferred that since these animals and their produce were intended for trade, zakâh of trade goods applies to them⁽⁴⁾.

(1) See: page [68] of that book

(2) See: "*Tohfah Al-Foqahâ*", [1: 285]; "*Bada'i' As-Sana'i*", [2: 30]; "*Bidayat Al-Mojtahid*" [2: 11]; "*Adh-Dhakhîrah*", [3: 93]; "*Al-Hawy Al-Kabîr*", [3: 188]; "*Al-Furû*", [4: 5]; "*Kashâf Al-Qinâ*", [2: 183].

(3) See: "*At-Tabsirah*", [3: 1023]; "*At-Tawdhîh*", [3: 183]

(4) See: Research and Proceedings of the 12th Symposium on Modern Zakâh Issues page (190); "*Nawazil Az-Zakâh*" by Al-Ghifly, page (118), "*Zakâh Al-Mustaghalât*" by Al-Saif page (317)

And this opinion contradicts with texts that obligate zakâh on livestock which did not differentiate between animals owned to sell their milk or benefiting from them, moreover, these animals in this case were not owned with the intention of trade in their own selves, but for retention, and the sale only pertains to their produce such as milk and the like, and the produce is completely separate from the animals, so it is incorrect to obligate zakâh of trade goods on them.

As for what the animals produce, such as wool, milk and its derivatives, if we looked into the words of the earlier jurists we hardly find any discussion about this issue, as I have not found but one text among the Maliki scholars, who stated that what the livestock produces is akin to the rental income of properties, and there is no zakâh on it unless it is sold and a year passes on its proceeds⁽¹⁾. Imam Malik (may Allah rest his soul) said about sheep which wool is sheared: *"I see its wool akin to the rental income of properties, and there is no zakâh on it until a year passes on it from the day of receiving the money if the wool is sold"*⁽²⁾.

And some modern scholars analogize the produce of these livestock, like milk and its derivatives, to honey if it was not grazing, and one tenth of its produce is obligatory, reasoning that it is the product of an animal on which zakâh is not obligatory on their assets, so a tenth is given, similar to honey⁽³⁾. However, none of the earlier jurists made this analogy between milk and honey, despite the fact that milk and its Derivatives are considered wealth that is not new, but rather among the oldest of wealths. And Allah gifted it to his worshipers in his Qur`ân just as he gifted them with honey, and none of the earlier jurists has said that a tenth should be given from it.

When we contemplate the reality about what livestock produce we find out that it is closer to manufactured goods and productive assets, for livestock in this case are productive assets of a special type, being among what the majority obligated the zakâh of its own asset on, with no difference between its produce whether it was grazing or fed. If its produce was intended for selling, profiting

(1) See: *"Al-Mudawanah"*, [1: 311], *"Al-Kafy Fi Fiqh Al-Madînah"* [1: 289]; *"At-Tâj wa Al-Iklîl"*, [3: 157]

(2) *"Al-Mudawanah"*, [3: 352].

(3) See: Research and Proceedings of the 12th Symposium on Modern Zakâh Issues page (190).

from it and trading in it, it is in the same ruling as industrial goods prepared for sale. Therefore, some modern jurists⁽¹⁾ and the Shari`ah Standard issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)⁽²⁾ have obligated the zakâh on livestock products prepared for sale as zakâh on trade goods. A detailed discussion on the zakâh of animal products will follow in the sixth treatise of the fifth chapter⁽³⁾.

Branch two: owning livestock with the intention of renting them

Aspect of the issue:

If someone owns camels or cattle with the intention of renting them for riding, loading, plowing and the like, and receiving their yield, is zakâh obligatory on them?

Ruling of the issue:

Livestock owned with the intention of renting them out for work and benefitting from their yield take the ruling of working livestock, because they work indeed, and they are not kept for their milk nor offspring nor growth in themselves, but rather for growth in its yield and is collected from their rental income, which is akin to benefitting from them in work. Additionally, they are not intended for trade through buying and selling, and the Shafi`is and Hanbalis have explicitly stated that they are treated as working animals, and their rental income does not affect this ruling⁽⁴⁾.

And we have previously gone through that the prevailing opinion is the non-obligation of zakâh on working animals -whether they were grazing or fed- and this is the opinion of the majority of the jurists, excluding the Malikis and those who agree with them⁽⁵⁾.

Branch three: owning camels with the intention of entering them into competitions to win prizes.

(1) See: "*Nawazil Az-Zakâh*" by Al-Ghifly, page (119); "*Zakâh Al-Mustaghalât*" by Al-Sayf page (319)

(2) See: "*Al-M`âir Ash-Shar`iah*" page (480)

(3) See: page (563) of that book

(4) See: "*Bahr Al-Madhab*" [3: 140]; "*Al-Majmû`*", [6: 36], "*Al-Furû`*" [4: 5]; "*Al-Mubdi`*", [2: 310]; "*Ash-Sharh Al-Momte`*", [6: 51]

(5) See: page 74 of that book

Aspect of the issue

In the modern age, camel competitions have been organized, including what is known as “*Sibâq Al-Hugan*”⁽¹⁾ which is

a race of speed, others are called “*Sibâq Al-Mazâyin*” in which camels are gathered to select the most beautiful according to specific criteria⁽²⁾, and the winners in these contests receive monetary prizes. If someone owns a camel with the intention of participating in these contests and obtaining the prizes, is zakâh required on it?»

Ruling of the issue:

This issue is considered of the modern issues on which I have not stumbled across a text from earlier jurists, with the possibility of extrapolating it as in the zakâh of working livestock (specifically those used in camel racing) as the camels in this case are not intended for growth in themselves nor receiving milk or offspring, but are used for riding, racing, and participating in contests. The Permanent Committee for Scientific Research and Ifta in the Kingdom of Saudi Arabia has issued a fatwa stating that camels used for racing are classified as working animals and are not subject to zakâh on the animals themselves based on the ruling of not obligating zakâh on working animals, but rather, zakâh is taken on its revenue from prizes if it reached the threshold and a year has passed on it⁽³⁾.

Camels in this scenario are considered under the ruling of working animals used for rental purposes, because they are treated as working animals and assets being used to gain financial rewards from competitions. Based on what we discussed in the previous issue⁽⁴⁾, these camels are neither subject to zakâh on livestock nor to zakâh on trade goods, but zakâh is required on the rewards they produce if they reach the zakâh threshold and a full year has passed since they were acquired. As for camels used in beauty contests, the ruling differs

(1) Al-Hagan is from Al-Hagân, and in the language: The good white camels, See: “*Lisan Al-`arab*”, [13: 431]

(2) See: the effect of the intention of zakâh on the camels of race and beauty contests, “*Al-Hazimy*” page (22)

(3) See: Fatwas of the Permanent Committee, Second Series, Fatwa no. (21545), [8: 16], and Fatwa no. (21468), [8: 28]

(4) See page (87) of that book

based on the owner's intention. If the owner plans to sell them after winning and increasing their value, zakâh on trade goods is required due to the intention of profit from the sale. However, if the owner intends to keep them for personal benefit, such as from their offspring or milk, along with any rewards they might obtain, then zakâh on grazing livestock is required, as they do not fall under the category of working animals.

Fifth issue: owning livestock without any intention

Aspect of the issue:

if someone owns the zakâh threshold of livestock without intending anything specific by owning it, such as intending to grow and benefit from their milk and offspring, and are not used for plowing, loading and the like, nor trading in it or utilize it, does zakâh become obligatory on this livestock?

The absence of intention can be imagined when there is a lack of knowledge, like if someone inherited livestock and a year has passed on it, being in his possession unbeknownst to them. And scholars are divided regarding this case into two opinions:

Opinions in the matter:

First opinion: zakâh is obligated on it

This is the opinion of Hanîfah followers⁽¹⁾, and doctrine in the Mâlikîah⁽²⁾, and an opinion of the Shâfi'îah⁽³⁾, and the most popular saying within the Hanâbilah⁽⁴⁾.

And this is opinion of the Hanîfah, Shâfi'îah, and Hanâbilah is related to if the animals were grazing, however, the Malikis do not require grazing and obligate the zakâh on them unconditionally as previously mentioned⁽⁵⁾.

(1) See: "*Al-Bahr Ar-Ra'iq*", [2: 225]; "*Hâshiyat Ibn `abidîn*", [2: 273].

(2) See: "*At-Tawdh*", [2: 250]; "*Sharh Az-Zaraqâny `la mukhtasar khalîl*", [2: 255].

(3) See: "*At-Tahdhîb Fi Fiqh Al-Imam Ash-Shafi'i*", [3: 72]; "*Fath Al-`azîz besharh Al-wagîz*", [5: 492].

(4) I did not find a text from the Hanbalis regarding livestock, but they stated that if someone inherited wealth and was unaware of it, they are exempt from paying its zakâh in one of the two opinions, which was chosen by the majority, see: "*Al-Furû'*", [3: 447]; "*Al-Mubdi'*", [2: 298]; "*Al-Insâf*", [3: 21]; "*Kashâf Al-Qinâ'*", [2: 174].

(5) See: page [66] of that book.

Second opinion: zakâh is not obligated on it, and this is another opinion of the Hanîfah⁽¹⁾, And what is popular within Shâfi`îah⁽²⁾, and a saying within the Hanâbilah⁽³⁾.

Evidences and discussions:

Evidence of the first opinion: the proponents of the obligation of their zakâh infer that growth occurs in the livestock and its occurrence does not depend on intention or knowing about them⁽⁴⁾

Evidence of the second opinion: the proponents of the non-obligation of their zakâh inferred this from two evidences, which are:

First evidence: Zakâh is meant to provide assistance, and property that its owner is unaware of possessing is not subject to zakâh due to the inability to manage it⁽⁵⁾

Discussed: grazing animals grow in their own assets without effort of hardship, and its growth does not depend on the knowledge nor the intention of the owner, which obligates the zakâh on it.

Second evidence: the intention of grazing from the owner is a condition that is not present, making zakâh non-obligatory⁽⁶⁾.

Discussed: after acknowledging that the intention of grazing is a condition for the obligation of the zakâh of livestock, so if the animals graze on their own, it is subject to zakâh as follows⁽⁷⁾.

preference:

It appears that the more likely opinion -And Allah is the all-knowing- is the first view, which states that if the livestock is freely grazing, zakâh is due on it, even if the owner has no specific intention regarding it or is unaware of possessing them in the first place.

(1) See: "*An-Nahr Al-Fâ'iq*", [1: 420]; "*Minhat Al-Khâliq `la Al-Bahr Ar-Ra'iq*", [2: 229].

(2) See: "*Tahrîr Al-Fatawy*", [1: 467]; "*Fath Al-Wahâb*", [1: 123]; "*Mughny Al-Muhtâj*", [2: 80].

(3) See: "*Al-Furû`*", [3: 447]; "*Al-Mubdi`*", [2: 298]; "*Al-Insâf*", [3: 21]; "*Sharh Montaha Al-`iradat*", [1: 389].

(4) See: "*At-Tawdîh*", [2: 250]; "*Sharh Az-Zaraqâny `la mukhtasar khalîl*", [2: 255].

(5) See: "*Sharh Montaha Al-`iradat*", [1: 389].

(6) See: "*At-Tahdhîb Fi Fiqh Al-Imam Ash-Shafi`i*", [3: 72]; "*Fath Al-`azîz besharh Al-wagîz*", [5: 492].

(7) See: page [95] of that book.

Reason for the preference:

The default rule is that zakâh is obligatory on freely grazing livestock, and this principle is not to be deviated from without evidence. Grazing animals are inherently productive, unlike other forms of wealth, so the inability to manage them, the inability to manage them, the lack of awareness of possessing them, or the absence of an intention to grow them for milk, offspring, or the like does not affect their natural growth.

- 3- The dispute in which factors are the most influential, is it the lack of ownership, or growth occurrence without the need, intention, or awareness of it? Those who consider lack of ownership to be more influential do not obligate zakâh, and those who deemed growth more influential obligate zakâh
- 1- the dispute in the requirement of the intention of grazing, those who required the intention of grazing did not obligate zakâh in this case, due to the lack of the intention of grazing from the owner.

The fruit of the disagreement

The disagreement in this matter is conceptual, and its fruits are evident for someone who owned livestock without intending anything due to not knowing of possessing them. According to the first opinion, zakâh is obligatory, and the zakâh year starts from the moment the livestock enters their ownership, and according to the second opinion, zakâh is not obligatory, and the zakâh year only begins after the awareness of the possession and having an intention regarding their ownership.

Topic (2): changing the intention of milk and offspring into work and its effect on the zakâh of livestock

Aspect of the issue:

If someone owns livestock with the intention of milk and offspring, but then decides during the zakâh year to use it for work such as plowing, carrying, or watering, according to the opinion of not requiring zakâh on working animals, does the zakâh year end and the obligation to pay zakâh cease with the mere intention or is actual work required? People who argue of the non-obligation of zakâh on working animals - and they are the majority apart from the Mâlikîah and who agrees with them- in this issue presented two opinions:

First opinion: the zakâh year does not end and the obligation of zakâh does not cease with the mere intention of putting them to work, but rather work has to happen alongside the intention.

And this is the popular opinion with the Hanîfah⁽¹⁾, doctrine of the Shâfi`îah⁽²⁾, and doctrine of the Hanâbilah⁽³⁾.

The Shâfi`îah stated that the use of livestock in work does not affect the cessation of zakâh or interrupt the zakâh year unless the use lasts for three days or more, or if it is less than that but accompanied by the intention to interrupt the zakâh year⁽⁴⁾. According to the Hanîfah followers the use must be for four months or more⁽⁵⁾, while the Hanbalis require it to last for more than half of the year or it would not affect the zakâh obligation⁽⁶⁾.

Second opinion: the year is interrupted and the obligation of zakâh ceases with the mere intention of putting them to work.

This is an opinion of the Hanîfah⁽⁷⁾ and the Hanâbilah⁽⁸⁾.

Sheikh Muhammad Ibn `uthaymîn - may Allah have mercy on him- that the Hanâbilah see that if the owner intends to use the grazing animals for an unlawful job, like highway robbery and the like, the zakâh year is interrupted by the mere intention, he also mentioned that this term was stated in "*Muntaha Al-Iradat*"

By him saying: "*the characteristic of grazing legally falls by stopping the animals from it with the intention of using it in highway robbery and the like, like the trade year with the intention of making their servants own it or silk*

(1) See: "*Al-Asl*", [2: 18]; "*Al-Mabsût*", [2: 169].

(2) See: "*Tohfât Al-Muhtâj*", [3: 238]; "*Al-Minhâj Al-Qawîm Sharh Al-Moqadima Al-Hadramya*", [page 221]; "*Hâshiyat Al-Jamal*", [2: 234].

(3) See: "*Ar-Rî`âyah As-Sughra*", [1: 388]; "*Al-Furû`*", [4: 12]; "*Sharh Montaha Al-iradat*", [1: 400].

(4) See: "*Tohfât Al-Muhtâj*", [3: 238]; "*Al-Minhâj Al-Qawîm*", [page 221]; "*Hâshiyat Al-Jamal*", [2: 234].

(5) See: "*Al-Bahr Ar-Ra`iq*", [2: 229]; "*Hâshiyat Ibn Abdîn*", [2: 282].

(6) See: "*Sharh Montaha Al-iradat*", [1: 399]; "*Kashâf Al-Qinâ`*", [2: 183].

(7) See: "*Al-Mohît Al-Burhâny*", [2: 253]; "*Hâshiyat Ibn Abdîn*", [2: 276].

(8) See: "*Al-Furû`*", [4: 12]; "*Al-Insâf*", [3: 48].

clothes for haram clothes”(1) , but when we go back to their books we see that their intention is the cessation of the grazing zakâh year with its fodder with the intention of using it for forbidden acts, so not to be assumed that its feeding it for the sake of using it in unlawful acts does not cease the cycle of zakâh (the zakâh year), and their intention is not to say that the cycle ends with just the intention, as the what affects the ending of the cycle is fodder and not the mere intention of using it unlawfully(2).

Evidences and discussions:

Evidences of the first opinion: people who argue that the zakâh cycle for grazing livestock is not interrupted, nor is the obligation of zakâh nullified, merely by the intention, based their arguments on two evidences as follows:

First evidence: The act of use is an action, not an omission, and its ruling does not take effect merely by intention without actual execution, similar to travel(3).

Second evidence: The default is the absence of use, so its ruling is not established by mere intention due to the weakness of the intention(4).

Evidence of the second opinion: Those who hold the second opinion inferred that the zakâh cycle is interrupted, and the obligation is lifted by merely intending to use the livestock, based on analogy with the cessation of the zakâh cycle for trade goods when one intends to retain them for personal use(5).

Discussed: This is an incorrect analogy, as the default for trade goods is ownership, so the zakâh cycle is interrupted as soon as the intention to retain them is made, and the default of livestock is not the use for work.

Preference:

The preferred -and Allah is the All-knowing- is the first opinion, which says that the zakâh cycle does not end with just the intention of using livestock for work.

(1) “*Montaha Al-`iradat*”, [1: 449].

(2) See: “*Sharh Montaha Al-`iradat*”, [1: 400]; “*Kashâf Al-Qinâ`*”, [2: 184]; “*Matâlib âlf An-Nuhâ*”, [2: 32].

(3) See: “*Al-Mabsût*”, [2: 169].

(4) See: “*Sharh Montaha Al-`iradat*”, [1: 400]; “*Kashâf Al-Qinâ`*”, [2: 184].

(5) See: “*Al-Mohît Al-Burhâny*”, [2: 253].

Reason for the preference:

The strength of the evidence of the first opinion, as livestock are primarily intended for milk, offspring, and growth, not for work. And which ever was contrary to the original purpose does not apply merely based on intentionion.

Topic (3)

Within it are three issues

First issue: the effect of the intention of grazing in livestock, with it are two branches:

It was previously mentioned in the first topic that the majority of scholars from the Hanafi, Shafi'i, and Hanbali schools require the animals to graze for zakâh to be obligatory on livestock, and as previously noted, "*Sawm*" refers to grazing on permissible pasture⁽¹⁾. However, the three schools differ regarding the extent⁽²⁾ and conditions for its validity, including their differing opinions on the requirement of the intention of grazing and whether the ruling of grazing applies merely based on intentionion. This will be discussed in the following two branches.

Branch one: requirement of the intention of grazing

Aspect of the issue:

According to the majority opinion (excluding the Maliki school), which stipulates that grazing (sawm) is a requirement for zakâh on livestock, is it necessary for the owner to have the intentionion of grazing for it to be valid legally? In other words, if the livestock grazed on their own without the owner's knowledge, would they still be considered legally grazing, and would zakâh be obligatory on them or not?

(1) See: "*Al-Mohîṭ Al-Burhâny*", [2: 253]; "*Hâshiyat Ad-Dusûqy*", [1: 432]; "*Kifayat An-Nabîh*", [5: 244]; "*Al-Mubdi*", [2: 310].

(2) According to the Hanîfah and Hanâbilah schools, grazing is considered valid if it occurs for more than half of the year. However, the Shafi'i school only recognizes grazing if it takes place throughout the entire year, with the exception of cases where the livestock are fed for a day or two, or an amount that they can survive without. Further details on this can be found in their respective books.

See: "*Al-Binayah*", [3: 352]; "*Al-Bahr Ar-Ra'iq*", [2: 229]; "*Hulyat Al-'ulamâ'*", [3: 20]; "*Kifayat An-Nabîh*", [5: 247]; "*Al-Mubdi*", [2: 310]; "*Al-Insâf*", [3: 45].

Opinions on the issue: Those who require grazing for the zakâh to be valid in livestock are divided regarding this issue into two opinions, which are:

First opinion: intention is not required for grazing to be valid. This is doctrine for the Hanîfah⁽¹⁾, an opinion⁽²⁾ among the Shâfi`îah chosen by An-Nawawi⁽³⁾, and the doctrine of the Hanâbilah⁽⁴⁾

And according to this opinion, if livestock grazed in the permissible pasture without the knowledge of their owner nor his intention, the zakâh would be obligatory on it if the livestock was used for milk and offspring.

Second issue: the intention of grazing is required.

And this is what the Shâfi`îah⁽⁵⁾ consider more correct, and an opinion of the Hanâbilah⁽⁶⁾.

And according to this opinion, livestock is not considered grazing legally and zakâh is not obligatory on them unless they graze in the permissible pasture with the intention of their owner, agent, or governing authority for them to graze.

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- (1) It is stated that if someone inherits livestock that is subject to zakâh, they are required to pay the zakâh when a full year has passed, regardless of whether they had the intention to do so or not. This implies that having the intention to graze the livestock (sawm) is not a condition according to them. Some scholars mention that the intention to keep the livestock is a condition, referring specifically to the intention to keep the animals for milk and breeding, rather than the intention to graze them. This reasoning is based on the fact that livestock could be kept for work or other purposes, which is why the intention for grazing is not considered necessary. See: "*Al-Bahr Ar-Ra'iq*", [2:225]; "*An-Nahr Al-Fâ'iq*", [1: 417]; "*Hâshiyat Ibn Abdîn*", [2\ 267: 273].
 - (2) The term refers to: the followers of the Imam associated with his school, those who derive rulings based on the Imam's principles, and those who derive judgments from his foundational rules. See: "*At-Takhrîj `ind Al-Fûqahâ' wa Al-Usulîyn, Ya`qûb Al-Bahisîn*", [page 348].
 - (3) See: "*Nihayat Al-Matlab*" [3: 207]; "*Al-Majmû` Sharh Al-Muhadhab*", [5: 358]; "*Kifayat An-Nabîh*", [5: 245].
 - (4) See: "*Al-Moghny*" by Ibn Qudamah, [2: 456]; "*Al-Insâf*", [3: 46]; "*Kashâf Al-Qinâ`*", [2: 184].
 - (5) It is the well-known opinion of their doctrine, and both al-Haytami and al-Sharbini have mentioned that it is the most accurate. See: "*Asna Al-Matlab*" [1: 355]; "*Tohfât Al-Muhtâj*", [3: 237]; "*Mughny Al-Muhtâj*", [2: 79].
 - (6) See: "*Al-Furû`*", [4: 9]; "*Sharh Az-Zarqashy*", [2: 380]; "*Al-Insâf*", [3: 46].

Evidences and discussions:

Evidences of the first opinion: The proponents of the first opinion inferred the non-requirement of the intention for grazing (sawm) through the following:

First evidence: The apparent meaning of the hadîths that mandate zakâh on grazing livestock without differentiating between the intention of the owner or the lack of intention⁽¹⁾, like what the prophet (peace and blessings of Allah upon him) said: *“For forty pasturing camels, one she-camel in her third year is to be given.”*⁽²⁾, and what he (peace and blessings of Allah upon him) also said: *“Regarding the Zakâh of grazing sheep, if they are between forty and one hundred and twenty”*⁽³⁾

Second evidence: The reason for the obligation of zakâh on grazing livestock rather than on fed livestock is the ease and low cost of their maintenance, which is fulfilled whether or not there is intention from the owner⁽⁴⁾.

Evidence of the second opinion: Proponents of the requirement of the intention of grazing use evidence that: grazing affects the obligation of zakâh, so the owner's intention is a requirement, as the owner is not obligated to pay zakâh on something they did not intend⁽⁵⁾.

Discussed: This is contradicted by the case of obligatory zakâh on crops that are planted by seeds carried by floodwater to someone else's land, even though the person did not intend the obligation of zakâh and did not intend what affects its obligation⁽⁶⁾.

Preference: the preferred -and Allah is the all-knowing- is the first opinion which is the non-obligation of the intention of grazing, which means if livestock grazes without the intention of their owner, zakâh is obligatory on it

Reason for the preference:

The purpose of grazing is to minimize the cost of maintenance, which does

(1) See: *“Al-Majmû”*, [5: 358].

(2) previously referenced, See: page [69] of that book.

(3) previously referenced, See: page [69] of that book.

(4) See: *“Fath Al-`azîz”*, [5: 496].

(5) See: *“Al-Marji` As-Sabiq”*, *“Al-Majmû”*, [5: 358].

(6) See: *“Al-Bayân”*, [3: 152]; *“Sharh Montaha Al-`iradat”*, [1: 400].

not depend on the owner's intention. The evidence for requiring intention is weak.

Fruit of the argument:

The difference in opinion on this matter is conceptual, and its fruit appears if livestock grazed in the permissible pasture without the knowledge of its owner, and according to the first opinion zakâh is obligatory on it because the intention of grazing is not a requirement for validity. And according to the second opinion, zakâh is not obligatory on it, because its owner did not intention for it to graze, and the intention of grazing is a condition for its validity.

Branch two: the mere intention of grazing

Aspect of the issue:

According to the view of the majority grazing is required for the obligation of zakâh on livestock -except for the Malikis-. does the grazing requirement get fulfilled and zakâh become obligatory merely by intention without actual grazing? If someone intends to graze their livestock while feeding them, is zakâh due on it?

Ruling of the issue

The proponents of the view that grazing is required for zakâh on livestock agree that mere intention of grazing does not suffice; and that the actual grazing must occur alongside the intention⁽¹⁾.

Some Hanîfah scholars have reported that if someone intends to graze their fed livestock it becomes grazing if they stop feeding it, and they reasoned that grazing occurs by ceasing to feed the animals, and since feeding has been stopped, the animals are then considered to be grazing⁽²⁾.

Evidences of the issue:

First evidence: grazing is an action not subject to be left, so it is not established by mere intention alone⁽³⁾.

(1) See: "*Tabyîn Al-Haqa'iq*", [1: 257]; "Fath Al-Qadîr", [2: 168]; "*Al-Hawy Al-Kabîr*", [3:296]; "*Asna Al-Matalib*" [1; 381]; "*Ar-Riwâyatayn Wa Al-Wajhayn*", [1: 243]; "*Sharh Montaha Al-iradat*", [1: 435].

(2) See: "An-Nahr Al-Fâ'iq", [1; 417]; "Minhat Al-Khâliq", [2: 226].

(3) See: "*Tabyîn Al-Haqa'iq*", [1: 257].

Second evidence: if a ruling is conditional on an action, it is not established until the action is actually performed, such as shortening prayers during travel, which does not occur with mere intention of traveling alone⁽¹⁾.

Third Evidence: That which does not originally require zakâh, like the fed animals, does not become liable for zakâh with mere intention alone⁽²⁾.

Second issue: The intention to cease grazing and its effect on the zakâh of livestock, within it are three branches:

Branch one: the requirement of the intention of feeding

Aspect of the issue:

On the opinion of the majority that zakâh is not required for livestock that is fed (except for the Malikis), is the intention of feeding necessary for it to be considered legal? If the livestock grazes by itself or is fed by its owner without the intention of ceasing grazing, will it be considered fed in the Sharia and thus its zakâh be waived, or not?

Opinions on the issue: those who claim that zakâh is non-obligatory on fed animals are divided into two opinions:

First opinion: the intention of feeding is not required

This is the evident doctrine of Hanîfah⁽³⁾, an opinion of the Shâfi'îah⁽⁴⁾, and doctrine of the Hanâbilah⁽⁵⁾.

Second opinion: the intention of feeding is required, this is an opinion of the Shâfi'îah⁽⁶⁾.....

(1) See: "*Al-Hawy Al-Kabîr*", [3: 296]. (2) "*Sharh Az-Zarqashy*", [2: 516].

(3) I have not found a specific text from them except that they mentioned that feeding and grazing contradict; thus, if feeding is present, grazing is negated. Their statements on this matter are general and do not distinguish between intentional feeding and other types. See: "*Tabyîn Al-Haqâ'iq*", [1: 268]; "*Al-'inaya*", [2: 194].

(4) See: "*Nihayat Al-Matlab*", [3: 207]; "*Bahr Al-Madhhab*" [3: 88]; "*Rawdat Al-Tâlibîn*", [2: 191]; "*Mughny Al-Muhtâj*", [2: 79].

(5) See: "*Al-Insâf*", [3: 46]; "*Kashâf Al-Qinâ'*", [2: 184]; "*Kashf Al-Mukhadrât*", [1: 245].

(6) See: "*Fath Al-'azîz*", [5: 496]; "*Tahrir Al-Fatâwy*", [1: 468]; "*Kifâyat An-Nabîh*", [5: 247]. The Shafi'i scholars who require the intention for feeding have differed on its meaning. Most of them say that what is meant is the intention to feed itself, so if the animals are fed without the owner's knowledge, they are not considered fed, but if he feeds them himself, =

and Hanâbilah⁽¹⁾

Evidences and discussions: The proponents of not requiring the intention to feeding argued the following

First evidence: with feeding, the intention of grazing ceases, just like the cessation of all other zakâh requirements, there is no difference between being with or without intention⁽²⁾.

Second evidence: the reason for the non-obligation of zakâh on fed animals is the cost and effort involved in feeding them, And this occurs with or without intention⁽³⁾.

Third evidence: feeding affects the non-obligation of zakâh, so the intention of it is not to be considered, as the default is the non-obligation of it, and thus there is no need for the intention⁽⁴⁾.

Evidences of the second opinion: the proponents of requiring the intention for feeding argued based on the following:

First evidence: The analogy made is that a person who wears a garment intended for trade without the intention of ownership does not escape from its zakâh obligation, similar to a person who feeds their livestock without the intention of feeding⁽⁵⁾

Discussed: The argument is that this is a faulty analogy because grazing is a condition for the obligation of zakâh on livestock, and merely feeding contradicts and opposes it. In contrast, the absence of use is not a condition

= they become fed. However, some of them say that the intention required here is the intention to stop pasturing, so if he feeds them himself while intending to return them to pasturing, their pasturing is not interrupted. See: "*Nihayat Al-Matlab*", [3: 207]; "*Sharh Mushkil Al-Wasit*", "*Ibn As-Salah*", [3: 73]; "*Kifayat An-Nabih*", [5: 247].

(1) See: "*Al-Furû`*", [4: 9]; "*Al-Mubdi`*", [2: 310].

(2) See: "*Fath Al-`aziz*", [5: 497]; "*Al-Mubdi`*", [2: 310].

(3) See: "*Kifayat Al-Akhyâr Fi Hal Ghâyat Al-Ikhtisar*", [page 171].

(4) Based on this reasoning, those who stipulated the intention of grazing without the intention of feeding made a distinction. They said that grazing affects the obligation of zakâh, and since the default is that zakâh is not obligatory, the intention for grazing is required. On the other hand, feeding affects the non-obligation of zakâh, which is the default, so the intention for it is not required. See: "*Mughny Al-Muhtâj*", [2: 79].

(5) See: "*At-Tahdhîb*", [3: 66]; "*Fath Al-`aziz*", [5: 496].

for the zakâh of trade goods; the condition is the lack of intention to change the purpose from trade to personal use. Thus, simply wearing a trade garment does not contradict the intention of trade.

Second evidence: is that if the intention of feeding is absent, the intention of grazing persists, this is out of care for the benefit of the needy⁽¹⁾.

Discussed: when the condition is missed, the benefit of the needy is not considered, similar to the absence of other conditions of zakâh.

Preference:

The preferred -and Allah is the All-knowing- is the first opinion, which is not requiring the intention of feeding, and if the livestock got fed sufficiently without the intention of their owner, the zakâh cycle would end and the zakâh would not be obligated.

Reason for the preference:

The strength of the evidences supporting the first view, the most significant of which is that the reason zakâh is not obligatory on fed livestock is due to the accumulating burden on the owner, which occurs with or without intention. The evidence presented by those holding the second view is not without criticism.

Fruit of the difference

The disagreement in this issue is conceptual, and its fruits become evident if the livestock is fed without the owner's knowledge or with their knowledge but without the intention to stop grazing. According to the first opinion, zakâh is not obligatory, as the intention to feed is not a condition for its validity. And according to the second opinion, zakâh is obligatory because the livestock is legally considered as grazing, and the feeding has no effect, because the owner did not intend it and the intention is a condition for its validity and effect.

Branch two: the intention mere intention of stopping grazing

Aspect of the issue:

According to the majority opinion that zakâh is not obligatory on fed livestock -except for the Malikis- does feeding occur and grazing stop with merely the intention of feeding or the intention of stopping grazing without action?

(1) See: "Fath Al-`azîz", [5: 496].

If someone intends to feed their livestock or cease grazing while still grazing them, does the zakâh obligation drop?

Opinions on the issue: Scholars have differed on this issue, with two main opinions:

First opinion: the intention of zakâh is not waived for grazing livestock with just the intention of feeding or stopping grazing.

This is one opinion of Hanîfah⁽¹⁾, doctrine of the Shâfi'îah⁽²⁾, and the Hanâbilah⁽³⁾.

Second opinion: Zakâh is waived for grazing livestock with just the intention of feeding or stopping grazing. This is another opinion within the Hanîfah⁽⁴⁾.

Ibn Najîm⁽⁵⁾ (may Allah have mercy on him) merged between the two opinions of the Hanîfah in this issue, he interpreted the first opinion as referring to someone who intended to make the grazing livestock fed without actually removing them from the pasture, in which case their intention has no effect. And he interpreted the second opinion as applying to someone who intended to make the grazing livestock fed after removing them from the pasture, in which case the intention takes effect⁽⁶⁾.

And the gist of this resolution is the ineffectiveness of just the intention of feeding without accompanying action to the Hanîfah, As removing livestock from the pasture is an action where mere intention is insufficient, and this

(1) See: "*Al-Mohît Al-Burhâny*", [2: 253]; "*Tabyîn Al-Haqa'iq*", [1: 257].

(2) See: "*Al-Om*", [2: 51]; "*At-Tahdhîb*", [3: 66], "*Kifayat An-Nabîh*", [5: 349].

(3) See: "*Al-Moghny*", [3: 62]; "*Kashâf Al-Qinâ'*", [2: 241]; "*Sharh Montaha Al-'iradat*", [1: 435].

(4) See: "*Al-Binayah*", [3: 309]; "*Fath Al-Qadîr*", [2: 169]; "*An-Nahr Al-Fa'iq*", [1: 417].

(5) He is Zain al-Abidin bin Ibrahim bin Muhammad al-Masri al-Hanafi, known as Ibn Nu-jaym, one of the prominent jurists and scholars of the Hanafi school of thought. He issued fatwas and taught during the time of his teachers, and was known for his noble character. He authored significant works, including: "*Al-Bahr Ar-Ra'iq Sharh Kinz Ad-Daqâ'iq*", and "*Sharh Al-Manâr Fi Al-Usûl*", and "*Al-Ashbâh Wa An-Nazâ'ir Al-Fiqhya Ala Madhhab Al-Hanafya*", He passed away in the year 970 AH. For more on his biography, see: "*Al-Kawâkib As-Sâ'ira Bi'yân Al-Mi'ah Al-'âshira*", [3: 138]; "*Sulam Al-Wusûl Ila Tabaqât Al-Fuhûl*", [2: 119].

(6) See: "*Al-Bahr Ar-Ra'iq*", [2: 226].

differs from what some have explicitly stated, it is mentioned in “*Al-Binâyah*: “fed animals are not to be considered grazing with just the intention of grazing, to the contrary of if it is grazing already and the owner decided to feed it”⁽¹⁾, and it was mentioned in “*Fath Al-Qadîr*”: and the traveler becomes a resident, the one breaking the fast becomes a fasting person, the muslim becomes a heretic,

and the animal becomes fed just with the mere intention of these things”⁽²⁾, and what they say explicitly does not mention removing them from the pasture.

Evidences and discussions:

Evidence of the first opinion: Those who argue that the zakâh for grazing livestock is not nullified merely by the intention to feed them or stop grazing base their reasoning on: that feeding is an action, so its ruling does not happen just with the intention of it unless it is accompanied by the action⁽³⁾.

Evidence of the second opinion: Those who argue that the zakâh for grazing livestock is nullified merely by the intention to feed them or stop grazing may base their reasoning on the following analogy: Just as the zakâh cycle for trade goods is interrupted by the mere intention to repurpose them for personal possession, both involve an intention that nullifies zakâh, so it should take effect merely by the intention.

Discussed: the intention of trade is requirement for zakâh of trade goods to be valid, and with the mere intention of possession, the intention of trade goods ceases and the cycle ends. However, the intention of grazing is not a requirement and the obligation of zakâh does not cease with its cessation when intending to feed the animals. However, the intention to graze it is not a requirement for zakâh and it does not nullify the obligation of zakâh with its absence when there is an intention to feed. The obligation is only nullified when the act of feeding occurs and grazing ceases⁽⁴⁾.

Preference:

The preferred is -and Allah is All-knowing- is the first opinion, which is

(1) “*Al-Binayah*”, [3: 309].

(2) “*Fath Al-Qadîr*”, [2: 169].

(3) See: “*Al-Mohît Al-Burhâny*”, [2: 253].

(4) See: “*Al-Moghny*”, [3: 63]; “*Sharh Montaha Al-`iradat*”, [1: 435].

that the zakâh is not nullified with just the intention of feeding alone or ceasing to graze

Reason for the preference:

The requirement of grazing is fulfilled, and the present action takes precedence over the mere intention of ceasing it or the intention of feeding, as it is an intention is not connected with the action intended, thus it is not considered. Grazing itself is what has an effect and not the intention, and therefore, it is not nullified by its absence.

Fruit of the difference:

Difference in this issue is conceptual, and its fruit becomes evident when someone intends to feed the grazing animals or cease their grazing without actually doing so. According to the first opinion, the intention alone does not have an effect, and zakâh remains obligatory. And according to the second opinion, the intention takes effect, and the animals are considered fed, thus zakâh is no longer obligatory.

Third branch: feeding the grazing animal small amounts with the intention of ceasing grazing.

Aspect of the issue: If a person gives their grazing livestock a small amount of feed, which alone is not enough to terminate the grazing status -such as feeding them once- and they intend to stop the grazing, does the grazing cease, and do they become classified as fed livestock, exempt from zakâh.

Opinions on the issue: people who argue that zakâh is not obligatory on fed animals in this case with two opinions, which are:

First opinion: grazing is not nullified by small amounts of feeding even with the intention of ceasing grazing

And this the clear doctrine of the Hanîfah and Hanâbilah⁽¹⁾, and an opinion

(1) I did not find a direct statement from them regarding the intention to stop grazing with minimal feeding. However, they did state that grazing is not nullified by mere minimal feeding, without distinguishing whether it was with the intention to stop grazing or not. The Hanâbilah scholars justified this by stating that minimal feeding might be used as a means to avoid paying zakâh, and this reasoning applies even if the intention to stop pasturing is present alongside the minimal feeding. See: "Fath Al-Qadîr", [2: 195]; "Al-Bahr Ar-Ra'iq", [2: 229]; "Al-Mughny", [2: 431]; "Kashâf Al-Qinâ'", [2: 183].

of the Shâfi`îah⁽¹⁾

Second opinion: grazing is nullified with the intention of ceasing it with small amounts of feed even if it was fed once

And this is doctrine for the Shâfi`îah⁽²⁾

Evidence of the first opinion: Those who argued that grazing is not interrupted by a small amount of feeding, even with the intention to end it, provided the following evidence:

First evidence: A minor amount of feeding does not result in the effort and expense that justify the non-obligation of zakâh on fed livestock, and there is no difference whether it is accompanied by the intention to end the grazing or not⁽³⁾.

Second evidence: The claim that zakâh can be voided by a small amount of feeding along with the intention is a loophole for those seeking to escape zakâh. As when they want to void zakâh, what they do is feed the animals for a day and intend to cease grazing to void the zakâh⁽⁴⁾

Evidence of the second opinion: Those who argue that grazing ceases with the intention to stop it along with a small amount of feeding reason that: the intention accompanies an act that nullifies zakâh, even if it was minimal, similar to someone intending to craft gold into jewelry for personal use⁽⁵⁾.

Discussed: that feeding upon which the dropping of zakâh was based on has not been fulfilled legally, unlike gold, the cessation of zakâh is contingent upon being crafted into jewelry for personal use, and this has been fulfilled.

The preferred:

The preferred -and Allah is the all-knowing- is the first opinion, which is grazing is not ceased by a small amount of feeding, even with the intention to discontinue it.

Reason for the preference: The intention has no impact on grazing and

(1) See: "*Bahr Al-Madhab*" [3: 88]; "*Tahrîr Al-Fatawy*", [1: 468].

(2) See: "*Rawdat Al-Tâlibîn*", [2: 190]; "*Kifayat Al-Akhyâr*", [page 171]; "*Kifayat Al-Binayah*", [5: 249].

(3) See: "*Al-Mughny*", [2: 431].

(4) See: "*Al-Mughny*", [2: 431].

(5) See: "*Bahr Al-Madhab*" [3: 88]; "*Hulyat Al-Ulamâ*", [3: 20].

feeding, as previously established; but the action is. Therefore, the intention to stop grazing does not turn an action that lacks impact into one that does.

Fruit of the disagreement:

The disagreement on this issue is conceptual, and its fruits are seen in the case of someone who feeds their grazing animals a small amount and intends thereby to stop the grazing. According to the first view, neither the feeding nor the intention make zakâh non-obligatory, which will only be lifted if a sufficient amount is fed.

Third issue: the effect of the intention of zakâh on livestock if they are fed and grazed by their usurper, within it are two branches

Introduction: Scholars have differed on the ruling regarding the zakâh of stolen livestock when it returns to its owner, with three opinions:

First opinion: zakâh is absolutely non-obligatory on it

This is doctrine of the Hanîfah⁽¹⁾, and an opinion of the Shâfi`îah⁽²⁾ and Hanâbilah⁽³⁾

Second opinion: Zakâh is obligatory on it once the owner takes possession of it, and he must pay zakâh for each year. This is the claim of “Zufar”⁽⁴⁾ of the Hanîfah⁽⁵⁾, a claim of the Mâlikîah⁽⁶⁾, the more popular for the Shâfi`îah⁽⁷⁾ and the Hanâbilah⁽⁸⁾

(1) See : “*Al-Mohît Al-Burhânî*”, [2: 308]; “*Al-Bahr Ar-Ra`iq*”, [2: 223], “*Hâshyat Ibn `Abidîn*”, [2: 266]

(2) See: “*Al-Hawy Al-Kabîr*”, [3:130], “*Al-Bayân*”, [3:143].

(3) See: “*Al-Insâf*”, [3: 21]; “*Sharh Az-Zarkashy*”, [2: 520].

(4) Zufar ibn al-Hudhayl ibn Qays al-Anbari al-Basri was one of the prominent companions of Imam Abu Hanîfah and a distinguished figure among the scholars. Zufar was initially a scholar of hadith, but later turned to jurisprudential reasoning, which became his predominant approach and was attributed to him. He was known for his intellect, piety, understanding, and devoutness. He served as the judge of Basra. Among his students was Waki'. He passed away in 158 AH in Basra. For more on his biography, refer to “*Al-Jawahir al-Mudî`ah*”, [1: 243]; “*At-Taba`ât As-Sunîah*” [page 283]

(5) See: “*Al-Mabsûr*”, [2: 171]; “*Tabyîn Al-Haq`iq*”, [1: 256].

(6) See: “*An-Nawâdir wa Az-Ziyadât*”, [2: 141]; “*Adh-Dhakhîrah*”, [3: 99]; “*At-Tâj wa Al-Iklîl*”, [3: 146]

(7) See: “*Al-Bayân*”, [2: 141]; “*Al-Majmû`*”, [5: 341]; “*Mughny Al-Muhtâj*”, [2: 124]

(8) See: “*Al-Insâf*”, [3: 21]; “*Kashâf Al-Qinâ`*”, [2: 173]; “*Sharh muntaha Al-Iradât*”, [1: 389].

Third opinion: zakâh is obligatory once the owner takes possession of it, and he must pay zakâh for one year. This is another opinion of the Mâlikîah⁽¹⁾

There is no difference for them whether the animals were grazed or fed by the usurper; because they require zakâh to be paid in full in all cases⁽²⁾. Each of these opinions has its own evidence, which is not the focus here. The aim is to clarify that this issue is related to those who claim that on the zakâh of usurped animals is obligatory and it being not obligated for the fed animals -which is what is popular with the Shâfi`îah Hanâbilah as previously mentioned- The focus here is on the impact of the usurper's actions regarding grazing and feeding on the zakâh due, and whether intention has any effect on this.

Clarifying the point of the disagreement:

Firstly: Those who claim that zakâh is obligatory on the stolen livestock but not on the fed livestock agree that if the livestock is fed both by its owner and the thief, then no zakâh is due on it⁽³⁾.

Secondly: Those who claim that zakâh is obligatory on stolen livestock but not on fed livestock agree that if the livestock is grazing both with its owner and the thief, then zakâh is due on it⁽⁴⁾.

Thirdly: Those who claim that zakâh is obligatory on stolen livestock but not on fed livestock differ on the ruling for livestock if it is grazing with its owner but fed with the thief, or vice versa, if it is fed with its owner but grazing with the thief. Does zakâh become obligatory in such cases or not?

And I will discuss the dispute in this issue in the following two branches

First branch: the thief feeding the grazing livestock.

Aspect of the issue: If someone had grazing livestock that was feeding on permissible pasture, and it was usurped by a thief who then fed it, and later it returned to its owner, is the owner obligated to pay zakâh on it according

(1) See: "*An-Nawadir Wa Az-Ziyadât*", [2: 141]; "*Adh-Dhakhîrah*", [3: 99]; "*At-Tâj wa Al-Iklîl*", [3: 146]

(2) See: "*Al-Muqadimât Al-Mumahidât*", [1: 323]; "*Bidayat Al-Mojtahid*", [2: 13]; "*Adh-Dhakhîrah*", [3: 69]

(3) See: "*Al-Hawy Al-Kabîr*", [3: 130]; "*Al-Bayân*", [3: 152], "*Al-Mughny*", [3: 73]; "*Ash-Sharh Al-Kabîr*", [2: 444]

(4) See: the previous reference

to the opinion that zakâh is required for usurped livestock and not for fed livestock?

Opinions on the issue: Those who claim that zakâh is required for usurped livestock when it returns to its owner and not required for fed livestock—which is the preferred opinion among the Shâfi`îah and Hanâbilah—differ on this issue in two opinions:

First opinion: zakâh is not obligatory on it

This is the prevailing opinion of the Shâfi`îah⁽¹⁾, And what is popular with the Hanâbilah⁽²⁾.

Second opinion: Zakâh is obligatory on it. This is an opinion of the Shâfi`îah<sup>(3)</sup>, and a view amongst the Hanâbilah<sup>(4)</sup>, chosen by Al-Qâdy<sup>(5)</sup> Abu-Ya`ly⁽⁶⁾

Evidences and discussions:

Evidence of the first opinion: Those who argue that zakâh is not required for livestock that was stolen if it was grazing and then fed by the thief, argue as follows: Grazing is a condition for zakâh to be obligatory, and with the thief feeding the animals, this condition is lost, similar to how zakâh would be invalidated, due to the loss of the nisab condition⁽⁷⁾.

Discussed: grazing remains a valid condition, and the thief's actions are not considered. This differs from the reduction in nisâb, which affects the owner and decreases their wealth. In contrast, feeding by the thief does not

(1) See: “*Al-Bayân*”, [3: 152]; “*Fath Al-`azîz*”, [5: 497]; “*Mughny Al-Muhtâj*”, [2: 79]

(2) This was decisively stated in “*Al-Mughni*”, “*Al-Furû*”, and “*Al-Muntaha*”, See: “*Al-Mughni*”, [3: 73]; “*Al-Furû*”, [4: 9]; “*Sharh Montaha Al-`iradât*”, [1: 400].

(3) See: “*Nihayat Al-Matlab*”, [3: 207]; “*At-Tahdhîb*”, [3: 66]; “*Al-Majmû*”, [5: 359]

(4) See: “*Al-Furû*”, [4: 9], “*Al-Insâf*”, [3: 46]

(5) See: “*Al-Mughni*”, [3: 73].

(6) He is: Muḥammad ibn Al-Ḥusayn Ibn Muḥammad ibn Al-Farrâ', Abû Ya`lâ al-Qâḍî, the jurist and Usûlî scholar, was the leading Ḥanbalî authority of his time. A native of Baghdad, he studied under numerous scholars, including Abû `Abdullâh ibn Hâmid. He excelled in the Hanbalî school of jurisprudence and was appointed as a judge in the caliphate's court. Among his works are *Ahkâm Al-Qur`ân*, *Al-`Idda fî Usûl Al-Fiqh*, and *Al-Ahkâm As-Sultâniyya*. He passed away in the year 458 AH. For more details on his biography, see: “*Tabaqât Al-Hanâbilah*”, [2: 193]; “*Sayr A`lâm An-Nubalâ*”, [18: 91]

(7) See: “*Al-Bayân*”, [3: 152]; “*Al-Mughny*”, [3: 73]

impact the owner's wealth⁽¹⁾.

Evidence of the second opinion: those who argue that zakâh is required on livestock that was stolen and is grazing, even if the thief fed it, support their view with the following points:

First evidence: The actions of the thief are not to be considered and does not affect the ruling of zakâh. Similar to if the thief stole precious items and turned them into jewelry, the zakâh obligation is not nullified due to the thief's actions⁽²⁾.

Discussed: The difference between the thief's feeding of the livestock and his melting down of stolen precious metals is that feeding the livestock is permissible, but stealing them is wrong, unlike the shaping of precious metals by the thief which is prohibited due to the transgression involved, which is not related with the zakâh falling because of it, because zakâh is only affected by permissible processing⁽³⁾.

Answered: feeding by the thief is considered handling someone else's property without their permission, and the owner might have an interest in not feeding his livestock. Transgressing on someone else's property is prohibited.

Second evidence: zakâh was only waived for fed animals due to the burden and the cost on the owner, but in this case there is no burden, so the zakâh is not waived⁽⁴⁾.

Discussed from two aspects

Aspect one: the reason for zakâh being obligatory on grazing animals and not on fed animals is not merely the ease or difficulty of the burden. Rather, it is related to what implies the burden, which are grazing and feeding, and travel hardship, which is the reason for concession in its case⁽⁵⁾.

Aspect two: This argument is invalid if the animals were fed both by the owner and the usurper, as zakâh would be waived with the reduced burden⁽⁶⁾.

(1) See: "*Al-Hawy Al-Kabîr*", [3: 131]; "*Al-Mughny*", [3: 73]

(2) See: "*Fath Al-`azîz*", [5: 497]; "*Al-Mughny*", [3: 73]

(3) "*Al-Hawy Al-Kabîr*", [3: 131]; "*Bahr Al-Madhab*", [3: 48]

(4) See: "*Nihayat Al-Matlab*", [3: 207]; "*Al-Mughny*", [3: 73].

(5) See: "*Al-Mughny*", [3: 73].

(6) See: the previous reference, [3: 74].

And Aspect two is answered: The reason you mentioned for the non-obligation of zakâh is that the animals are fed by their owner and do not fulfill the requirement of grazing. This contradicts the situation in this issue.

Third evidence: That feeding requires the owner's intention for its validity and effect, and this condition was not met, so the feeding has no effect, and the ruling of grazing remains⁽¹⁾.

Discussed: By not accepting the condition that the owner's intention is required for the validity of its ruling.

Preference: after contemplating the evidences and discussion provided on them, it appears -and Allah is the All-knowing, is that the preferred is the second opinion, which is the obligation of zakâh on stolen livestock if it was grazing and the thief fed them.

Reason for the preference: The strength of the evidence presented by the proponents of the second opinion that the livestock is originally grazing, and the actions of the thief are not legally recognized and are insignificant. Therefore, it remains classified as grazing by law and zakâh is due on it.

The effect of the intention on the issue: the impact of intention of the proponents of the second opinion who argued that zakâh is required on livestock that was grazing and then fed by the thief, that for the ruling of feeding to be established, the owner of the livestock must intend it. Since this condition was not met, the ruling of feeding does not apply.

However, it has been previously mentioned that the intention to feed is not a condition for its ruling to be established⁽²⁾. What is a factor regarding the non-establishment of the feeding and the obligation of zakâh, is that the usurper's action is not legally recognized.

Branch two: Grazing of the usurper for the fed livestock

If a person owns livestock that they are feeding, and a usurper takes them and grazes them, then the livestock returned to the owner, is zakâh obligatory on it, according to the opinion that zakâh is required on usurped livestock but not on fed livestock?

Opinions on the issue: The scholars who hold the view that zakâh is oblig-

(1) See: "*Kifayat An-Nabîh*", [5: 247]; "*Al-Furû'*", [4: 9].

(2) See: page[98] of that book.

atory on usurped livestock if they return to their owner and not on fed livestock - which is the well-known opinion among the Shafi'iah and Hanâbilah - are divided regarding this matter into two opinions:

First opinion: zakâh is not obligatory on it.

This opinion is the more correct one among the Shafi'iah⁽¹⁾, and an opinion among the Hanâbilah⁽²⁾

Second opinion: zakâh is obligatory on it.

This is the other opinion of the Shafi'iah⁽³⁾, and doctrine of the Hanâbilah⁽⁴⁾

evidences and discussions:

Evidences of the first opinion: those who argue that zakâh is not required for stolen livestock if it was fed by its owner and then grazed by the thief support their opinion with the following points:

First evidence: They argue that for grazing to be valid and to establish its legal effect, the owner's intention is required. Since this condition was not met, zakâh is not due⁽⁵⁾.

Discussed: Not agreeing to the opinion that the intention of grazing is a condition for its validity, for the lack of evidence for the requirement

Second evidence: actions of the thief are unlawful for overstepping by grazing the livestock without the owner's consent, so it is not considered a legal action, and thus the livestock remains in the ruling of fed⁽⁶⁾.

Evidences of the second opinion: those who argue that the zakâh is required for usurped livestock if it was fed by their owner but grazed by their thief support opinion with the following evidence:

First evidence: that the livestock became grazing now and their owner's intention is not considered, like if someone stole seeds and planted them in someone else's land, zakâh would be obligated on in⁽⁷⁾.

(1) See: "Al-Hawy Al-Kabîr", [3: 131]; "Fath Al-'azîz", [5: 497]; "Mughny Al-Muhtâj", [2: 79].

(2) See: "Al-Mughny", [3: 73]; "Al-Furû'", [4: 9]; "Al-Insâf", [3: 47].

(3) See: "Bahr Al-Madhhab", [3: 48]; "At-Tahdhîb", [3: 66]; "Al-Bayân", [3: 152].

(4) See: "Al-Insâf", [3: 47]; "Kashâf Al-Qinâ'", [2: 184]; "Sharh Montaha Al-'iradat", [1: 400].

(5) See: "Al-Hawy Al-Kabîr", [3: 131]; "Bahr Al-Madhhab", [3: 48].

(6) See: "Al-Mughny", [3: 73].

(7) See: "Al-Hawy Al-Kabîr", [3: 131]; "Al-Mughny", [3: 73].

Discussed: this analogy is flawed because intention is required with grazing, unlike farming. For example, if someone transports food, then the food scattered it, then it grew in his land, then reached the zakâh threshold, zakâh would be obligatory on that food even without his intention⁽¹⁾.

Answered: rejecting the claim that intention is required with grazing

The evidence could be discussed: that if someone stole seeds to plant them, they have created wealth that the owner could benefit from, making paying zakâh obligatory on it, because his action affected the wealth with either increase or decrease, and so it must be taken into account with the unlawfulness of the thief's action. Like if the thief slaughtered a sheep causing the threshold to decrease, or if it produces offspring while being with the thief and reaching the zakâh threshold. However, the grazing or feeding done by the thief do not affect the wealth with increase, decrease, existence or non-existence. Therefore, it can be disregarded due to its forbidden nature.

Second evidence: reduced burden has been achieved through the grazing of the thief, and thus zakâh becomes obligatory⁽²⁾.

Discussed: the ease of burden occurred through an unlawful act, so it is insignificant

Third evidence: grazing is an action that obligates zakâh if it occurred by the owner or by the thief, just as if they were grazing under both their care⁽³⁾.

Discussed: in contrast, as if it was grazing under both their cares, we would choose the ruling of grazing under the owner, and in this case it is not possible.

Fourth evidence: the condition of grazing is achieved due to the grazing done by the thief, just as if he completed the threshold on his own, thus obligating zakâh for meeting the condition⁽⁴⁾.

Discussed: by rejecting that the condition of grazing was fulfilled, as livestock is fed under their owner's possession and so it remains fed and there is no effect of the usurper grazing them. This also differs with the completing of the threshold (Nisab) as it is not an act by him.

Preference: after contemplating the evidences and the discussions around

(1) See: "Al-Hawy Al-Kabîr", [3: 131].

(2) See: "Fath Al-'azîz", [5: 497].

(3) See: "Al-Mughny", [3: 73].

(4) See: "Al-Insâf", [3: 47].

them, it appears - and Allah is the All-knowing- that the preferred is the first opinion, which is the non-obligation of zakâh on usurped livestock if it was fed then grazed by the usurper.

Reason for the preference: Grazing by the usurper is prohibited legally, because it is unjust dealing with someone else's property without permission, and prohibited actions are of no consideration legally, and the animals remain ruled as fed and zakâh is not obligatory on them.

Effect of the intention and reason for the disagreement

The effect of intention is evidence in the fact that the reason for the disagreement among scholars on this issue is over the requirement of the intention of grazing by the owner. Those who require it disregard the grazing made by the usurper, and those are the proponents of the first opinion. And those who do not require it acknowledged the grazing made by the usurper and obligated zakâh; those are the proponents of the second opinion. The reason the first opinion holds is that zakâh is not due is the lack of the owner's intention for grazing, but this is not the reason for their preference. As we have seen, the intention for grazing is not a condition⁽¹⁾; rather, the reason for preference is the disregard for the usurper's actions due to their prohibition.

Topic (4): effect of intention of the obligation of zakâh on livestock that the owner has damaged after the year has passed.

Aspect of the issue:

If someone damages their livestock by slaughtering them after the zakâh year has passed, is zakâh still required? And what is the effect of intention in this regard?

Clarifying the Point of Disagreement:

Firstly: scholars agree that if someone damaged their livestock after the zakâh cycle has passed while having the ability to pay the zakâh. The obligation of zakâh remains, regardless of whether he slaughtered it to avoid paying zakâh or not⁽²⁾.

(1) See: page [95] of that book.

(2) See: "Bada'i' As-Sana'i'", [2: 63]; "Al-Binayah", [3: 362]; "Al-Jami' Lemâsa'il "Al-Mudâwanah", [4: 284]; "Ash-Sharh Al-Kabîr by Ad-Dardîr", [1: 503]; "Fath Al-'azîz", [5: 547]; "Mughny Al-Muhtâj", [2: 136]; "Kashâf Al-Qinâ'", [2: 182]; "Sharh Montaha Al-'iradat", [1: 398].

Secondly: scholars disagreed regarding if it was damaged after the zakâh year (cycle) passing and before being able to pay their zakâh⁽¹⁾ is zakâh obligatory on it or not?

opinions on the issue: scholars have differed on this issue with two opinions:

First opinion: zakâh on them is not nullified, and the owner is liable for it, whether he intended to evade zakâh by damaging them or not.

This is doctrine for the Hanîfah⁽²⁾, Shâfi`îah⁽³⁾, and doctrine for the Hanâbilah⁽⁴⁾.

second opinion: zakâh is nullified if he did not intend to evade zakâh by damaging them, but if he intended that it wouldn't be nullified. This is doctrine for the Mâlikîah⁽⁵⁾, and an opinion of the Hanâbilah⁽⁶⁾

Evidences and discussions:

Evidences of the first opinion: proponents of not nullifying zakâh on livestock that the owner damaged after the zakâh year has passed and before being able to pay zakâh base their argument on the following evidence:

First evidence: zakâh becomes established as an obligation once the year has passed, which is indicated by the implied meaning of the prophet's saying (peace and blessings of Allah upon him): "*There is not zakâh on wealth until Hawl (one year) has passed.*"⁽⁷⁾ So if the owner damages them after the year, he would have damaged it after the cycle was obligated on him, and he is liable for it like a deposit⁽⁸⁾.

(1) It is as if there is no one to pay it to him, whether a collector or someone deserving. See: "At-Tahdhîb", [3: 25]; "Al-Mughny" [2: 509].

(2) See: "At-Tajrid", [3: 1151]; "Al-Mabsût", [2: 175]; "Al-Bahr Ar-Ra'iq", [2: 235].

(3) See: "Al-Hawy Al-Kabîr", [3: 103]; "Asna Al-Matalib" [1: 365]; "Mughny Al-Muhtâj", [2: 137].

(4) See: "Al-Mubdi'", [2: 306]; "Kashâf Al-Qinâ'", [2: 182]; "Sharh Montaha Al-'iradat", [1: 398].

(5) See: "Al- Ma`una", [page 408]; "Al-Jami` Lemâsa'il Al-Mudâwanah", [4: 283]; "Aqd Al-Jawâhir Ath-Thamînah", [1: 217].

(6) See: "Al-Mughny", [2: 504]; "Al-Furû'" [3: 482]; "Al-Mubdi'", [2: 306].

(7) previously related, See: page [60] of that book.

(8) See: "Bada'i' As-Sana'i'", [2: 63]; "Al-Jawharah An-Na'irah", [1: 121]; "Kashâf Al-Qinâ'", [2: 182].

Discussed: Rejecting the idea that the obligation of zakâh is established by the passing of the year, but rather established only after the ability to pay it. because zakâh is an act of worship and its obligation is established with the ability to perform it, like other acts of worship⁽¹⁾.

Answered: by rejecting that every act of worship requires the ability to perform it to be obligated, as fasting is obligatory on menstruating women while being unable to perform it. Furthermore, zakâh is a financial act of worship, and it can remain owed even without the ability to perform it, like the liability of debt on an insolvent person⁽²⁾.

Second evidence: zakâh is a right to humans or includes rights to them, so it is not nullified by damaging the livestock after it becomes obligatory, like a human debt⁽³⁾

Third evidence: the violation and disregard is by the owner damaging his own livestock after the passing of the year, and this violation enforces liability, whether we said that being able to pay zakâh is a condition for eligibility and liability or not⁽⁴⁾.

Evidences of the second opinion: proponents of the nullification of zakâh of livestock that were damaged by its owner after the year and before being able to perform it without intending to evade paying it base their argument on the following:

First evidence: the owner of the livestock damaged it before the condition of their obligation, which is being able to perform it, and thus he is not liable to it, similar to if he damaged it before the year passes⁽⁵⁾.

discussed: rejecting that being able to do it is a condition for the obligation of zakâh, but rather, obligation is established with the passing of the year, which differs from damaging it before its passing.

Second evidence: They argued that if the owner damaged it intending to avoid zakâh by doing that, it will not be nullified, based on that the owner sought a foul intention which is evading zakâh. As a consequence, they are

(1) See: "Al-Mubdi", [2: 306].

(2) See: "Al-Mughny", [2: 508].

(3) See: "Sharh Montaha Al-'iradat", [1: 398].

(4) See: "At-Tahdhīb", [3: 25]; "Mughny Al-Muhtāj", [2: 137].

(5) See: "Al-Ishraf 'ala Nukat Masa'il Al-Khilaf", [1: 382].

penalized contrary to their intention, and zakâh remains obligatory on them, like someone who kills their ancestor to hasten the inheritance; the law punishes him by depriving him of it⁽¹⁾.

discussed: The zakâh is not nullified for him whether he intended to escape it by damaging the livestock or not, just as if he damaged his livestock after being able to pay it.

Preference:

The preferred -and Allah is the all-knowing- is the first opinion, which is that the zakâh on livestock is not nullified if the owner damages them after a full year has passed but before the ability to pay their zakâh, whether he intended to evade paying zakâh by doing so or not.

Reason for the preference: damaging property on which a full year has passed for zakâh is considered transgression, and what is damaged through such transgression must be compensated for. This is because the owner holds the property on which zakâh is due as a trustee, and if a trustee acts aggressively or negligently, they are liable for compensation.

Reason for the Disagreement:

Disagreement lies in whether the ability to pay is a condition for the obligation of zakâh. Those who hold that it is not a condition do not consider zakâh nullified.

Regarding someone who has damaged their livestock after the year has passed, for its obligation just as the year passes even before the ability to perform it, who state this as a requirement nullified zakâh on whoever damages the livestock without the ability to perform it, for the obligation not being firmly established.

Effect of the intention on the issue:

The effect of intention is evident in the view of the second group - The Mâlikîah and Hanâbilah- who made an exception regarding the nullification of zakâh on livestock damaged by its owner after the year had passed and before being able to pay zakâh, which is the case of if the owner intended to waive zakâh on it by damaging it. The owner is to be punished opposite of his inten-

(1) See: "Al-Mughny", [2: 504].

tion and zakâh is not to be nullified. However, if their intention is different, such as damaging the livestock out of necessity, zakâh would be nullified.

Topic (5): the effect of intention on the ruling of joint ownership (Khalta) of livestock

First issue: joint ownership with differing intentions regarding owning the livestock

Preface: “Khalta” with livestock is, sharing or co-owning them, and it has two types:

First: joint assets, which is: for the livestock to be co-owned by partners, with each of them having an undivided share in the livestock, like when the livestock is inherited or purchased with shared capital that is indistinguishable from the other

and the Second: joint ownership, where each partner’s livestock is distinct in ownership and each knows exactly which animals belong to them, but the livestock are kept together as if they were a single herd.⁽¹⁾

Scholars have disagreed regarding the effect of both types of joint ownerships, and would partners’ wealth be considered as one for the purpose of zakâh? The Hanîfah opine that it has no effect whatsoever⁽²⁾, while the Mâlikîyah consider it to have an effect if each partner’s share reaches the nisab when considered individually⁽³⁾, The Shâfi’îyah and Hanâbilah, however, view joint ownership as having an effect as long as the jointly owned livestock together meet the nisab⁽⁴⁾.

The basis for joint ownership is what mentioned in the letters of the prophet (peace and blessings of Allah upon him) about zakâh, including: *“Those separated should not be gathered together nor should those gathered together be separated in order to avoid paying zakâh. Whatever belongs to two associates is settled between them proportionately.”*⁽⁵⁾

(1) See: “Nihayat Al-Matlab”, [3: 146]; “Al-Bayân”, [3: 208]; “Al-Mughny”, [2: 454]; “Kashâf Al-Qinâ’”, [1: 196].

(2) See: “Al-Mabsût”, [2: 153]; “Al-Mohît Al-Burhâny”, [2: 302]; “Fath Al-Qadîr”, [2: 172].

(3) See: “An-Nawâdir Wa Az-Ziyârât”, [2: 244]; “Al-Ma’ûnah”, [page 399]; “‘Aqd Al-Jawâhir Ath-Thamînah”, [1: 202].

(4) See: “Al-Muharîr”, [1: 216]; “Al-Insâf”, [3: 67]; “Kashâf Al-Qinâ’”, [2: 196].

(5) Related by Al-Bukhari in his “Sahîh” from Anas ibn Mâlik (may Allah be pleased with =

Those who argue regarding the effect of joint ownership require certain conditions, some of which are agreed upon, while others are disputed, they also present various subdivisions that are not the focus of this discussion⁽¹⁾. Instead, this examines the issue related to the differing intention of the partners regarding their joint ownership of the livestock and the effect of that on zakâh.

aspect of the issue:

If the intention of the owners differs regarding their ownership of joint livestock -some intending to obtain milk and offspring, others intending for personal use, and others intending for trade- does this joint ownership affect the zakâh according to those who believe that joint ownership affects the zakâh of livestock?

After researching the issue, I did not find any scholars who have addressed it, except for Sheikh Muhammad ibn Uthaymin (may Allah have mercy on him) in one of its aspects. Therefore, I have approached it through extrapolation and deduction. The issue has three cases, which I will address as follows.

First case: for one of the partners to intend milk and offspring, while the other intends personal use

the difference of the intention of partners in this case has no effect according to those who do not distinguish between livestock intended for milk and offspring or livestock intended for work and rental, and obligate zakâh on all of them equally, which are the Mâlikîah⁽²⁾, and an opinion of the Shâfi'îah⁽³⁾

- = him) without saying: *Whatever belongs to two associates is settled between them proportionately*. Book of zakâh, Chapter: Neither should the separated be combined nor the combined be separated, Hadith No. (1450), [2/177], And with this wording was also related by the authors of the "Sunan" from Sâlim ibn Abdullah from his father (may Allah be pleased with him). Related by Ibn Mâjah in his "Sunan", Book of zakâh, Chapter: zakâh to be taken from Camels, Hadith no. (1801), [1: 576]; and by Abu Dâwûd in his "Sunan", Book of zakâh, Chapter: On the zakâh of Livestock, Hadith no. (1568), [3: 19]; and by An-Nasâ'i in As-Sughra, Book of zakâh, Chapter: zakâh of Camels, Hadith no. (2447), [5: 18]; and by At-Tirmidhi in his "Jami", Book of zakâh, Chapter: What Has Been Narrated Regarding zakâh of Camels and Sheep, Hadith no. (621), [3: 8], and he considered it "Hassan"
- (1) See: "Aqd Al-Jawâhir", [1: 202]; "Ash-Sharh Al-Kabîr" by Ad-Dardîr, [1: 440]; "Bahr Al-Madhhab" [3: 35]; "Al-Bayân", [3: 208]; "Al-Mughny", [2: 454]; "Al-Insâf", [3: 67].
- (2) See: "Al-Mudawanah", [1: 357]; "Al-Qawânîn Al-Fiqhyâ", [page 73]; "Sharh Al-Khurashy", [2: 148].
- (3) See: "At-Tahdhîb", [3: 65]; "Al-Bayân", [3: 150]; "Al-Majmû'", [5: 385].

and the Hanâbilah⁽¹⁾. Therefore, joint ownership is considered in this case if its conditions are met, as the livestock is treated equally in terms of the obligation of zakâh.

As for the prevalent opinion among the Shâfi`îah⁽²⁾ and Hanâbilah⁽³⁾ according to those who say that zakâh is not obligatory on working livestock or those kept for rental, joint ownership is not considered in this case if there is a difference in intention, as they stated that

In the case where the property is not eligible for zakâh, such as livestock owned by a non-muslim, a debtor, or those that are fed, the property has no effect on the money eligible for zakâh in the joint ownership⁽⁴⁾, and livestock used for work is ineligible for zakâh, so mixing it with assets eligible for zakâh does not influence its zakâh status.

evidences on it as follows:

First evidence: working animals have no effect on completing the nisab or increasing it if they are owned by only one person. So they have no effect when mixed with another person's wealth, even more so⁽⁵⁾.

Second evidence: One of the rulings on joint ownership is the possibility of recourse among the co-owners. If there is no zakâh due, recourse cannot be sought⁽⁶⁾.

Second case: for one partner to intend milk and offspring and for the other to intend trade

In this case, the differing intentions of the co-owners do not affect the zakâh for those scholars who hold that livestock used for trade is subject to zakâh of property and not the zakâh for trade goods. This opinion is held by the Mâlikîah⁽⁷⁾, and the modern opinion of the Shâfi`îah⁽⁸⁾, and an opinion of

(1) See: "Al-Furû", [4: 5]; "Al-Mubdi", [2: 310]; "Al-Insâf", [3: 46].

(2) See: "Al-Om", [2: 25]; "Al-Hawy Al-Kabîr", [3: 189]; "Al-Majmû", [5: 385].

(3) See: "Al-Muharir", [1: 214]; "Al-Iqnâ", [1: 248]; "Sharh Montaha Al-`iradat", [1: 399].

(4) See: "Al-Madhhab", [1: 279]; "Fath Al-`azîz", [5: 393]; "Mughny Al-Muhtâj", [2: 74]; "Al-Mughny", [2: 456]; "Kashâf Al-Qinâ", [2: 196]; "Matâlib Uli An-Nuha", [2: 44].

(5) See: "Al-Muhadhib", [1: 279]; "An-Najm Al-Wahâj", [3: 153].

(6) See: "Al-Mumti` Fi Sharh Al-Muqni" by Ibn Al-Munjy, [1: 697].

(7) See: "Al-Mudawanah", [page 375]; "Al-Muntaqa Sharh Al-Mawta", [2: 121]; "Manahij At-Tahsil", [2: 211].

(8) If the livestock are freely grazing, See: "Al-Om", [2: 52]; "Al-Hawy Al-Kabîr", [3: 303];=

the Hanâbilah⁽¹⁾. For them, there is no difference in zakâh whether the livestock is intended for milk and offspring or for trade; the zakâh remains the same in both cases. Therefore, joint ownership is considered valid in this case if its conditions are met.

The issue remains for those who believe in the effect of joint ownership in livestock, specifically those who hold that livestock used for trade is subject to zakâh as trade goods, which is an old opinion of the Shâfi`îah⁽²⁾, and doctrine of the Hanâbilah⁽³⁾. Does joint ownership affect the zakâh for those who intend their livestock for milk and offspring, which is zakâh on property, versus those who intend it for trade, which is zakâh on trade goods?

It appears here that joint ownership is not considered, because the Shafi`is and Hanbalis have stated that the zakâh for grazing livestock differs from the zakâh for trade goods in terms of the threshold and the amount due, and with one being related to the property itself and the other to its value. Therefore, they said that the year (ḥawl) for one does not affect the other in cases where grazing livestock is used to purchase trade Goods⁽⁴⁾.

Based on their assertion of the difference between zakâh on livestock and zakâh on trade goods, it can be concluded that joint ownership in this case has no effect; its presence is equivalent to its absence, similar to when livestock is mixed with a different type of property.

Sheikh Ibn Uthaymeen (may Allah have mercy on him) explicitly stated the ruling on the matter, saying: «If two individuals co-own livestock, with one intending trade and the other intending milk and offspring, this form of joint ownership does not have an effect due to the difference in the type of zakâh for each; one pays zakâh based on value, while the other pays zakâh from the actual livestock»⁽⁵⁾.

= "Al-Bayân", [3: 310].

(1) See: "Al-Furû", [4: 199]; "Al-Mubdi'", [2: 371].

(2) See: "Al-Hawy Al-Kabîr", [3: 303]; "Al-Bayân", [3: 310]; "Al-Majmû'", [6: 50].

(3) See: "Masâ'il Al-Imam Ahmad Wa Ishâq Ibn Râhaweh", [3: 1148]; "Al-Mughny", [3: 61]; "Al-Insâf", [3: 157].

(4) See: "Fath Al-'azîz", [6: 54]; "Asna Al-Matâlib", [1: 382]; "Al-Ghurur Al-Bahiya", [2: 164]; "Al-Hidâyah `ala Madhhab Al-'Imam Ahmad", [page 139]; "Al-Mubdi'", [2: 371]; "Kashâf Al-Qinâ'", [2: 242].

(5) "Ash-Sharh Al-Momte'", [6: 66].

Third case: for one partner to intend personal use and for the other to intend trade.

the difference in intention between partners has no effect, and the co-ownership is considered valid and recognised by those who obligate zakâh on working animals, which are the Mâlikîah⁽¹⁾, an opinion of the Shâfi'îah⁽²⁾, and the Hanâbilah⁽³⁾, and the obligation of zakâh on individual assets of livestock intended for trade, which is doctrine of the Mâlikîah⁽⁴⁾, a modern opinion of the Shâfi'îah⁽⁵⁾, and an opinion of the Hanâbilah⁽⁶⁾, because the zakâh of individual asset is obligated on all partners, And there is no effect of their differing intentions in their ownership of the livestock.

As for the opinion that zakâh is not required for working animals, the joint ownership in this case does not affect the situation as mentioned earlier, joint ownership only affects assets eligible for zakâh⁽⁷⁾.

According to the view that requires zakâh on livestock as physical assets and zakâh on livestock used for trade as commercial assets, joint ownership is not considered according to what is previously mentioned in the second scenario, there is no distinction between livestock used for milk and offspring and livestock used for labor or rent.

Second issue: the requirement of the intention for considering joint ownership

Aspect of the issue:

According to the majority opinion -except for the Hanafis- on the effect of joint ownership on the zakâh of livestock, is the intention of joint ownership required by every one of the partners? If livestock is mixed with others without the knowledge of its owner, for example, if a shepherd mixes the livestock

(1) See: "Al-Mudawanah", [1: 357]; "Al-Qwânin Al-Fiqhya", [page 73]; "Sharh Al-Khurashy", [2: 148].

(2) See: "At-Tahdhîb", [3: 65]; "Al-Bayân", [3: 150]; "Al-Majmû'", [5: 385].

(3) See: "Al-Furû'" [4: 5]; "Al-Mubdi'", [2: 310]; "Al-Insâf", [3: 46].

(4) See: "Al-Mudawanah", [page 375]; "Al-Muntaqa Sharh Al-Mawta'", [2: 121]; "Manâhij At-Tahsil", [2: 211].

(5) If the livestock are freely grazing, See: "Al-Om", [2: 52]; "Al-Hawy Al-Kabîr", [3: 303]; "Al-Bayân", [3: 310].

(6) See: "Al-Furû'", [4: 199]; "Al-Mubdi'", [2: 371].

(7) See: page [113] of that book.

without the owner's knowledge and intention, will this mixing have an effect? Or must the owner intend it?

Clarifying the Point of Disagreement

1- Those who claim that joint ownership affects zakâh concur that the intention of joint ownership is not required for the mixing of physical assets⁽¹⁾.

2- But they disagreed regarding the requirement of the intention of joint ownership in the joining of different types of assets leading to two opinions:

Opinions on the issue

First opinion: requiring the intention of joint ownership

this is the doctrine of the Mâlikîah⁽²⁾, one of two opinions of the Shâfi'îah⁽³⁾ and chosen by the judge Abu Ya'la⁽⁴⁾ of the Hanâbilah.

Some of the Mâlikîah restricted the meaning of requiring the intention of joint ownership to not having the intention of evading zakâh by it⁽⁵⁾. However, most of them stated that what is meant by this is the intention of joint ownership itself by all the co-owners⁽⁶⁾.

Second opinion: the non-requirement the intention of joint ownership. This is the opinion of Ashhab⁽⁷⁾ of the Mâlikîah⁽⁸⁾, the more correct opinion of

(1) See: "Adh-Dhakhîrah", [3: 130]; "At-Tawdîh", [2: 307]; "Al-Hawy Al-Kabîr", [3: 141]; "Al-Bayân", [3: 212]; "Al-Furû'", [4: 42]; "Kashâf Al-Qinâ'", [2: 198].

(2) See: "Adh-Dhakhîrah", [3: 130]; "Sharh Az-Zaraqâny", [2: 219]; "Sharh Al-Khurashy", [2: 157].

(3) See: "Al-Hawy Al-Kabîr", [3: 141]; "Al-Muhadhib", [1: 279]; "Al-Majmû'", [5: 436].

(4) See: "Al-Hidâyah", [page 128]; "Al-Mughny", [2: 456]; "Al-Insâf", [3: 71].

(5) See: "Ash-Sharh Al-Kabîr" by Ad-Dardîr, [1: 439]; "Manh Al-Jalîl", [2: 17].

(6) See: "Adh-Dhakhîrah", [3: 130]; "Jawâhir Ad-Durar" by At-Tata'i, [3: 35]; "Sharh Az-Zaraqâny", [2: 219]; "Sharh Al-Khurashy", [2: 157].

(7) He is: Ashhab ibn Abdulaziz ibn Dawood al-Qaisi al-'Amiri al-Ja'dî, Abu Amr, the Egyptian jurist from the companions of Malik. The leadership of Egypt in jurisprudence passed to him after the death of Ibn al-Qâsim. He was a student of Ibn Wahb and served as his scribe, a trustworthy narrator, and a renowned jurist. Among his works are: "Al-Ikhtilâf in Al-Qasâmah" and "Fada'il 'umar ibn 'Abdul 'azîz." He passed away in the year 204 AH. see his biography: "Tabaqât al-Fuqahâ" (page 150), "Tartîb Al-Madârik" by Qadi 'aiyad (3, 265), and "Wafiyât Al-A'yân" (1/239).

(8) See: "Adh-Dhakhîrah", [3: 130]; "Tahbîr Al-Mukhtasar" by Bahram, [2:34].

the Shâfi'îah⁽¹⁾, and doctrine of the Hanâbilah⁽²⁾.

Evidences and discussions:

Evidences of the first opinion: The proponents of requiring the intention for joint ownership argue based on the following:

First Evidence: That joint ownership changes the ruling and amount of zakâh, so it requires an intention, similar to the requirement of intention for travel⁽³⁾.

Discussed: the analogy is flawed, because Travel is an act related to the person's body, and thus requires intention, whereas joint ownership pertains to one's property.

Second evidence: joint ownership has an effect on zakâh, thus requiring intention for it, similar to the requirement for grazing⁽⁴⁾.

Discussed: By rejecting the requirement of intention for grazing, and the evidence could be argued with by saying: that joint ownership affects zakâh and so it does not need intention, similar to grazing.

Third evidence: Joint ownership affects the amount of zakâh, either increasing or decreasing it, it is inappropriate for zakâh to increase in value on the owner without his intention and consent nor to decrease if they did not intend it to protect the rights of the beneficiaries⁽⁵⁾.

Discussed: this contradicts with the conditions of grazing and feeding, as they both affect the obligation and exemption of zakâh. and the prevailing opinion is not requiring their intention

Evidences of the second opinion: The proponents of not requiring the intention of joint ownership argue based on the following:

First evidence: what the prophet (peace and blessings of god be upon him) stated: "*joint animals (Al-Khalitân) are which share the same well, shepherd, and male*"⁽⁶⁾.

(1) See: "Bahr Al-Madhab" [3: 55]; "Fath Al-'azîz", [5: 399]; "Tohfât Al-Muhtâj", [3: 230].

(2) See: "Al-Furû", [4: 42]; "Kashâf Al-Qinâ'", [2: 198]; "Montaha Al-'iradat", [1: 408].

(3) See: "Adh-Dhakhîrâ", [3: 130]; "Sharh Mushkil Al-Wasî", [3: 46].

(4) See: "Al-Hawy Al-Kabîr", [3: 141].

(5) "Fath Al-'azîz", [5: 399].

(6) Related by Ad-Daraqutni in his "Sunan", Book of zakâh, Chapter: Explanation of the Two =

Aspect of the evidence: the prophet (peace and blessings of god be upon him) mentioned that joint ownership occurs when all these three things are joint, if they occurred, its ruling is obligated whether with or without intention⁽¹⁾.

Discussed: by the weakness of the Hadith.

Second evidence: Joint ownership only affects zakâh due to the reduced expenses resulting from shared facilities, and this is not affected with or without intention⁽²⁾.

Third evidence: the intention of joint ownership is not required with joint assets, and so it is not required with joint ownership of different items⁽³⁾.

Preference:

the preferred is - and Allah is the all-knowing- is the second opinion, which is the non-requirement of the intention of joint ownership

Reason for the preference:

The original principle is that intention for joint ownership is not required, and the evidence of those who argue for its necessity is subject to debate.

Fruit of the argument:

The disagreement on this issue is conceptual, and its fruit appears evident when livestock are mixed either accidentally or by the shepherd without the owner's awareness⁽⁴⁾. According to the first opinion, such mixing has no effect since there is no intention, and each owner would calculate zakâh separately. According to the second opinion, the mixing is considered valid, and the rules of joint ownership would apply.



= Partners and What Has Been Mentioned About zakâh on Partners, Hadith no. (1943), [2: 494], and by Al-Bayhaqi in Al-Kubra, Book of zakâh, Chapter: zakâh of Partners, Hadith no. (7333), [4: 178]. The Hadith is weak, as it was narrated exclusively by Ibn Lahi'ah, who is considered weak. See: "Al-Badr Al-Munir", [5: 448]; "At-Talkhis Al-Habir", [2: 349].

(1) "Al-Mughny", [2: 456].

(2) See: "Adh-Dhakhira", [3: 130]; "Fath Al-'aziz", [5: 399].

(3) See: "Al-Hawy Al-Kabir", [3: 141].

(4) See: "Al-Insaf", [3: 71]; "Kashaf Al-Qina'", [2: 198].

Second Treatise

Effect of intention in the zakâh of agricultural produce

Topic (1): The Effect of Intention in Determining What is Subject to zakâh from Crops and Fruits

there is no disagreement between scholars about the obligation of the zakâh of agricultural produce from crops and fruits in general⁽¹⁾. However, the disagreement arises in specifying which types of crops and fruits are subject to zakâh, as will be discussed.

The basis for the consensus on the obligation of zakâh on crops and fruits is supported by many texts, including the verse of Allah's saying: {**"and give its due [zakâh] on the day of its harvest"**}⁽²⁾, and the prophet's saying (peace and blessings of Allah upon him): *"A tenth is payable on what is watered by rivers, or rains, and a twentieth on what is watered by camels."*⁽³⁾

Aspect of the issue:

What types of crops and fruits are subject to zakâh? And does intention have an effect in determining that?

Clarifying the point of dispute:

Scholars agree⁽⁴⁾ on the obligation of zakâh for four types of crops and

(1) See: "Al-'ijma'" by Ibn Al-Mundhir, [page 45]; "Al-'iqnâ' Fi Masa'il Al-'Ijma'", [1: 197]; "Bada'i' As-Sana'i'", [2: 53]; "Al-Mohit Al-Burhany", [2: 325]; "Al-Ma'ûnah", [page 409]; "Bidayat Al-Mojtahid", [2: 27]; "Al-Om", [2: 37]; "Al-Bayân", [3: 255]; "Al-Mughny", [3: 3]; "Sharh Az-Zarkashi", [2: 467].

(2) From [Al-An'âm (Cattle): 141].

(3) Related by Muslim in his "Sahih", Book of zakâh, Chapter: That Which Requires a Tenth or Half a Tenth, Hadith no. (981), [2: 675].

(4) Except for Ibn Hazm (may Allah have mercy on him), as he does not deem zakâh obliga-

fruits: wheat, barley, dates, and raisins⁽¹⁾.

They disagree on determining which crops and fruits, other than the four specified types, are subject to zakâh.

Opinions on the issue: The scholars differ on this issue according to four opinions, which are:

First opinion: zakâh is obligatory on wheat, barley, dates, and raisins only, and non other.

This is the claim of Abd Ar-Rahman ibn Omar (may Allah be pleased with him)⁽²⁾, and some scholars of old, including Al-Hassan Al-Basry⁽³⁾, Ibn Sirîn⁽⁴⁾, and Sufyân Ath-Thawri⁽⁵⁾. It is also a narration from Imam Ahmad⁽⁶⁾.

Second opinion: zakâh is obligatory on everything that grows from the earth and is intended for the purpose of agricultural growth generally. This is doctrine of the Hanîfah, They exclude firewood, grass, Persian cane, straw,

tory on raisins. See: "Al-Muhalâ", [4: 12].

- (1) See: "Al-'jma" by Ibn Al-Mundhir, [page 45]; "Al-'iqnâ' Fi Masa'il Al-'Ijma'", [1: 197]; "Bada'i' As-Sana'i'", [2: 58]; "Al-Binayah", [3: 417]; "Al-Ma'ûnah", [page 490]; "Adh-Dhakhîrah", [3: 73]; "Al-Bayân", [3: 255]; "Asna Al-Matâlib", [1: 367]; "Al-Hidâya", [page 31]; "Al-Kafi", [1: 397].
- (2) See: "Al-'amwâl" by Al-Qâsim Ibn Salâm, [page 568]; "Al-Mughny", [3: 4].
- (3) Al-Hasan ibn Abi Al-Hasan Abu Sa'id al-Basri, a freed slave of Zaid ibn Thâbit, was one of the leading figures among the Tabi'un (the generation following the Companions of the Prophet). It is said that he was nursed by Umm Salamah, the Mother of the Believers (may Allah be pleased with her). He was a scholar, jurist, eloquent speaker, trustworthy, devout, and abundant in both knowledge and deeds. He passed away in the year 110 AH at the age of 88. See his biography: "Wafyât Al-A'yan", [2: 69]; "Sayr 'alâlm An-Nubalâ", [4: 563].
- (4) He is Muhammad ibn Sirîn l-Basri Al-Ansâri by allegiance, known as Abu Bakr. He was one of the most distinguished figures among the Tabi'un and the leading scholar of his time in religious sciences in Basra. He was born and passed away in Basra. He was well-versed in Islamic jurisprudence, narrated hadîth, and was famous for his piety and interpretation of dreams. Anas ibn Mâlik (may Allah be pleased with him) appointed him as a scribe in Fars, and his father was a freed slave of Anas. He passed away in the year 110 AH. See his biography: "At-Tabaqât Al-Kubrâ", [7: 143]; "Ath-Thiqât" by Ibn Hbân, [5: 348].
- (5) See: "Tafsîr Al-qurtuby", [7: 100]; "Bidayat Al-Mojtahid", [2: 14]; "Al-Bayân", [3: 255]; "Al-Mughny", [3: 4].
- (6) See: "Al-Mughny", [3: 4].

palm fronds, and similar items that are not typically intended for agricultural growth. However, if someone intends to use their land for growing firewood, grass, or similar items, zakâh becomes obligatory on those as well⁽¹⁾.

An opinion similar to theirs is those who say that zakâh is obligatory on everything that grows from the earth without exception, and it is the claim of Ibrâhîm Al-Nukha'î⁽²⁾, Omar Ibn Abd El-'azîz, and Hamâd ibn Abi Sulimân⁽³⁾. It was also adopted by the 8th Symposium on Modern zakâh Issues⁽⁴⁾.

Third opinion: zakâh is obligatory on what is eaten⁽⁵⁾ and saved⁽⁶⁾ from crops and fruits. This is doctrine of the Mâlikîah⁽⁷⁾, and the Shâfi'îah⁽⁸⁾ with

(1) "Al-Hidâyah", [1: 108]; "Al-Mohît Al-Burhâny", [2: 325]; "Tabîn Al-Haqa'iq", [1: 292].

(2) He is Ibrâhîm ibn Yazîd ibn Al-Aswad ibn 'Amr ibn Rabî'ah Al-Nakha'î Al-Kufî, known as Abu 'Imran, a jurist and one of the famous scholars. He was a Tabî'î (from the generation following the Companions) and saw 'Aisha, (may Allah be pleased with her), and entered her house. He was well-versed in the knowledge of Ibn Mas'ûd, extensive in narration, and was a jurist with deep understanding and many virtues. He passed away in the year 96 AH. See his biography: "Wafyât Al-A'yân", [1: 25]; "Sair 'alâlm An-Nubalâ", [4: 520].

(3) See: "Al-Muhala", [4: 16]; "Al-Istidhkâr", [3: 236]; "Tafsîr Al-qurtubî", [7: 101]. Hammâd is Hammâd ibn Abi Sulaymân ibn Muslim Al-Kufî, known as Abu Ismâ'î, a freed slave of the Ash'ari tribe. Originally from Isfahan, he was a renowned scholar and jurist in Iraq. He narrated hadîth from Anas ibn Mâlik and studied jurisprudence under Ibrâhîm An-Nukha'î. He was considered the most distinguished and knowledgeable among his peers. The famous scholar Abu Hanîfah was his student. Hammad passed away in the year 119 AH, although some sources say 120 AH. See his biography: "At-Târikh Al-Kabîr", [3: 18]; "Sayr 'alâlm An-Nubalâ", [5: 231].

(4) See: Research and Proceedings of the Eighth symposium of modern zakâh issues (page 354).

(5) Qût (sustenance) is what the human body sustains itself with in terms of food. See: "As-Si-hah", [1: 262]; "Lisân Al-'arab", [2: 74]; entry Qawat.

(6) That is, what can be preserved and remain until the time of need. See: "Taj Al-r'ûs", [11: 363]; entry Dhakhar; "zakâh Az-Zurû' Wa Ath-Thimâr", "Ash-shûm", [page 123].

(7) See: "Al-Ma'ûna", [page 409]; "Bidayat Al-Mojtahid", [2: 14]; "Adh-Dhakhîra", [3: 73]. Modern Mâlikîah scholars specify twenty types for which zakâh is obligatory, excluding others. These include among the fruits: dates and raisins, and among the grains: the seven legumes which are chickpeas, fava beans, kidney beans, lentils, lupins, cowpeas, and peas; then wheat, barley, oats, millet, and rice; and finally the four oilseeds: olives, sesame, safflower, and radish seeds. See: "Sharh Al-Khurashy", [2: 168]; "Ash-Sharh Al-Kabîr" by Ad-Dardîr, [1: 447]; "Fiqh Al-'ibâdât 'la Al-Madhhab Al-Malkî", by Kawkab 'bid, [page 278].

(8) See: "Al-Om", [2: 37]; "Al-Muhadhib", [1: 288]; "Asna Al-Matâlib", [1: 367].

the differences among them in determining the criteria in some cases, such as olives and others⁽¹⁾.

Forth opinion: zakâh is required on what can be measured and stored from crops and fruits. this is doctrine of the Hanâbilah⁽²⁾ Similarly, Abu Yusuf⁽³⁾ and Muhammad ibn al-Hasan⁽⁴⁾ from the Hanîfah school said that zakâh is only obligatory on what has a fruit that can be measured and reaches the amount of five wasqs⁽⁵⁾.

Evidences of the opinions and discussions:

evidences of the first opinion: The proponents of the view that zakâh is not obligatory on anything from crops and fruits except for wheat, barley, dates, and raisins argue their position with the following:

First evidence: What was narrated from Amr ibn Shu'ayb from his father, from his grandfather (May Allah be pleased with him), who said: "There is no zakâh in al-hajar (a type of crop), nor in legumes. The Prophet (peace and blessings of Allah upon him) only established zakâh for wheat, barley, dates, and raisins."⁽⁶⁾

(1) See: "Adh-Dhakhîra", [3: 73].

(2) They did not require that it be sustenance; thus, zakâh is obligatory on them for cumin, mustard, and similar items. See: "Al-Hidâya", [page 131]; "Al-Mughny", [3: 3]; "Kashâf Al-Qinâ'", [2: 203]; "Sharh Montaha Al-'iradat", [1: 413].

(3) He is Ya'qub ibn Ibrâhîm ibn Habîb, Abu Yûsuf Al-Ansari, the jurist judge, and the foremost of Abu Hanifa's companions. He was known for his memorization of hadîth, but later became more inclined toward reasoning (ra'y). He held the position of judge in Baghdad and was the first to write works according to Abu Hanifa's school of thought. Among his works are *Al-Kharâj* and *Adab Al-Qâdi*. He passed away in the year 182 AH. See his biography: "At-Tabaqât Al-Kubrâ", [7: 239]; "Akhhâr Al-Qudâh", "Ad-Daby", [3: 264].

(4) He is Muhammad ibn Al-Hasan ibn Farqad Ash-Shaybânî, their freedman, the second companion of Abu Hanifa after Abu Yûsuf. He was an imam in jurisprudence and legal theory (usul), and after Abu Yûsuf, the leadership of jurisprudence in Iraq was entrusted to him. He held the position of Chief Judge for Caliph Al-Rashid. Many prominent scholars studied under him, and he is the one who spread the knowledge of Abu Hanifa through his writings. Among his works are *Al-Asl*, *Al-Jami' As-Saghîr*, and *Al-Jami' Al-Kabîr*. He passed away in the year 189 AH. See his biography: "Târîkh Baghdâd", "Al-Khatîb Al-Bughdâdy", [2: 561]; "Sayr 'alâim An-Nubalâ", [7: 555].

(5) See: "Al-'isl" by Ash-Shaybânî, [2: 163]; "Al-Mohît Al-Burhâny", [2: 325]; "Bada'i' As-Sana'i'", [2: 59].

(6) Related by Ad-Daraqutni in his "*Sunan*", Book of zakâh, Chapter: What Grains Require =

Aspect of the evidence: the hadîth indicates that the Prophet (peace and blessings of Allah upon him) restricted the obligation of zakâh to these four types of crops and fruits, so zakâh is not required for others⁽¹⁾.

Discussed: The hadîth is weak, by Muhammad ibn `ubayd Allah Al` rzmy, and it is disregarded⁽²⁾.

Second evidence: what was narrated from Mûsa ibn Mu`âdh ibn Jabal (may Allah be pleased with them) when the prophet (peace and blessings of Allah upon him) sent them to Yemen to teach people about their religion, saying: *“Take zakâh only from those four, barley, wheat, raisins, and dates”*⁽³⁾.

And what was narrated from Musa ibn Talhah⁽⁴⁾ saying *“we have the letter of Mu`adh b. Jabal from the Prophet to the effect that he ordered him to collect sadaqa only on wheat, barley, raisins and dates.”*⁽⁵⁾.

= zakâh, Hadîth no. (1905), [2: 475]. A similar narration from Umar ibn Al-Khattâb (may Allah be pleased with him) was also reported, Hadîth no. (1913), [2: 480]. Both Hadîth are weak, as they contain Muhammad ibn Abdullah Al-`Arzami, who is considered unreliable. See: “Al-Badr Al-Munîr”, [5: 512]; “At-Talkhîs Al-Habîr”, [2: 367].

(1) See: “Al-Mughny”, [5: 512].

(2) See: “Al-Badr Al munîr”, [5: 512]; “At-Talkhîs Al-Habîr”, [2: 367].

(3) Related by al-Daraqutni in his “*Sunan*”, Book of zakâh, Chapter: there is no zakâh on vegetables, Hadîth no. (1921), [1: 482], and Al-Hakim in his “*mustadrak*”, the book of zakâh, Hadîth no. (1459), [1: 558] and Al-Bîhiqy in his “*Sunan Al-Kubrâ*”, Book of zakâh, Chapter: no zakâh is taken on trees except palms and grapes, Hadîth no. (7451), [4: 210], Al-Bîhiqy said: “Its narrators are trustworthy, and it has an unbroken chain of transmission.” “*Al-Khilafât*”, [4:353]

(4) He is Mûsâ ibn Talha ibn `Ubaydullâh At-Taymi Al-Qurashi Al-Madani, also known as Abu `Isâ. A distinguished Tâbi`î and exemplary leader, he resided in Kufa. He narrated from his father and from senior Companions. Known for his eloquence, he was given the title “Al-Mahdi” and passed away in the year 103 AH. see his biography: ““Sayr ‘alâlm An-Nubalâ”, [4: 364]; “Al-`isâbah”, [6: 211]

(5) Related by AL-Imam Ahmad in his “*Musnad*” Hadîth no. (21989), [34: 314] and Ad-Daraqutni in his “*Sunan*”, Book of zakâh, Chapter: there is no zakâh on vegetables, Hadîth no. (1914), [2: 480]; and Al-Hâkim in his “*Mustadrak*”, Hadîth no. (1457), [1: 558]; and Al-Bîhiqy in his “*Sunan Al-Kubrâ*”, Book of zakâh, Chapter: no zakâh is taken on trees except palms and grapes, Hadîth no. (7451), [4: 210]. Al-Hâkim said: “All narrators of this Hadîth are relied upon, though they did not relate it, Mûsâ ibn Talha was a prominent Tâbi`î, and it has not been disputed that he lived during the time of Mu`adh (may Allah be pleased with him)” “*Al-Mustadrak*” [1: 558] Some hadith scholars have criticized it =

Discussed: That this restriction to the four categories is only in relation to what was available at their time as evidenced by the Hadith of Mu'adh ibn Jabal that the prophet of Allah (peace and blessings of Allah be upon him) said: “one-tenth of that which was irrigated by deep roots⁽¹⁾, and to take one half of one-tenth of that which was irrigated by means of buckets, including dates, wheat and grains”⁽²⁾. He mentioned grains generally and did not restrict them in these four types⁽³⁾.

Third evidence: There is no specific text or consensus regarding the other categories beyond these four, and it is not valid to make an analogy with them due to the absence of the rationale that applies to the four, and it is not valid to make an analogy with them due to the absence of the rationale that applies to the four, which are the prevalence of sustenance and the abundance of benefit⁽⁴⁾.

Discussed: By not accepting the absence of textual evidence for categories other than these four, due to the forthcoming arguments for other opinions. As for analogy, even if we accept that the rationale is the sustenance and abundance of benefit, these characteristics are present in categories other than the four. If zakâh is established for these four categories due to a specific rationale, the ruling should not be limited to them but extended to everything that shares that rationale.»

= for being *mursal* (having a missing link in the chain of narrators), arguing that Mûsâ ibn Talha did not meet Mu'adh (may Allah be pleased with him), but Al-Albâny said: “There is no valid reason, in my view, to criticize this chain as *mursal*, because Mûsâ is narrating from the book of Mu'adh, and he explicitly states that he had it. Therefore, it is a narration through *wijâdah* (transmission based on finding written material).” =

And it is considered authoritative according to the strongest opinion among the scholars of *usûl Al-hadîth* (the origins of hadîth, as there is no condition requiring a meeting with the author of the book.”. “Irwâ' Al-Ghalîl, by Al-Albâny

- (1) Al-Ba': crops that are watered naturally through their roots without the need for irrigation, see: “An-Nihâyah Fi Gharib Al-Hadîth”, [1: 141]
- (2) Related by Ad-Daraqutni in his “*Sunan*” Book of zakâh, Chapter: there is no zakâh on vegetables, Hadîth no.. (1915), [2: 480], and Al-Hakim in his “mustadrak”, the book of zakâh, Hadîth no. (1458), [1: 558], and Al-Bîhiqy in his “*Sunan Al-Kubrâ*”, Book of zakâh, Chapter: no zakâh is taken on trees except palms and grapes, Hadîth no. (7477), [4: 216]. Ibn Hagar said: “It contains weakness and a break in the chain of transmission.”, At-Talkhîs Al-Habîr, [2: 365]
- (3) See: “Asna Al-Matâlib”, [1: 367]; “Al-Mughny Al-Muhtâj”, [2: 82]
- (4) See: “Al-Mughny”, [3: 4]

Evidence of the second opinion: Proponents of zakâh being obligatory on everything that comes out of the ground have used the following evidence:

First evidence: Allah says {*“O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth.”*}(1)

Aspect of the evidence: Allah, the Almighty and Exalted commanded spending from all that comes out of the earth in general terms and without specifying. His command implies obligation, which indicates that zakâh is required on all produce from the earth, including crops and fruits(2).

Discussed from two perspectives:

First perspective: The intended meaning of ‘spending’ in the verse is voluntary charity (Sadaqah), not obligatory zakâh, as indicated by what was narrated from Al-Bara’ ibn ‘Azib about the reason for the revelation of the verse(3). ‘It was revealed for us, the Ansar. We were people of date palms. A man would bring dates from his palm according to its abundance or scarcity, and Aman would bring dates(4) in a bunch(5) or two and hang them in the mosque... and some people, who were not inclined towards good deeds, would bring a bunch with unripe dates or a bunch that was broken and hang it up. The verse was revealed for this’(6).

Answered: The consideration should be based on the generality of the wording, not the specific reason for the revelation. The command to spend in the verse is general, and a general command implies an obligation unless there is evidence to restrict it to a recommendation.(7)

(1) [Al-Baqarah (the cow): 267].

(2) See: “Ahkâm Al-Qur’ân by Al-Gasâs”, [3: 12]; “At-Tajrid”, [3: 1278]

(3) See: “Tafsîr Al-Qurtuby”, [3: 321].

(4) Ash-Shîs: dates that do not have hardened and strengthened pits. See: “An-Nihâyah Fi Gharîb Al-Hadîth”, [2: 518]

(5) The bunch (qanoo) of a palm tree, which contains the ripe dates. See: “Fath Al-Bari” by Ibn Rajab, [3: 156]

(6) Related by At-Tirmidhy in his “Jâmi’”, “Abwab Tafsîr Al-Qur’ân, chapter: and of Surat Al-Baqarah, Hadîth no. (2987), and said “A hadith that is Hassan, rare, and authentic”, [5: 218]

(7) See: “Ahkam Al-Qur’ân” by Al-Gasâs, [3: 14]

Second perspective: The verse is general and is specified by the texts indicating that zakâh is not required on vegetables and what is not stored, as will be discussed in the evidence for the third and fourth opinions⁽¹⁾.

Second evidence: Allah saying: {*“And He it is who causes gardens to grow, [both] trellised and untrellised, and palm trees and crops of different [kinds of] food and olives and pomegranates, similar and dissimilar. Eat of [each of] its fruit when it yields and give its due [zakâh] on the day of its harvest.”*}⁽²⁾.

Aspect of the evidence: that Allah, the Almighty and Exalted, mentioned trellised⁽³⁾ and untrellised gardens, then commanded to to give their due, which is the obligated zakâh, indicating the obligation of zakâh of everything that comes from the earth of crops and fruit⁽⁴⁾.

Discussed from three perspective:

First perspective: The verse is abrogated; it was abrogated by the evidence requiring one-tenth and half a one-tenth of the produce⁽⁵⁾.

Answered: there is no evidence for the abrogation, and the obligation of the one-tenth does not contradict the verse, but rather provides details on what was stated in the verse regarding the amount due⁽⁶⁾

Second perspective: The verse refers to voluntary charity (Sadaqah), as it was revealed in Mecca, and zakâh was made obligatory in Medina.

And that Allah commanded giving at harvest time, while zakâh should only be given after threshing, cleaning, and processing⁽⁷⁾.

Answered: that zakâh was originally obligatory in Mecca, but the specific nisab and amounts were defined in Medina. As for the command to give on the day of harvest, «day» is not a condition for the commanded giving; rather, it is a temporal reference. The intended meaning is: «Give the due after har-

(1) See: “Al-Hawy Al-Kabîr”, [3: 240]; “Al-Mughny”, [3: 4]

(2) [Al-An‘âm (Cattle): 141]

(3) Al-Ma`rûshât: It refers to those which were raised on supports and protected from having their fruit touch the ground, See: “*Ahkâm Al-Qur’ân*” by Ibn al-Arabi, [2: 280]

(4) See: “At-Tajrid”, [3: 1278]

(5) See: “Tafsîr At-Tubary”, [9: 610]

(6) see: “*Ahkâm Al-Qur’ân*” by Al-Gasâs, [3: 13]; “Tafsîr Ibn Kathîr”, [3: 313]

(7) See: “Al-Hâwy Al-Kabîr”, [3: 240].

vesting, once it has been cleaned⁽¹⁾.

Third aspect: Even if we were to accept that the verse refers to obligatory zakâh, it is noted that Allah mentioned the harvest when commanding the giving, and Allah made the obligation of zakâh dependent on what has been harvested. However, what is harvested refers to crops rather than fruits and vegetables⁽²⁾.

Answered: The original meaning of «harvest» in Arabic is the act of cutting something and removing it from its place. Allah said: {*“some are [as] a harvest [mowed down].”*} ⁽³⁾, and Also said: {*“We made them [as] a harvest [mowed down], extinguished [like a fire].”*}⁽⁴⁾ and this original meaning includes crops and fruits⁽⁵⁾.

Third evidence: the prophet (peace and blessings of Allah be upon him) said *“On land that is watered by rain or springs or any natural means there is (zakâh to pay of) a tenth. On irrigated land there is (zakâh of) a twentieth (to pay).”*⁽⁶⁾

Aspect of the evidence: The general meaning of the hadith requires zakâh on all types of crops and fruits without distinguishing between what is consumed and what is not⁽⁷⁾.

Discussed from two perspectives:

First perspective: The purpose of the hadith is to specify the amount required for zakâh, not to clarify what is subject to zakâh⁽⁸⁾.

Answered: The hadith mandates zakâh on all irrigated crops while specifying the amount required⁽⁹⁾.

Second perspective: The hadith is general but is specified by texts indi-

(1) See: “*Ahkâm Al-Qur’ân*” by Al-Gasâs, [3: 14]; “*At-Tajrîd*”, [3: 1279]; “*Tafsîr Ibn Kathîr*”, [5: 403]

(2) See “*Al-Hawy Al-Kabîr*”, [3: 240].

(3) [Hûd (The Prophet Hûd): 100]

(4) [Al-Anbiyâ’ (The Prophets): 15]

(5) see: “*At-Tajrîd*”, [3: 1279]; ; “*Ahkâm Al-Qur’ân*” by Ibn Al-`Arabi, [2: 285].

(6) previously related, see: page (119) of that book

(7) see: “*Ahkâm Al-Qur’ân*” by Al-Gasâs, [3: 14]; *Badâ’i’ As-Sanâ’i’*, [2: 59].

(8) See: “*Tafsîr Al-Qurtubî*”, [7: 100].

(9) See: “*Ahkâm Al-Qur’ân*” by Ibn Al-`Arabi, [2: 286]

cating that zakâh is not required on vegetables and produce that cannot be stored⁽¹⁾.

The Hanîfah scholars argue that zakâh is required only for what is grown with the intention of growth from the land, and not for items like grass, firewood, they base their position on the fact that wheat and dates, for which zakâh is agreed upon, are cultivated with the intention of growth from the land. This principle extends to other crops intended for the same purpose, apart from firewood, sugarcane, and grass because they grow naturally with water and are not intended for land growth; in fact, they might even damage the land⁽²⁾.

Evidences of the third opinion : The proponents of zakâh on items that are consumed and stored support their view with the following evidence:

First evidence: The Hadith of Mu'adh ibn Jabal (may Allah be pleased with him) where the Prophet of Allah (peace and blessings of Allah be upon him) said: *"On land that is watered by rain or springs or any natural means there is (zakâh to pay of) a tenth. On irrigated land there is (zakâh of) a twentieth (to pay)."* and it is required for dates, wheat, and barley. As for cucumbers, melons, pomegranates, sugarcane, and vegetables, the Prophet of Allah (peace and blessings of Allah be upon him), exempted them⁽³⁾, and it was narrated from the prophet (peace and blessings of Allah be upon him) *"There is nothing on vegetables"*⁽⁴⁾.

(1) See: "Al-Hâwy Al-Kabîr", [3: 240].

(2) See: "Sharh Mukhtasar At-Tahâwî", [2: 289]; "Ahkâm Al-Qur'ân" by Al-Gasâs, [3: 13]; "Ahkam Al-Qur'ân" by Al-Gasâs, [3: 13];

(3) previously related, see: page (123) of that book

(4) Related by At-Tirmidhi in his "*sunan*" from the Hadîth of Mu'âdh Ibn Jabal (may Allah be pleased with him) book: doors of zakâh, chapter: what is mentioned regarding the zakâh of vegetables, Hadîth no. (638), [3: 21] and Ad-Daraqutni in his "*Sunan*", Book of zakâh, chapter: there is no zakâh on vegetables, Hadîth no. (1907), [2: 476], At-Tirmidhi said: "The chain of this hadith is not authentic, and there is no reliable narration from the Prophet (peace and blessings of Allah be upon him) on this topic it is only reported from Musa ibn Talha from the Prophet (peace and blessings of Allah be upon him) in an unsanctioned form.". "Sunan At-Tirmidhi", [3: 21]; and Ibn Hajar weakened the narrations narrated on behalf of the prophet (peace and blessings of Allah be upon him) on the denial of zakâh on vegetables. see: "At-Talkhîs Al-Habîr", [2: 364-366]

Aspect of the evidence: that the prophet (peace and blessings of Allah be upon him) obligated zakâh on dates and grains and exempted it from what is not consumed from vegetables and the like⁽¹⁾.

Discussed from two perspective:

First perspective: that these Hadiths are weak, Al-Imam At-Tirmidhi said⁽²⁾: "There is no authentic report from the Prophet (peace and blessings of Allah be upon him) in this regard.⁽³⁾", and it is not acceptable to abandon the general principles of the Qur'an and established hadiths for this⁽⁴⁾.

Second evidence: No one has reported that the Prophet (peace and blessings of Allah be upon him) took zakâh from fruits and vegetables, even though they were present in Medina. It is improbable that zakâh would be obligatory on them without being collected, or that it would be collected without anyone mentioning it, despite the need for it⁽⁵⁾.

Discussed from two perspectives:

First perspective: Lack of knowledge of evidence does not imply the absence of evidence, and the generality of the Quran is sufficient to cover this⁽⁶⁾.

Second perspective: It has not been reported that the Prophet (peace and blessings of Allah be upon him) took zakâh from the honey, yet you are asserting its zakâh⁽⁷⁾.

(1) See: "Adh-Dhakhîrah," [3: 73]; "Al-Hawy Al-Kabîr," [3: 239]; "Al-Bayân," [3: 229].

(2) He is: Muhammad ibn 'Isa ibn Sûrah ibn Mûsâ Abû 'Isa At-Tirmidhî, See his biography: "Wafiyat Al-A'yân," a renowned hadîth scholar and one of the prominent imams in the science of hadîth that are taken as role model. He was a student of Al-Bukhârî and was known for his compilation, classification, memorization, and study. He traveled extensively, hearing from scholars in Khorasan, Iraq, and the two holy sanctuaries. Among his works are "Al-Jâmi' al-Kabîr" (Sunan At-Tirmidhî) and "Al-'Ilal Al-Kabîr." He passed away in Tirmidh in 279 AH. See his biography: see: "Wafiyât al-A'yân," [4: 278]; "Siyar A'lâm an-Nubalâ," [13: 270]; "Tahdhîb at-Tahdhîb" by Ibn Hajar, [9: 389]

(3) Sunan At-Tirmidhî, [3: 21]

(4) see: "Bada'i' As-Sana'i'," [2: 58]

(5) see: "Al-'ishrâf 'la nukat masâ'il Al-khilâf", [1: 396]; "Sharh Sahîh Al-Bukhari" by Ibn Batâl, [3: 532]

(6) See: Ahkâm Al-Qur'ân by Ibn 'raby, [2: 286]

(7) See: "At-Tajrîd", [3: 1285].

Third evidence: Vegetables are generally not consumed as staple food, so zakâh does not apply to them, similar to grass and firewood⁽¹⁾.

Discussed: Vegetables are intended to contribute to the growth of land, so the rationale for zakâh applies to them, unlike grass and firewood⁽²⁾.

Fourth evidence: When zakâh is required for a type of asset, it applies to its most beneficial and valuable form; for instance, zakâh for animals applies to the most beneficial type, which is grazing livestock, and for minerals, it applies to the most valuable ones, namely gold and silver. And for crops and fruits, zakâh is required on those that are consumed and stored, rather than others⁽³⁾.

Discussed: You do not obligate zakâh on saffron, which is among the highest types of crops, yet you require it on barley while excluding pomegranates⁽⁴⁾, which Allah has praised in His statement *{“food and olives and pomegranates, similar and dissimilar.”}*⁽⁵⁾

Fifth evidence: Cultivating the land is a means to achieve sustenance, and the purpose takes precedence over the means. Therefore, the measurement by volume is a secondary attribute and can be disregarded. Thus, the only valid criterion for zakâh is the aspect of consumption⁽⁶⁾.

Discussed: rejecting the idea that volume measurement is secondary, and its significance appears in determining the amount and ensuring it meets the legally required threshold of five bushels.

Evidence of the fourth opinion: The proponents of zakâh being obligatory on what is measured and stored from crops and fruits support their opinion with the following evidence:

First evidence: What the prophet (peace and blessings of Allah be upon him) said: *“and there is no zakâh on less than five awsuq (three hundred sa).”*⁽⁷⁾

Aspect of the evidence: The hadith indicates that zakâh is required on

(1) See “Al-’ishrâf ‘la nukat masâ’il Al-khilâf”, [1: 396]; “Al-Hawy Al-Kabîr”, [3: 239]; “Al-Bayân”, [3:229].

(2) See: “At-Tajrîd”, [3: 1284]

(3) See: “Al-Hawy Al-Kabîr”, [3: 239]; “Al-Madhhab”, [1: 288].

(4) See: “At-Tajrîd”, [3: 1285].

(5) [Al-An‘âm (Cattle): 141]

(6) See: Adh-Dhakhîrah”, [3: 74].

(7) Previously related, See: page [60] of that book.

crops and fruits that are subject to being measured, which is done by means of a measure (mikyâl) The mention of measuring implies that the ruling is dependent on it. Therefore, anything that is not measured is excluded from the general texts that mandate zakâh on crops and fruits⁽¹⁾.

Discussed: what the general meaning of the Hadith indicates is that the threshold is considered for what is measured. However, the exclusion of zakâh from what is not measured is not explicitly supported by the text⁽²⁾.

Answered: The specification of the threshold for measured items only indicates the non-obligation of zakâh on other items; if zakâh were obligatory on them, their threshold would have been specified.

Second evidence: The consideration of storage is indicated by the fact that everything agreed upon for zakâh can be stored, and non-stored items do not complete the benefit due to the inability to utilize them in the end⁽³⁾.

Third evidence: the non-obligation of zakâh vegetables and fruits is indicated by the report that the tax collector of ʿUmar ibn Al-Khatab (May Allah be pleased with him) wrote to him about vineyards⁽⁴⁾, with “Frisk”⁽⁵⁾ and pomegranate orchards, stating that their yield was much more productive than the vineyards. ʿUmar replied : ”there is no one-tenth on them, as they are not subject to it, they are of the thorny shrubs.”⁽⁶⁾⁽⁷⁾

Discussed: that the effect is disconnected ⁽⁸⁾

preference:

After contemplating the evidence, opinions, and the discussions regarding

(1) See: “Al-Mughny”, [3: 5]; “Al-Mumti` Fi Sharh Al-Muqni`, [1: 709]; “Kashâf Al-Qinâ”, [2: 203].

(2) See: “Ahkâm Al-Qurʾân” by Ibn Al-ʿraby, [2: 334]

(3) See: Al-kâfy Fi Fiqh Al-Imam Ahmad, [1: 397]; “Al-Mubdi`, [2: 334]

(4) the plural of “Kurm” which is: grape plants. See: “Mukhtâr As-Sihâh, (page 268), entry (karam)

(5) Al-Frisk: peaches, and also said: a type of peaches. See: An-Nihâyah fi Gharîb Al-hadîth, [3: 429].

(6) Al-ʿadâh: all great trees that have spines. See: “As-Sihâh”, [6: 2240], entry (ʿadah)

(7) Related by Al-Bîhiqy in his “Sunan Al-Kubrâ”, Book of zakâh, Chapter: no zakâh is taken on trees except palms and grapes, Hadîth no. (7454), [4: 210], an incompletely transmitted Hadîth. See: “At-Takmil lima Fât Takhrîjuh Min Irwâʾ Al-Ghalîl” (page 34)

(8) See: “At-Takmil lima Fât Takhrîjuh Min Irwâʾ Al-Ghalîl” (page 34)

them, it appears that each one of these opinions has its own merit, and reaching a decisive preference in such a matter is difficult. However, the closest of these opinions to the truth -and Allah is the all-knowing- is the fourth opinion, which is that zakâh is obligatory on everything that can be measured and stored from crops and fruits, excluding other items.

Reason for the preference: The Shar' has set the nisab for zakâh on crops and fruits based on measurement in the prophet's saying (peace and blessings of Allah be upon him): "*and there is no zakâh on less than five awsuq (three hundred sa)*"⁽¹⁾. This indicates the absence of zakâh on what cannot be measured, as no nisab was specified by the Shar' for such items, and it is not customary for the Shar' to set a nisab for only some types within a category and not others, as with livestock, the Shar' specified the nisab for all types, as well as for gold and silver. This is further supported by the fact that there is no report of the Prophet (peace and blessings of Allah be upon him) taking zakâh from items that are not measured.

The categories from which the Prophet (peace and blessings of Allah be upon him) took zakâh - dates, raisins, wheat, and barley- share three characteristics, which are:

- 1- measurement This is a significant characteristic, as the Shar' links the zakâh ruling to it when determining the nisâb
- 2- Storability: This is important because with storability, the full benefit and financial completeness are realized, and it typically accompanies measurement.
- 3- sustenance: This is not considered significant because if it were, it would exclude many crops that are valuable assets and contribute to wealth growth, such as sesame, cumin, and coffee -which is one of the most valuable crops in our age- and the like, and there is no evidence supporting the consideration, so it is to be neglected.

reasons for the disagreement on the issue:

Firstly: The reason for the difference between the proponents of the first view, who limited the obligation of zakâh to the four unanimously agreed-upon types, and those who held the third and fourth opinions, lies in their dis-

(1) Previously related, See: page [60] of that book.

agreement over whether zakâh is linked to these four types specifically or due to an underlying cause, which are sustenance and measurement? Those who argued that zakâh is obligatory due to the specific nature of these four categories -supporters of the first opinion- restricted the obligation to them. On the other hand, those who claimed that zakâh is obligatory due to a shared underlying cause extended the obligation to everything in which that cause is realized. However, they differed in defining the cause and determining its applicability to certain branches⁽¹⁾.

Secondly: The reason for the disagreement between those who made zakâh obligatory on everything that the land produces except what is not intended for the growth of the land, which are the Hanîfah, and those who restricted the obligation to what fulfills the cause of obligation, which are the Mâlikîah, Shâfi'îah and Hanâbilah lies in the opposition between measurement and the generality of the text. Those who restricted the general meaning of the texts used measurement to exempt zakâh from what did not meet the requirement, while those who give precedence to the general texts obligated it on everything⁽²⁾.

Effect of the intention on the issue

The effect of intention appears in the Hanîfah opinion, as they obligated zakâh on what is customarily cultivated for the growth of the land, even if the landowner did not specifically intend to cultivate it for that purpose, as long as it is normally cultivated for that reason. However, for crops like firewood, grass, and straw, which are not typically grown for the land's growth, zakâh is not obligatory unless the landowner intends growth with the cultivation of those crops, like investing his land in growing firewood, straw, or grass, the intention here would be to cultivate the land for productivity, and so plays a role in making zakâh obligatory and does not affect its nullification⁽³⁾. However, according to the preferred opinion, which states that zakâh is obligatory on what is measured and stored from crops and fruits, intention has no effect in determining what zakâh is due on.

(1) See: "Bidayat Al-Mojtahid", [2: 14].

(2) See: The previous reference.

(3) See: "Bada'i' As-Sana'i", [2: 57]; "Al-Hidâya", [1: 108]; "Al-Ikhtiâr leta'lil Al-Mukhtâr", [1: 113]; "Tabîn Al-Haqa'iq", [1: 292].

Topic (2): zakâh on Agricultural Land Owned with the Intention of Trade

Aspect of the issue:

If someone owns agricultural land with the intention of trading through buying and selling, and there is produce in it that is subject to zakâh, should they pay a tenth of the produce as zakâh only, or should they pay zakâh on all of it as trading goods, or should they pay a tenth of the produce as zakâh and zakâh on the land as trading goods?

Opinions on the issue: scholars disagreed on this issue leading to three opinions, which are

First opinion: only zakâh of a tenth is paid on crops and fruits, and the zakâh is not obligatory on neither trading goods nor planted trees or palm trees. This is doctrine of the Hanîfah⁽¹⁾ and an opinion of the Shâfi'îah⁽²⁾.

Second opinion: the zakâh of a tenth is obligated on crops and fruits, and the zakâh of trading goods is also obligated to the land and the planted trees or palm trees. so one should give precedence to this and pay quarter of a tenth of its value.

This opinion was narrated from Muhammad ibn Al-Hasan⁽³⁾ and is the doctrine of the Mâlikîah⁽⁴⁾, and the new doctrine of Ash-Shafi'îyah⁽⁵⁾, and an

(1) See: "Al-Mabsût", [3: 47]; "Bada'i' As-Sana'i'", [2: 57]; "Tabîn Al-Haqa'iq", [3: 275].

(2) See: "At-Tahdhîb", [3: 110]; "Al-Bayân", [3: 311]; "Kifâyat An-Nabîh", [5: 477].

(3) See: "Badâ'i' As-Sana'i'" [2: 57]; "Al-Mohît Al-Burhânî", [2: 338]; "Al-Binâyah Sharh Al-Hidâyah" [7: 237].

(4) See: "At-Tahdhîb Fi Ikhtisâr Al-Mudâwanah", [1: 406-407]; "Mawâhib Al-Jalîl", [2: 323]; "Lawâmi' Ad-Durar", [3: 430].

And the precedence for each year is only for the managing merchant, who is: the one who does not have cash or goods settled in his possession, but rather sells whatever he finds of Profit, whether little or much. As for the monopolist, he is the one who holds back goods and waits for a high profit, even if it takes a long time, only pays zakâh on the sale price of the agricultural land for one year when it is sold. See: "An-Nawâdir wa Az-Ziyâdât", [2: 133]; "Ad-Dur Ath-Thamîn", by Miyârah, [page 422]; "Sharh Al-Khurashy", [2: 197].

(5) See: "Al-Majmû'", [6: 52]; "Asna Al-Matâlib", [1: 384]; "Tohfât Al-Muhtâj", [3: 303]; For the Shafi'îah school, there is an opinion that the zakâh on agricultural land is the same as the zakâh on trade, and it is independent of the original trees. It is sufficient to pay a tithe for its zakâh. See: "At-Tahdhîb", [3: 110]; "Fath Al-'azîz", [6: 83].

opinion of the Hanâbilah⁽¹⁾.

Third opinion: zakâh of trade goods is obligatory for the entire agricultural land, including its crops and fruits. The total is evaluated, and a quarter-tenth of its value is paid. This is the old opinion of the Ash-Shafi`iyyah⁽²⁾ and the accepted view in the Hanâbilah⁽³⁾.

Evidences and discussions:

evidence of the first opinion

Firstly: proponents of the obligator of the zakâh of the tenth on crops and fruits present the following evidence:

First evidence: the statement of the prophet (peace and blessings of god be upon him): “ *tenth is payable on what is watered by rivers, or rains,* ”⁽⁴⁾.

Aspect of the evidence: that the prophet (peace and blessings of god be upon him), obligated one-tenth of crops and fruits, and did not distinguish between if it was for trade or for possession⁽⁵⁾.

Second evidence: the zakâh of the one-tenth is stronger and more emphasized than zakâh on trade, because it is unanimously agreed upon, whereas zakâh on trade is disputed upon. When both reasons for zakâh are present, what is unanimously agreed upon takes precedence over what is subject to disagreement⁽⁶⁾.

Third evidence: That zakâh of the one-tenth does not require the completion of a year, unlike the zakâh on trade, which makes it stronger and more deserving of obligation⁽⁷⁾.

Fourth evidence: The zakâh of the one tenth is more advantageous and beneficial for the beneficiaries than the zakâh of trade which is valued as quarter of a tenth, and thus, the more beneficial is given precedence⁽⁸⁾.

(1) See: “Al-Hidâyah”, [page 139]; “Al-Muharir”, [1: 218]; “Al-Mumti` Fi Sharh Al-Muqni`, [1: 747].

(2) See: “Al-Muhadhib”, [1: 294]; “Nihayat Al-Matlab”, [3: 319]; “Al-Bayân”, [3: 310].

(3) See: “Al-Mubdi`, [2: 373]; “Al-Insâf”, [3: 159]; “Kashâf Al-Qinâ`, [2: 242].

(4) Previously related, See: page [119] of that book.

(5) “Al-Bayân”, [3: 310].

(6) See: “Al-Hawy Al-Kabir”, [3: 304].

(7) See: “At-Tajrid”, [3: 1349].

(8) See: “Al-Mughny”, [3: 62].

Secondly: proponents of the non-obligation of the zakâh of trade on lands and plantations present the following evidence:

First evidence: That zakâh of one-tenth on crops and fruits is only obligatory due to the growth of the land, and zakâh of trade goods is also obligatory based on growth. Since the reason for the obligation of zakâh is the same, and it applies to the same property, two types of zakâh cannot be imposed on it, like the zakâh of grazing is not to be combined with the zakâh of trade⁽¹⁾.

Discussed: By not accepting that the property is the same, as crops and fruits are a property, and land and plants are another form of property, and zakâh is not obligatory on land and plants only if it is for possession, but if it was for trade, zakâh of trade goods is obligatory on it.

Second evidence: what is intended by the agricultural land is crops and fruits, and the zakâh of the tenth is obligatory on it. However, the land and the plants are considered secondary and are included under the zakâh of the tenth⁽²⁾.

Discussed: by not accepting that land and trees are secondary to crops and fruits, but rather two independent forms of wealth on which zakâh of trade is obligated if they were owned with the intention of trade.

Evidence of the second opinion: proponents of the obligation of the zakâh of the zakâh of the tenth on crops and fruits presented the evidence the proponents of the first opinion presented, and presented the following evidence of the obligation of the zakâh of trade on land and plants:

First evidence: the zakâh of tenth is due on what comes out of the land, whereas the land and trees are considered two separate forms of wealth, and the zakâh of the tenth cannot be obligated on them, therefore, the zakâh of trade is obligatory⁽³⁾.

Second evidence: Trade in land and trees is independent of the produce, and the obligation of a tithe is specific to the produce alone. This is evidenced by the fact that the tithe is obligatory on those who do not own land, while zakâh al-tijarah (trade zakâh) is obligatory on those who own land alone with

(1) See: "Al-Mabsûṭ", [3: 47]; "Bada'i' As-Sana'i'", [2: 57].

(2) See: "Al-Muhadhib", [1: 295]; "Al-Wasîṭ", [2: 488].

(3) See: "Bada'i' As-Sana'i'", [2: 57]; "Tabyîn Al-Haqâ'iq", [3: 275]; "Al-Bayân", [3: 311].

the intention of trade. If zakâh of trade is required for land and trees when considered individually, it must also be required when they are combined⁽¹⁾.

Evidence of the third opinion: proponents of the obligation of zakâh of trade alone in all cases presented the following evidence:

First evidence: the Hadith of Samrah ibn Jundub (may Allah be pleased with him), saying: *“The Messenger of Allah (ﷺ) used to command us to pay zakâh from (the goods) we had prepared for sale.”*⁽²⁾

Aspect of the evidence: that the land with what is in it is prepared for trade, and thus the zakâh on all of them is considered the zakâh of trade⁽³⁾.

Discussed: That this reasoning is valid for the principle regarding assets of land and trees intended for sale. However, for the produce from crops and fruits, the Shari'ah has mandated a tithe once the grain has matured and the fruit has ripened, and did not distinguish between what is prepared for trade what is not, even though that which reaches the minimum threshold is often prepared for sale due to its abundance.

Second evidence: That zakâh on trade takes precedence over zakâh of the tithe because it can be mandated for both the principal and the branches, whereas zakâh on a tithe can only be mandated for the produce, not the land itself⁽⁴⁾.

Discussed: the impossibility of mandating zakâh on 'ushr for the principal does not imply that it is not obligatory for the branches, nor does it necessitate making zakâh on trade obligatory for everything.

Third evidence: That crops and fruits are the products of land and trees, and thus are considered with them, just as the produce of livestock and trade profits are considered with the principal⁽⁵⁾.

Discussed: The crops and fruits are considered independent assets, as evidenced by the fact that the Shari'ah mandates zakâh of tithe on the pro-

(1) “Nihayat Al-Matlab”, [3: 319]; “Al-Wasit”, [2: 488]; “Al-Mumti` Fi Sharh Al-Muqni`”, [1: 746].

(2) Previously related, See: page [83] of that book.

(3) See: “Al-Bayân”, [3: 310].

(4) See: “Al-Hawy Al-Kabîr”, [3: 303]; “Al-Bayân”, [3: 310].

(5) See: “Al-Mumti` Fi Sharh Al-Muqni`”, [1: 746]; “Sharh Montaha Al-`iradat”, [1: 436].

duce without including the original land. This differentiates them from the offspring of livestock and trade profits, where zakâh is not required on the produce or profit without including the original asset.

Fourth evidence: If a tithe was required on crops and fruits, it would necessitate two different types of zakâh on a single asset, which would be burdensome for the owner, and burden should be avoided⁽¹⁾.

Discussed: by not accepting that they are a single asset, according to the evidence of the second opinion previously mentioned.

Preference: after contemplating the opinions and evidence it appears that the preferred -and Allah is the all-knowing- is the second opinion which is the obligation of the zakâh of tithe on crops and fruits, and the zakâh of trade on land and plants,

Reasons for the preference:

- 1- the strength of the evidence of the second opinion and its immunity from discussions, and the discussions replying to the evidence of the first and the third opinions.
- 2- The primary intention in trading agriculture generally pertains to the land and plants, while the produce of crops and fruits is considered a secondary aspect in the context of commercial intentionions, even though it is an independent asset.
- 3- Paying the tithe for crops and fruits is consistent with the text and is more beneficial for the beneficiaries .

Reasons for the disagreement:

Firstly: one of the the key reasons for the disagreement between the first and third opinions is the debate over the stronger and more deserving between the zakâh on assets and the zakâh on trade when both causes of obligation are present in a single asset, and whether the intention of trade can shift the obligation from the original zakâh of the tithe to the zakâh on trade?

Secondly: it appears -and Allah is the all-knowing- The reason for the disagreement between the first and third opinions and the second opinion lies in whether agricultural land, along with its trees, crops, and fruits, is considered

(1) See: "Al-Mumti` Fi Sharh Al-Muqni'", [1: 746]; "Al-Mubdi'", [2: 373].

a single type of property or two separate assets. The first and third opinions view it as a single asset, while the second opinion regards the crops and fruits as separate, independent assets.

the effect of intention in this issue:

The effect of intention in the issue is that the proponents of the first opinion believe that the intention of trade in agricultural land does not affect the obligation of zakâh of trade on it, but only the zakâh of a tithe is obligated. Conversely, the proponents of the third opinion believe that the intention of trade in agricultural land nullifies zakâh of the tithe on the produce and requires zakâh of trade on everything. The proponents of the second opinion maintain that intention of trade affects the obligation of the zakâh of trade on the land and what is included in it without the produce, on which the zakâh of tithe is obligatory.

Topic (3): the effect of the intention of utilizing what is produced naturally of crops and fruits and the obligation of zakâh on it

Aspects of the issue

if someone intended to use what grew from crops and fruits without purposefully planting it -like seeds that fell from its carrier and grew on its own or was carried by the wind and grew by the rain-, is zakâh obligatory on it? There are two aspects for the issue:

First aspect: to grow in the land of someone who intends to benefit from it.

and in this aspect, scholars disagreed on the obligation of zakâh with two opinions:

First opinion: zakâh is obligatory in all cases, which is the opinion of Hanî-fah⁽¹⁾, Mâlikîah⁽²⁾, and Shâfi`îah<sup>(3)</sup> And an opinion of the Hanâbilah chosen by Abu Ya`la⁽⁴⁾.

(1) See: "At-Tajrid", [3: 1284]; "Bada'i' As-Sana'i'", [2: 62]; "Hâshiyat Ibn `abidîn", [2: 325].

(2) See: "Adh-Dhakhîrah", [3: 75]; "Al-Mukhtasar Al-Fiqhî", by "Ibn `arafa", [2: 18]; "Shifâ' Al-Ghalîl", [1: 265].

(3) See: "Al-Bayân", [3: 255]; "Tohfât Al-Muhtâj", [3: 241]; "Hâshiyat Al-Bujayrami `ala Sharh Al-Khatîb", [2: 319].

(4) See: "Al-Furû'" [4: 75]; "Al-Mubdi'", [2: 339]; "Al-Insâf", [3: 99].

Second opinion: zakâh is obligatory on it when the seeds of what grew are owned by who intends to benefit from it, or else it will not be obligatory. which is doctrine for the Hanâbilah⁽¹⁾

Evidences and discussions:

Evidence of the first opinion: proponents of the obligation of zakâh in all cases base their opinion on the following evidence:

First evidence: General evidence that indicate the zakâh of the tithe, and this grew in his land so it belongs to him, and zakâh is obligatory on what he owns⁽²⁾

Second evidence: The reason for zakâh on crops and fruits is the growth of the land, and this achieves its growth, especially when there is the intention to benefit from it⁽³⁾.

Evidence of the second opinion: The Hanâbilah argued for the obligation of zakâh on the condition of owning the seeds, and if not owned then it is not obligatory based on the following: what is not owned by its seed is not owned by its growth merely by owning the land. Rather, it is owned by taking possession of it after harvesting or gathering -like other permissible items- and zakâh becomes due before that. Therefore, at the time zakâh is due, it is not in his ownership, so there is no zakâh on it. However, when the seed is owned, zakâh becomes obligatory since ownership is established at the time it becomes due⁽⁴⁾.

Discussed from two perspectives:

First perspective: not accepting that what grows on owned land, from seeds that are not owned, is not owned until it is possessed. Rather, ownership is established simply by owning the land, as it is part of its growth, just as someone who owns livestock also owns their wool⁽⁵⁾.

(1) They stated that there is no zakâh on what grows in one's land from permissible vegetation—without cultivation. zakâh is only obligatory on the owned grains that fell on his land and grew without his intention. See: "Al-Insâf", [3: 99]; "Kashâf Al-Qinâ'", [2: 208]; "Ar-Rawd Al-Murabâ'", [page 205].

(2) See: "Bada'i' As-Sana'i'", [2: 62]; "Hâshiyat Al-Bujayrami `ala Sharh Al-Khatîb", [2: 319].

(3) See: "Al-Hidâyah", [1: 108].

(4) See: "Al-Kâfy Fi Fiqh Al-'imâm Ahmad", [1: 398]; "Kashâf Al-Qinâ'", [2: 208].

(5) See: "At-Tahdhîb Fi Fiqh Al-Imam Ash-Shafi'î", [4: 494].

Second perspective: You obligate zakâh on honey and consider its ownership at the time of collection sufficient, so you must also obligate zakâh on what grows without being planted and consider its ownership at the time of collection sufficient⁽¹⁾.

Preference:

The preferred is -and Allah is the All-knowing- is the first opinion, which is the obligation of zakâh on all cases on whoever intends to benefit from what grew on his land without being planted.

Reason for the preference:

1- The strength of the evidence used by the proponents of the first opinion lies in the fact that what grows from crops and fruits without the intention to plant them contributes to the growth of the land and is considered part of the owner's property - even if it consists of pasture or seeds that are not owned- as long as the owner intends to take possession and benefit from it.

2- The argument of the second opinion does not hold up against scrutiny.

effect of intention in this issue:

The effect of intention in this matter is evident in that the proponents of the first opinion argue for the obligation of zakâh based on the natural growth of when there is an intention to benefit from its yield. It follows that if the intention to benefit is absent, growth does not occur, and zakâh is not obligatory. In contrast, the proponents of the second opinion maintain that zakâh is required if the seeds belong to the landowner, regardless of whether there is an intention to benefit or not; thus, zakâh is obligatory in either case.

Second aspect: if it grows in a permissible land⁽²⁾

and in this aspect, scholars disagreed regarding the obligation on zakâh leading to three opinions

First opinion: zakâh is obligatory in all cases, which is doctrine of the Hanîfah⁽³⁾, and an opinion of the Hanâbilah mentioned by Abu Ya'la that it is

(1) See: "Al-Insâf", [3: 99].

(2) And it is that which has no owner. See: "Hâshiyat Al-Bujayrami 'ala Sharh Al-Khatîb", [2: 319].

(3) See: "Bada'i' As-Sana'i'", [2: 62]; "Al-Binayah", [3: 431]; "Tabîn Al-Haqa'iq", [1: 293].

based on the opinion of Al-Imam Ahmad⁽¹⁾.

Second opinion: zakâh is not obligatory on it in all cases. which is the opinion of Abû Yûsuf of the Hanifaj⁽²⁾, and the preferred in the Mâlikîah doctrine⁽³⁾.

Third opinion: Zakâh is obligatory if the seeds are owned by the one intending to benefit from them; otherwise, it is not. This is doctrine of the Shâfi'iah⁽⁴⁾ and the Hanâbilah⁽⁵⁾.

Evidence of opinions and discussions:

Evidence of the first opinion: proponents of the obligation of zakâh in all cases used the following evidence:

First evidence: The generality of the evidence supporting the obligation of Zakâh of the tithe whether the land is owned or not, as the focus is on what is produced from the land, which occurred. Even on someone who borrows the land, because the yield is acquired without compensation⁽⁶⁾.

Discussed: Merely obtaining produce from public land is not sufficient for Zakâh to be obligatory, because it is public and lacks growth, and measuring that on borrowers is not valid, because the borrower just owns the seeds, while you argue that Zakâh is obligatory in all cases —whether the seeds are owned by the individual or not⁽⁷⁾.

Second evidence: if we measure it like honey, the tithe is obligatory on it if it was taken from a public land. similarly, crops and fruits are produced from a public land, and both share a common factor of being measured by volume⁽⁸⁾

(1) See: "Al-'ahkâm As-Sultânyah" by Abi Ya'la, [page 122]; "Al-Mughny", [3: 6].

(2) See: "Al-Kharâj Li Abi Yûsif", [page76]; "Bada'i' As-Sana'i'", [2: 62]; "Al-Binayah", [3: 431].

(3) They said that zakâh is due on what a person cultivates, and they denied the obligation of zakâh on what grows naturally in available land, without differentiating between whether the seeds were owned or not. See: "Adh-Dhakhîrah", [3: 75]; "Sharh Zurûq 'ala Matn Ar-Risâla", [1: 481]; "Mawâhib Al-Jalîl", [2: 279].

(4) See: "Nihayat Al-Matlab", [3: 254]; "Bahr Al-Madhhab" [3: 127]; "Al-Majmû'", [5: 497]; "Tahrîr Al-Fatawy", [1: 469].

(5) See: "Al-Furû'" [4: 75]; "Al-Mubdi'", [2: 339]; "Kashâf Al-Qinâ'", [2: 208].

(6) See: "Bada'i' As-Sana'i'", [2: 62]; "Tabyîn Al-Haqâ'iq", [1: 293].

(7) See: "Al-Binayah", [3: 431].

(8) See: "Al-'ahkâm As-Sultânyah" by Abi Ya'la, [page 122].

Discussed: if we agree with the obligation of zakâh on honey, your analogy falters when applied to milk as it is also measured by volume and the tithe is not obligatory on it, even when being more similar to honey since both are produced by animals, unlike crops and fruits⁽¹⁾.

Evidence of the second opinion: proponents of the non-obligation of zakâh in all cases use the following evidence:

First evidence: what grows in public land is not owned by anyone, and is only owned when collected, so zakâh is not obligatory on it for the lack of ownership⁽²⁾.

discussed: This applies if the seed of what has grown is not owned by anyone or if its owner is unknown. However, if the seed is owned by someone, then the owner possesses the produce from their seed, even if it is in public land. If their ownership is established, zakâh becomes obligatory if they intend to benefit from it.

Second evidence: the reason for the obligation of zakâh on crops and fruits is owning a growing land, and this reason does not exist for not owning the land, so zakâh is not obligatory⁽³⁾.

Discussed: by not accepting that the reason for the obligation of zakâh is owning a growing land, for the evidence that the zakâh of the tithe is obligatory on the borrower even though they do not own the land⁽⁴⁾.

Evidence of the third opinion: The proponents of the third opinion, which is the non-obligation of zakâh if the seeds are not owned by the one intending to benefit from the crops or fruits, used the first evidence of the second opinion as reference⁽⁵⁾, and that the zakâh is obligatory if seeds were owned with: as the individual possesses the produce at the time of zakâh obligation through their ownership of the seeds. and thus the zakâh is obligatory, and the act of planting or owning the land is not a condition for zakâh obligation⁽⁶⁾.

(1) See: "Kashâf Al-Qinâ", [2: 221].

(2) See: "Bada'i' As-Sana'i", [2: 62]; "Adh-Dhakhîrah", [3: 75]

(3) See: "Al-Binayah", [3: 431].

(4) See: "Al-Mabsût", [3: 45]; "Al-'inaya", [2: 249]

(5) See: "Bahr Al-Madhhab" [3: 127].

(6) See: "Al-Furû", [4: 76]; "Kashâf Al-Qinâ", [2: 208].

Preference:

The preferred is -and Allah is the All-knowing- is the third opinion, which is the obligation of zakâh on what grows in a public land without intending to plant it if the seeds were owned by the individual who intended to benefit from it, otherwise it will not be obligated.

the effect of intention in the issue: The effect of intention is evident in that zakâh is required based on the existence of the intention to benefit from what has grown in the public land. According to the prevailing opinion, the intention alone is insufficient; it must be accompanied by ownership of the seeds.



Third Treatise

Effect of intention in

the zakâh of gold and silver, and debts

Topic (1): The effect of intention on the cessation of the zakâh year for cash when exchanged to another form of cash.

Scholars categorize zakâh on wealth into two types:

First type: zakâh related to value, which is the zakâh of trade goods, and this type's year is not affected by exchanging an asset with another, and the year of the first is based on the second according to the agreement of those who affirm zakâh on trade goods⁽¹⁾.

Second type: zakâh that is related to the asset, such as the zakâh on live-stock and cash (gold and silver), and exchanging forms of wealth involved in this type has various forms, I will discuss one of these forms: the exchange of one type of currency for another.

Aspect of the issue: if someone owns a specific amount of one type of currency and exchanges it during the zakâh year for an equivalent amount of the same or a different type, does this exchange interrupt the zakâh year? For example, if someone has twenty dinars and exchanges them during the year for twenty dinars or two hundred dirhams, or with modern currencies, if they have thirty thousand Saudi riyals and exchange them for another thirty thousand Saudi riyals or for a different currency like three thousand Kuwaiti dinars for example, does this interrupt the zakâh year and start a new one from the time they acquired the new currency? Or does the second period continue based on the first? And what is the effect of intention in this matter?

(1) See: "Al-Mabsûṭ", [2: 197]; "Bada'i' As-Sana'i'", [2: 15]; "Al-Mudawanah", [1: 312]; "Mawâhib Al-Jalîl", [2: 320]; "Al-Hawy Al-Kabîr", [3: 296]; "Fath Al-'azîz", [5: 489]; "Kashâf Al-Qinâ'", [2: 178]; "Sharh Montaha Al-'iradat", [1: 396].

opinions on the issue: scholars disagreed regarding this issue leading to four opinions, which are:

First opinion: the year is not interrupted in all cases, which is doctrine of the Hanifah⁽¹⁾ and Mâlikiah⁽²⁾, and doctrine of the Hanâbilah⁽³⁾

Second opinion: the year is interrupted in all cases.

which is the more correct opinion of the Shâfi`iah⁽⁴⁾ and a reported opinion among the Hanâbilah⁽⁵⁾

Third opinion: the year is interrupted unless the person intended to exchange it for trade like the money changers⁽⁶⁾ this is an opinion among the Shâfi`iah⁽⁷⁾.

fourth opinion: the year is interrupted if the person exchanges currency for a different type without the intention of trade. However, if he exchanges it for the same type, the year is not interrupted at all, it is also not interrupted if he exchanges it with a currency of a different type with the intention of trade. this is an opinion of the Hanâbilah⁽⁸⁾, chosen by Ash-Sheikh Muhammed Ibn `uthaîmîn⁽⁹⁾.

Evidence of the opinions and discussions:

Evidence of the first opinion: proponents of the opinion that the year is not interrupted provide the following evidence:

First evidence: The obligation of zakâh on currency is related to the purpose rather than the physical object, and since the purpose persists after the exchange, the year is not interrupted by it, similar to trade goods⁽¹⁰⁾.

(1) See: "Al-Mabsût", [2: 197]; "Tohfât Al-Foqahâ", [1: 273]; "Lisân Al-Hukâm", [page 360].

(2) See: "At-Talqîn", [1: 65]; "At-Tabsirah", [3: 1026]; "At-Tâj wa Al-Iklîl", [3: 96].

(3) See: "Al-Mubdi'", [2: 304]; "Al-Insâf", [3: 31]; "Kashâf Al-Qinâ'", [2: 178].

(4) See: "At-Tahdhîb", [3: 107]; "Fath Al-'azîz", [5: 489]; "Al-Majmû'", [6: 60].

(5) See: "Al-Hidâyah", [page 125]; "Sharh Az-Zarkashi", [2: 457].

(6) Money changers: those who sell currency for currency with the intention of trade. See: "Al-Muhadhib", [1: 296]; "Al-Misbâh Al-Munîr", [1: 338].

(7) See: "Al-Muhadhib", [1: 296]; "Nihayat Al-Matlab", [3: 210]; "Al-Bayân", [3: 318].

(8) See: "Al-Mughny", [2: 504]; "Al-Mubdi'", [2: 304]; "Al-Insâf", [3: 31].

(9) See: "Ash-Sharh Al-Mumtî'", [6: 40].

(10) See: "Bada'i' As-Sana'i'", [2: 15].

Second evidence: The intention behind currency is its use for transactions rather than its physical forms. This is evident as it can be a tangible asset and then become a debt or commodity, so the year is not interrupted by it, same as if someone exchanges part of it for another part⁽¹⁾.

third evidence: The amount due in zakâh on money is a quarter of a tenth in all cases, so the zakâh period is not interrupted by exchanging some for others, similar to trade goods⁽²⁾.

Fourth opinion: Money, despite its different types, is treated like a single asset. It serves as compensation for injuries, values of lost items, and provides benefits. These types can be combined to complete the required threshold, so its zakâh period is based on the initial period⁽³⁾.

Discussed: not accepting that money is treated as a single asset and can be combined to meet the required amount is not accepted, as it consists of different types, similar to camels and cattle⁽⁴⁾.

Answered: what is meant by money is its value, making it akin to a single type of asset, allowing different forms of currency to be combined to meet the required threshold. This differs from livestock, where the focus is on the actual entities and their benefits, which vary among different types⁽⁵⁾.

Fifth evidence: The assertion that the period for zakâh is interrupted when exchanging one currency for another would result in a scarcity of zakâh on money due to the frequent exchanges of currency during the year. It could also serve as a loophole for avoiding zakâh by swapping currency for the same type or a different type just before the end of the year⁽⁶⁾.

Evidence of the second opinion: proponents of the interruption of the year in all cases present the following evidence:

First evidence: what the prophet (peace and blessings of Allah upon him) said: *“there is no zakâh on wealth until the Hawl has passed while it is in his*

(1) See: “At-Tajrîd”, [3: 1342].

(2) See: “At-Tajrîd”, [3: 1342]; “Adh-Dhakhîrah”, [3: 34].

(3) See: “Al-Mabsûṭ”, [2: 197]; “Manâhij At-Tahsîl”, [2: 333]; “Al-Mughny”, [2: 504].

(4) See: “Ash-Sharh Al-Mumti’”, [6: 40].

(5) See: “Bada’i’ As-Sana’i’”, [2: 15].

(6) See: “Al-Ma’ûnah ‘ala Madhhab ‘âlim Al-Madîna”, [page 402].

possession.”⁽¹⁾.

Aspect of the evidence: the prophet (peace and blessings of Allah upon him) nullified zakâh until a year has passed on that one type of wealth, but if a currency was exchanged with another currency it starts another year as it is another type of wealth⁽²⁾.

discussed from two perspective:

First perspective: that the prophet (peace and blessings of Allah upon him) said: “*there is no zakâh on wealth*” and wealth is a combined description, and he did not say: there is no zakâh on a specific type of wealth or type of cattle, and if a currency was exchanged with another currency during the year it does not cease to be a single type of wealth⁽³⁾

Second perspective: The hadith is specific to the produce of grazing animals, profits, and trade goods, as their year is based on the year of their origin. Therefore, the disputed matter can be analogized to this and is considered an exception to the hadith⁽⁴⁾.

Second evidence: The currencies are a primary asset in themselves, and zakâh is obligatory on their actual forms, so one year's cycle is not built upon another, like with livestock⁽⁵⁾.

Discussed: the zakâh on grazing livestock is related to the physical asset, so the exchange affects the interruption of the year. In contrast, zakâh on currencies is tied to their value, as one type can serve as a substitute for another⁽⁶⁾.

Third evidence: They argued for the interruption of the year, even if the exchange was intended for trade, by stating that exchanging currency for currency with the intention of profit involves minimal gain and does not involve unfair trading. This is because if one sells the currency for the same type, it must be equal, and if they sell it for a different type, it is not allowed to defer payment, and with the prohibition of deferring payment, the profit decreases,

(1) Previously related, See: page [60] of that book.

(2) See: “Al-Hawy Al-Kabîr”, [3: 296]; “Al-Bayân”, [3: 318].

(3)) See: “Adh-Dhakhîrah”, [3: 98].

(4) See: “Al-Mughny”, [2: 503].

(5) See: “Al-Om”, [2: 52]; “Al-Hawy Al-Kabîr”, [3: 296]; “Al-Muhadhib”, [1: 296].

(6) See: “Bada’i’ As-Sana’i’”, [2: 15].

so it is not considered a trade that necessitates zakâh⁽¹⁾.

Discussed: The determining factor for the zakâh on trade goods is the existence of the intention to trade, regardless of the amount of profit, whether little or large, in both currencies and other items.

Evidences of the third opinion: proponents of the interruption of the year with exchanging without the intention to trade based on the evidence from the second opinion, and not being subject for interruption if the exchange was with the intention to trade, presented the following evidence:

First evidence: The claim that the zakâh cycle is interrupted even with the intention of trade would lead to the exemption of money changers from zakâh, which contradicts consensus. Money changers have always existed, and there is no record of the Prophet (peace and blessings of Allah upon him), his companions, or the successors exempting them from zakâh⁽²⁾.

Second evidence: If someone engages in trade with items that are not subject to zakâh, such as fed livestock or clothing, zakâh becomes obligatory for them. Therefore, if they trade in items that do require zakâh -such as money- it is even more necessary for them to fulfill this obligation⁽³⁾.

Third evidence: zakâh on money is obligatory even without growth through trade; zakâh on money is obligatory, so it is more necessary to be obligatory with the growth resulting from trade⁽⁴⁾.

Evidence of the fourth opinion: Those who argued for the interruption of the zakâh year when currency is exchanged for a different type without the intention of trade, and the non-interruption of the year when exchanged for the same type, based their reasoning on the following: The difference in type prevents the combination of two types to complete the zakâh threshold, just as wheat cannot be combined with barley, and cattle cannot be combined with sheep. Therefore, the year of one type cannot be built upon the year of the other, unless they are trade goods, in which case they can be combined, and the year of one type is built upon the year of the other, as is the case with all

(1) See: "Al-Hawy Al-Kabîr", [3: 296]; "At-Tahdhîb", [3: 107]; "Kifâyat An-Nabîh", [5: 470].

(2) See: "At-Tajrîd", [3: 1342].

(3) See: Previous reference, [3: 1343]; "Al-Hawy Al-Kabîr", [3: 296]; "Al-Muhadhib", [1: 296].

(4) See: Previous reference, [3: 1343]; "Al-Hawy Al-Kabîr", [3: 296]; "Al-Muhadhib", [1: 296].

trade goods⁽¹⁾.

Discussed: different types of currencies are like varieties of the same kind when it comes to zakâh, because their benefit and purpose are unified, and one type can substitute for the other. Each type of currency is also combined with trade goods to complete the zakâh threshold, and thus they are combined with one another, and the year of one type is built upon the hawl of the other⁽²⁾.

Preference:

it appears -and Allah is the all-knowing- that the preferred is the first opinion, which is the non-interruption of the year with exchanging one type of currency with the other in all cases.

Reasons for the preference:

- 1- The strength of the evidence for the first opinion and its immunity to critique, while critique can be raised against the evidence supporting the other opinions.
- 2- One of the characteristics of currency is that its zakâh year is based on the zakâh year of trade goods and it is added to them in completing the zakâh threshold, as it represents the value of goods, so its zakâh year is connected to each other.

Reasons for the disagreement:

- 3- The difference lies in the interpretation of what constitutes the «same wealth» that must complete a full year. The proponents of the first opinion believe that the classification of «same wealth» remains even when one currency is exchanged for another of the same type or a different type. The proponents of the second and third opinions argue that the classification of «same wealth» is tied to the specific asset, and if it is exchanged for a different asset, it becomes a different wealth. The proponents of the fourth view believe that the classification of «same wealth» is interrupted if the type of currency changes, but it remains if the type does not change.
- 1- The disagreement is in the matter of combining one type of currency with another to complete the zakâh threshold. The proponents of the

(1) See: "Ash-Sharh Al-Momte'", [6: 40, 102].

(2) See: "Al-Mughny", [3: 36].

first view believe that the different types of currency can be combined, and their zakâh year is based on the zakâh year of the other. However, the proponents of the other opinions do not believe that different types of currency can be combined to complete the zakâh year.

- 2- The reason for the disagreement between the proponents of the second opinion and the other opinions regarding whether exchanging one currency for another with the intention of trade interrupts the zakâh year is that the proponents of the second opinion view currency exchange as not being a form of trade due to the small profit margins involved. Therefore, the zakâh year is interrupted by the exchange, just as it would be if there were no intention to trade. Meanwhile, others argue that currency exchange is indeed a form of trade as long as the transaction is conducted with the intention of trading.

Effect of the intention in the issue: The effect of intention in this issue is evident as the proponents of the third opinion made an exception for the interruption of the zakâh year when exchanging one currency for another, whether of the same kind or a different kind, if the exchange was done with the intention of trade, as is the case with money exchangers. Similarly, the proponents of the fourth opinion also made an exception to their stance on the interruption of the zakâh year when currency is exchanged for a different kind of currency, stating that if the exchange was done with the intention of trade, it does not interrupt the zakâh year.

Topic (2): effect of intention on the zakâh of debt gifted to others,

Aspect of the issue

According to the opinions that permits gifting debt to someone other⁽¹⁾ than the debtor, if a person gifts the debt owed to them -after the passing of the zakâh year- to someone else, and that person takes possession of the gifted debt, does the giver need to pay zakâh on that debt? And if so, should they pay

(1) This is doctrine for Hanîfah and Mâlikîah, and opinion of the Shâfi`îah and a saying by the Hanâbilah and the more correct opinion of the Shâfi`îah and doctrine Of the Hanâbilah that it is not valid to gift a debt to someone other than the debtor. They argued that a debt cannot be physically handed over, and the recipient of a gift must receive something tangible, not a debt. See: "Al-Mabsût", [8: 13]; "Fath Al-Qadîr", [6: 512]; "Aqd Al-Jawâhir", [3: 979]; "Al-Qawânîn Al-Fiqhyah", [page 241]; "Asna Al-Matalib" [2: 482]; "Mughny Al-Muhtâj", [3: 565]; "Al-Furû`" [6: 332]; "Al-Insâf", [7: 129]; "Kashâf Al-Qinâ'", [4: 305].

it from the gifted debt itself or from other assets? What is the effect of intention in this matter?

Opinions on the issue:

First opinion: The zakâh on the debt is obligatory for the donor, and he must pay the zakâh from it even if he did not intend to do so at the time of the gift. This is doctrine of the Hanîfah⁽¹⁾, an opinion of the Mâlikîah⁽²⁾, and is related as an opinion of the Shâfi'îah⁽³⁾

Second opinion: zakâh on the debt is obligatory for the donor, and it should be paid from other funds unless he intends to pay it from the gifted debt at the time of the donation. This is another opinion of the Mâlikîah⁽⁴⁾, and related as an opinion of the Hanâbilah⁽⁵⁾.

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- (1) The Hanîfah scholars have explicitly stated the obligation of paying zakâh on the one who gifts a debt. See: "Al-Bahr Ar-Ra'iq", [2: 225]; "Hâshiyat Ibn 'abidîn", [2: 267]; I did not find any explicit statement from them that the donor must pay zakâh from the gifted debt. However, their position can be inferred based on their ruling that it is permissible to revoke a gift even after it has been received. If the donor can take back the entire gift, then it is even more reasonable for them to reclaim the amount equivalent to the zakâh and allocate it to the deserving recipients. See: "Bada'i' As-Sana'i'", [6: 127]; "Tabîn Al-Haqa'iq", [5: 98].
- (2) See: "At-Tawdîh", [2: 205]; "Mawâhib Al-Jalîl", [2: 312].
- (3) I did not find any explicit text from them on this issue. However, their stance can be derived based on their ruling that the gifting of debt to someone other than the debtor is valid, and their opinion that gifting an asset in which zakâh is due is only valid for the portion beyond the zakâh amount, requiring the donor to pay it. Additionally, they consider the gifting of debt to be similar to transfer (hawâlah), and transfer is regarded as equivalent to receiving the debt. Thus, it can be concluded that gifting debt to someone other than the debtor after the zakâh year has passed is akin to receiving it, and is only valid beyond the amount of zakâh, which the donor must pay. See: "Al-Bayân", [3: 269]; "Nihayat Al-Matlab" [8: 414]; "Rawdat Al-Tâlibîn", [5: 374]; "Asna Al-Matalib" [1: 384]; "Mughny Al-Muhtâj", [2: 110].
- (4) See: "Al-Fawakih Ad-Dawâny", [1: 333]; "Manh Al-Jalîl", [2: 53].
- (5) I did not find any explicit text from them on this issue. However, their position can be inferred from their ruling that gifting debt to someone other than the debtor is valid. Based on this, it can be concluded that zakâh is obligatory on the one who gifts the debt, and the recipient's receiving of the gift is equivalent to the donor's receipt of the debt. This is based on their opinion that zakâh is due on someone who gifts an asset after zakâh has become obligatory on it. Additionally, their ruling that transferring a debt is akin =

Third opinion: zakâh on the debt is not obligatory for the donor, nor for the recipient. This is the position of Ashhab of the Mâlikîah⁽¹⁾.

Evidences of the opinions and discussions:

Evidence of the first opinion: proponents of the obligation of zakâh on the donor and that it should be taken from the debt present the following evidence

First evidence: They argued that zakâh is obligatory on the donor because the recipient's collection of the debt is akin to the donor collecting it themselves. Thus, zakâh becomes due on the donor, just as if they had collected the debt themselves or their agent had collected it after a full year had passed⁽²⁾.

Second evidence: they argue that zakâh should be taken from the debt itself because the portion of zakâh is a right of the poor that is attached to the debt after a full year has passed, and their right precedes that of the recipient. Therefore, zakâh should be paid from the debt itself.

Discussed: the obligation of zakâh is related to the donor's liability, not to the debt itself. Once the recipient collects the debt, their ownership of it becomes secure, and the donor no longer has the right to take any portion of it for zakâh unless they intended to do so at the time of the gift.

Evidence of the second opinion: They argued for the obligation of zakâh on the donor using the same reasoning as those who hold this opinion. They further argued that zakâh should be paid from other than the debt, unless the donor intended to take it from the debt itself based on an analogy with someone who sells crops after zakâh has become due on them - zakâh is paid from other than the sold crop unless the seller stipulates it with the buyer. Similarly, the donor pays zakâh from other than the gifted debt unless they intended to take it from the debt itself, with the intention here being like a condition in a sale⁽³⁾.

= to receiving it supports this view. It can also be inferred that zakâh should be paid from non-debt funds unless explicitly intended otherwise. This aligns with their stance that when someone sells an asset on which zakâh is due, they must account for the zakâh from other than the sold item, unless they reserve the zakâh amount during the option period. See: "Al-Mughny", [3: 13]; "Ar-Ri'âyah As-Sughra", [1: 381]; "Al-Furû", [3: 454, 4: 343]; "Al-Mubdi", [2: 411]; "Al-Insâf", [3: 20].

(1) See: "At-Tabsira", [2: 914]; "Aqd Al-Jawâhir Ath-Thamînah", [1: 211]; "Manâhij At-Tahsil", [2: 237].

(2) See: "Al-Bahr Ar-Ra'iq", [2: 225]; "Aqd Al-Jawâhir Ath-Thamînah", [1: 211].

(3) See: "At-Tawdhî", [2: 206]; "Sharh Al-Khurashy", [2: 190].

Evidence of the third opinion: Those who argued against the obligation of zakâh on both the donor and the recipient reasoned that the recipient's possession of the debt is not the same as the original creditor or their agent's possession, since the recipient receives it for themselves. zakâh on debt is only obligatory upon possession, and since the recipient is starting a new possession period with what they received, no zakâh is due on them⁽¹⁾.

Discussed: by not accepting that the recipient's possession is different from the donor's, because gifting the debt to someone other than the debtor implicitly includes an authorization to collect it. Thus, the recipient is considered as if they are authorized to collect the debt, making their possession equivalent to that of the donor.

Preference:

it appears that the preferred is -and Allah is the All-knowing- is the second opinion, which is the obligation of the zakâh of debt on the donor, and that it must be given from something other than the debt unless they intended at the time of the gift to pay the zakâh from the debt itself.

Reason for the preference:

- 1- The strength of the argument made by those who say that zakâh is obligatory on the donor lies in the fact that gifting a debt is akin to authorizing its collection. Therefore, when the gifted party receives the debt, zakâh becomes due on the donor.
- 2- zakâh is obligatory on the donor's liability, not on the debt itself, and once the debt is gifted, the entire amount belongs to the recipient, and the donor cannot deduct the zakâh from it unless they intended to do so at the time of the gift. This intention is equivalent to setting a condition, as gifting is a form of voluntary contract.

Reasons for the disagreement:

- 1- The reason for the disagreement between the proponents of the first and second opinions and the proponents of the third opinion lies in the consideration of the recipient's collection of the debt as equivalent to the donor's collection. The advocates of the first and second opinions considered the recipient's collection to be the same as the donor's,

(1) See: "At-Tabsira", [2: 914]; "At-Tawdih", [2: 205].

thus obligating zakâh on the donor due to that collection. However, the proponents of the third opinion did not view it this way, stating that zakâh is not obligatory on the debt because it becomes due upon collection, which has not occurred⁽¹⁾.

- 2- The reason for the difference between the proponents of the first and second opinions lies in whether zakâh is connected to the debt itself or to the debtor's liability. The proponents of the first opinion believe that zakâh is related to the debt itself, so it must be paid from it, but the proponents of the second opinion believe that zakâh is connected to the debtor's liability, meaning it cannot be paid from the debt itself once it has entered the ownership of the recipient upon collection. An exception applies if the donor intends to pay zakâh from the debt itself, such as when they donate the debt while intending to exclude the amount of zakâh, making their intention equivalent to a condition, as it involves a charitable act.

Effect of intention on the issue:

The effect of the intention is evident in that the proponents of the second opinion believe that zakâh cannot be paid from the debt itself once it has entered the ownership of the recipient upon collection, with the exception of if the donor intends to pay zakâh from the debt itself, such as when they donate the debt while intending to exclude the amount of zakâh. In this case, their intention is treated as a condition, and this is considered the preferred opinion.

Topic (3): The effect of intention on the obligation of zakâh on the loan⁽²⁾ on the lender

The scholars discussed the rulings on zakâh for loans while addressing the zakâh of debts, with some distinguishing between loans and other types of debts in terms of zakâh rulings, which are the Hanîfah and Mâlikîah schools.

(1) See: "Manâhij At-Tahsîl", [2: 237].

(2) The loan in language: cutting. See: "Maqâ'yis Al-Lughah", [5: 71], The term "Qard" (loan). Technically, it is defined as the transfer of wealth to someone who benefits from it and returns its equivalent. It is a type of debt, distinguished by being an act of benevolence without profit-seeking or expectation of growth. See: "Mughny Al-Muhtâj", [3: 29]; "Al-Mubdi'", [4: 194]; "Kashâf Al-Qinâ'", [8: 135].

The Hanîfah categorize loans as strong debts -specifically, the compensation of a loan and commercial money- that differ in their zakâh rulings from moderate and weak debts among them⁽¹⁾, and the Mâlikîah differentiated in the ruling of zakâh between the debt of a loan and commercial debts⁽²⁾. However, the Shâfi`îah and Hanâbilah do not make a distinction between loans and other debts regarding the rulings of zakâh, except that they consider the loan as a type of immediate debt; because it does not necessitate deferral if it is stipulated⁽³⁾. This is also doctrine of the Hanifag school⁽⁴⁾, in contrast to the Mâlikîah⁽⁵⁾.

Aspect of the issue:

If someone lends a person an amount of money as an interest-free loan and the borrower takes possession of it, is its zakâh obligatory on the lender? and what is the effect of intention in this matter?

opinions on the issue: scholars disagreed about the ruling on this issue with four opinions:

First opinion: the zakâh of the loan is not obligatory

This opinion was narrated about all debts by `â'ishah and `abd Allah Ibn `umar (may Allah be pleased with them)<sup>(6)</sup>, it is the old opinion of the Shafi`ah⁽⁷⁾, and a narration within the Hanâbilah⁽⁸⁾.

and doctrine of the Hanîfah⁽⁹⁾ and the choice of the Sheikh of Islam Ibn

(1) See: "Al-Mabsût", [2: 195]; "Fath Al-Qadîr" by Al-Kamâl, [2: 167].

(2) See: "An-Nawâdir Wa Az-Ziyârât", [2: 169]; "Manâhij At-Tahsîl", [2: 214].

(3) See: "Al-Hawy Al-Kabîr", [5: 355]; "Mughny Al-Muhtâj", [3: 34]; "Al-Mughny", [4: 237]; "Al-Mubdi'", [4: 198].

(4) See: "Al-Hidâyah", [3: 60]; "Al-Mohît Al-Burhân", [9: 240].

(5) According to them, the loan can be either concurrent or deferred. see: "Aqd Al-Jawâhir", [2: 844]; "Ash-Shâmil", [1: 629].

(6) See: "Al-Mughny", [3: 71]; "Al-Mubdi'", [2: 298].

(7) see: "Al-Hawy Al-Kabîr", [3: 263]; "Al-Bayân", [3: 291]; "Mughny Al-Muhtâj", [2: 125].

(8) The Hanâbilah have one opinion that zakâh on debt is not obligatory at all, and another view that zakâh is only not obligatory on debts that are not expected to be repaid.. See: "Al-Mubdi'", [2: 298]; "Al-Insâf", [3: 18, 22].

(9) The Hanâbilah have one opinion that zakâh on debt is not obligatory at all, and another view that zakâh is only not obligatory on debts that are not expected to be repaid.. See: "Al-Mubdi'", [2: 298]; "Al-Insâf", [3: 18, 22].

Taymiah⁽¹⁾, and provided as a ruling by the Permanent Committee for Scholarly Research and Ifta in the Kingdom of Saudi Arabia⁽²⁾ regarding debts that are not expected to be repaid, whether they are loans or otherwise⁽³⁾. Several modern scholars⁽⁴⁾ have chosen the view that there is no obligation for zakâh on loans, including professor doctor Muhammed Na`im Yassîn<sup>(5)</sup>, professor doctor Yûsuf Ash-Shibely<sup>(6)</sup>, doctor `bd Allah Al-`ayâdî<sup>(7)</sup>, and Doctor `bd Allah ibn Hassan âl Ash-Sheikh⁽⁸⁾.

Second opinion: The lender must pay zakâh on the loan every year, even if it hasn't been repaid, as long as it is expected to be repaid. This is an opinion among the Mâlikîah regarding loans made to a solvent trader⁽⁹⁾.

This opinion regarding all current debts was narrated by `Uthman ibn `Affan and Jabir ibn `Abdullah (may Allah be pleased with them) and among the Tabi`in, from Tawus⁽¹⁰⁾ and Ibrahîm al-Nakha`î<sup>(11)</sup>, and it is the modern doctrine of the Shâfi`îah⁽¹²⁾, a narration among the Hanâbilah⁽¹³⁾, chosen⁽¹⁴⁾ by Ibn `Abd Al-bar⁽¹⁵⁾, and has been endorsed by the Permanent Committee for

(1) This was transmitted from him by Burhan al-Din Ibn Muflih, See: "Al-Mubdi", [2: 229]

(2) See: "Fatâwa Al-Lagnah Ad-Da'imah" Third collection [8: 449]

(3) What is owed by someone who is insolvent, delaying payment, or denying the debt. See "Kashâf Al-Qinâ", [2: 173].

(4) See Journal of the Islamic Fiqh Academy, [2: 66]

(5) Research and Proceedings of the 22nd Symposium on modern zakâh Issues. (p. 73)

(6) See: previous reference (p. 153)

(7) See: "zakât Ad-Duyûn Al-Mu`âsirah" by Al-`aydy (p.115)

(8) See: "Zakat Ad-Duyûn wa Tatbiqâtihâ Al-Mu`âsirah" by `Abd Allah Al Sheikh (p.110)

(9) See: "Minhâj At-Tahsîl", [2: 217]; "At-Tawdîh", [2: 223].

(10) He is: Taws ibn Kisân Al-Hamadâny Al-Yamâny, Abu `abd Ar-Rahmân, was a scholar among the successors. He was a prominent jurist, having heard narrations from Abi Hurairah, `â'ishah and Ibn Al`abâs (may Allah be pleased with them, and is considered one of the major scholars of his time. He died in Mecca while on pilgrimage in the year 106 AH, though some say it was 104 AH. See his biography: "Wafiyât Al-A`yân", [2: 509]; "Sayr `alâlm An-Nubalâ", [5: 38]

(11) See: "Al-Mughny", [3: 71]

(12) See: "Al-Hawy Al-Kabîr", [3: 263]; "Al-Bayân", [3: 291]; "Fath Al-`azîz", [6: 54]

(13) See: "Ar-Ri`âyah As-Sughrâh Fi Al-Fiqh", [1: 377]; "Al-Furû", [3: 450]; "Al-Mubdi", [2: 298]

(14) See: "Al-Kâfy fi Fiqh Ahl Al-Madînah", [1: 293]

(15) Abu `umar Yûsuf Ibn `abd Allah Ibn Muhammad Ibn `abd Al-Bar Ibn `isâm An-Namari Al-Qurtuby Al-Mâlikî was the leading scholar of his time in hadith and related disciplines.=

Scholarly Research and Ifta in the Kingdom of Saudi Arabia⁽¹⁾.

Third opinion: The lender must pay zakâh on the loan if it has been received for previous years. This is doctrine for the Hanîfah except in the case of a disputed loan for which there is no evidence⁽²⁾. This is also doctrine for the Hanâbilah⁽³⁾, and the modern doctrine for the Shâfi`iah regarding loans that are not expected to be repaid⁽⁴⁾.

Fourth opinion: The donor must pay zakâh for the loan for one year if they receive the loan

this is doctrine for the Mâlikîah, except if they kept it with the borrower to avoid paying zakâh, in this case it is due for zakâh even if they do not receive it⁽⁵⁾.

It is also a narration among the Hanâbilah specifically regarding debts required to be paid⁽⁶⁾.

Evidence of opinions and discussions:

Evidence of the first opinion: The proponents of the first opinion are divided into three categories, each with its own specific evidence. I will clarify these categories and their supporting arguments below:

First section: Those who argue that zakâh on debt is not obligatory, whether the debt is a loan or otherwise, and whether it is expected to be repaid or not, support their view with the following arguments:

= He was a jurist and a devout worshipper, living for ninety-five years. He authored valuable works explaining of Mawta' which are: "At-Tamhîd" and Al-'istidhkâr, and in jurisprudence, he wrote: "Al-Kâfi fi Fiqh Ahl Al-Madînah. He passed away in the year 463 AH. See his biography: "Wafiyât Al-A`yân", [7: 66]; "Sayr 'a'lâm An-Nubalâ", [18: 153]

(1) See: "Fatâwa Al-Lagnah Ad-Dâ'imah" third collection, [8: 449]

(2) See: "Badâ'i` As-Sanâ'i'", [2: 10]; "Fath Al-Qadîr", [2: 167]; "Al-Bahr Ar-Ra'iq", [2: 223]

(3) See: "Al-mubdi'" [2: 298]; "Al-Insâf", [3: 21]; "Kashâf Al-Qinâ'", [2: 171-173]

(4) See: "Al-Madhhab", [1: 263, 291]; "Mughny Al-Muhtâj", [2: 125]

(5) There is no disagreement regarding a loan that is not from a solvent trader, which is the more well-known view concerning the loan from a solvent trader. Refer to: Al-Nawadir wa Al-Ziyadat. See: "An-Nawâdir Wa Az-Ziyâdât", [2: 169]; "Al-Moqadimât Al-Momahidât", [1: 304]; "Adh-Dhakhîrah", [3: 21]; "Sharh Az-Zaraqâny `la Mukhtasar khalîl", [2: 281].

(6) See: "Sharh Az-Zarkashi", [2: 520]; "Al-Mubdi'", [2: 298].

First evidence: drawing an analogy between debt and personal property as both do not generate growth, therefore, zakâh is not obligatory on either, similar to other forms of personal wealth⁽¹⁾.

Discussed: This is an invalid analogy because debt can be collected and used to generate growth, especially if it is owed by someone who is solvent and willing to pay, unlike personal property, which is intended for use⁽²⁾.

Second evidence: Debt is considered as non-existent because it is neither owned nor can it be transacted with⁽³⁾.

Discussed: By rejecting the claim that debt is considered non-existent, it is actually owned by its loaner, who can collect and use it, or benefit from it through transferring it before collecting it⁽⁴⁾.

Second section: Those who say zakâh is not obligatory on non-recoverable debt, whether it is a loan or otherwise, have provided the following evidence:

First evidence: They draw an analogy to the debt of emancipation contracts, arguing that zakâh is not obligatory on it because it cannot be collected or utilized⁽⁵⁾.

Discussed: This analogy is flawed because the debt of emancipation is subject to cancellation, and it cannot be guaranteed, making it an unsuitable comparison to other types of debt⁽⁶⁾.

Second evidence: a debt that is not expected to be repaid is considered nonexistent as it cannot be collected or managed, nor can it grow, so zakâh is not obligatory on it⁽⁷⁾

Third section: Those who argue that zakâh is not obligatory on debt from loans specifically, whether it is expected to be repaid or not, provided the following evidence:

(1) See: "Al-Mughny", [3: 71].

(2) See: "Zakât Ad-Duyûn", by Al-Halîl, [page 44].

(3) See: "Al-Muhala", [4: 223].

(4) See: "Majalat Al-'ulûm Ash-Shar'yah", Search: Zakât Ad-Duyûn At-Tujâryah, by Ash-Shibîlî, [edition 23: 219].

(5) See: "Al-Muhadhib", [1: 291]; "Al-Mughny", [3: 71].

(6) See: "Badâ'i' As-Sanâ'i'", [2: 10]; "Al-Mubdi'", [2: 296].

(7) See: "Mujma' Al-'nhur", [1: 194]; "Sharh Az-Zarkashi", [2: 521].

First evidence: The debt from an interest-free loan carries a meaning that is not found in other debts, which is that the lender does not intend to benefit from the transaction but rather aims to show kindness and goodwill to the borrower. Therefore, seeking growth is not expected from such a loan, and zakâh is only obligatory on wealth that has the potential to grow⁽¹⁾.

Discussed: This reasoning applies to a loan that cannot be collected from the borrower, such as a deferred loan or one owed by an insolvent or procrastinating individual. However, for a due loan that is expected to be repaid, growth is possible through its collection and utilization.

Second evidence: saying that zakâh is obligatory on the lender is unfair to their wealth and harmful to it. The lender may leave the loan for several years with the borrower out of kindness and consideration for their needs, even though the borrower is solvent and capable of repayment⁽²⁾.

Discussed: This reasoning applies to a loan that is not expected to be repaid, but for loans that are due and likely to be repaid, they are treated as though they have already been received, and leaving it with the borrower as an act of sympathy does not exempt it from zakâh, as the borrower may not even qualify as a deserving recipient of zakâh, and if they are, the lender can collect the loan and pay zakâh to them directly.

Third evidence: The purpose of zakâh is to support those in need, and this support is already achieved through the loan itself, as the borrower is often among those deserving of zakâh. Therefore, the loan can suffice in place of paying zakâh⁽³⁾.

Discussed from two perspectives:

First perspective: The act of providing support is not exclusive to loan debt; it can also occur in other types of debts.

For example, a seller may grant the buyer an extension to pay the price out of compassion for the buyer's need, even though the buyer is able to pay. Yet, I have not found anyone who argued that zakâh is not obligatory on this type of debt merely because support was provided.

(1) See: "Zakât Ad-Duyûn Wa Tatbiqâtihâ Al-Mu`âsirah" by âl Ash-Shaykh, [page 110]; Research and Proceedings of the 22nd Symposium on modern zakâh Issues, [page 71].

(2) See: "Zakât Ad-Duyûn Wa Tatbiqâtihâ Al-Mu`âsirah" by âl Ash-Shaykh, [page 110].

(3) See: "Zakât Ad-Duyûn Wa Tatbiqâtihâ Al-Mu`âsirah" by Al-`âydi, [page 116].

Second perspective: It is not accepted that the borrower is often among those eligible for zakâh, as many loans are for starting commercial projects or for non-essential needs.

Evidence of the second opinion: proponents of the second opinion are split into two parties, to each their evidence, which are:

First party: Those from the Mâlikîyah who say that zakâh is required on the merchant's loan every year, even if it is not collected, provided it is expected to be paid, base their view on the idea that the merchant must evaluate their trade goods and debts every year and pay zakâh on them, and the loan follows this rule because the lesser follows the greater⁽¹⁾.

Discussed: the loan is excluded from business management and withheld from growth, making it more similar to what a merchant sets aside for clothing or personal use⁽²⁾.

Second party: those who argue for the obligation of zakâh on all due debts, including loans, if they are expected to be repaid, base their argument on the following points:

First evidence: what has been narrated from `uthmân Ibn `afân (may Allah be pleased with him): *"pay zakâh on it -meaning the debt- if it was with the solvent"*⁽³⁾ ⁽⁴⁾ and what has been narrated by `abd Allah Ibn `umar (may Allah be pleased with him) saying: *"zakâh on your wealth is due year after year. For debts owed by a trustworthy person, give zakâh on them, but for doubtful debts, there is no zakâh until the debtor pays them off."*⁽⁵⁾

(1) see: "Manâhij At-Tahsil", [2: 214].

(2) see: "Adh-Dhakhîrah", [3: 21].

(3) Al-Malâ': the rich. See: As-Sihâh", [1: 73].

(4) related by Al-Bihîqî in his "Kubra", book of zakâh, chapter: the zakâh of debt if it was on a solvent debtor, Hadith no. (7619), [4: 251] relate dto Abd Allah ibn Luhai`ah and it is weak. See: "Al-Kâmil Fi Du`afâ' Ar-Rijâl", [5: 237].

(5) This wording was related by Ibn Abi Shaybah in his "Musannafah", book of zakâh, chapter: And whatever is not stable, he can give today and take it back in two days, he should pay its zakâh. Hadith no. (10251), [2: 389] and something similar related by Al-Bihîqî in his "Kubra" book of zakâh, chapter: zakâh on a debt if it is owed by someone an insolvent or a denying person, and the narration is weak, its chain of transmission includes Mûsa ibn `Ubaidah Ar-Rubadhî. Imâm Ahmad said: "I do not accept narrations from Mûsa ibn `Ubaidah, See: "Tahdhîb Al-Kamâl", [29 : 107].

Aspect of the evidence: this is explicit in indicating the obligation of zakâh on debts that are expected to be repaid each year, even if they have not been received, and the statement of the Companion is considered authoritative⁽¹⁾.

Discussed: the weakness of the Due to the weakness of the two reports and the lack of their authenticity from `uthmân and `umar (may Allah be pleased with them)⁽²⁾.

Second evidence: the analogy is drawn to the deposit, as the owner of the deposit is obligated to pay zakâh on it every year, even if it has not been received. Similar to the owner of a debt that is wanted to be repaid, based on the fact that both are owed by solvent parties who acknowledge them and from whom the money can be collected⁽³⁾.

discussed: this analogy is flawed for two reasons:

First: a deposit is related to the money itself, unlike the debt that is related to the liability of the debtor⁽⁴⁾

Secondly: a deposit is akin what is at hand, as it is a replacement for saving the money, unlike debt⁽⁵⁾.

Third evidence: zakâh either must be paid every year as the Prophet established (peace and blessings of Allah be upon him) or the money must complete a year after being received, similar to newly acquired wealth. However, paying zakâh after receiving it for previous years is not supported by the Sunnah, and since debt is not considered newly acquired wealth, the only remaining option is the first one⁽⁶⁾.

Discussed: not paying zakâh until after receiving the money does not mean it isn't due for every year; but rather, it is obligatory for each year, but its payment is postponed until after collecting the money.

(1) See: "Al-Mughny", [3: 71].

(2) The narration from Ali (may Allah be pleased with him) includes Abdullah ibn Lahi'ah in its chain, who is weak. See: "Al-Kâmil Fi Du`afâ' Ar-Rijâl", [5: 237].

=And the narration of Ibn Umar (may Allah be pleased with him) has Musa ibn `Ubaidah Ar-Rubaydi in its chain, who is weak. See: "Tahdhîb Al-Kamâl", [29: 107].

(3) (1) See: "Al-Hawy Al-Kabîr", [3: 263]; "Al-Bayân", [3: 291].

(4) (2) See: "At-Tajrid", [3: 1337].

(5) (3) See: "Al-Mughny", [3: 71].

(6) (4) See: "Al-Om", [2: 55].

Fourth evidence: A current debt -such as a loan, if it is expected to be repaid- represents a complete ownership of wealth that can be collected and utilized. Therefore, it being in the possession of another person does not affect its status, and zakâh is required on it just like on other forms of wealth⁽¹⁾.

Evidence of the third opinion: proponents of the third opinion are divided into two parties, to each their own evidence, which are:

First party: proponents of the obligation of zakâh on a loan after receiving it for every year in all cases, whether it is expected to be repaid or not, support their view with the following evidence:

First evidence: what has been narrated from `â'ishah (may Allah be pleased with her) talking about debt *"there is no zakâh of a debt until it is collected"*⁽²⁾

Aspect of the evidence: this is an explicit statement by `â'ishah (may Allah be pleased with her) and no opposition from the companions were known against her⁽³⁾.

Discussed from two perspectives:

First perspective: the chain of narration is weak⁽⁴⁾.

Second perspective: something narrated by `abd Allah Ibn `umar (may Allah be pleased with him) contradicts it, as previously mentioned in the evidence of the second opinion⁽⁵⁾, and neither of their statements is more valid than the other.

Second evidence: The debt that is expected to be paid can be collected and benefited from, so zakâh is required on it every year due to the general evidence, analogously to other assets subject to zakâh. However, the obligation to pay zakâh is only after collection because zakâh is a form of support, and it is not considered support to give zakâh on money that has not been collected⁽⁶⁾.

(1) (5) See: "Mughny Al-Muhtâj", [2: 125]; "Sharh Az-Zarkashi", [2: 519].

(2) (6) related by Ibn Abi Shaybah in his "Musanafah" boom of zakâh, chapter: who says: there is no zakâh on debts until it is collected, Hadith no. (10259), [2: 390] includes `abd Allah Ibn Al-Mo'mal Al-Makhzûmy, who is weak. See: "Mizan Al-'i tidal", [2: 510]

(3) (7) See: "Kashâf Al-Qinâ'", [2: 172].

(4) In its chain is Abdullah bin Al-Mu'ammal Al-Makhzumi, and he is weak. see: "Mîzân Al-I tidal", [2: 510].

(5) See page (151) of that book

(6) See: "Al-Mubdi'", [2: 298]

Discussed: That the wealthy is not more deserving of support than the poor, as delaying the payment until after collection is not considered support for the poor⁽¹⁾.

Third evidence: The analogy to the debt of the insolvent, due to the common factor that each is a debt established in liability⁽²⁾.

Discussed from two perspectives:

First perspective: Debt of an insolvent person is different in the ruling of its zakâh, and it is invalid to make an analogy based on an issue that is disputed upon⁽³⁾.

Second perspective: this analogy is flawed, as current debts that are expected to be repaid can be collected and utilized, unlike debts on insolvent people⁽⁴⁾

Second party: those who say that zakâh is obligatory on a loan after it is received each year, even if it is not expected to be repaid, support their view with the following evidence:

First evidence: what was narrated that Ali ibn Abi Talib (may Allah be pleased with him) was asked about a man who has a suspected debt: should he pay zakâh on it? He said, "If he is truthful, then he should pay zakâh on it for the past years when he receives it."⁽⁵⁾

Aspect of the evidence: that uncertain evidence, which is a debt that the owner does not know if the debtor would pay or not, is considered an is considered unexpected to be paid⁽⁶⁾. 'Ali (may Allah be pleased with him) gave a fatwa that it is obligatory for zakâh for the past year once it is collected and his statement is authoritative.

(1) See: "zakât Ad-Dayn" by Al-Halîl, (p.38)

(2) See: "Al-Mughny", [3: 71]

(3) See: "zakât Ad-Dayn" by Al-Halîl, (p. 40)

(4) See: previous reference, zakâh of debts and its modern applications, by Al Sheikh (p 86)

(5) Related by Abu 'ubayd in "Al-Amwâl" book of zakâh: zakâh and its rulings and sunan, chapter: zakâh in trading and debts, what is obligatory on them, and what is not, Hadith no. (1220), (p. 528) and Ibn Shaybah fi Musanafih, book of zakâh, chapter: and whatever is not stable—if he gives it today and takes it back in two days—should be subject to zakâh, Hadith no. (10256), [2: 390], deemed "Sahih" by Al-Albâny, See: "Irwâ' Al'Ghalîl" [3: 253].

(6) See: "Gharîb Al-Hadîth" by Abû 'ubayd

Discussed: That this was his personal reasoning, and other companions disagreed with him, so his statement is not considered evidence⁽¹⁾

Second evidence: that it is money completely owned by its owner, so its zakâh is obligatory for each year like expected debt, and it is not required to be paid until it is collected, for the possibility of the inability to pay it⁽²⁾.

Discussed: what validates ownership is the ability to use and grow the money, and this is not the case with unexpected debt⁽³⁾.

Evidence of the fourth opinion: those who argue that the creditor is obligated to pay zakâh on a debt for one year when it is collected support their opinion with the following evidence:

First evidence: zakâh is only obligatory on specified assets, and a loan is not specified since it is due in liability. Therefore, zakâh is only due for the year in which the asset becomes specified after it is collected⁽⁴⁾.

Discussed: This is reasoning within a disputed issue, and it is not accepted that zakâh is only obligatory on specified assets⁽⁵⁾.

Second evidence: That the obligation of zakâh is based on the ability to pay, which did not occur in the past years. zakâh is only due for the year in which the loan is received, as it became possible to pay in that year⁽⁶⁾.

Discussed: It is not accepted that the ability to pay is a condition for the obligation of zakâh, it is rather obligatory even if payment is not possible, just like other assets for which it is due in liability⁽⁷⁾.

Third evidence: The loaned money is considered to have been liquidated⁽⁸⁾ twice by the lender; the first time before the loan and the second time after collecting it back from the borrower, and the period between these two times is treated as one zakâh year, even if it extends over several years, due to the in-

(1) See: "Zakat Ad-Dayn" by Al-Halîl (p.57)

(2) See: "Bahr Al-Madhhab", [3: 132]; "Al-Bayân", [3: 144].

(3) See: "Zakat Ad-Duyûn Al-Mu`asirah" by Al-`ayâdy, (p.52)

(4) See: "Adh-Dhakhîrah", [3: 29].

(5) See: "Zakat Ad-Duyûn Al-Mu`asirah" by Al-`ayâdy, (p.45)

(6) See: "Al-`insâf", [3: 18].

(7) See: "Al-Mughny", [2: 508]

(8) Meaning it became an asset with him, See: "As-Sihâh", [3: 1107]; "Al-Misbâh Al-Munîr", [2: 610], entry "Nadad"

ability to grow the wealth before receiving it. If the money is liquidated at both ends of the zakâh year, zakâh for that year becomes obligatory. An exception is made if the lender leaves the loan with the intention to evade zakâh; in such a case, he must pay zakâh for every year as a counter to his intention⁽¹⁾.

Discussed: Liquidation of the wealth is not a condition for the obligation of zakâh, and zakâh is due even if the wealth is in the borrower's liability, provided it can be collected and grown. Therefore, considering only one year without accounting for the other years is unfounded. Either zakâh is due for the past years, or it is said that the zakâh year is interrupted and restarts after the money is received.

preference: after contemplating opinions and evidence and discussions of them, it appears that the preferred -and Allah is the All-knowing- is the obligation of the zakâh of a loan on the lender for every year even if it has not been collected, as long as the loan is due -according to the opinion that delaying it is valid and binding- and is expected to be paid for being owed by a solvent and willing debtor. However, if the loan is delayed or not expected to be repaid, zakâh is only obligatory when it becomes due and can be collected, with the zakâh year resuming at that time.

Reason for the preference:

- 1- That a due loan which is expected to be repaid is treated like an asset that has been collected and is not severed from the lender's possession, as it can be collected at any time. However, if it becomes impossible to collect for any reason, it is treated like a loan that is not expected to be repaid.
- 2- That complete ownership is a condition for the obligation of zakâh, and its criterion is the ability to manage the wealth and the capacity to grow it. Debt that is not expected to be repaid cannot be collected or managed, thus failing to meet the condition of complete ownership.
- 3- That a delayed loan—according to the opinion that delaying the loan is valid and binding—is not considered a growing asset unlike commercial debts, and it cannot be collected or managed, so it is treated like a loan that is unlikely to be repaid.

(1) See: "Al-Muntaqa Sharh Al-Mawta", [2: 113]

- 4- The arguments presented by modern scholars who assert that zakâh on loans is not obligatory are weak and are not free from criticism.

Effect of intention on the ruling of the issue:

intention has two effects on the ruling of the zakâh of loan on the lender, which are:

First: some modern scholars and researchers have denied the obligation of zakâh on the lender entirely, arguing that the lender's intention is to provide assistance and kindness to the borrower. This intention contradicts the pursuit of growth, and zakâh is only obligatory on growing wealth.

Second: doctrine of the Mâlikîah is the non obligation of zakâh of loans on a loaner unless the loan is collected for one year. They made an exception for cases where the loan is retained with the borrower with the intention of evading zakâh, in order to close the loophole and prevent deceit to avoid zakâh.



Fourth Treatise

Effect of intention on the zakâh of jewelry

Topic (1): Effect of intention on the obligation of the zakâh of jewelry

Jewelry is anything worn for adornment, made from crafted metals or precious stones⁽¹⁾. It can be made of gold, silver, or other types of gems and metals, and ownership of them is either for the intention of permissible use, lending, forbidden use, hoarding and saving, renting, trading, or without a specific intention. Based on this classification, I will discuss the ruling on zakâh for jewelry in the following seven issues:

First issue: zakâh of jewelry other than gold and silver

Aspect of the issue: if someone owns jewelry of gems and metals other than gold and silver with the intention of use or otherwise, is zakâh obligatory on them?

The ruling on the issue:

Scholars unanimously agree that zakâh is not obligatory on jewelry made from gems and metals other than gold and silver, whether it is owned with the intention of permissible or forbidden use, rental, or otherwise, unless it is owned with the intention of trade. zakâh is due on it as commercial assets if its conditions are met⁽²⁾.

Evidence of the issue:

Scholars based their consensus on the non-obligation of zakâh on jewelry

(1) See: "Sharh kifayât Al-Mutahafidh" by Al-Fâsy (p.168); "Tâj Al-'arûs", [37: 469]; entry (Halaya)

(2) The consensus on the non-obligation of zakâh was narrated by Ibn Qudâmah. "Al-Mughny", [3: 440]; See: "Al-Mabsût", [2: 211]; "Al-Jawâhir An-Nayirah", [1: 123]; "Al-Muntaqa Sharh Al-Mawta'", [2: 109]; "At-Tabsirah", [2: 873]; "Al-Hâwy Al-Kabîr", [3: 271]; "Bidayat Al-Muhtâj", [1: 510]; "masâ'il Al-Imam Ahmad" narrated by his son 'abd Allah (p.164); "Kashâf Al-Qinâ'", [2: 235]

made from other than gold and silver on the principle of original permissibility. They stated that the original ruling is that zakâh is not obligatory, and there is no textual evidence regarding zakâh on jewelry made from other than gold and silver. Therefore, zakâh is not obligatory on it, similar to other types of assets⁽¹⁾.

If the jewelry is owned with the intention of trade, zakâh is obligatory on it as commercial assets, based on the hadith of Samrah Ibn Jundub *“God’s messenger (peace and blessings of Allah be upon him) used to order them to deduct the sadaqa from what they prepared for trade.”*⁽²⁾.

Second issue: zakâh of gold and silver jewelry which are owned with the intention of permissible use or lending

Aspect of the issue: if someone owned gold or silver jewelry with the intention of permissible use or lending it to someone for permissible use -like a silver ring for men, the adornments made of gold and silver for women-, is zakâh obligatory on it?

Opinions on the issue: Scholars disagreed on this issue leading to two popular opinions⁽³⁾:

First opinion: zakâh is obligatory

Reported from `Abdullah ibn Mas`ud, `Abdullah ibn `Abbas, and `Abdullah ibn `Amr ibn Al-`âs (may Allah be pleased with them)<sup>(4)</sup>, and it is the opinion of `atâ⁽⁵⁾,.....

(1) See: “Bidayat Al-Muhtâj”, [1: 510]; “Kashâf Al-Qinâ’”, [2: 235].

(2) previously related, See p.(83) of that book

(3) There are three other opinions on the matter which are considered weaker opinions: The first: That its zakâh is fulfilled by lending it, as narrated from Al-Hasan, `Abdullah ibn `Utbah, and Qatadah, See: “Al-`ishrâf `la madhâhib Al-`ulamâ”, [3: 45]; “Al-Mughny”, [3: 42]. The second: That zakâh is only paid for one year, as narrated from Anas ibn Mâlik and attributed by Ibn Qudâmah in “Al-Mughny” to Imam Mâlik, though I could not find this after searching in the books of Mâlikîah, see: “Al-`ishrâf `la madhâhib Al-`ulamâ”, [3: 45]; “Al-Muhalâ bil-Âthâr”, [4: 185]; “Al-Mughny”, [3: 42]. The third: zakâh is obligatory if it belongs to a man, but if it belongs to a woman, zakâh is not required. This is narrated from Al-Imam Mâlik, see: “Al-Mukhtasar Al-Fiqhî”, [1: 475]; “Sharh Ibn Naji At-Tanûkhy”, [1: 315].

(4) See: “At-Tamhîd”, [12: 515]; “Al-Hâwy Al-Kabîr”, [3: 271]; “Al-Mughny”, [3: 42].

(5) he is: `Atâ` ibn Abî Rabâh, Abû Muhammad, al-Makkî, a freedman of the Banî Fihri, =

Az-Zuhari⁽¹⁾, and others among the successors⁽²⁾, and is also considered doctrine of the Hanîfah,⁽³⁾ an opinion of the Mâlikîah⁽⁴⁾, and one of two opinions among the Shafi'ah⁽⁵⁾, an opinion among the Hanâbilah⁽⁶⁾, and chosen by the two Sheikhs 'abd Al-'azîz ibn Bâz⁽⁷⁾ and Muhamad ibn 'uthaimîn⁽⁸⁾.

Second opinion: zakâh is not obligatory.

It has been reported from 'â'ishah, Asmâ' bint Abî Bakr, Gabir Ibn 'abd Allah ibn 'umar (may Allah be pleased with them)⁽⁹⁾. It is also the opinion of Sa'id Ibn Al-Masîb⁽¹⁰⁾,.....

= was one of the most respected jurists among the successors and known for his great piety, understanding, and narration of hadith. He narrated from Jâbir ibn 'Abdullâh, Ibn 'Abbâs, Ibn al-Zubayr (may Allah be pleased with them), and others. Among those who narrated from him is 'Amr Ibn Dinâr, Az-Zuhary, Qatadah and others. He became the leading authority for religious rulings in Mecca. 'Atâ' performed Hajj seventy times and lived to be one hundred years old. He passed away in the year 114 AH, though other dates have also been mentioned. See his biography: "At-Tabaqât Al-Kubrâ", [6: 21]; "Wafiyât Al-A'yân", [3: 261]

(1) He is: Muhammad ibn Muslim ibn 'Abdullâh ibn Shihâb Az-Zuhrî Al-Qurashî, Abû Bakr, from the Banî Zuhrah ibn Kilâb, he was a successor and one of the foremost scholars and jurists. He was the first to compile and document hadîth. Known for his asceticism, he settled in Ash-Shâm and passed away in the year 124 AH. See his biography: "At-Tabaqât Al-Kubrâ", [6: 21]; "Sayr A' mâl An-Nubalâ", [5: 326].

(2) See: "Al-'amwâl" by Al-Qâsim Ibn Salâm, [p.539]; "Al-Mughny", [3: 42].

(3) See: "Al-Hujah 'ala 'ahl Al-Madînah", [1: 448]; "Badâ'i' As-Sanâ'i", [2: 17]; "Tabyîn Al-Haqâ'iq", [1: 277].

(4) See: "Al-Mukhtasar Al-Fiqhî", [1: 475]; "Sharh ibn Nâji At-Tanûkhy", [1: 315].

(5) It was said: Al-Imam Ash-Shâfi'i sought guidance from Allah regarding it and chose it. See: "Al-Madhhab", [1: 292]; "Bahr Al-Madhhab" [3: 136].

(6) See: "Al-Hidâyah", [p. 138]; "Al-Furû'", [4: 139]; "Al-'Insâf", [3: 138].

(7) See: "Majmû' fatâwa ibn Bâz", [4: 124].

(8) See: "Risâlah Fi zakat Al-Hulî" by Ibn 'uthaymîn, (p.4).

(9) See: "Al-'ishrâf 'la madhâhib Al-'ulamâ", [3: 45]; "Al-Muhallâ", [4: 185]; "Al-Mughny", [3: 41].

(10) He is: Sa'id ibn al-Musayib Ibn Abî Wahb Al-Makhzûmî, Abû Muhammad Al-Qurashi, was born two years after the caliphate of 'Umar (may Allah be pleased with him). He was one of the leaders of the successors in terms of jurisprudence, piety, worship, virtue, and knowledge. He associated with Ibn Umar and Ibn Abbas (may Allah be pleased with them). When Az-Zuhrî and Makhûl were asked: "Who is the most knowledgeable among those you encountered?" they said, "Sa'id ibn al-Musayib." He passed away in the year 94 AH. See his biography: "Mashâhîr 'ulamâ' Al-Amsâr", [p.105]; "Tabaqât al-Fuqahâ", [p.58].

Al-Qasim Ibn Muhammad⁽¹⁾, and others among the successors⁽²⁾. It is also doctrine of the Mâlikîah⁽³⁾, Shâfi'îah⁽⁴⁾, and Hanâbilah⁽⁵⁾

Evidence and discussions:

evidence of the first opinion: Proponents of the obligation support their opinion with evidence, the most prominent of them being:

First opinion: ***{“And those who hoard gold and silver and spend it not in the way of Allāh - give them tidings of a painful punishment.”}***⁽⁶⁾.

Aspect of the evidence: Allah, the Exalted, has attached a severe warning to the hoarding of gold and silver and not spending them in His cause. This warning is linked to the name of gold and silver without differentiating between their forms, being unrefined⁽⁷⁾ or in the form of coins⁽⁸⁾. or made into jewelry, and that indicates the obligation of zakāh on jewelry⁽⁹⁾.

The argument based on the verse was discussed from two perspectives:

First perspective: The indication of the verse is specific to the narrations reported from the Companions⁽¹⁰⁾ regarding the non-obligation of zakāh on jewelry⁽¹¹⁾.

Second perspective: The verse prohibits hoarding gold and silver and not

(1) He is: Al-Qâsim ibn Muhammad ibn Abî Bakr ibn Abî Quhâfah At-Taymî Al-Qurashi At-Taymî, one of the prominent successors and one of the seven jurists. He heard from his aunt `Âishah and Mu`âwiyah, and Az-Zuhri, Nâfi', and his son Abd Ar-Rahmân narrated from him. He was among the most knowledgeable, well-mannered, and intelligent people of his time. He was very quiet, speaking only rarely. He passed away in the year 102 AH. See his biography: “At-Tarîkh Al-Kabîr”, [8: 300]; “Ath-Thaqâth” by Ibn Habân, [5: 302].

(2) See: “Al-`amwâl” by Al-Qâsim Ibn Salâm, [p.541]; “Al-`ishrâf `la madhâhib Al-`ulamâ”, [3: 45].

(3) See: “Al-Ma`ûnah”, [p.376]; “Bidayat Al-Mujtahid”, [2: 11]; “Adh-Dhakhîrah”, [3: 49].

(4) See: “Al-Majmû’”, [6: 36]; “Asna Al-Matâlib” [1: 377]; “Mughny Al-Muhtâj”, [2: 95].

(5) See: “Al-Mughny”, [3: 41]; “Sharh Az-Zarkashi”, [2: 496]; “Al-`Insâf”, [3: 138].

(6) [At-Tawbah (Repentance): 34].

(7) At-Tabrîs: what is not made of gold or silver: See: “Maqâyîs Al-Lughah”, [1: 362], entry (Tabara)

(8) See: Al-Madrûb is: what is coined in the form of dirhams or dinars, See: “Lisân Al-`arab”, [1: 543], Entry (Daraba)

(9) See: “Sharh Mukhtasar At-Tahâwî”, [2: 315]; “Badâ’i` As-Sanâ’i’”, [2: 17].

(10) Will be presented in the evidence of the second opinion, see p.(165) of that book.

(11) See: “Sharh Ar-Risâlah” by the judge `abd Al-Wahâb, [1: 413].

spending them for the same of Allah. Jewelry that is used for permissible purposes is not considered hoarding, and thus it does not fall within the scope of the verse⁽¹⁾.

Second evidence: The general statement of the prophet (peace and blessings of Allah be upon him): “*And on Ar-Riqah*⁽²⁾ (silver), (the zakâh) is one quarter of one tenth.”⁽³⁾

Aspect of the evidence: that the prophet (peace and blessings of Allah be upon him) obligated zakâh on silver coins and did not distinguish between jewelry or otherwise⁽⁴⁾.

Argument using the Hadith was discussed from two perspectives:

First perspective: the prophet (peace and blessings of Allah be upon him) obligated zakâh on silver coins from amongst silver, and refrained from mentioning anything else. And Riqah among the Arabs refers to the minted silver coins that are commonly in circulation among people, and it does not include jewelry⁽⁵⁾.

Answered: by not accepting that “Riqah” or “Wariq” refers only to coins, but rather, they are terms for silver⁽⁶⁾. as supported by the Hadith of Ibn ‘umar, (may Allah be pleased with him) saying: “*the prophet (peace and blessings of Allah be upon him) wore a ring made of “Wariq” (silver)*”⁽⁷⁾

Second perspective: the Hadith is based on the narrations from the Companions⁽⁸⁾.....

(1) See: Ahkâm Al-Qur’ân by Likya Al-Harâsy, [4: 198]; “zakat Al-Huli” by As-Sibaihy (p.45).

(2) Ar-Riqah is: silver, whether dirhams or otherwise. See: “Gharîb Al-Hadîth” by Ib Al-Jawzî, [1: 411]; “An-Nihâyah”, [2: 254], Entry (Raqqa).

(3) Related by Al-Bukhârî in his “Sahîh” book of zakat, chapter: zakat of sheep, Hadîth no.(1454), [2: 118].

(4) See: “Sharh Mukhtasar At-Tahâwi”, [2: 318].

(5) See: “Al-Amwâl” by Al-Qâsim Ibn Salâm, (p.542); “Al-Mughny”, [3: 42].

(6) See: “Sharh Mukhtasar At-Tahâwi”, [2: 318]; “At-Tajrîd”, [3:1324].

(7) Related by Al-Bukhârî in his “Sahîh” book of Clothing, chapter, the carving of a ring, hadîth no. (5873), [7: 157], and Muslim in his “Sahîh”, book of clothing and adornment, chapter: the prophet (peace and blessings of Allah be upon him) wore a silver ring with the carving “Muhammad Rasûl Allah”, and the caliphate wearing it after him, hadîth no. (2091), [3: 1656]

(8) Will be mentioned in the evidence of the second opinion, See (p.165) of that book

regarding the non-obligation of the zakâh of jewelry⁽¹⁾.

Third evidence: the Hadith of `amr Ibn Shu`aib from his father from his grandfather: that a woman came to the prophet (peace and blessings of Allah be upon him) with a daughter of hers, and on her daughter's hand were two thick gold bracelets. The prophet (peace and blessings of Allah be upon him) said to her *"Do you pay zakâh on them?"* She said, 'No.' He then said, *"Are you pleased that Allah may put two bangles of fire on your wrist on the Day of Judgment?"* So she took them off and gave them to the Messenger of Allah and said: *"They are for Allah and His Messenger."*⁽²⁾.

Discussed: the Hadith has a weak chain of narration, as the Tirmidhi narrated it then said "And nothing authentic has been reported from the Prophet (peace and blessings of Allah be upon him) on this matter" so it cannot be used as evidence for the obligation of zakâh on jewelry⁽³⁾.

Answered: The hadith has an authentic chain of transmission according to Abu Dâwûd and An-Nasâ'i, but the At-Tirmidhy said that nothing authentic exists on this matter, it was because the hadith had only reached him through a weak chain⁽⁵⁾.

Fourth evidence: the hadith of `a'ishah (may Allah be pleased with her)

(1) See: "Al-Mubdi'", [2: 362]

(2) Related by Abû Dâwûd in his "Sunan" and the wording is his, book of zakâh, chapter: hoard, what is it? and zakâh of jewelry. hadîth no. (1563), [3: 13], and At-Tirmidhy in his "Sunan", book of zakâh, chapter: what is mentioned about the zakâh of jewelry, hadîth no. (637), [3: 20], and An-Nisâ'i in his "Sunan", book of zakâh, chapter: the zakâh of jewelry, hadîth no. (2479), [5: 38], At-Tirmidhy said: The chain of narration of Abû Dâwûd has no issues, and Ibn Al-Mulaqin deemed it "Sahîh". See: "Al-Badr Al-Munîr", [5: 566]; "umdat Al-Qarî", [9: 34]

(3) See: "Al-Amwâl by Al-Qâsim Ibn Salâm (p.544)

(5) Abû Dâwûd and An-Nasâ'i narrated the hadîth through the chain of Khalid Ibn Al-Hârith from Hussain Al-Mu'alim from `Amr Ibn Shu'ayb from his father from his grandfather. Both Khalid ibn Al-Hârith and Hussain Al-Mu'alim are trustworthy and are narrators in the two Sahihs. Al-Tirmidhi narrated it through the chain of Ibn Lahi'a from `Amr ibn Shu'ayb from his father from his grandfather, and then said: "This was also narrated by al-Muthanna ibn al-Sabbah from Amr ibn Shu'ayb." Both al-Muthanna and Ibn Lahi'a are weak narrators. This weakening by Al-Tirmidhi was based on the assumption that only Ibn Lahi'a and al-Muthanna had narrated it, but that is not the case. See: "Al-Binâyah", [3: 380]; "Al-Majmû'", [6: 33]

saying: the prophet (peace and blessings of Allah be upon him) entered upon me and saw two silver rings “Fatakhât”⁽¹⁾ in my hand. He asked What is this, Aishah? I said I have made two ornaments myself for you, Messenger of Allah (peace and blessings of Allah be upon him). He asked Do you pay zakat on them? I said No or I said Whatever Allah willed. He said this is sufficient for you (to take you) to the Hell fire⁽²⁾.

Discussed: this Hadith has a weak chain of narration⁽³⁾.

Answered: The hadith has been authenticated by more than one scholar⁽⁴⁾.

Fifth evidence: Umm Salamah (May Allah be pleased with her) narrated that she was wearing golden ornaments “Awdâh”⁽⁵⁾ and asked the Messenger of Allah (Peace and blessings of Allah be upon him), *‘Is it considered as a treasure?’* He said, *“If you pay the due zakâh, then it is not considered as a treasure.”*⁽⁶⁾.

- (1) Al-Fatakhât, the plural of Fatakhah, which are big rings, and it was said: they are rings without stones, See: “An-Nihâyah Fi Gharîb Al-Hadîth”, [3: 408]. Entry (Fatakh).
- (2) Related by Abû Dâwûd in his “Sunan” and the wording is his, book of zakâh, chapter: chapter of hoard, what is it? and zakâh of jewelry, hadîth no. (1566), [3: 15]; and Ad-Dârqatni in his “Sunan”, book of zakâh, chapter: the zakâh of jewelry, hadîth no. (1951), [2: 497]; and Al-Hâkim in his “Mustadrak”, book of zakâh, hadîth no. (1473), [1: 547], and Al-Bayhaqî in “Al-kubra”, book of zakâh, chapter: context of report concerning the zakâh on jewelry, hadîth no. (7548), [4: 235]. Al-Hâkim said: “Authentic according to the conditions of the two sheikhs.”, “Al-Mustadrak”, [1: 547], and its chain of narration was deemed “Sahîh” by Ibn Hîjr, See: “At-Talkhîs Al-Habîr”, [2: 343].
- (3) See: “Adh-Dhakhîrah”, [3: 49]; “Sharh Az-Zarkashi”, [2: 500].
- (4) The argument of those who claim its chain of narration is weak is that Ad-Dârqanti mentioned it in his “Sunan” from Muhammad ibn ‘Ata, attributing it to his grandfather instead of his father. Then he said: “And Muhammad ibn ‘Ata is unknown.” However, the narrator, as found in Abu Dâwûd is Muhammad ibn ‘Amr ibn ‘Ata, who is trustworthy. Yet, because he was attributed to his grandfather, Al-Daraqutni assumed he was unknown, as stated by Al-Bayhaqî. See: “Bayân Al-Wahm wa Al-ihyâm” Ibn Al-Qattân, [5: 367]; “Nasb Ar-Râyah”, [2: 371].
- (5) “Al-Awdâh: Al-Hulî, and it is said: jewelry of silver, see : “Talabat At-Talabah”, [p.18]; “An-Nihâyah”, [5: 196]. entry (Wadah).
- (6) Related by Ad-Dârqatni in his “sunan” book of zakâh, chapter: What has been given its zakâh is not considered hoarded wealth. hadîth no. (1950), [2: 496]; and Al-Hâkim in his “Mustadrak”, book of zakâh, hadîth no. (7234), [4: 140], Al-Hâkim said: “Sahîh according to the condition of Bukhari”, “Al-Mustadrak”, [1: 547], and Ibn Al-Mulakin said: “A “Has-san” Hadîth”, “At-Tawdîh Le Sharh Al-Jami’ Al-Fasîh” by Ibn Al-Mulaqin, [10: 439].

Discussed: The hadith was uniquely narrated by Thâbit ibn `Ajlân⁽¹⁾ who is weak, and his narration cannot be used as evidence⁽²⁾.

Answered: Most of the hadith scholars consider the narration of Thabit ibn `Ajlân to be reliable, and Al-Bukhâri narrated from him⁽³⁾.

The indication of the previous three hadiths regarding the obligation of zakâh of jewelry has been discussed from three perspectives:

First perspective: it is possible that what is meant by zakâh in this context is loan for use⁽⁴⁾.

Answered: The hadiths threatened against refraining from zakâh, while the act of lending for use is not obligatory, and one should not incur

a threat for neglecting it. Furthermore, If what was meant by zakâh were lending for use, then zakâh on jewelry used for forbidden purposes should also be considered as a loan for use, which you do not support⁽⁵⁾.

Second perspective: these hadiths are understood in the context of what was initially prohibited regarding jewelry, as it was forbidden before being permitted⁽⁶⁾.

Answered: This is not valid, because in these hadiths, the Prophet did not prohibit the adornment with gold and silver; ; rather, he acknowledged it while warning against refraining from zakâh. If adornment were forbidden, he would have commanded its removal and clearly stated its prohibition⁽⁷⁾.

Third perspective: It is possible that the jewelry mentioned in this hadith

(1) He is: Thâbit ibn `ajlân Al-Ansâry As-Salmi Al-Himsy, Abu Abdullah, was cited by al-Bukhari in the chapter on slaughtering. Abu Hâtim Al-Râzi stated: "There is no harm in him; he is a reliable narrator." Al-Nasa'i also said: "There is no harm in him," while Ibn Ma'in regarded him as trustworthy. He narrated from Anas ibn Mâlik, Abi Imâmah, Sa`id Ibn Al-Musayyib, Sa`id Ibn Jubayr, `Ata' Ibn Abi Rabâh, Mujâhid, and Tawus. See his biography: "At-Ta`dîl Wa At-Tarjîh" by Al-Bâjî, [1: 448]; "Tahdhîb At-Tahdhîb", [2: 10].

(2) See: "Al-Ahkâm Al-Wustâ", by `abd Al-Haq Al-Ishbîly, [2: 169]

(3) See: "Bayân Al-wahm Wa Al-'ihâm", [5: 363]; "Tanqîh At-Tahqîq" by Ibn `abd Al-Hâdy, [3: 78].

(4) . See: "Al-Amwâl" by Qâsim Ibn Salâm, [p.544], "Sharh Az-Zarkashi", [2: 496]

(5) See: "Sharh Mukhtasar At-Tahâwî", [2: 318]; "Al-Mabsût" by As-Sarsakhî, [2: 192]

(6) See: "Sharh Ar-Risâlah", [1: 413]; "Al-Hâwy Al-Kabîr", [3: 273]; "Adwâ' Al-Bayân", [2: 535].

(7) See: "Risalah Fi zakat Al-Hulî (p.11)

was abundant to the point of extravagance, and in such cases, zakâh is obligatory on it⁽¹⁾.

Answered: This possibility has no supporting evidence, and it cannot be assumed that the wives of the Prophet (peace and blessings of Allah be upon him) would adorn themselves with extravagant jewelry. If it had been extravagant, the Prophet (peace and blessings of Allah be upon him) would have prohibited it and would not have allowed them to wear it⁽²⁾.

Sixth evidence: The ruling on zakâh is related to the asset of gold and silver; and it is not nullified by them being crafted into jewelry. This is similar to the rule of immediate exchange when selling one for the other and the occurrence of usury between them, even after they have been crafted. The Sharia does not differentiate between the name of gold and silver any other characteristic for the obligation of zakâh; therefore, zakâh is required on them, whether they are intended for spending, personal use or otherwise⁽³⁾.

Discussed: The basis for the obligation of zakâh on gold and silver is the ability to dispense with them in their original form, thus, there is no inherent purpose related to them that indicates wealth, and this basis is not fulfilled in the jewelry being used⁽⁴⁾.

Answered: this becomes invalid when it comes to utensils and jewelry made for prohibited use, as you still require zakâh on them despite them being for use⁽⁵⁾.

Evidence of the second opinion: proponents of the non-obligation presented evidence, the most prominent of them being:

First evidence: What is narrated from Jabir ibn `abd Allah (may Allah be pleased with him) that the prophet (peace and blessings on Allah be upon him) said: "there is no zakâh on jewelry"⁽⁶⁾.

(1) See: previous reference.

(2) See: "zakât Al-Hulî" by `ateya Sâlim (p.85)

(3) See: "Al-Mabsût", [2: 192].

(4) See: "Kifâyat An-Nabîh", [5: 425].

(5) See: "At-Tajrîd", [3: 1333]

(6) Related by Al-Bihîqî in "knowing sunan and âthâr", book of zakâh, chapter: zakâh of jewelry, hadîth no. (8296), [6: 143]; and Ibn Al-Juzî in "At-Tahqîlq" book of zakâh, issue: zakâh is not obligatory on permissible jewelry, hadîth no.(980), [2: 42], and Al-Bihîqî said: "And this has no basis as marfu', and the correct view is that it is mawquf on Jabir."=

Discussed: that this hadith is not correctly traceable it is discontinued by Jabir (may Allah be pleased with him)⁽¹⁾.

second evidence: The statement of the prophet (peace and blessings of Allah be upon him): *"Give charity, even if it is from your jewelry"*⁽²⁾.

Aspect of the evidence: that if zakâh was obligatory on jewelry the prophet (peace and blessings of Allah be upon him) would have not used it as an example with voluntary charity⁽³⁾.

Discussed: This hadith does not indicate that zakâh is not obligatory on jewelry; rather, it encourages giving charity even from the wealth that is needed, similar to saying: 'Give charity even from the money you have saved for expenses'⁽⁴⁾.

Third evidence: what has been established about `â'ishah (may Allah be pleased with her) is that she used to care for her brother's orphans by keeping the jewelry for them, and zakâh does not apply to their jewelry⁽⁵⁾.

Aspect of the evidence: `â'ishah (may Allah be pleased with her) not paying zakâh on the jewelry of the orphans indicates that zakâh is not obligatory on jewelry, and it seems that she held this belief based on what she learned from the Prophet (peace and blessings of Allah be upon him). This also explains her narration from the prophet (peace and blessings of Allah be upon him) regarding the hadith of the two bracelets, and that it does not indicate the obligation of zakâh⁽⁶⁾.

= "Al-Khilafiyât", [4: 374], Al-Albâni mentioned that in its chain is Ibrâhim Ibn Ayyûb, who is weak, See: "irwâ' Al-Ghalîl", [3: 295].

(1) See: "Al-Khilafiyât", [4: 374]; "Nasb Ar-Râyah", [2: 374]; "At-Talkhîs Al-Khabîr", [2: 386].

(2) Related by Al-Bukhari in his "Sahîh", Book of zakâh, chapter: zakâh on the spouse and the orphans under guardianship. hadîth no. (1466), [2: 121]; and Muslim in his "Sahîh", book of zakâh, chapter: The virtue of spending and giving charity to close relatives, the spouse, children, and parents, even if they are polytheists. hadîth no. (4111), [2: 695].

(3) see: "Riâd Al-Afhâm" by Al-Fakahânî, [3: 67], Zakat Al-Hulî, As-Sibîhy (p.19)

(4) See: "Sharh Al-Mumtî", [6: 130]

(5) related by Malik in his "Mawta'", book of zakâh, chapter: What is exempt from zakâh among jewelry, bullion, and amber. hadîth no. (10), [1: 250], and Ash-Shafi'i in his "Musnad", book of zakâh, (p.95) and the chain of narration was deemed "Sahîh" by Ibn Al-Mulaqin, See: "Al-Badr Al-Munîr", [5: 582].

(6) See: "Bahr Al-Madhab" [3: 136]; "Adh-Dhakhîrah", [3: 49].

Discussed from three perspectives:

First perspective: This is understood to mean that `â'ishah (may Allah be pleased with her) did not believe zakâh was obligatory on the wealth of orphans⁽¹⁾.

Answered: the view of `â'ishah (may Allah be pleased with her) is the obligation of zakâh on the wealth of orphans based on the statement of Al-Qâsim ibn Muhammad “*`â'ishah used to look after me and one of my brothers - we were orphans - in her house, and she would take the zakat from our property.*”⁽²⁾ which indicates that she does not pay the zakâh of jewelry believing zakâh is not obligatory on it⁽³⁾.

Second perspective: it was mentioned that `â'ishah (may Allah be pleased with her) said: “*«There is no harm in wearing jewelry if its zakâh has been paid.»*”⁽⁴⁾ and her fatwa takes precedence over her actions.⁽⁵⁾

Third perspective: `â'ishah not paying zakâh on the jewelry of the orphans is merely an action, and an action does not have general applicability, and several possibilities may have prevented her from paying zakâh⁽⁶⁾.

Fourth evidence: What is confirmed about `Abdullah ibn `Umar (may Allah be pleased with him) is that he used to adorn his daughters and servant girls with gold, and he did not pay zakâh on their jewelry⁽⁷⁾.

(1) See: "Sharh Mukhtasar At-Tahâwî", [2: 314].

(2) related by Mâlik in "Al-Mawta", boom of zakâh, chapter: zakâh on the wealth of orphans and engaging in trade on their behalf. hadîth no. (13), [1: 251]; and `abd Ar-Râziq in his "Musanaf", book of zakâh, chapter: Charity from the wealth of an orphan, seeking benefit from it, and giving its zakâh. hadîth no. (6984), [4: 66]; and the chain of narration is Sahîh, See: "Ma Sah fi âthâr As-Sahâbah fi Al-Fiqh" by zakaria Al-Bâkistânî, [2: 598].

(3) See: "Bahr Al-Madhab" [3: 136]

(4) Related by Ad-Dârqanti in his "sunan" book of zakâh, chapter: zakâh of jewelry, hadîth no. (1956), [2: 500]; and Al-Bihîqi in his "Sunan Al-kubrâ", book of zakâh, chapter: who said: there is zakâh on Jewelry, hadîth no. (7545), [4: 234] and its chain of narration was deemed "Sahîh" by Ibn Al-Mulaqin, See: "Al-Badr Al-Munîr", [5: 582]

(5) See: "At-Tajrid", [3: 1330]

(6) See: "Ash-Sharh Al-Mumtî", [6: 283]

(7) related by Mâlik in "Al-Mawta", book of zakâh, chapter: That which is not subject to zakâh from jewelry, raw gold, and amber, hadîth no. (11), [1: 250], and Al-Bihîqi in his "Sunan Al-kubrâ", book of zakâh, chapter: who said there is no zakâh on jewelry, hadîth no. (7536), [4: 233]; and its chain of narration was deemed "Sahîh" by Ibn Al-Mulaqin, See: "Al-Badr Al-Munîr", [5: 581]

Discussed: The actions of a Companion are not given precedence over the general rulings of the Quran and what has been authentically reported from the Prophet (peace and blessings of Allah be upon him) regarding the zakâh on jewelry, especially since other Companions' statements contradicted him⁽¹⁾.

Fifth evidence: The analogy of jewelry to working animals and possession assets in the non-obligation of zakâh is based on the common factor of diverting the use from growth to permissible personal use⁽²⁾.

Discussed from three perspectives:

First perspective: this analogy is flawed, as the distinction between jewelry and possession assets is that the essence of jewelry-gold and silver-is unanimously subject to zakâh, unlike possession assets. Moreover, the difference between jewelry and working animals is that the obligation of zakâh on gold and silver is not based on avoiding wastefulness, as evidenced by the existence of utensils and jewelry that are considered forbidden⁽³⁾.

Second perspective: The use of gold and silver as jewelry does not negate their growth ,as evidenced by the fact that their usage does not affect their value, unlike other types of wealth⁽⁴⁾.

Third perspective: This analogy is flawed because it contradicts the authentic texts regarding the obligation of zakâh on jewelry⁽⁵⁾.

Sixth evidence: If zakâh were obligatory on jewelry, the Prophet would have clearly stated it, and this would have been widely known among the people, as jewelry is one of the most common forms of wealth among them⁽⁶⁾.

Discussed: That the obligation of zakâh on gold and silver is well-known from the Quran, Sunnah, and consensus, and the principle is that jewelry does not fall outside this obligation unless there is evidence Therefore, there is no need for a specific statement regarding its zakâh, even if we were to concede that there is no specific text on the obligation of zakâh on jewelry, which we

(1) See: "zakat Al-Hulî" by `ateia Salim (p.66).

(2) See: "Al-Ma`ûnah", [p.376]; "Al-Hâwy Al-Kabîr", [3: 273]; "Al-Mughny", [3: 42].

(3) See: "Sharh Mukhtasar At-Tahâwi", [2: 318]; "Tabyîn Al-Haqa'iq", [1: 277].

(4) See: "Zakat Al-Hulî" by `umar Al-Ashqar, among the sixth symposium of modern zakâh issues (p.271).

(5) See: "Zakat Al-Hulî" by `atiya Sâlim, (p.72)

(6) See: "Al-Amwâl" by Al-Qâsim Ibn Salâm, (p.544).

do not concede.

Preference: The issue of the ruling on zakâh for jewelry owned with the intention of permissible use is undoubtedly one of the most contentious matters among scholars, to the extent that Imam al-Shafi'i sought Allah's guidance in it due to the strength of the disagreement and the conflicting evidence. What appears - and Allah is the all-knowing - after careful consideration of the evidence and discussions is that the closer to the truth among the two opinions is the first opinion, which is the obligation of zakâh on jewelry owned with the intention of permissible use.

Reasons for the preference:

- 1- The strength of the evidence presented by those who argue for the obligation of zakâh, along with its resilience against valid criticisms.
- 2- Those who argue about the non-obligation of zakâh have not provided a sound basis from transmitted sources, except for the fatwas and practices of some companions, which are in conflict with the opinions of other companions, and one opinion is not necessarily superior to another.
- 3- The strongest argument by those who argue that zakâh is not obligatory is the analogy with property used for personal needs. However, this analogy is undermined by the fact that they obligate zakâh on jewelry owned with the intention of unlawful use, which indicates that the original ruling for jewelry is the obligation of zakâh.
- 4- The opinion that zakâh is obligatory on jewelry owned with the intention of permissible use aligns with the general principles that do not differentiate between the types of gold and silver, whether crafted or not, as seen in the contexts of usury and transactions.

Reason for the disagreement on the issue

Disagreement on this issue has two main reasons, being:

- 1- Conflicting hadiths and reports from the Companions revolving around the obligation of zakâh versus its absence.
- 2- The disagreement regarding what is more similar to jewelry for use, is it goods for personal use and thereby it is subject to the same ruling? or

is it raw gold and silver and thereby follows the same ruling⁽¹⁾?

Third issue: zakâh of gold and silver jewelry owned for forbidden use

Aspect of the issue: If a person owns gold or silver jewelry with the intention of forbidden use, or lend or rent it to someone for such purposes -like a man adorning himself with gold or a woman wearing gold shoes, according to one opinion among the scholars⁽²⁾-, is zakâh obligatory on it?

Ruling on the issue: Scholars unanimously agree on the obligation of zakâh for gold and silver jewelry owned with the intention of forbidden use, or for lending or renting it to someone for such uses. Al-Mardâwi stated⁽³⁾: "zakâh is obligatory on forbidden jewelry and forbidden utensils, without any known disagreement"⁽⁴⁾.

Basis of the consensus:

The scholars based their consensus on this matter on the principle: (What is religiously prohibited is like that which is physically nonexistent)⁽⁵⁾ The reasoning is that the original ruling is the obligation of zakâh on gold and silver, as they are valuable items created for trade and growth, and the forbidden use of these items has no legal standing, and thus is treated as nonexistent; a similar analogy can be drawn to the impairment of the mind through forbidden actions⁽⁶⁾.

(1) See: "Bidayat Al-Muhtâj", [2: 11].

(2) See: "Al-Hâwy Al-Kabîr", [3: 275]; "Al-Mubdi'", [2: 366].

(3) He is: 'Ali ibn Sulaymân ibn Ahmad ibn Muhammad al-'Alla' al-Mardâwi, from Damascus, Al-Salihi, Al-Hanbali, was the foremost scholar of the Hanbali school in his time. He was a jurist with a strong mastery of both the branches and principles of the Hanbali doctrine, excelling in writing and compilation. He was also known for his devotion, piety, and scrupulousness. Among his works are "*Al-Insâf fi Ma'rifat al-Râjih min Al-Khilâf*" "*Al-Tanqih al-Mushbi'*" and "*Al-Tahbir Sharh Al-Tahrir fi Al-Usûl*" He passed away in the year 885 AH. See his biography: "Ad-dû' Al-Lami'" by As-Sakhâwi, [5: 225]; "Al-Jawhar Al-Mundad", [1: 101]

(4) "*Al-Insâf*", [3: 139]; Among those who reported the consensus was Ar-Râfi'i, See: "Fath Al-'aziz", [6: 23]; and also see: "Tuhfat Al-Fuqâha", [1: 264]; "Fath Al-Qadîr", [2: 215]; "Al-Muntaqa Sharh Al-Mawta'", [2: 108]; "Aqd Al-Jawâhir", [1: 224]; "Nihayat Al-Matlab" [3: 281]; "Asna Al-Matâlib" [1: 381]; "Al-Mughny", [3: 47]; "Al-Muharrir", [1: 217].

(5) "Aqd Al-Jawâhir" [1: 224] The principle is expressed with the phrase: (*What is legally non-existent is like what is physically non-existent.*) See: "Idah Al-Masâlik" by Al-wan-sharîsy, [1: 138]; "Mawsû'iat Al-Qawa'id Al-Fiqhiyah" by âl Brûno, [10: 742].

(6) See: "Al-Mabsût", [2: 192]; "Al-Madhhab" [1: 292]; "Al-Mughny", [3: 47]

Fourth issue: zakâh of gold and silver jewelry owned with the intention of trade

Aspect of the issue:

If someone owns gold or silver jewelry owned with the intention of trade and seeking growth, does this make zakâh obligatory on it?

Ruling on the issue:

Scholars unanimously agreed on the obligation of zakâh on jewelry owned with the intention of trade, the judge `abd Al-wahab said: “regarding jewelry owned for trade, zakâh is obligatory on it, whether it being circulated in trade or not, and I do not know of any disagreement among scholars regarding this.”⁽¹⁾.

Evidence of the issue:

The scholars based their consensus on the obligation of zakâh for jewelry owned with the intention of trade on the following:

First evidence: The general evidence indicating the obligation of zakâh on gold and silver, Allah said: ***{And those who hoard gold and silver and spend it not in the way of Allâh - give them tidings of a painful punishment.}***⁽²⁾. and what the prophet (peace and blessings of Allah be upon him) said: “ *And on silver (the zakâh) is one quarter of one tenth* ”⁽³⁾ And there is nothing that would exclude jewelry owned with the intention of trade from this generality⁽⁴⁾.

Second evidence: The zakâh is obligatory on trade goods that zakâh is not obligatory on their original assets, like clothes and the like, thus, it is even more appropriate for zakâh to be obligatory on jewelry owned for the purpose of trade, since its origin mandates zakâh⁽⁵⁾.

(1) “Sharh Ar-Risâlah”, [1: 414]; and among who reported the consensus was Ibn Bashîr Al-Malikî, See “At-Tanbîh `ala Mabâdi’ At-Tawjîh”, [2: 786]. also see: “Tuhfat Al-Fuqâha”, [1: 264]; “Majma’ Al-`anhur”, [1: 206]; “An-Nawâdir Wa Az-Ziyâdât”, [2: 119]; “Manâhij At-Tahsîl”, [2: 197]; “Bahr Al-Madhhab” [3: 141]; “Al-Bayân”, [3: 312]; “Al-Mughny”. [3: 43]; “Kashâf Al-Qinâ’”, [2: 235].

(2) [At-Tawbah (Repentance): 34].

(3) Previously related, See: p. (160) of that book.

(4) See: “Sharh Az-Zarkashi”, [2: 501].

(5) See: “At-Tanbîh `ala Mabâdi’ At-Tawjîh”, [2: 786]; “Al-Bayân”, [3: 312].

Fifth issue: zakâh of gold and silver jewelry owned with the intention of hoarding and saving

Aspect of the issue:

If someone owns gold or silver jewelry not with the intention of using it but to hoard or save it so that he might need it in the future, or to sell it when its price rises, also included in this issue is anyone who owns jewelry with the intention of giving it as a dowry to a woman he intends to marry in the future, or saving it for a young girl to wear in the future—does zakâh become obligatory on it?

Opinions on the issue: scholars disagreed on this opinion leading to two opinions, being:

First opinion: the obligation of zakâh

This opinion is the doctrine of Hanîfah⁽¹⁾, the popular among the Mâlikîah⁽²⁾, doctrine of the Shâfi`îah⁽³⁾, and doctrine of the Hanâbilah⁽⁴⁾

Second opinion: the non-obligation of zakâh, this is the opinion of Ashhab and Asbagh⁽⁵⁾ of the Mâlikîah⁽⁶⁾, and was mentioned as an opinion among the Shâfi`îah⁽⁷⁾.

(1) See: "Tuhfat Al-Fuqâha", [1: 264]; "Badâ'i` As-Sanâ'i'", [2: 17]; "Majma` Al-'anhur", [1: 207].

(2) See: "Al-Mudawanah", [1: 305]; "Al-Ma`ûnah", [p.377]; "Al-Bayân wa At-Tahsîl", [2: 360].

(3) See: "Al-Madhhab", [1: 292]; "Al-Bayân", [3: 301]; "Rawdat At-Tâlibîn", [2: 260].

(4) See: "Al-Furû'", [4: 141]; "Sharh Az-Zarkashi", [2: 501]; "Al-'Insâf", [3: 139].

(5) He is: Asbagh Ibn Al-faraj ibn Sa`îd ibn Nâfi` Al-Qurashî Al-Amawî Al-Misrî Al-Mâlik, Abû `Abdullâh, was the scribe and copyist of `Abdullâh ibn Wahb. He was a distinguished jurist who studied under Ibn Al-Qâsim, Ibn Wahb, and Ashhab. Ibn Al-Mâjishûn said: "Egypt has not produced anyone like Asbagh." He passed away in the year 224 AH. See his biography: "Al-ma`lam be shuyûkh Al-Bukhârî wa Muslim" by Ibn Khalfûn [p.112]; "Wafiyât Al-A`yân", [1: 240].

(6) Among the Mâlikîah, some restricted the disagreement to jewelry stored for future wear, while jewelry stored for financial need or purposes other than wearing is unanimously agreed to be subject to zakâh. However, others applied the disagreement to both scenarios. See: "An-Nawâdir Wa Az-Ziyâdât", [2: 116]; "Al-Bayân wa At-Tahsîl", [2: 360]; "At-Tanbîh `ala Mabâdî At-Tawjîh", [2: 786]; "At-Tawdîh", [2: 178].

(7) See: "Nihâyat Al-Matlab", [3: 288]; "Rawdat At-Tâlibîn", [2: 260]; "Bidayat Al-Muhtâj", [1: 507].

Evidence and discussions

Evidence of the first opinion: as for the Hanîfah, they argue for the obligation of zakâh on jewelry by using the same reasoning they applied to the obligation of zakâh on jewelry that is used⁽¹⁾. If zakâh is required on jewelry that is actively used, then jewelry owned with the intention of hoarding or saving should, even more so, be subject to zakâh⁽²⁾.

And those who argue for the obligation of zakâh in this matter, aside from the Hanîfah, cite the general evidence indicating the obligation of zakâh on gold and silver. Jewelry falls under this generality, and its zakâh cannot be waived except when there is an intention for permissible use. This can be compared to clothing that is worn and items that are owned; for anything outside of that, zakâh is obligatory on the original asset⁽³⁾.

Evidence of the second opinion: The proponents of the second opinion argued against the obligation of zakâh based on the following points

First opinion: They argued against the obligation of zakâh on jewelry set aside for future use by stating that jewelry becomes an asset once it is crafted, thus zakâh is only required if it is intended for trade, similar to other assets⁽⁴⁾.

Discussed: They claimed that comparing jewelry to other assets is a flawed analogy because jewelry belongs to a category where zakâh is required, and the mere act of crafting it does not change its status as an asset, as it retains its value as currency.

Second evidence: They argued against the obligation of zakâh on jewelry owned with the intention of saving it for future use, stating that it is jewelry designated for permissible use in the future. This intention impacts the requirement for zakâh in the same way as jewelry owned for immediate use⁽⁵⁾.

Discussed: They argued that what matters is the present state, not the future. In the current situation, it constitutes hoarding due to the lack of intention to use it⁽⁶⁾.

(1) See page (159) of that book.

(2) See: "Tuhfat Al-Fuqâha", [1: 264]; "Badâ'i' As-Sanâ'i'", [2: 17]; "Majma' Al-'anhur", [1: 207].

(3) See: "Al-Ma'ûnah", [p.377]; "Al-Bayân wa At-Tahsîl", [2: 360]; "Al-Furû'" [4: 141].

(4) See: "Al-Muntaqa Sharh Al-Mawta'", [2: 109]; "At-Tanbîh 'ala Mabâdi' At-Tawjîh", [2: 786].

(5) See: "Al-Muntaqa Sharh Al-Mawta'", [2: 109].

(6) See: "Aqd Al-Jawâhir", [1: 225]; "Manâhij At-Tahsîl", [2: 196].

preference:

The preferred is -and Allah is the All-knowing- is the first opinion, which is the obligation of zakâh on jewelry owned with the intention of hoarding or saving to spend, or to who will use it in the future.

Reasons for the preference:

1- The strength of the first opinion's evidence and its immunity from critique, along with the weakness of the second opinion's evidence.

2- The more likely opinion, as previously mentioned, is that zakâh is obligatory on jewelry owned with the intention of permissible use, and jewelry owned with the intention of hoarding or saving is even more deserving of being obligated.

Reason for the disagreement:

The disagreement regarding the impact of crafting on jewelry arises between two groups. Proponents of the first opinions believe that the essence of jewelry

is determined by its type, and that mere crafting does not affect its zakâh obligation. In contrast, supporters of the second opinions argue that crafting alone transforms gold and silver into items that do not require zakâh unless they are intended for trade⁽¹⁾.

Sixth issue: zakâh of gold and silver jewelry owned with the intention of rent

Aspect of the issue:

if someone owns gold or silver with the intention of renting them to someone who will use them permissibly, is zakâh obligatory on it?

Opinions on the issue:

The disagreement in this matter pertains to the view that zakâh is not obligatory on jewelry owned with the intention of permissible use. However, those who assert that zakâh is required—including the Hanîfah and those who agree with them—maintain that it is even more obligatory in this case⁽²⁾.

(1) See: "At-Tabsirah", [2: 870].

(2) See: "Al-Hujah 'ala 'ahl Al-Madīnah", [1: 448]; "Badā'i' As-Sanā'i'", [2: 17]; "Majma'

There are differing opinions among those who assert that zakâh is not obligatory on jewelry owned with the intention of permissible use regarding the ruling on zakâh for jewelry owned with the intention of leasing. These differences result in three main views, which are:

First opinion: the obligation of zakâh

This is a narration among the Hanâbilah⁽¹⁾, an opinion among the Shâfi'îah⁽²⁾, and doctrine of the Hanâbilah⁽³⁾.

Second opinion: the non-obligation of zakâh

This is the more popular opinion of the Mâlikîah⁽⁴⁾, and the more popular opinion of the Shâfi'îah⁽⁵⁾.

Third opinion: the non-obligation of zakâh if the owner is permitted to use it, and the obligation of zakâh if the owner is not allowed to use it. This is the view of Ibn Habib from the Maliki school⁽⁶⁾.

Evidence of opinions and discussions:

Evidence of the first opinion: The proponents of the obligation of zakâh on jewelry owned with the intention of renting it out argue as follows:

First evidence: The basis for gold and silver is the obligation of zakâh, and there is nothing that exempts jewelry designated for rental from this principle⁽⁷⁾.

Second evidence: Jewelry owned with the intention of rental is intended for the purpose of generating growth, so zakâh is obligatory on it, analogous to jewelry owned for the purpose of trade⁽⁸⁾.

Al-'anhur", [1: 206]; "At-Tahdhîb", [3: 100]; "Al-Majmû'", [6: 36].

(1) See: "At-Tabsirah", [2: 869]; "Bidayat Al-Mujtahid", [2: 12]; "Aqd Al-Jawâhir", [1: 224]

(2) See: "At-Tahdhîb", [3: 100]; "Fath Al-'azîz", [6: 25]

(3) See: "Al-Mughny", [3: 42], "Al-Muharir", [1: 217]; "Kashâf Al-Qinâ'", [2: 235]

(4) See: "Al-Mudawanah", [1: 305]; "An-Nawâdir Wa Az-Ziyâdât", [2: 116]; "Al-Ma'ûnah" [p. 377]

(5) See: "Fath Al-'azîz", [6: 25]; "Rawdat At-Tâlibîn", [2: 261]; "Bidayat Al-Muhtâj", [1: 507]

(6) See: "An-Nawâdir Wa Az-Ziyâdât", [2: 117]; "Al-Muntaqa Sharh Al-Mawta'", [2: 108]; "Aqd Al-Jawâhir", [1: 224].

(7) see: "Al-Mughny", [3: 42]; "Al-Furû'", [4: 141].

(8) See: "Al-Ma'ûnah", [377]; "Al-Muhadhib", [1: 293]; "Al-Mumti' Fi Sharh Al-Muqni'", [1: 738]

Evidence of the second opinion: Those who argue against the obligation of zakâh on jewelry owned with the intention of rental support their position with the following:

First evidence: They argue that it is jewelry used by the renter, and therefore zakâh is not obligatory on it, drawing an analogy to jewelry owned with the intention of lending⁽¹⁾.

Discussed: They argue that this is a analogy is flawed as jewelry owned with the intention of lending does not yield growth, unlike jewelry owned with the intention of renting.

Second evidence: They argue that growth is absent in jewelry owned with the intention of renting, as the earnings from rent are minimal and do not affect the obligation of zakâh⁽²⁾.

Discussed: by not accepting that the earnings from rent are minimal, and if we concede this point, a small amount of rent does not imply the absence of growth.

Evidence of the third opinion: Those who argue about the non-obligation of zakâh on jewelry owned with the intention of renting it, provided the owner is permitted to use it, and the obligation of it if the owner is not permitted to use it with: the first allow the owner to use it whenever he desires, making him similar to owning with the intention of permissible use, thus making zakâh not obligatory. And unlike the second which is more similar to owning with the intention of trade for the owner cannot use it, but rather designated for generating growth⁽³⁾.

Discussed: The key consideration is the owner's intention, not merely the permissibility or feasibility of use. Therefore, zakâh is obligatory on jewelry owned with the intention of trade, even if its use is permitted for the owner.

Preference:

The preferred - and Allah is the all-knowing- is the first opinion, which is the obligation of zakâh on jewelry owned with the intention of rent.

(1) See: "Al-Muntaqa Sharh Al-Mawta", [2: 109], "Fath Al-'azîz, [6: 25].

(2) See: "Al-Muhadhib", [1: 293].

(3) See: "Manâhij At-Tahsîl", [2: 196].

Reason for the preference:

1- The strength of the evidence for the first opinion, its immunity from debate, and the weakness of the evidence for the second and third opinions.

2- The type of jewelry—gold and silver—is inherently capable of growth, and thus zakâh is obligatory on uncoined gold stored for spending. It was said that growth ceases after crafting in jewelry used by the owner or their family or loaned to meet the needs of others, but there is no basis for claiming that growth ceases in other cases.

3- The more correct opinion, as previously mentioned, is that zakâh is obligatory on jewelry owned with the intention for permissible use. Jewelry owned with the intention to rent out is even more deserving of this obligation.

Reason for the disagreement:

The disagreement of opinion lies in which jewelry more closely resembles jewelry owned with the intention to rent. Is it jewelry owned with the intention for permissible use, and thus it follows the same ruling due to the shared factor of usage? Or is it jewelry owned with the intention for trade, and thus it follows the same ruling due to the shared factor of generating growth in both cases?

Seventh issue: zakâh of gold and silver jewelry owned without a specific intention.

Aspect of the issue:

If someone owns jewelry made of gold or silver without intending anything specific—neither use, storage, nor anything else—such as receiving it as a gift and a year passes without intending anything for it, is zakâh obligatory on it?

Opinions on the issue: Scholars disagreed regarding this issue leading to two opinions, they are:

First opinion: the obligation of zakâh

which is doctrine for the Hanîfah⁽¹⁾, the popular opinion of the Malikiyah⁽²⁾, an opinion of the Shafi'îyah⁽³⁾, and doctrine of the Hanâbilah⁽⁴⁾.

(1) See: "Badâ'i' As-Sanâ'i'", [2: 17]; "Majma' Al-'anhur", [1: 207].

(2) See: "Adh-Dhakhîrah", [3: 50]; "Sharh Az-Zaraqâny 'la Mukhtasar khalîl", [2: 258].

(3) See: "Nihâyat Al-Matlab", [3: 288]; "Bahr Al-Madhhab" [3: 141].

(4) See: "Al-Furû", [4: 141]; "Al-Mubdi'", [2: 363]; "Kashâf Al-Qinâ'", [2: 235].

Second opinion: the non-obligation of its zakâh, which is the opinion of Ashhab of the Malikîah⁽¹⁾, and doctrine of the Shafi`îah⁽²⁾.

The opinion, according to the Shafi`îah, applies to someone who is aware of their ownership of the jewelry but did not intend anything specific for it. However, if a person was unaware of owning the jewelry -such as inheriting it and only discovering it after a year- their doctrine holds that zakâh is obligatory on them. They also have an opinion that the heir's intention follows the intention of the deceased. For example, if the deceased intended for permissible use, then zakâh would not be obligatory, according to the opinion that zakâh is not due on permissible use. The reasoning for their distinction between someone who knew about the ownership and someone who did not is that in the first case, the intention to keep the jewelry was present, which affects the exemption from zakâh, whereas in the second case, this intention was absent, so zakâh becomes obligatory⁽³⁾.

Evidence and discussions:

Evidence of the first opinion: Those who argue for the obligation of zakâh on jewelry owned without a specific intention base their reasoning on the principle that gold and silver are fundamentally subject to zakâh, and There is nothing that exempts jewelry owned without a specific intention from this basic principle⁽⁴⁾.

Evidence of the second opinion: Those who argue that zakâh is not obligatory on jewelry owned without a specific intention base their reasoning on the fact that zakâh is only due on wealth that is capable of growth. zakâh is obligatory on currency because it is inherently prepared for growth, but crafting has negated this readiness in jewelry, and thus zakâh is not obligatory⁽⁵⁾.

Discussed from two perspectives:

First perspective: You obligate zakâh on jewelry owned with the intention

(1) See: "At-Tabsirah", [2: 870]; "Sharh Az-Zaraqâny `la Mukhtasar khalîl", [2: 258].

(2) See: "kifâyat An-Nabîh", [5: 428]; "Asna Al-Matâlib" [1: 378]; "Mughny Al-Muhtâj", [2: 96].

(3) See: "Asna Al-Matâlib" [1: 378]; "Al-Ghurar Al-Bahiya", [2: 142]; "Mughny Al-Muhtâj", [2: 95].

(4) See: "Adh-Dhakhîrah", [3: 50]; "kifâyat An-Nabîh", [5: 428]; "Kashâf Al-Qinâ'", [2: 235].

(5) See: "At-Tabsirah", [2: 870]; "kifâyat An-Nabîh", [5: 428].

of storage, despite it being crafted⁽¹⁾.

Answered: The intention of storage or hoarding shifts the nature of the crafted jewelry from being used to focusing on its value rather than its form, similar to currency⁽²⁾.

Second perspective: This argument can be challenged by the case of jewelry owned with the intention for forbidden use, as zakâh is unanimously obligatory on it despite the presence of crafting, as previously mentioned⁽³⁾.

Preference

The preferred is -and Allah is the all-knowing- is the first opinion, which is the obligation of zakâh on jewelry owned without a specific intention.

Reasons for the preference:

- 1- The strength of the evidence for the first opinion, its immunity from debate, and the weakness of the evidence for the second opinion.
- 2- The more correct opinion, as previously mentioned, is that zakâh is obligatory on jewelry owned with the intention for permissible use, and if there is no intention for permissible use, then the obligation becomes even more deserved.

Reason for the disagreement:

The proponents of the first opinion emphasize the ruling regarding the substance-gold or silver-and thus obligate zakâh even in the absence of an intention for permissible use. While the proponents of the second opinion focus on the appearance -crafting, which diverts from the pursuit of growth-thus they do not impose zakâh, regardless of whether there is an intention for permissible use or not⁽⁴⁾.

Topic (2): Effect of intention on the zakâh of broken jewelry intended for use

Aspect of the issue:

According to the opinion that zakâh is not obligatory on jewelry owned

(1) See: "Asna Al-Matâlib" [1: 378].

(2) See: The previous reference.

(3) See: page [167] of that book.

(4) See: "At-Tabsirah", [2: 870]; "Nihâyat Al-Matlab", [3: 288].

with the intention for permissible use -contradictory to the Hanîfah and who agree with them⁽¹⁾- is zakâh obligatory on jewelry owned with the intention of permissible use if it is broken, or does the breakage not affect the obligation of zakâh.

Clarifying the point of disagreement:

1-Those who argue that zakâh is not obligatory on jewelry owned with the intention for permissible use agree that it is not obligatory if the jewelry breaks in a minor way that does not prevent its use; because it is considered in the same category as intact jewelry⁽²⁾.

2-They disagreed about jewelry owned with the intention for permissible use if it breaks in a way that prevents its use: is zakâh obligatory on it or not? This can be explained in the following two branches:

First branch: zakâh on slightly broken jewelry that prevents its use but can be repaired

If jewelry owned with the intention of permissible use breaks in a minor way that prevents its use but can be repaired, it is classified into three cases depending on the owner's intention

First case: The owner intends to repair it.

In this case, scholars disagreed regarding the obligation of zakâh, leading to two opinions:

First opinion: zakâh is not obligatory. This is doctrine for the Malikiyah⁽³⁾, the more correct opinion among the Shafi'îyah and stated by the Imam⁽⁴⁾, an opinion of the Hanâbilah, affirmed by the judge Abu Ya'la, and chosen by the author of Al-Kashâf⁽⁵⁾

Second opinion: zakâh is obligatory, this is an opinion among the Shafi'îyah⁽⁶⁾,

(1) See: page [158] of that book.

(2) See: "Aqd Al-Jawâhir", [1: 225]; "Tahbîr Al-Mukhtasar", [2: 65]; "Al-Hâwy Al-Kabîr", [3: 278]; "Rawdat At-Tâlibîn", [2: 261]; "Al-Furû'" [4: 142]; "Kashâf Al-Qinâ'", [2: 235].

(3) see: "An-Nawâdir Wa Az-Ziyâdât", [2: 115]; "Adh-Dhakhîrah", [3: 49]; "Sharh Az-Zarkashi", [2: 182].

(4) See: "Al-Furû'", [4: 142]; "Al-Insâf", [3: 139]; "Kashâf Al-Qinâ'", [2: 235].

(5) See: "Al-Furû'", [4: 142]; "Kashâf Al-Qinâ'", [2: 235].

(6) See: "At-Tahdhîb", [3: 99]; "Al-Majmû'", [6: 37].

an opinion among the Hanâbilah affirmed by Ibn Qadâmah⁽¹⁾.

Evidence and discussions:

Evidence of the first opinion: proponents of the non-obligation of zakâh present the following evidence:

First evidence: broken jewelry that can be repaired is still referred to as jewelry, and its form remains intact, and with the intention of repairing it the intention to use it is also present, so zakâh is not obligatory on it, just like intact jewelry⁽²⁾.

Second opinion: If jewelry owned with the intention for permissible use breaks and the owner intends to repair it, it is closer to the state of use, thus it is categorized with it, as that is its original state. Therefore, zakâh is not obligatory on it⁽⁴⁾.

Evidence of the second opinion: proponents of the obligation of zakâh base their reasoning on: due to the breakage, jewelry ceases being classified as jewelry due to its inability to be used, and merely intending to repair it is insufficient to negate the zakâh obligation, similar to intending to reforge broken pieces⁽⁵⁾.

Discussed from two perspectives:

First perspective: not accepting that jewelry ceases to be classified as such merely due to breakage. The issue is regarding broken jewelry that can be repaired; something that can be repaired does not lose its status as jewelry. As for the inability to use it, this can be resolved through repair.

Second perspective: The intention to repair is sufficient to negate the obligation of zakâh due to the preservation of the jewelry's form and its potential for restoration to its original state. This is different from the intention to reforge broken pieces, as those pieces have completely lost their status and form as jewelry.

Preference: It has been previously established that zakâh is obligatory on jewelry owned with the intention for permissible use. However, according to

(1) See: "Al-Mughny", [3: 43]; "Al-Furû'" [4: 142]; "Matâlib Uli An-Nuha", [2: 90].

(2) See: "Al-Bayân", [3: 303]; "Fath Al-'azîz", [6: 26].

(4) See: "Al-Furû'" [4: 142].

(5) See: "Al-Furû'" [4: 142].

the opinion that zakâh is not obligatory in this case, the preferred opinion -and Allah is the all-knowing- is the first opinion in this matter, which is that zakâh is not obligatory on broken jewelry if the owner intends to repair it.

Reasons for the preference:

- 1- The strength of the evidence for the first opinion, and the weakness of the evidence for the second, and its vulnerability to counterarguments.
- 2- In this case, jewelry does not cease to be classified as jewelry owned with the intention for permissible use. The inability to use it is merely a condition that can be removed, and the intention to repair it is present.

Second case: The owner intends not to repair it.

Proponents of the non-obligation of zakâh on jewelry owned with the intention for permissible use agree that zakâh becomes obligatory if the jewelry breaks in a way that prevents its use and the owner intends not to repair it, such as if they intend to hoard it, store it, sell it, or similar actions⁽¹⁾.

Evidence of the issue: The intention not to repair it removes it from being classified as usable, thus zakâh becomes obligatory due to the absence of the reason that would negate its obligation, which is the permissible use⁽²⁾.

Third case: The owner intends nothing, neither repairing nor not repairing it, while knowing it is broken:

and in this case, scholars disagreed regarding the obligation of zakâh leading to two opinions, which are:

First opinion: zakâh is obligatory,

this is doctrine for the Malikîah⁽³⁾, was the old doctrine for the Shafi`îah⁽⁴⁾, doctrine for the Hanâbilah⁽⁵⁾.

(1) See: "Jawâhir Ad-Durar", [3: 86]; "Sharh Az-Zaraqâny `la Mukhtasar khalîl", [2: 256]; "Sharh Al-Khurashy", [2: 182]; "Al-Hâwy Al-Kabîr", [3: 278]; "Niḥayāt Al-Matlab" [3: 289]; "Rawdat At-Tâlibîn", [2: 261]; "Al-'Insâf", [3: 140]; "Kashâf Al-Qinâ", [2: 235]; "Kashf Al-Mukhaderât", [1: 260].

(2) See: "Asna Al-Matâlib" [1: 378]; "Al-Mughny", [3: 43].

(3) See: "Sharh Az-Zaraqâny `la Mukhtasar khalîl", [2: 256]; "Ash-Sharh Al-Kabîr" by Ad-Dardîr, [1: 460]; "Daw' Ash-Shumû", [1: 585].

(4) See: "Al-Bayân", [3: 303]; "Fath Al-'azîz", [6: 26].

(5) See: "Kashâf Al-Qinâ", [2: 235]; "Kashf Al-Mukhaderât", [1: 260].

Second opinion: zakâh is not obligatory. this is an opinion among the Malikîah⁽¹⁾, and the modern doctrine for the Shafi'îah⁽²⁾.

Evidence and discussions:

Evidence of the first opinion: proponents of the obligation of zakâh reason that: if the owner does not intend to repair the broken jewelry, it is no longer considered usable in its current state, nor is it prepared for use. Therefore, zakâh becomes obligatory due to the absence of the barrier that would otherwise negate its obligation⁽³⁾.

Evidence of the second opinion: Proponents of the non-obligation of zakâh reason that: the jewelry can still be repaired, and it is apparent that the intention to use it remains. Therefore, zakâh is not obligatory⁽⁴⁾.

Discussed: The intention to use the jewelry necessitates the presence of an intention to repair it if its use is hindered without repair. Therefore, if the intention to repair is absent, the intention to use is also absent.

Preference:

The preferred -and Allah is the all-knowing- is the first opinion, which is the obligation of broken jewelry that the owner has neither intended to repair it or not repair it.

Reason for the preference:

- 1- The preferred opinion, as previously mentioned, is that zakâh is obligatory on jewelry owned with the intention for permissible use, and broken jewelry falls under this ruling as well.
- 2- The absence of the intention to repair broken jewelry, which cannot be used without repair, signifies the absence of the intention to use it. The intention to use is what prevents zakâh from being obligatory according to those who do not impose zakâh on used jewelry. When this barrier is removed, zakâh becomes obligatory.

Branch two: zakâh on shattered jewelry that cannot be repaired except through re-crafting.

(1) See: "Tahbîr Al-Mukhtasar", [2: 65]; "Sharh Al-Khurashy", [2: 182].

(2) See: "Al-Bayân", [3: 303]; "kifâyat An-Nabîh", [5: 429].

(3) See: "Al-Hâwy Al-Kabîr", [3: 278]; "Fath Al-'azîz", [6: 26].

(4) See: "Al-Bayân", [3: 303]; "Fath Al-'azîz", [6: 26].

Those who argue against the obligation of zakâh on jewelry owned with the intention for permissible use have disagreed regarding the obligation of zakâh on it if it becomes shattered and cannot be repaired except through re-crafting. They are divided into two opinions:

First opinion: zakâh is obligatory without exception. This is doctrine for the Malikaiah⁽¹⁾, doctrine for the Shafi`iah⁽²⁾, and Hanâbilah⁽³⁾.

Second opinion: zakâh is not obligatory if the owner intends to repair it. This is one perspective among the Shafi`iah⁽⁴⁾, and an opinion of the Hanâbilah⁽⁵⁾.

Evidence and discussions:

Evidence of the first opinion: proponents of the obligation of zakâh without exceptions present the following evidence:

First evidence: when jewelry becomes shattered, it transitions from being considered jewelry to being closer to raw gold or silver, thus zakâh becomes obligatory on it⁽⁶⁾.

Second evidence: That which cannot be repaired is neither usable nor intended for use, and thus zakâh is obligatory on it⁽⁷⁾.

Evidence of the second opinion: proponents of the non-obligation of zakâh if the owner intends to repair the jewelry base their reasoning on the idea that if the owner intends to repair it, the intention to use it remains. The intention to use acts as a nullifies the obligation of zakâh.

Discussed: Since its repair is only possible through re-crafting, the intention to repair it does not affect the zakâh obligation, just as if someone had a gold bar⁽⁸⁾ and intended to craft it into jewelry for use zakâh remains obligato-

(1) See: “`iqd Al-Jawâhir”, [1: 225]; “Adh-Dhakhîrah”, [3: 49]; “Sharh Al-Khurashy”, [2: 182].

(2) See: “Nihayat Al-Matlab” [3: 289]; “Fath Al-`azîz”, [6: 26]; “Al-Majmû’”, [6: 37].

(3) See: “Al-Insâf”, [3: 140]; “Kashâf Al-Qinâ’”, [2: 235]; “Kashf Al-Mukhaderât”, [1: 260].

(4) See: “Al-Majmû’”, [6: 37]; “kifâyat An-Nabîh”, [5: 428].

(5) See: “Al-Furû’” [4: 142]; “Al-Insâf”, [3: 140].

(6) See: “`iqd Al-Jawâhir”, [1: 225]; “Jawâhir Ad-Durar”, [3: 85].

(7) See: “Asna Al-Matâlib” [1: 378].

(8) See: It is what has been melted from gold and silver and poured into molds, resulting in a rectangular piece. See: “Lisân Al-`arab”, [10: 438]; “Al-Misbâh Al-Munîr”, [1: 265], entry (Sabak).

ry on it until it is crafted⁽¹⁾.

Preference: the preferred -and Allah is the all-knowing- is the first opinion, which is the obligation of zakâh on shattered jewelry that cannot be repaired without recrafting.

reasons for the preference:

1-The strength of the evidence for the first opinion, and its immunity to discussions, and the weakness of the evidence of the second opinion.

2- The preferred opinion, as previously mentioned, is that zakâh is obligatory on jewelry owned with the intention for permissible use, and shattered jewelry falls under this ruling as well.

Topic (3): Changing the intention for possessing jewelry and its effect on the obligation of zakâh.

First branch: changing the intention for possessing jewelry from permissible use or lending to trade

Aspect of the issue:

According to the view that zakâh is not obligatory on jewelry owned with the intention for permissible use or lending -contrary to the Hanîfah and those who agree with them-⁽²⁾ does zakâh become obligatory on someone who initially owned jewelry with the intention of permissible use or lending, but then changed their intention to trade? And does the ruling shift to a trade asset solely based on the change of intention?

Opinions on the issue: Those who argue that zakâh is not obligatory on jewelry owned with the intention of permissible use or lending have disagreed on this matter, resulting in two opinions:

First opinion: Jewelry becomes under the ruling of trade goods and zakâh becomes obligatory just with the intention of trade, and this is the popular opinion among the Malikiyah⁽³⁾, doctrine for the Shafi`îyah⁽⁴⁾ and Hanâbilah⁽⁵⁾.

(1) See: "Kashâf Al-Qinâ", [2: 235].

(2) See p(158) of that book

(3) See: "Ash-Shâmel", [1: 165]; "Sharh Az-Zaraqâny `la Mukhtasar khalîl", [2: 258].

(4) See "Nihâyat Al-Matlab", [3: 288]; "Rawdat At-Tâlibîn", [2: 261]

(5) See: "Al-Mughny", [3: 43]; "Al-Mubdi", [2: 370].

Second opinion: Jewelry becomes under the ruling of trade goods merely by intention and zakâh is not obligatory on it, and this is an opinion among the Malikîah⁽¹⁾.

Evidence and discussions:

Evidence of the first opinion: Those who argue that jewelry transitions to a trade asset merely by intention provide the following reasoning:

First evidence: The original ruling for jewelry is trade because it consists of gold and silver. If the owner intends to use it for trade, they have returned it to its original status, and thus it transitions to a trade asset based solely on the intention⁽²⁾.

Discussed: by not accepting that the original ruling for jewelry is trade, as it is crafted to be used.

Second evidence: the original ruling for jewelry is the obligation of zakâh, which was only nullified due to the prevention factor which is personal use. When the intention changes from personal use to trade, zakâh becomes obligatory, because its original ruling is the obligation of zakâh, Similar to changing the intention from trading to owning clothes nullifies zakâh, as the non-obligation of zakâh on clothes is the original ruling⁽³⁾.

Evidence of the second opinion: Those who argued that jewelry does not transition to trade merely by intention reasoned that: the act of crafting the jewelry and the intention of personal use make the original ruling the non-obligation of zakâh. Therefore, it does not become subject to zakâh for trade simply by mere intention, like other assets⁽⁴⁾.

Discussed: Not accepting that the original ruling on jewelry is the non-obligation of zakâh, as it is obligatory on its original form,

and the act of crafting alone is not sufficient without the intention of personal use. Therefore, comparing it to other personal belongings is not valid⁽⁵⁾.

(1) See: "At-Tanbîh 'ala Mabâdî' At-Tawjîh", [2: 787]; "At-Tawdîh", [2: 179].

(2) See: "Kashâf Al-Qinâ'", [2: 241].

(3) See: "At-Tawdîh", [2: 179]; "Al-Mughny", [3: 43].

(4) See: "At-Tawdîh", [2: 179].

(5) See: "Ad-Dur Ath-Thamîn wa Al-Mawrid Al-mu'in" (p.420)

Preference:

The preferred -and Allah is the all-knowing- is the first opinion, that jewelry transitions from permissible use to trade merely with the intention of trade.

Reasons for the preference:

- 1- The strength of the evidence for the first opinion, along with the weakness of the evidence for the second opinion and its vulnerability to counterarguments.
- 2- What has been previously preferred is that zakâh is obligatory on jewelry in all cases, whether owned with the intention of use or for trade. Therefore, the intention of trade does not change the original ruling, as the obligation remains the same.

Reason for the disagreement: The disagreement is regarding the determination of whether the original ruling for zakâh on jewelry is obligation or exemption. Those who say that the original ruling for jewelry is the obligation of zakâh claim that it transfers to trade merely by intention, as the intention itself reverts it to its original status, while those who say that the original ruling is the non-obligation of zakâh compare it to other assets, asserting that they do not transition to trade merely by intention.

Branch two: Changing the intention of owning jewelry to what nullifies or obligates zakâh other than trade

Aspect of the issue:

According to the opinion that zakâh is not obligatory on jewelry owned with the intention of permissible use, is zakâh due on someone who initially acquired the jewelry with the intention of permissible use but then changed their intention to something that obligates zakâh, such as forbidden use or hoarding? And does zakâh cease to be obligatory for someone who acquired the jewelry with an intention that necessitates zakâh, such as forbidden use, trade, or hoarding, and then changed their intention to lawful personal use? In other words, does a change in intention after acquiring the jewelry hold the same ruling as the original intention in terms of the obligation or exemption of zakâh?

Opinions on the issue: Those who say that zakâh is not obligatory on jewelry owned with the intention of permissible use have disagreed on this matter, dividing into two opinions:

First opinion: The new intention becomes equivalent to the initial intention regarding the obligation or exemption of zakâh.

The explanation of this view is that if someone owns jewelry with an intention that does not require zakâh, such as permissible use, and then changes their intention to one that necessitates zakâh, such as impermissible use or hoarding, zakâh becomes obligatory immediately upon the change of intention. If the person then reverts to the intention of permissible use, the zakâh cycle is interrupted, and zakâh is no longer due. This is an opinion among the Malikiyah⁽¹⁾, and doctrine for the Shafi'iah⁽²⁾ and Hanâbilah⁽³⁾

Second opinion: The change in intention to one that necessitates zakâh is considered valid, but a change in intention to one that nullifies zakâh is not considered sufficient by itself.

The explanation for this is that if someone owns jewelry with an intention that does not require zakâh, such as permissible use, and then changes their intention to something that necessitates zakâh, like impermissible use or hoarding, zakâh becomes obligatory upon them merely by the change of intention. However, if they originally owned it with an intention that necessitates zakâh and then changed their intention to one that nullifies it, zakâh does not drop, nor does the zakâh cycle reset merely by the change in intention. Instead, action must accompany the intention. This is the popular opinion among the Malikiyah⁽⁴⁾.

Evidence and discussions:

Evidence of the first opinion: Those who argued that the new intention is like the initial intention used the following reasoning:

First evidence: Jewelry has both substance and form. Its substance—gold or silver—makes it subject to zakâh, while its form, after being crafted, makes it resemble personal items that are not subject to zakâh. Therefore, if the intention that obligates zakâh arises, we consider the substance of the jewelry, and if the intention that negates zakâh arises, we consider its form⁽⁵⁾.

(1) See: “‘iqd Al-Jawâhir”, [1: 225]; “At-Tawdîh”, [2: 179].

(2) See: “Al-Wasîf”, [2: 476]; “Asna Al-Matâlib” [1: 378].

(3) See: “Ar-Ri’âyah As-Sughrah” by Ibn Himdân, [1: 411]; “Al-Furû’”, [4: 143].

(4) See: “Hâshiyat Al-Banânî ‘la Sharh Az-Zaraqâny le Mukhtasar Khalîl”, [2: 258]; “Hâshiyat Ad-Dusûqy ‘la Ash-Sharh Al-Kabîr, [1: 461]; Manh Al-Jalîl”, [2: 46].

(5) “Nihâyat Al-Matlab Fî Dirâyat Al-Madhhab”, [3: 289].

Evidence of the second opinion: Those who argued that a mere subsequent intention can obligate zakâh but cannot negate it based their reasoning on: intention alone is a weak cause. It can return something to its original state but cannot remove it from that state. Since the original ruling on jewelry is that zakâh is obligatory, the intention that obligates zakâh is valid, while the intention to negate it is not⁽¹⁾.

Discussed: There is no difference between the intention present at the time of acquisition and the intention that subsequently arises. Just as jewelry, when acquired with the intention of use, becomes exempt from zakâh due to that intention alone, even if it is not actually used, the same applies if the intention to use arises after acquisition.

Preference:

The preferred is -and Allah is the all-knowing- is the first opinion, which is that the intention that arises after acquiring the jewelry has the same effect on the ruling as the current intention.

Reason for the preference:

There is no difference between the intention that arises upon acquiring the property and the intention present at the time of acquisition. Just as the ruling is established by the intention present at the time of acquisition, it is also established by the intention that arises afterwards.



(1) See: Ad-Dur Ath-Thamîn (p.420), “Sharh Az-Zaraqâny le Mukhtasar Khalîl”, [2: 258].

Fifth Treatise

Effect of intention on trade goods.

Topic (1): Effect of intention on the beginning and the interruption of the zakâh year on trading goods

Within it are four issues:

Trade goods⁽¹⁾ are: anything that can be traded for profit, including merchandise, real estate, types of animals, crops, fruits, and the like⁽²⁾. Scholars have agreed that the intention to trade is a requirement for the obligation of zakâh on assets that are not subject to zakâh in their own right⁽³⁾. The intention to trade refers to the purpose of earning a profit from these assets, either by exchanging them or retaining them⁽⁴⁾, not by damaging them⁽⁵⁾. Intention can be divided into genuine and implied intentions. A genuine intention is to intend for the assets to be for trade, while an implied intention occurs when one purchases an asset in exchange for an asset he has to trade, in which case the ruling of the intention to trade remains unless there is a contrary intention⁽⁶⁾.

The intention of trade affects the initiation of the zakâh year for trade goods. This intention can either be concurrent with ownership or occur subsequently, and trade goods intended for trade can be acquired through transaction or

(1) “‘urûd” is the plural of “‘ard”, and in language it is: anything other than money. See: “As-Sihâh”, [3: 1083]; “Maqâyis Al-Lughah”, [1: 276]; entry (‘arada).

(2) See: “Al-Fiqh Al-Manhajî ‘la Madhhab Ash-Shafi’î”, [2: 43].

(3) See: “Badâ’i’ As-Sanâ’i”, [2: 21]; “Al-Hidâyah”, [1: 103]; “Al-Ishrâf ‘la nukat masâ’il Al-khilâf”, [1: 402]; “Tahbîr Al-Mukhtasar”, [2: 78]; “Al-Om”, [2: 51]; “Asna Al-Matâlib” [1: 381]; “Al-Mughny”, [3: 62]; “Al-Mubdi’”, [2: 370].

(4) Meaning: What remains in the goods and is not consumed is considered part of trade goods, such as saffron used to dye clothes and certain materials used in manufacturing. See: “Al-Bayân”, [3: 323]; “Kashâf Al-Qinâ’”, [2: 244].

(5) See: “Al-Insâf”, [3: 154].

(6) See: “Badâ’i’ As-Sanâ’i”, [2: 12]; “Kashâf Al-Qinâ’”, [2: 241].

without transaction. These are four issues that I will discuss below:

First issue: The intention of trade from the moment of acquiring the asset through transaction and its effect on the zakâh year

Aspect of the issue:

Who owns trade goods through pure⁽¹⁾ transaction such as buying or renting or through an non-pure⁽²⁾ transaction such as marriage or divorce and intends to trade from the time of acquiring the goods, will those goods be considered for trade and included in the zakâh year from the time of ownership or not?

Clarifying the point of agreement:

- 1- The scholars of the four schools of thought agreed that goods owned with the intention of trade through pure exchange such as buying and renting are considered for trade, and zakâh on trade goods becomes obligatory if the other conditions are met⁽³⁾.
- 2- They disagreed regarding goods owned with the intention of trade through non-pure exchange, such as marriage, divorce, and reconciliation for retaliation, are considered trade goods and whether zakâh on trade goods is obligatory or not?

Opinions on the issue: Scholars disagreed regarding this issue resulting into two opinions:

First opinion: zakâh is obligatory

Which is one of two opinions of the Hanîfah⁽⁴⁾, the more correct opinion of the Shafi'îah⁽⁵⁾,.....

(1) Pure transaction is: transactions where wealth is intended in them from both sides, and the contract is invalidated by the invalidity of the compensation, such as in selling and rentals, since wealth includes both the asset and the benefit.

(2) Non-pure transactions: transactions where wealth is intended from one side, and the contract is not invalidated by the invalidity of the compensation, such as in marriage, (khul') and reconciliation in cases of retaliation. See: "Badâ'i' As-Sanâ'i'", [2: 12]

(3) See: "Al-Mabsû't", [2: 198]; "Badâ'i' As-Sanâ'i'", [2: 12]; "Al-Muqadimât Al-Mumahidât", [1: 284]; "At-Tawdîh", [2: 213]; "Al-Om", [2: 50]; "Bahr Al-Madhhab" [3: 156]; "Al-Mub-di'", [2: 369]; "Kashâf Al-Qinâ'", [2: 240].

(4) Most of the Hanîfah attribute this opinion to Abî Yūsuf, and some attribute it to Muhammad ibn Al-Hasan. See: "Badâ'i' As-Sanâ'i'", [2: 12]

(5) See: "Fath Al-'azîz", [6: 43]; "Tahrîr Al-Fatawy", [1: 488]; "Tuhfat Al-Muhtâj", [3: 296].

and doctrine for the Hanâbilah⁽¹⁾.

Second opinion: zakâh is not obligatory and they are subject to the ruling of personal property.

Which is the other opinion of the Hanîfah⁽²⁾, doctrine for the Malikîah⁽³⁾, a perspective of the Shafi`îah⁽⁴⁾, and a claim by the Hanâbilah⁽⁵⁾.

Evidence and discussions:

Evidence of the first opinion: Those who argue for the obligation of zakâh on trade goods owned with the intention of trade through a non-pure transaction cite the following evidence:

First evidence: The generality of the hadith of Samurah Ibn Jundub (may Allah be pleased with him) saying: *"God's messenger (peace and blessings of Allah be upon him) used to order them to deduct the sadaqah from what they prepared for trade."*⁽⁶⁾.

Aspect of the evidence: The hadith is general regarding everything that is intended for trade and prepared for sale, which includes goods owned through a non-pure transaction if they were intended for trade at the time of acquisition⁽⁷⁾.

Discussed: By the weakness of the chain of narration of the hadith⁽⁸⁾.

Answered: That the meaning of the hadith is valid, and it has been accepted by the scholars, even though there are issues with its chain of narration.

Second evidence: That trade goods acquired through non-pure exchanges do not enter a person's ownership except with their acceptance; they are obtained through their profit. Trade is essentially about acquiring wealth, so the

(1) See: "Al-Mughny", [3: 59]; "Al-Insâf", [3: 153]; "Sharh Mutaha Al-Irâdât", [1: 435].

(2) Most of the Hanîfah attribute this opinion to Muhammad ibn Al-Hasan, and some attribute it to Abî Yusu'f. See: "Al-Mabsû't", [2: 198]; "Al-Bahr Ar-Râ'iq", [2: 225]; "Hâshiyat Ash-Shalaby 'la Tabyîn Al-Haqâ'iq", [1: 257].

(3) See: "Sharh Az-Zaraqâny 'la Mukhtasar khalîl", [2: 275]; "Al-Fawakih Ad-Dawâny", [1: 331]; "Ash-Sharh Al-Kabîr" by Ad-Dardîr", [1: 472].

(4) See: "Nihâyat Al-Matlab Fî Dirâyat Al-Madhhab", [3: 314]; "At-Tahdhîb", [3: 103].

(5) See: "Al-Mubdi'", [2: 369]; "Al-Insâf", [3: 154].

(6) Previously related, See p.(83) of that book.

(7) See: "Kashâf Al-Qinâ'", [2: 240].

(8) See: "Al-Badr Al-Munîr", [5: 594]; "Irwa' Al-Ghalîl", [3: 311].

intention for trade here coincides with the act of trading, similar to how it is associated with buying or renting⁽¹⁾.

Third evidence: These trade goods are owned through a transaction that establishes the right of preemption, making them akin to those owned through purchase⁽²⁾.

Fourth evidence: The statement that zakâh is obligatory on these trade goods is precautionary to this act of worship⁽³⁾.

Evidence of the second opinion: Those who argue against the obligation of zakâh on trade goods owned with the intention of trade through non-pure transactions cited the following evidence:

First evidence: The intention here is not connected to the intended action of trade, as non-pure transaction contracts do not qualify as trade contracts. This is evidenced by the fact that permission for trade does not encompass these contracts, nor can the agent own them. Thus, if the intention of trade is not connected to the intended action, it is not considered valid⁽⁴⁾.

Discussed: That the intention of trading is associated with earning through a transaction, which makes the goods subject to trade; there is no evidence that the intention must be accompanied by the act of trading.

Second evidence: The original ruling regarding goods is that zakâh is not required, and they are considered for personal use; merely having the intention does not change this original ruling, as it must be accompanied by acquiring the goods through an act of trade, such as purchasing or similar actions⁽⁵⁾.

Discussed: Not accepting that the intention of trade must be accompanied by acquiring goods through a pure transaction, as the intention of trade has its effect on changing the ruling, especially when it is coupled with acquiring the goods through a transaction, such as marriage or “khul’”

Preference:

It appears -and Allah is the all-knowing- that the preferred is the first opin-

(1) See: “Al-Mabsûṭ”, [2: 198]; “Badâ’i’ As-Sanâ’i’”, [2: 12].

(2) See: “Al-Bayân”, [3: 309]; “Asna Al-Matâlib” [1: 382].

(3) See: “Al-Mohîṭ Al-Burhâny”, [2: 248].

(4) See: “Al-Binâyah”, [3: 311]; “Al-Hâwy Al-Kabîr”, [3: 299].

(5) See: “At-Tanbîh ‘ala Mabâdi’ At-Tawjîh”, [2: 799].

ion, which is that is, trade goods acquired through a non-pure transaction are subject to zakâh if the intention of trade is present at the time of the contract.

Reason for the preference:

- 1- the strength of the evidence of the first opinion, and in contrast, the weakness of the evidence for the second opinion, and its vulnerability to criticism.
- 2- The intention of trade is what affects the consideration of goods as trade goods. If it is accompanied by the transaction and is not preceded or contradicted by the intention of personal use, this strengthens its application.

Second issue: Intention of trade from the moment of acquiring the asset without a transaction and its effect on the zakâh year.

Aspect of the issue

If someone acquires goods without a transaction—either through an action on their part, such as spoils of war, gathering firewood, or accepting a gift or inheritance, or through an action not initiated by them, such as inheritance or the passage of time for defining lost property—and intends to trade them from the moment of acquisition, do these goods qualify as trade goods and enter into the zakâh threshold from the moment of ownership, or not?

Opinions on the issue: Scholars disagreed regarding this issue, presenting three opinions, being:

First opinion: zakâh is not obligatory in all cases regarding trade goods owned without transaction.

This is one of two opinions of the Hanifah⁽¹⁾, doctrine for Malikiah⁽²⁾ and Shafi'iah⁽³⁾, and a claim of the Hanâbilah chosen by the judge Abû Ya'la⁽⁴⁾

Second opinion: zakâh is obligatory on trade goods acquired through the owner's actions, but not on those acquired without any action from them.

(1) See: "Badâ'i' As-Sanâ'i'", [2: 12]; "Al-Mohît Al-Burhâny", [2: 248].

(2) See: "Al-Muqadimât Al-Mumahidât", [1: 284]; "Adh-Dhakhîrah", [3: 17]; "Sharh Mukhtasar Khalîl" by Al-Khrashî, [2: 195].

(3) See: "Nihâyat Al-Matlab", [3: 314]; "Bahr Al-Madhhab" [3: 157]; "Tuhfat Al-Muhtâj", [3: 297].

(4) See: "Al-Kâfy", [1: 411]; "Al-Furû'", [4: 194].

This is the other opinion of the Hanîfah⁽¹⁾, and doctrine for the Hanâbilah⁽²⁾.

Third opinion: zakâh is obligatory on trade goods in all cases, even if they were acquired without any action from the owner. This is claimed by Ishaq ibn Râhaweh⁽³⁾, Abî Thawr⁽⁴⁾, Al-Hussein Al-Karabîsy⁽⁵⁾ of the Shafi'îah⁽⁶⁾, a claim by the Hanâbilah⁽⁷⁾, and the choice of the permanent Committee for Scholarly Research and Ifta in Saudi Arabia⁽⁸⁾, and the two sheikhs `abd Al-`azîz Ibn Bâz⁽⁹⁾, and Muhammad Ibn `uthaymayn⁽¹⁰⁾ (may Allah have mercy on them)

Evidence and discussions:

Evidence of the first opinion: Those who argue that trade zakâh is not oblig-

(1) See: "Al-Mabsût", [2: 198]; "Al-Hidâyah", [1: 96].

(2) See: "Al-Mubdi'", [2: 369]; "Al-'Insâf", [3: 153]; "Kashâf Al-Qinâ'", [2: 240].

(3) He is: Ishâq ibn Abî Al-Hasan Ibrâhîm ibn Mukhlid ibn Ibrâhîm al-Tamîmî al-Hanzalî al-Marwazî, Abû Ya'qûb, also known as Ibn Râhwayh, a resident of Nishapur. He combined hadith, jurisprudence, and piety and was one of the eminent scholars and reliable authorities in Islam. Imâm Ahmad ibn Hanbal said, "We have not met anyone like Ishâq." He was also one of Imâm al-Bukhârî's teachers. He passed away in 238 AH. See his biography: "*Wafiyât Al-A'yân*", [1: 199]; "*Tabaqât 'ulamâ' Al-Hadîth*" by As-Sâlihî, [2: 86].

(4) He is: Ibrâhîm ibn Khâlid al-Kalbî al-Baghdâdî, the jurist and Mufti of Iraq. He was one of the foremost scholars of his time in jurisprudence, knowledge, piety, and virtue. He authored books, elaborated on the Sunnah, and defended it. Originally a follower of the Hanîfah doctrine, he later followed Ash-Shâfi'îah when the latter came to Baghdad. He authored numerous works, including a book discussing the differences between Mâlik and al-Shâfi'î, in which he expressed his own views on these issues. In this and all his writings, he inclined more toward al-Shâfi'î's views. He passed away in 240 AH. See his biography: "*Sayr 'a'lâm An-Nubalâ'*", [12: 72]; "*Al-Sayr 'a'lâm*", [1: 70].

(5) He is: Al-Husayn ibn 'Alî ibn Yazîd al-Karabîsî, Abû 'Alî, was a jurist of Baghdad who studied under Imâm al-Shâfi'î and authored many works. He stated regarding the Qur'an, "My recitation of it is created." When Imâm Ahmad heard of his statement, he disapproved, calling it an fad, which led to a dispute between him and Imâm Ahmad. It is noted that he was more knowledgeable than Abû Thawr, but when Imâm Ahmad criticized him, people abandoned him, and his reputation declined, while Abû Thawr's renown rose due to Imâm Ahmad's praise. He passed away in 248 AH. See his biography: "*Sayr 'a'lâm An-Nubalâ'*", [12: 82]; "*Tabaqât Ash-Shâfi'îah Al-Kubrâh*", [2: 117].

(6) See: "*Bahr Al-Madhhab*", [3: 156]; "*Al-Bayân*", [3: 308].

(7) See: "*Al-Mughny*", [3: 59]; "*Al-Mubdi'*", [2: 370]; "*Al-Insâf*", [3: 153].

(8) See: "*fatâwa Al-Lagnah Ad-Dâ'imah*" first edition, [9: 330].

(9) See: "*fatâwa Nur 'la Ad-Darb*" by Ibn Baz edited by Ash-Shuwai'r, [15: 257]

(10) See: "*Majmû' Fatâwa wa Rasâ'il Muhammad Ibn 'uthaymayn*", [18: 230]

atory at all on goods acquired without a transaction base their reasoning on the following:

First evidence: The intention did not relate to the intended action, which is trade, because these goods are owned without a transaction, and if the intention of trade is not connected to the intended action, is not considered valid⁽¹⁾.

Discussed: The relation of the intention to trade with the intended action does not necessarily require acquiring the goods through a transaction.

Second evidence: Trade goods acquired through inheritance are not subject to trade zakâh, even if the intention to trade was present at the time of acquisition by consensus. All goods acquired without a transaction are analogized to this, due to the absence of compensation⁽²⁾.

Discussed: Not accepting The assertion of consensus on the non-obligation of zakâh for trade goods acquired through inheritance with the intention to trade, as there is disagreement among proponents of the third opinion. Therefore, the original ruling used as a basis for analogy is disputed.

Evidence of the second opinion: Those who argue for the obligation of zakâh on trade goods acquired through the owner's direct action, but not on those acquired without the owner's action, base their argument on the following points:

First evidence: Trade goods acquired through the owner's direct action are a result of their earning, and trade is essentially the act of earning wealth. Therefore, the intention of trade here coincides with an act of trade, similar to how it coincides with purchasing or renting⁽³⁾.

Discussed: Rejecting the matter that accepting gifts and bequests and the like are considered acts of trade because there is no transaction involved.

Second evidence: Comparing these assets to those owned through purchase, based on the common factor that all are owned through the action of the owner, except for those acquired through inheritance and similar means⁽⁴⁾.

(1) See: "Al-Binâyah", [3: 311]; "Tuhfat Al-Muhtâj", [3: 297].

(2) See: "Al-Kâfy Fi Fiqh Al-Imâm Ahmad", [1: 411].

(3) See: "Al-Mabsût", [2: 198]; "Badâ'i' As-Sanâ'i'", [2: 12].

(4) See: "Al-Kâfy Fi Fiqh Al-Imâm Ahmad", [1: 411]; "Al-Furû'", [4: 194].

Discussed: The reason for this analogy is not effective; because the reason for the obligation of zakâh on assets owned through purchase with the intention of trade is that purchasing is an act of commerce, not merely that it is an action of the owner.

Third evidence: Assets owned without any action from the owner with the intention of trade did not have the intention connected to the intended act, so zakâh on trade does not become obligatory on them; because the original status is ownership for personal use, while trade is merely an incidental aspect. The status does not change from the original merely with the intention, just as if a person intends to travel, he does not acquire the status of a traveler without action⁽¹⁾.

Discussed from two perspectives:

First perspective: The association of the intention of trade with the act of trade is not limited to the ownership of assets through the action of the owner. Offering goods for sale is also an act of trade, and it can occur from the moment they are owned through inheritance or similar means.

Second perspective: There is no evidence to require the association of the intention of trade with the act of trade for the obligation of zakâh on the assets. The intention is associated with the ruling unless there is something that contradicts or negates it. Therefore, if a person in attendance intends to travel, their mere intention is not taken into account without action, due to the presence of something that contradicts it, which is the continued state of presence that negates the intention of travel.

Evidence of the third opinion: Those who argue for the obligation of zakâh on trade goods intended for trade, even if they are owned without any action by the owner, support their view with the following:

First evidence: The prophet (peace and blessings of Allah be upon him) saying: *"Deeds are to be judged only by intentions, and a man will have only what he intended."*⁽²⁾.

Aspect of the evidence: That the prophet (peace and blessings of Allah be upon him) indicated that the essence lies in the intention alone, without re-

(1) See: "Al-Mughny", [3: 59].

(2) Previously related, See p.(7) of that book.

quiring it to be accompanied by a specific action, which includes the intention of trade in goods; thus, what matters is its existence⁽¹⁾.

Second evidence: The hadith of Samura ibn Jundub (may Allah be pleased with him) saying: *"God's messenger used to order them to deduct the sadaqa from what they prepared for trade."*⁽²⁾.

Aspect of the evidence: If the goods are intended for trade, they fall under the generality of the hadith, as they become prepared for sale by virtue of the intention⁽³⁾.

Discussed: That mere intention to trade is not considered preparation for sale; rather, preparation must involve an action related to trade⁽⁴⁾.

Answered: That if someone holds goods and intends to trade with them while waiting for prices to rise, it can be said that he has prepared them for sale, even if he has not performed any action beyond the intention to trade⁽⁵⁾.

Third evidence: That waiting for goods to rise in value is considered an act of commerce, and no action beyond the intention to trade is required, which indicates that the intention to trade alone affects the obligation of zakâh on trade goods⁽⁶⁾.

Preference:

After contemplating the opinions and evidence it appears that the preferred -and Allah is the all-knowing- is the third opinion, which is the obligation

of zakâh on trade goods on assets intended for trade in all cases, even if they are owned without any action from the owner.

Reasons for the preference

- 1- The strength of the evidence for the third opinion, along with the weaknesses of the first and second opinions and their vulnerability to

(1) See: "‘uyûn Al-Masâ’il", (p.188); "At-Tawqîf Al-Hawî fi Az-zakâh" by Ash-Shway`ar, [1: 157].

(2) Previously related, See p.(83) of that book.

(3) See: "Al-Mughny", [3: 59]; "Al-Mubdi'", [2: 370].

(4) See: "At-Tawqîf Al-Hawî fi Az-zakâh" by Ash-Shway`ar, [1: 158].

(5) See: "Al-Mumtî' Fi Sharh Al-Muqni'", [1: 744].

(6) See: "Al-Mughny", [3: 63].

criticism.

- 2- The third opinion is closer to achieving the intended purpose of the legislator in mandating zakâh on trade goods, which is to ensure spending on those entitled to it from wealth prepared for growth and increase.
- 3- There is no evidence to suggest that zakâh on trade goods is not obligatory unless the goods are acquired through a transaction or through the actions of the owner, as this would imply that if a person inherits goods that the deceased intended for trade, such as fabrics, and the heir intends to trade with them from the time of inheritance, then zakâh would not be obligatory on them, even if several years pass before they are sold and the heir receives a return to start a zakâh year, whether in cash or trade goods. This contradicts the established principle, which is the obligation of zakâh on wealth intended for growth.

Third issue: Changing the intention of personal use to the intention of trade and its effect on zakâh

Aspect of the issue:

If a person acquires goods with the intention of personal use⁽¹⁾, (such as clothes intended for wearing or properties meant for residence for themselves and their family), and then later develops the intention to trade, intending to sell those goods for profit, do it transition to trade goods and their zakâh year start by the time of intending to trade or not?

Opinions on the issue: Scholars disagreed regarding this issue, resulting three opinions, which are:

First opinion: They do not transition to trade and zakâh is not obligatory on them until they are sold and their value is received starting a zakâh year, provided that they are of which is subject to zakâh.

(1) The intention of possession in its general meaning is: The ownership of assets with the intention of keeping them for personal use or benefit is the essence of possession, which is what is meant by it when contrasted with trade. See: "Ad-Dur An-Naqi", [2: 346]; "Kashâf Al-Qinâ'", [2: 241].

Islamic jurists may use the term "possession" to refer to a specific meaning, which is the ownership of assets with the intention of using them by their owner or by someone else in a manner that does not lead to the growth of wealth. This meaning is contrasted with that of benefit or utilization. See: "At-Tabsirah", [2: 870]; "kifâyat An-Nabîh", [5: 438].

This is doctrine for the Hanîfah⁽¹⁾, the popular opinion among the Malikîah⁽²⁾, doctrine for the Shafi'îah⁽³⁾, and doctrine for

The Hanâbilah⁽⁴⁾.

Second opinion: They do not transition to trade, and zakâh is not obligatory on it, except if it was originally owned through a transaction with the intention of trade, and then it was intended for personal use, and later it was intended for trade again.

This is a claim among the Malikîah⁽⁵⁾.

Third opinion: They transition to trade, and zakâh becomes obligatory on it from the time of the intention for trade. This is a claim among the Malikîah⁽⁶⁾, a claim by Ishâq ibn Râhaweh⁽⁷⁾, Abi Thawr⁽⁸⁾, Al-Hussein Al-Karabîsy of the Shafi'îah⁽⁹⁾, a claim among the Hanâbilah⁽¹⁰⁾, and chosen by the Permanent Committee for Scholarly Research and Ifta in Saudi Arabia⁽¹¹⁾, and the two Sheikhs `abd Al-`azîz ibn Bâz⁽¹²⁾ and Muhammed ibn `uthaymayn⁽¹³⁾.

Evidence and discussions:

Evidence of the first opinion: Those who argue that the goods do not transfer from personal use to trade merely by intention cite the following evidence:

First opinion: That trade is an action, so its ruling does not occur merely by intention, similar to travel, which requires action; its ruling does not arise

(1) See: "Al-Mabsût", [2: 198]; "Al-Binâyah", [3: 309]; "Al-Bahr Ar-Râ'iq", [2: 226].

(2) See: Al-Mudâwanah", [1: 322]; "i'qd Al-Jawâhir Ath-Thamînah", [1: 229]; "Adh-Dhakhîrah", [3: 19].

(3) See: "Al-Om", [2: 51]; "Nihayat Al-Matlab" [3: 288]; "Rawdat At-Tâlibîn", [2: 266].

(4) See: "Al-Mughny", [3: 62]; "Sharh Az-Zarkashi", [2: 516]; "Al-Insâf", [3: 153].

(5) See: "At-Tanbîh `ala Mabâdi' At-Tawjîh", [2: 800]; "At-Tawdîh", [2: 216]; "Tahbîr Al-Mukhtasar", [2: 84].

(6) See: "Aqd Al-Jawâhir Ath-Thamînah", [1: 229]; "At-Tawdîh", [2: 216].

(7) The Shafi'îah transmitted it from him, but I did not find it in his issues. See: "Bahr Al-Madhhab" by Ar-Riwâ'î, [3: 156]; "Helyat Al-`ulamâ", [3: 86].

(8) See: "Helyat Al-`ulamâ", [3: 86]; "Al-Bayân", [3: 308].

(9) See: "Al-Wasît", [2: 480]; "Al-Majmû'", [6: 49].

(10) See: "Al-Mughny", [3: 63]; "Sharh Az-Zarkashi", [2: 516]; "Al-Mubdi'", [2: 370].

(11) See: "Fatâwa Al-Lagnah Ad-Dâ'imah" first issue, [9: 330].

(12) See: "Fatâwa nûr `la Ad-Darb" by Ibn Bâz edited by Ash-Shuwai'r, [15: 257].

(13) See: "Majmû' Fatawa wa Rasâ'il Muhammad Ibn `uthaymîn", [18: 230].

from mere intention⁽¹⁾.

Discussed from two perspectives:

First perspective: That some aspects of trade do not involve action, such as waiting for prices of goods to rise.

Second perspective: That the analogy to travel is flawed because a person who intends to travel while still present is not regarded as having that intention due to the contradiction of their continued presence, which opposes the intention to travel.

Second evidence: The default status of goods is ownership, and intention is a weak reason for changing this default; it does not shift the status merely through intention, similar to residency, which is the default and does not change merely by intending to travel⁽²⁾.

Discussed: By not accepting that the intention of trade is a weak reason that does not shift the default; because it makes the property ready for sale and a target for growth, which is a reason for the obligation of zakâh.

Third evidence: That anything for which zakâh is not obligatory in principle does not become subject to zakâh merely by intention, such as fed livestock, which does not incur zakâh simply by the intention of grazing⁽³⁾.

Discussed: By not accepting that anything for which zakâh is not obligatory originally remains exempt solely by intention, for the fed livestock must either be intended for grazing while it is still being fed, in which case zakâh is not due because there is evidence contradicting the intention to graze, which is the continued feeding, or the livestock can be intended for grazing while being left unfed, in which case zakâh is obligatory.

Evidence of the second opinion: The proponents of the opinion that goods do not transition from personal possession to trade merely by intention, unless they were originally owned through a transaction with the intention of trade, argue that goods owned through a transaction with the intention of trade are fundamentally for trade. Therefore, if they transition to personal possession by intention and then the owner returns to intending to trade them, they re-

(1) See: "Al-Binâyah", [3: 309]; "Adh-Dhakhîrah", [3: 20].

(2) See: "At-Tawdîh", [2: 216]; "Al-Mughny", [3: 63].

(3) See: "Bahr Al-Madhab" [3: 156]; "Al-Mughny", [3: 63].

vert to being for trade, as that is their original nature⁽¹⁾.

Discussion: They argue that if the original purpose of those goods is trade, how can they transition to personal possession merely by intention? You claim that intention can transfer to the original purpose but cannot revert from it. This requires you to either assert that intention does not transfer from the original purpose, thus invalidating your opinion, since trade is the original purpose and cannot shift to personal possession by intention alone, or say that mere intention can transfer from the original purpose, thereby aligning with the third opinion.

Evidence of the third opinion: Those who argue that goods transition from personal possession to trade and that zakâh is due on them with merely the intention of trade support their position with the following:

First evidence: the prophet (peace and blessings of Allah be upon him) saying: *“Deeds are to be judged only by intentions, and a man will have only what he intended.”*⁽²⁾.

Aspect of the evidence: The prophet (peace and blessings of Allah be upon him) established that the determining factor is the intention, and he did not require it to be coupled with a specific action. This includes the intention of trade regarding the assets, as the essential factor is its existence. Therefore, whenever the intention exists, the assets become intended for trade⁽³⁾.

Second evidence: The hadith of Samura ibn Jundub (may Allah be pleased with him) saying: *“God’s messenger used to order them to deduct the sadaqa from what they prepared for trade.”*⁽⁴⁾.

Aspect of the evidence: If assets are intended for trade, it becomes under the general meaning of the hadith, as it becomes prepared for trade due to intention⁽⁵⁾.

Discussed: Just intending to trade is not part of preparation for sale. Rather,

(1) See: “At-Tanbîh ‘ala Mabâdi’ At-Tawjîh”, [2: 800]; “Jawâhir Ad-Durar Fi Hal Alfaz Al-Mukhtasar”, [3: 102]

(2) Previously related: see p.(7) of that book.

(3) See: “‘uyûn Al-Masâ’il” (p.188); “At-Tawqîf Al-Hawlî fi Az-zakâh” by Ash-Shway’ar, [1: 157]

(4) previously referenced, see: page [83] of that book.

(5) See: “Al-Mughny”, [3: 59]; “Al-Mubdi’”, [2: 370].

preparation has to include an action related to trade⁽¹⁾.

Answered: If someone holds onto goods and intends to trade them, waiting for the prices to rise, they can be considered as having prepared them for sale, even though they have not taken any action beyond intending to trade.

Third evidence: The intention of personal possession alone is sufficient to shift goods from trade to personal use; similarly, the intention of trade alone should be sufficient to require zakah on trade goods. In fact, considering the intention of trade on its own is even more appropriate, as imposing obligations takes precedence over waiving them as a precaution⁽²⁾.

Fourth evidence: holding onto goods till they rise in price is considered part of trading. even though no action has taken place other than the intention to trade. This demonstrates that the intention of trade alone is enough to obligate zakah on trade goods⁽³⁾.

Fifth evidence: Obligating zakah with just the intention of trade is more beneficial for the needy, and at times of dispute, what is more beneficial is applied, just as trade goods are evaluated in a way that favors the needy⁽⁴⁾.

Preference:

After contemplating the opinions and evidence, it appears that the preferred -and Allah is the all-knowing- is the third opinion, which is that training goods transition from possession to trade and zakah becomes obligatory with just the intention to trade.

Reasons for the preference:

- 1- The strength of the third opinion, and the weakness of the first and second opinions and their vulnerability to criticism.
- 2- The third opinion is closer to fulfilling the objective of the jurist, being obligating zakah on trade goods, which is to provide for the deserving from wealth set aside for growth and increase.

(1) see: "At-Tawqîf Al-Hawli Fi Az-Zakâh", [1: 158]; Athar Taghayur Niyat Al-Mukalaf Fi 'urûdih 'la Hawl Az-Zakâh, by Al-Lihidân", [page 227].

(2) See: "Al-Mubdi'", [2: 370].

(3) See: "Al-Mumti' Fi Sharh Al-Muqni'", [1: 744].

(4) See: "Al-Mughny", [3: 63].

- 3- Wealth, by the mere intention of trade, becomes prepared for sale and designated for growth, and this is the reason zakah is obligatory on trade goods.

Reasons for the disagreement:

- 1- The reason for the disagreement between the proponents of the first opinion and those of the second is the difference concerning trade goods owned through a transaction with the intention of trade. Is the default for such goods trade, so they revert to it by mere intention, or is the default for them personal possession like other goods, and thus they do not revert to trade by mere intention?⁽¹⁾
- 2- It appears that the reason for the disagreement between the proponents of the first and second opinions and the proponents of the third opinion lies in the cause of obligating zakah of trade. The proponents of the first and second opinions believe that the cause is the occurrence of a transaction involving the goods, combined with the intention of trade. Meanwhile, the proponents of the third opinion believe that the cause is the preparation of the goods for sale and setting them aside for growth and increase, which occurs with the mere intention of trade.

Fourth issue: Changing the intention of trade to personal use during the zakah year and its effect on zakah

Aspect of the issue:

If someone owns assets with the intention to trade, like cars or real estate purchased for profit and seeking income, and developed the intention to use personal use during the year, changing his intention from trade to retaining those assets and benefiting from them, does this mean they transition to personal use, and does the obligation of zakah cease from the moment he changes his intention to personal use, or not?

opinions on the issue: Scholars disagreed regarding this issue, resulting three opinions, which are:

First opinion: Assets transition from trade to personal possession, and the zakah cycle is interrupted upon changing the intention to personal possession. This is doctrine for the Hanîfah⁽²⁾,.....

(1) See: “‘iqd Al-Jawâhir”, [1: 229].

(2) See: “Badâ’i’ As-Sanâ’i”, [2: 12]; “Al-Binâyah”, [3: 309]; “Majma’ Al-’anhur”, [1: 196].

The popular opinion among the Mâlikiah⁽¹⁾, and doctrine for the Shâfi'iah⁽²⁾ and the Hanâbilah⁽³⁾. Second opinion: Assets transition from trade to personal possession, and the zakah cycle is interrupted upon changing the intention to permissible possession. However, intention of impermissible possession -like using weapons for highway robbery- has no effect. This is an opinion among the Shâfi'iah⁽⁴⁾, and an opinion among the Hanâbilah⁽⁵⁾.

Third opinion: assets do not transition from trade to personal possession and the zakah cycle is not interrupted with the intention of personal possession. This is a claim among the Mâlikiah chosen by Ashhab⁽⁶⁾.

Evidence and discussions:

Evidence of the first opinion: Those who argued that assets transition from trade to personal possession and that the zakah cycle is interrupted when the intention changes to personal possession based their argument on the following:

First evidence: The intention of personal possession was accompanied by an action, which is abandoning trade, and thus its ruling is established⁽⁷⁾.

Second opinion: Personal possession refers to abandoning trade, and it does not require the actual use of the goods. Anything that involves abandoning something is enacted by mere intention, just like a traveler becomes a resident simply due to intention⁽⁸⁾.

Third opinion: The default ruling on goods is personal possession, and the non-obligation of zakah. Zakah becomes obligatory only with the intention of trade, so if the intention of trade ceases, the goods return to their original status⁽⁹⁾.

(1) See: "Al-Muqadimât Al-Mumahidât", [1: 284]; "Al-Bayân wa At-Tahsîl", [2: 368]; "Tahbîr Al-Mukhtasar", [2: 83].

(2) And they said: Its zakat is recommended alongside that. See: "Al-Om", [2: 51]; "kifâyat An-Nabîh", [5: 445]; "Asna Al-Matâlib" [1: 381].

(3) See: "Al-Mughny", [3: 62]; "Sharh Az-Zarkashi", [2: 516]; "Sharh Montaha Al-'iradat", [1: 400].

(4) See: "Tahrîr Al-Fatawy", [1: 488]; "Tuhfat Al-Muhtâj", [3: 295].

(5) See: "Al-Insâf", [3: 155].

(6) See: "Al-Ishrâf", [1: 402]; "At-Tabsirah", [2: 888]; "Adh-Dhakhîrah", [3: 20].

(7) See: "Al-Mabsûr", [2: 198]; "Badâ'i' As-Sanâ'i'", [2: 12].

(8) See: "Al-Bahr Ar-Ra'iq", [2: 226]; "Al-Hâwy Al-Kabîr", [3: 297].

(9) See: "Al-Ishrâf 'la nukat masâ'il Al-khilâf", [1: 402]; "Al-Mughny", [3: 63].

Evidence of the second opinion: They argued that the intention for permissible possession transfers goods from trade to personal possession based on the evidence for the first opinion. They further argued that the intention for impermissible possession does not transfer goods from trade to personal possession by stating that the cause for the obligation of zakah on goods -which is trade- is present, and there must be a valid cause to nullify it, but impermissible intention is not sufficient for that⁽¹⁾.

Discussed: They argued that the intention for personal possession nullifies the intention for trade, thus removing the cause for zakah, and there is no evidence to differentiate between the intention for permissible or impermissible possession in this matter.

Evidence of the third opinion:

First evidence: The intention to trade accompanies possession, so its ruling does not change with another intention, just as when one owns assets with the intention of personal possession and then later intends to trade them⁽²⁾.

Discussed: That personal possession is the original state of goods, in contrast to trade; therefore, it is not correct to equate the intention of personal possession with the intention of trade⁽³⁾.

Second evidence: The argument is that trade is fundamentally inherent in the goods, and thus it does not transition to personal possession through mere intention⁽⁴⁾.

Discussed: By not accepting that trade is the original state of goods; rather, the original state is personal possession, and trade is incidental.

Third evidence: The analogy to grazing livestock is that if one intends to feed them, they do not transition to being fed, and the cycle does not end merely by intention. Similarly, trade goods do not transition to personal possession, nor does the cycle end merely by intention⁽⁵⁾.

Discussed: This is a flawed analogy, as the condition for livestock is grazing

(1) See: "Tuhfat Al-Muhtāj", [3: 295].

(2) See: "Al-Ishrāf 'la nukat masā'il Al-khilāf", [1: 402].

(3) See: "Al-Hāwy Al-Kabīr", [3: 297].

(4) See: "Al-Jami' Lemasā'il Al-Mudāwanah", [4: 44].

(5) See: "Al-Mughny", [3: 62].

and not merely the intention. The cycle does not end unless grazing genuinely ceases. In contrast, for trade goods, the intention to trade is a condition, and this condition ceases to exist when the intention shifts to personal possession⁽¹⁾.

Preference:

The preferred -and Allah is the all-knowing- is the first opinion, which is that assets transition from trade to personal possession and the zakah cycle is interrupted upon changing the intention from trade to possession, unless this change is to evade zakah.

Reason for the preference:

- 1- The strength of the evidence of the first opinion, and the weakness of the evidence of the second and third opinions and their vulnerability to criticism.
- 2- The intention to trade is a condition to obligate zakah of trade goods, so if the owner changes his intention from trade to possession, the condition is removed, and thus the cycle is interrupted.
- 3- The original state on assets is personal possession, and being owned initially with the intention of trade does not remove them from this state. The intention alone returns them to their original state.

Reason for the disagreement:

The reason for the disagreement between the proponents of the first and second opinions and the proponents of the third opinion lies in determining the default state of assets owned with the intention of trade. The proponents of the first and second opinions believe that the default state of all assets is personal possession, with trade being incidental. Meanwhile, the proponents of the third opinion believe that for assets owned through a transaction with the intention of trade, the default state is trade, and intention does not alter this default state⁽²⁾.

(1) See: Previously reference.

(2) See: "Minhāj At-Tahsīl", [2: 220].

Topic (2): ruling on the intention of holding for profit and management of trade goods

Within it are three issues:

The Mālikiah scholars classified the trader, upon whom zakah on trade goods is obligatory, into two categories, each with its specific rulings.

First category: The trader who holds for profit or monopolizes, which is he who buys goods and watches the market, waiting for prices to rise before selling at a higher price, without rushing to sell. This is like someone who buys real estate and waits for its value to increase over several years. According to them, such a trader is not obligated to pay zakah on their trade goods every year, but rather pays zakah when he sells and receives the payment for one year⁽¹⁾.

Second category: The «active trader» is someone who sells goods at the current price, replacing them with other goods, constantly circulating their wealth. This trader does not wait for prices to rise but is content with whatever profit is available, sometimes even selling without profit, like a grocer or a vendor of goods. Such a trader assesses the value of their trade goods every year at the end of the zakah cycle and pays the zakah accordingly⁽²⁾.

All jurists, except the Mālikiah, make no distinction between hold-for-profit-trading and active management when it comes to the zakah of trade goods. Both the holding trader and the active trader assess the value of their trade goods every year and pay the zakah accordingly⁽³⁾. The change in intention between holding or managing has no impact. Therefore, the issues discussed in this section follow the opinion of the Mālikiah, which differentiates between the zakah of goods held for sale and those actively managed for trade.

In what follows, I will address the issues of intention regarding hold-trading and active management in trade goods according to the Mālikiah:

First issue: The zakah on a trader's wealth if they intended management then intended holding

(1) See: "Al-Muqadimāt Al-Mumahidāt", [1: 285]; "At-Tanbīh `ala Mabādi' At-Tawjīh", [2: 802]; "iḳd Al-Jawāhir", [1: 226].

(2) See: "An-Nawādir Wa Az-Ziyādāt", [2: 168]; "Al-Ma'unah `ala Madhhab Al-Madīnah", [page 372]; "Mawāhib Al-Jalīl", [2: 322].

(3) See: "Al-Mabsūt", [2: 190]; "Al-Bināyah", [3: 382]; "Al-Hāwy Al-Kabīr", [3: 284]; "Al-Bayān", [3: 306]; "Al-Mughny", [3: 58]; "Al-Furū'", [4: 194].

Aspect of the issue: If someone owned goods with the intention of managing them in trade and continuously moving them, then he decided to change his intention to waiting for the prices to rise and monopolize them, does the zakah cycle of management end with this intention, and does it transition from the zakah of a manager to the zakah of a holding trader?

Ruling on the issue:

The Mâlikiah agreed that if a trader owned goods with the intention of management and then intended to hold on to them, he transitions from the status of management to that of holding simply by intending so, unless he intends to evade zakah, which must be established through his admission⁽¹⁾. Ibn Al-Qâsim⁽²⁾ Mentioned that if a manager intends to hold onto goods a month before the zakah due date, he would be exempt from zakah on those goods and be considered a holder. Al-Mâzari⁽³⁾ countered this by arguing that such an action raises suspicion of evading zakah. The response to this is that suspicion alone is not sufficient as there must be a clear admission of the intention to evade zakah⁽⁴⁾.

Evidence on the issue:

The Mâlikiah scholars argue that the mere intention to hold shifts the

(1) See: "At-Tawdîh", [2: 220]; "Sharh Az-Zaraqâny", [2: 283]; "Hâshiyat Ad-Dusûqi 'la Ash-Sharh Al-Kabîr", [1: 476].

(2) He is: 'Abd al-Rahman ibn Al-Qâsim ibn Khâlid ibn Junâdah Al-'Ittaqi al-Misri, Abu 'Abdullah, the narrator of the issues of Imam Malik. He was a trustworthy and ascetic jurist who accompanied Imam Mâlik for twenty years, and after the Imam's death, the Mâlikiah greatly benefited from him. He is the author of "Al-Mudawanah" one of the most important books of the Maliki school, and from him, Sahnun took it. He passed away in the year 191 AH. See his biography: "Al-Kamâl fi Asmâ' Al-Rijâl" [7: 10]; "Wafiyât Al-A'yân", [3: 129].

(3) He is: Muhammad ibn 'Ali ibn 'Umar ibn Muhammad Al-Tamîmi Al-Mazîri Al-Malikî, Abu 'Abdullah. Al-Mazîrî is attributed to Mazara, a town on the island of Sicily. He was a jurist, hadîth scholar, and a highly intelligent scholar. He studied medicine and became a mufti in it as well as in jurisprudence. He authored several notable works, including "Al-Mu'alim bi-Fawâ'id Muslim", "Idah Al-Mahsûl min Burhân Al-Uşûl", and "Sharh al-Talqîn". He passed away in the year 536 AH. See his biography: "Sayr 'alâm An-Nubalâ", [20: 105]; "Al-Wâfi Bi Al-Wafyât", [4: 110].

(4) See: "Al-Mukhtasar Al-Fiqhî", [1: 496]; "At-Tâj wa Al-Iklîl", [3: 190]; "Hâshiyat Ad-Dusûqi 'la Ash-Sharh Al-Kabîr", [1: 476].

status from management to holding. Their reasoning includes the following points:

First evidence: The original ruling for trade assets is that zakah is not obligatory every year, and the intention alone shifts back to the original ruling⁽¹⁾.

Second evidence: Holding is similar to possession which is the original state of trade assets due to the long duration of ownership in both cases. The ruling transitions to holding simply by intention, just as it shifts to ownership with intention⁽²⁾.

Second issue: The zakah on a trader's wealth if they intended holding and then intended management

Aspect of the issue:

This issue is the opposite of the previous one. If someone possesses goods with the intention of holding them until prices rise, and then decides to manage them in trade by buying and selling continuously, does this intention transition him from the zakah of the holder to the zakah of the manager?

Opinions on the issue:

The Mâlikiah argued regarding this issue, resulting into two opinion, which are:

First opinion: The trader does not transition from holding to managing with just intending so.

This is the popular opinion among the Mâlikiah⁽³⁾.

Second opinion: The trader transitions from holding to managing with just intending so. This is an opinion contradicting the popular opinion among the Mâlikiah⁽⁴⁾.

Evidence and discussions:

Evidence of the first opinion: They argued that the trader does not transi-

(1) See: "Al-Mukhtasar Al-Fiqhî", [1: 496].

(2) See: "At-Tawdîh", [2: 220]; "Sharh Az-Zaraqâny 'la Mukhtasar khalîl", [2: 283].

(3) See: "Sharh Az-Zaraqâny 'la khalîl", [2: 283]; "Hâshiyat Ad-Dusûqi", [1: 476]; "Bolghat As-Sâlik", [1: 641].

(4) See: "Ash-Shâmil Fi Fiqh Al-Imâm Mâlik", [1: 170]; "Sharh Al-Khurashy", [2: 198]; "Hâshiyat Ad-Dusûqi 'la Ash-Sharh Al-Kabîr", [1: 476].

tion from hoarding to management merely by intentionion, based on several reasons on:

The intention is a weak reason that allows for a transition to the original state but not away from it. The original state of goods is ownership, and holding is closely related to it, as both possession and holding involve the goods remaining in the hands of their owner for an extended period⁽¹⁾.

Discussed: This original ruling is contradicted by another original one, which is that the original state in trade is management, not hoarding⁽²⁾.

Evidence of the second opinion

Those who argue that a trader can transition from hoarding to management simply by intention present the following evidence: that both management and holding are forms of trade. Thus, one can shift to management by intentionion just as they would shift to holding, as there is no difference between them⁽³⁾.

Discussed: With the difference between management and holding, which is that holding is close to possession, which is the original state in regards to assets, holding is compared to it in terms of transferring ownership to it and not transferring from it merely by intention⁽⁴⁾.

Answered: That the comparison to possession is a flawed comparison, as holding is part of trade and requires zakah on assets, unlike possession.

Preference:

The preferred between those two opinions -and Allah is the all-knowing- is the second opinion, which is that the mere intention of management transitions from the ruling of holding to the ruling of management.

Reason for the preference:

Both holding and management are trade activities that obligate zakah, and the default regarding trade is managing assets and not monopolizing and

(1) See: "Sharh Az-Zaraqâny `la Mukhtasar khalîl", [2: 284]; "Bolghat As-Sâlik Li Aqrab Al-Masâlik", [1: 641].

(2) See: "Zakât `urûd At-Tijarâh `ind Al-Mâlikiyah", Qays Âl Mubâarak, [page 9].

(3) See: "Sharh Az-Zaraqâny `la Mukhtasar khalîl", [2: 284]; "Sharh Al-Khurashy", [2: 198].

(4) See: "Hâshiyat Ad-Dusûqi `la Ash-Sharh Al-Kabîr", [1: 476].

holding them, and thus, transitioning to management with mere intention takes precedence.

Third issue: The zakah on a trader's wealth if they intended to manage a portion of it and hold the other.

Aspect of the issue

If a person owns trade goods and intends to manage some through continuous buying and selling, while intending to hold others and wait for price increases, should they pay zakah on all goods based on the management intention? Or should they pay zakah based on the holding intention? Or does each type have its own ruling?

There are three cases for the issue, and they are explained as follows:

First case: When the value of goods owned with the intention for ongoing trade and management is equal to the value of goods owned with the intention for holding and waiting for price increases:

In this case, the Mālikiah scholars argued resulting into two opinions, being:

First opinion: Each type takes its own ruling for zakah. what is intended for management is evaluated every year and zakah is paid on it, while what is intended for holding is subject to zakah only after it is sold, and for one year.

This is the popular among the Mālikiah, and there consensus has been narrated⁽¹⁾.

Second opinion: All goods follow the ruling of management. This is an opinion among the Mālikiah⁽²⁾.

Evidence and discussions:

Evidence of the first opinion: Those who argue that each type takes its own ruling in zakah based their reasoning on: the goods are of equal value, so it is not possible to make some related to others. The principle is to give each item its appropriate ruling⁽³⁾.

(1) See: "An-Nawādir Wa Az-Ziyādāt", [2: 171]; "At-Tanbīh `ala Mabādi' At-Tawjīh", [2: 805]; "Hāshiyat Ad-Dusūqi `la Ash-Sharh Al-Kabīr", [1: 477].

(2) See: "At-Tawdīh", [2: 221]; "Tahbīr Al-Mukhtasar", [2: 84].

(3) See: "Al-Bayān wa At-Tahsīl", [2: 424].

Evidence of the second opinion: I couldn't find any direct evidence for those who argue that everything should be subject to the zakah of management. However, an argument could be made for them by reasoning that: management is the default in trade. If half of the goods are being managed, then the other half would follow and be related to this default.

Discussed:

The argument that management being the default in trade does not necessarily imply that trade assets held for holding purposes should be subject to the zakah of management. Otherwise, it would result in an inconsistency where a trader who holds most of their wealth while managing a small portion would be required to pay zakah on all of it under management. This reasoning contradicts the distinction made between the zakah of managed trade assets and those held for price appreciation.

Preference:

The preferred -and Allah is the all-knowing- is the first opinion, which is in the case of if the management goods and held goods were equal in value, every type is treated based on their own ruling of zakah.

Reason for the preference:

The default ruling is giving each type of trade its own ruling, and there is no evidence for the second opinion that would divert from this default.

Second case: The value of goods owned with the intention of holding being greater.

and in this case, Mâlikiah scholars disagreed resulting in three opinions, which are:

First opinion: Each type takes its respective ruling in zakah. What is held for management is considered annually and zakah is paid on it, while what is held for trade is subject to zakah after being sold for one year.

This is the popular among the Mâlikiah, and the claim of Ibn Al-Qâsim⁽¹⁾.

Second opinion: Zakah is paid on all as zakah for holding. This is an opinion

(1) See: "Al-Kâfy Fi Fiqh Ahl Al-Madīnah", [1: 300]; "Tahbîr Al-Mukhtasar", [2: 84]; "Sharh Al-Khurashy", [2: 199].

among the Mâlikiah chosen⁽¹⁾ by Ibn Al-Magshûn⁽²⁾.

Third opinion: Zakah is paid on all of them as zakah of management. This is an opinion among the Mâlikiah, interpreted by Ibn Lubâbah⁽³⁾ from the text⁽⁴⁾.

Evidence of opinions and discussions:

Evidence of the first opinion: Those who stated that each type takes its respective ruling in zakah based their reasoning on: that the default ruling is to give each item its appropriate ruling in zakah, and there is no evidence to deviate from this principle⁽⁵⁾.

Evidence of the second opinion: Those who stated that zakah should be paid on all as zakah for holding based their reasoning on: the lesser-valued goods follow the ruling of the higher-valued ones, and the majority here consists of held goods⁽⁶⁾.

Discussed: it is not valid to pay zakah on management goods as if they were held goods, because the one holding goods for trade pays zakah after selling, while the manager is continuously buying and selling throughout the year. As a result, they would be required to pay zakah on their goods multiple times

(1) See: "An-Nawâdir Wa Az-Ziyâdât", [2: 171]; "Manâhij At-Tahsîl", [2: 219]; "Sharh Az-Zarâqânî 'la Mukhtasar khalîl", [2: 284].

(2) He is: 'Abd Al-Malik ibn 'Abd Al-'Aziz bin Abd Allah ibn Abi Salâmah Al-Majishûn At-Taymî, their freedman, Abu Marwân. was a knowledgeable jurist, an eloquent speaker, and became a central figure for issuing fatwas in Medina. He was blind, and it is said that he lost his sight later in life. Many Maliki scholars studied under him such as Ibn Habîb and Sahnûn. He passed away in the year 212 AH, and some say in 214 AH. See his biography: "*Al-Intiqâ' Min Fadâ'il Al-Thalâthah Al-A'imma Al-Fuqahâ'*" by Ibn Abd Al-Bar (p. 57), and "*Al-Dibâ' Al-Mudhhab*" by Ibn Farhun [2: 7].

(3) He is: Muhammad ibn 'Umar ibn Labâbah, a freedman of Uthman ibn 'Ubayd Allah ibn 'Uthman, Al-Qurtubî Al-Andalusî Al-Mâlikî. He was an Imam in jurisprudence, and was the sole figure issuing fatwas in Cordoba. He became the preeminent imam in the Maliki school of thought. He was trusted, reliable, and knowledgeable about Andalusian history. He also had a talent for grammar and poetry. He passed away in the year 314 AH. See his biography "*Târîkh 'Ulamâ' Al-Andalus*" by Ibn Al-Farâdî [2: 36]; "Sayr A'mâl An-Nubalâ", [14: 459].

(4) See: "Al-Bayân wa At-Tahsîl", [2: 424]; "Lawami' Ad-Durar", [3: 438].

(5) See: "At-Tâj wa Al-Iklîl", [3: 190].

(6) See: "Manâhij At-Tahsîl", [2: 219].

within the same year⁽¹⁾.

Evidence of the third opinion: Those who argued that zakah should be paid on all of it as zakah for management based their reasoning on: zakah for management is more beneficial and easier for the poor. Therefore, it is required based on the principle of preference⁽²⁾.

Discussed: That this is an excessive reliance on preference, which contradicts analogy, as each type of wealth should be subject to zakah according to its specific ruling⁽³⁾.

Preference:

The preferred -and Allah is the all-knowing- is the first opinion, which is that each type follows its own ruling of zakah even if the value of held goods was greater.

Reason for the preference:

The previous point established that the default principle is to give each type of wealth its appropriate ruling, and the second opinion has no evidence except the notion that the lesser follows the greater, which is not accepted. As for the third opinion, it is based on a preference that contradicts analogy.

Third case: The value of goods owned with the intention of management being greater.

and in this case, Mâlikiah scholars disagreed resulting in two opinions, which are:

First opinion: All goods follow the ruling of management goods. This is the popular opinion among the Mâlikiah⁽⁴⁾.

Second opinion: every type of wealth follows its own ruling. What is intended for management is calculated annually and zakah is paid on it, while what is held for trade is subject to zakah after being sold for one year. This is an opinion among the Mâlikiah⁽⁵⁾.

(1) See: "Al-Bayân wa At-Tahsîl", [2: 424]. (2) See: The previous reference.

(3) See: The previous reference.

(4) See: "Al-Kâfy Fi Fiqh Ahl Al-Madīnah", [1: 300]; "Tahbīr Al-Mukhtasar", [2: 85]; "Sharh Al-Khurashy", [2: 198].

(5) See: "Al-Bayân wa At-Tahsîl", [2: 424]; "At-Tanbīh 'ala Mabâdī' At-Tawjīh", [2: 805]; "Manâhij At-Tahsîl", [2: 219].

Evidence and discussions:

Evidence of the first opinion: Those who argued that zakah should be paid on all of it as zakah for management based their reasoning on: that the lesser-valued goods here follow

the ruling of the higher-valued goods. This is done in favor of requiring zakah annually and as a precaution to safeguard the rights of the poor⁽¹⁾.

Discussed: This is a preference that contradicts analogy, as each type of wealth should be subject to zakah according to its specific ruling⁽²⁾.

Evidence of the second opinion: Those who argued that each type of wealth should take its respective ruling in zakah based their reasoning on: that each item should be given its proper ruling in zakah. This is possible here without any hardship, so there is no justification to deviate from it based on mere preference⁽³⁾.

Preference:

The preferred -and Allah is the all-knowing- is the second opinion, which is that each type of goods follow its own ruling of zakah, even if the management goods were greater in value.

Reason for the preference:

The previous point established that the default principle is to assign each item its appropriate ruling in zakah, and this principle is stronger than the preference used as evidence by the proponents of the first opinion.

Topic (3): Purchasing goods with the intention of trading them for goods for personal use.

Aspect of the issue:

If someone purchases goods with the intention of trading them, using items they own for personal use as payment -such as selling cloth or personal belongings to acquire other goods intended for trade- does zakah become obligatory on the goods purchased with the intention of trade, for which the purchase price consisted of items meant for personal use, provided that the

(1) See: "At-Tanbīh 'ala Mabādi' At-Tawjīh", [2: 805].

(2) See: "Al-Bayān wa At-Tahsīl", [2: 424].

(3) See: "Manāhij At-Tahsīl", [2: 192]; "At-Tāj wa Al-Iklīl", [3: 190].

other conditions for zakah on trade goods are met?

Opinions on the issue: Scholars disagreed regarding this issue resulting in three opinions, which are:

First opinion: Zakah is obligatory on the goods bought with the intention of trade that use personal use items as payment. This is doctrine for the Hanî-fah⁽¹⁾, an opinion among the Mâlikiah⁽²⁾, doctrine for the Shâfi`iah⁽³⁾, and doctrine for the Hanâbilah⁽⁴⁾.

Second opinion: Zakah is not at all obligatory on the goods bought with the intention of trade that use personal use items as payment. This is an opinion among the Mâlikiah⁽⁵⁾, and a claim among the Hanâbilah⁽⁶⁾.

Third opinion: Zakah is obligatory if the trade goods are purchased with personal-use items owned through a pure transaction, and it is not obligatory if they are purchased with personal-use items owned through a non-pure transaction or without a transaction.

This is the popular opinion among the Mâlikiah⁽⁷⁾.

Evidence and discussions: The majority based their reasoning for the obligation of zakah on goods purchased with the intention of trade using personal-use items as payment, on the following points:

First evidence: The hadith of Samura Ibn Jundub (may Allah be pleased with him) saying: *“God’s messenger used to order them to deduct the sadaqa from what they prepared for trade.”*⁽⁸⁾.

(1) See: “Badâ’i` As-Sanâ’i`”, [2: 11]; “Al-Mohît Al-Burhâny”, [2: 247]; “Al-Binâyah”, [3: 385].

(2) See: “`iqd Al-Jawâhir”, [1: 229]; “At-Tawdîh”, [2: 216]; “At-Tâj wa Al-Iklîl”, [3: 181].

(3) See: “Al-Hâwy Al-Kabîr”, [3: 287]; “Rawdat At-Tâlibîn”, [2: 266]; “Mughny Al-Muhtâj”, [2: 106].

(4) See: “Al-Mughny”, [3: 61]; “Kashâf Al-Qinâ’”, [2: 244]; “Sharh Montaha Al-`iradat”, [1: 435].

(5) See: “Al-Ishrâf”, [1: 402]; “Adh-Dhakhîrah”, [3: 17]; “Ash-Shâmil Fi Fiqh Al-Imâm Mâlik”, [1: 169].

(6) See: “Ar-Ri`âyah As-Sughrâh Fi Al-Fiqh”, [1: 417]; “Al-Furû’”, [4: 195]; “Al-Insâf”, [3: 154].

(7) See: “Sharh Az-Zaraqâny `la Mukhtasar khalîl”, [2: 276]; “Sharh Al-Khurashy”, [2: 196]; “Al-Fawâkih Ad-Dawâny”, [1: 331]; “Hâshiyat Ad-Dusûqi `la Ash-Sharh Al-Kabîr”, [1: 473].

(8) Previously referenced, see p.(83) of that book

Aspect of the evidence: The hadith is general regarding goods prepared for sale, whether they are purchased with cash, trade goods, or personal-use items⁽¹⁾.

Discussed: The weakness of the hadith's chain of narration⁽²⁾.

Answered: The meaning of the hadith is sound, and scholars have accepted it, even though there are some criticism regarding the chain of narration.

Second evidence: The analogy is made with goods purchased for trade using cash or trade goods, based on the fact that all of them are owned through a pure transaction with the intention of trade. Therefore, zakah is obligatory⁽³⁾.

Evidence of the second opinion: Those who argued that zakah is not obligatory on goods purchased with the intention of trade using personal-use items as payment based their reasoning on the following:

First evidence: Goods are subject to zakah based on their value, and zakah on value is dependent on zakah on the asset itself. If the price of the goods is not in the form of an asset that zakah applies to, then zakah is not obligatory⁽⁴⁾.

Discussed: The fact that zakah on value is dependent on zakah on the goods does not necessitate that the original trade goods be in the form of gold or silver. It is not required for the goods to be linked to one of the two currencies. Instead, they are assessed based on what is most beneficial for the poor or according to their common selling price⁽⁵⁾.

Second evidence: An analogy is made between goods purchased for trade using personal-use items and goods owned with the intention of trade but acquired without a transaction, such as through a gift or inheritance, in the ruling that zakah is not obligatory. This is based on the common factor that neither was acquired through one of the two currencies⁽⁶⁾.

Discussed from two perspectives

First perspective: Not accepting that goods owned with the intention of

(1) See: "Al-Hâwy Al-Kabîr", [3: 287].

(2) See: "Al-Badr Al-Munîr", [5: 594]; "irwâ' Al-Ghalîl", [3: 311].

(3) See: "Al-Hâwy Al-Kabîr", [3: 287]; "Al-Bayân", [3: 314].

(4) See: "Al-Ishrâf 'la nukat masâ'il Al-khilâf", [1: 402]; "Adh-Dhakhîrah", [3: 17]; "Al-Furû'", [4: 195].

(5) See: "Sharh Az-Zaraqâny 'la Mukhtasar khalîl", [2: 280]; "Al-Mughny", [3: 60].

(6) See: "Al-Ishrâf 'la nukat masâ'il Al-khilâf", [1: 403]; "Adh-Dhakhîrah", [3: 17].

trade without a transaction are not subject to zakah.

Second perspective: The reason for the non-obligation of zakah on goods owned with the intention of trade without a transaction, according to those who hold this opinion, is not because the goods were not acquired with one of the two currencies, but rather that the intention was not accompanied by an act of trade, which is the transaction itself.

Third evidence: These goods are originally personal-use items, so they take the ruling of their origin; thus, they are treated according to the principle concerning personal-use items⁽¹⁾.

Discussed: This might be accepted if the goods were purchased without specifying the intention, and it could be argued that they take the ruling of what was used for the purchase. However, since they were purchased with the intention of trade, that categorizes them as trade goods, and the original nature of the items is no longer considered.

Evidence of the third opinion: I have not found any evidence for those who argue that zakah is obligatory when the price of goods purchased with the intention of trade is personal-use items owned through a pure transaction, while it is not obligatory if the price consists of personal-use items owned through an non-pure transaction or without a transaction. It can be argued that: goods owned through an non-pure transaction or without a transaction cannot be considered for trade, even if they were intended for trade; therefore, they cannot be validly used as the price for trade goods.

Discussed: By not accepting that goods owned without a transaction cannot be for trade based on intention. Even if we were to accept this, what matters is the ownership of the goods through purchase with the intention of trade, regardless of their price or origin.

Preference:

The preferred -and Allah is the all-knowing- is the first opinion, which is the obligation of zakah owned with the intention of trade using personal items as payment.

Reasons for the preference:

1- Strength of the evidence of the first opinion and their immunity from

(1) See: "At-Tanbīh 'ala Mabādi' At-Tawjīh", [2: 799]; "Adh-Dhakhīrah", [3: 17].

criticism, along with the weakness of the evidence for the second and third opinions.

- 2- The preferred opinion -as previously established- is the obligation of zakah on trade goods based merely on the intention of trade. Therefore, goods purchased with the intention of trade are prioritized, even if their price consists of personal-use items, because the intention of trade is coupled with the act of purchasing.

Topic (4): Hiring the agent using the trade capital without the intention of trade

The default for the agent “Al-Mudârib”⁽¹⁾ or worker is to buy and sell with the capital of the partnership “Mudârabah” with the intention of trade, as this is the essence of the investment partnership contract. However, the agent could sometimes purchase with the partnership’s capital without the intention of trade, and this is what I will discuss in this topic.

Aspect of the issue:

If the agent purchases something with the partnership’s capital without the intention of trade, but rather for personal use or acquisition - like buying fodder for livestock meant for trade or a vehicle to carry the trade items- Is what he purchased considered trade goods and thus subject to zakah, even if it was intended for personal use?

Opinions on the issue:

After searching, I have not found anyone who addressed the ruling of this issue other than the scholars of Hanîfah and Shams Ad-Dîn ibn Muflih⁽²⁾ of

(1) The agent “Al-Mudârib” is the worker in a partnership, and a partnership “Mudârabah” is the act of giving money to someone to trade with it for a known share of the profit. In Iraq, this is called “mudarabah” derived from “striking the ground” (Ad-Darb Fi Al-Ard) which refers to trade. In the Hijaz, it is called “Qirâd,” meaning “to cut off” as if the owner of the money has cut off a portion of his wealth and given it to the agent, while also cutting off a share of the profit for him. See: “Al-Bayân”, [7: 181]; “Al-Mughny”, [5: 19]; “Al-’iqnâ’”, [2: 259].

(2) He is: Muhammad ibn Muflih ibn Muhammad ibn Mufarij Al-Râmini Al-Maqdisi Al-Hanbali, Abu `Abdullah, Shams Ad-Dîn, and Ramin is a well-known village in Palestine. He was a devout fundamentalist scholar. He studied under Sheikh Al-Islam Ibn Taymiyah, excelled in knowledge, issued legal opinions, taught, and authored works.=

the Hanâbilah, Therefore, I approached it through deduction, and it appeared to me that scholars are divided into two opinions, which are:

First opinion: Everything that the agent buys using the partnership capital is considered for trade and zakah becomes obligatory in it. even if it was purchased for personal use. This is doctrine for the Hanîfah⁽¹⁾, and Ibn Al-Muflih mentioned it in "Al-Furû` - from some of the Hanâbilah⁽²⁾.

And this makes it that this issue for them is excluded from the requirement of the intention of trade for the zakah to be obligatory on trade goods⁽³⁾.

Second opinion: What the agent buys using the partnership capital with the intention of personal use is not considered for trade and zakah is not obligatory on it.

This opinion can be inferred from the Mâlikiah, Shâfi`iah and Hanâbilah based on their general rule that the intention of trade is a requirement for the obligation of zakah on trade goods⁽⁴⁾. Their opinion contradicts the Hanîfah's⁽⁵⁾ in that the agent may pay "Futrah"⁽⁶⁾ for the slaves prepared for trade⁽⁷⁾ with the partnership capital, and if zakah was obligatory on all goods the agent buys, it would be obligatory on the "Futrah", which is incorrect.

Evidence and discussions:

The Hanîfah argued that everything the agent buys with the partnership's capital is considered for trade and thus subject to zakah, even if it was bought

= He was a prominent figure among the Hanâbilah. Among his works are "Al-Furû'", in which he compiled much of the school's doctrine and is known as "Miknasat Al-Madhhab", as well as "Al-Ustûl" and "Al-Âdâb Ash-Shar'iah", He passed away in 763 AH. See his biography: "Al-Jawhar Al-Mundad" by Ibn Al-Mubrad, [1: 114]; "Tashîl As-Sâbilah" by Salih Âl `uthaymîn, [2: 1131].

(1) See: "Badâ'i' As-Sanâ'i'", [2: 13]; "Fath Al-Qadîr", [2: 219]; "Durar Al-Hukâm, [1: 174].

(2) See: "Al-Furû'" [4: 195].

(3) See: "Al-Bahr Ar-Râ'iq", [2: 226].

(4) See: "At-Talqîn, [1: 61]; "At-Tawdhîh", [2: 213]; "Nihâyat Al-Matlab", [3: 313]; "Asna Al-Matâlib", [1: 381]; "Al-Mughny", [3: 59]; "Sharh Az-Zarkashy", [2: 514].

(5) See: "Badâ'i' As-Sanâ'i'", [2: 70]; "Al-'inayah", [2: 286].

(6) Meaning: the zakah of breakfast on slaves prepared for trade.

(7) See: "Al-Bayân wa At-Tahsîl", [12: 362]; "Sharh Az-Zaraqâny le Mukhtasar Khalîl", [2: 288]; See: "Al-Majmû'", [6: 71]; "Mughny Al-Muhtâj", [2: 110]; "Al-Mughny", [3: 92]; "Kashâf Al-Qinâ'", [2: 247].

with the intention of personal use, basing their opinion on: that the agent cannot own purchases made with the partnership's capital except for the purpose of trade; therefore, everything he buys is considered to be for trade⁽¹⁾.

Discussed: Not accepting that the agent cannot make purchases with the partnership's capital except for trade, as the agent has the right to purchase for the expenses related to the partnership, such as for slaves or animals, as well as the food for the slaves prepared for trade "Futrah"⁽²⁾. Additionally, he is permitted to spend on himself from the partnership's capital while traveling, according to your view⁽³⁾. All of this does not pertain to trade.

Evidence of the second opinion: It can be argued in support of the opinion that what the agent purchases with the partnership's capital with the intention of personal use is not considered for trade and is therefore not subject to zakah based on: the consensus that zakah is not required on goods purchased for personal use⁽⁴⁾. This includes items bought by the agent or the worker with the partnership's capital for personal use, as there is no indication that such purchases should be excluded from this rule.

Preference and its reason:

After contemplating the issue it appears to me that the preferred -and Allah is the all-knowing- is the distinction. As what the agent purchases from the partnership's capital with the intention of personal use can only fall into one of two cases:

The first: To be permitted to the agent to purchase that item for personal use, either genuinely -with the permission of the capital provider- or legally; such as expenses related to animals used for trade or personal expenses during travel. In this case, the items would not be considered for trade, and zakah would not be obligatory on them.

The second: when the agent purchases items with the partnership's capital for personal use without being authorized to do so -this is the original premise

(1) See: "Fath Al-Qadîr", [2: 219]; "Al-Bahr Ar-Râ'iq", [2: 226].

(2) See: "At-Tawdîh", [2: 246]; "Sharh Al-Khurashy", [6: 226]; "Al-Bayân", [7: 224]; "An-Najm Al-Wahâj", [3: 220]; "Al-Mughny", [3: 92]; "Sharh Al-Muntahâ", [1: 439].

(3) See: "At-Tajrid", [7: 3515]; "Al-Mabsût", [22: 62]; "Al-Hidâyah", [3: 209].

(4) See regarding the consensus: "At-Tanbîh 'ala Mabâdi' At-Tawjîh", [2: 798]; "Al-Hâwy Al-Kabîr", [3: 88].

of the partnership. In this case, the items would be considered for trade, and zakah would be obligatory on them because the agent is a representative of the capital provider⁽¹⁾, who has entrusted him with purchases solely for trade. The intention of the principal takes precedence over that of the agent⁽²⁾.

Topic (5): Effect of intention on the zakah of stolen goods if the thief traded with them

Aspect of the issue:

If someone owned items with the intention of trade and a thief seized them and traded with them, does zakah on trade apply to the original owner?

Clarifying the point of disagreement:

- 1- The scholars agree that the owner of the seized property -whether it is trade goods or otherwise- is not obligated to pay zakah on it while it is in the hands of the thief⁽³⁾.
- 2- Scholars disagreed regarding zakah on trade goods that were seized and then traded by the thief then returned to their owner. Is zakah obligatory for the past years, or should the owner start a new zakah year?

Opinions on the issue: Scholars disagreed on this issue, resulting into two opinions:

First opinion: Zakah is not obligatory on them at all, and the owner starts a new year if it returned back to him. This is doctrine for the Hanîfah⁽⁴⁾. and doctrine for the Hanâbilah⁽⁵⁾.

I did not find a text on this issue among the Mâlikiah and the Shâfi'iah. However, this opinion can be derived for the Mâlikiah based on their claim that if someone seizes property and trades with it, the profit from the trade belongs to the thief, while the original owner retains only the capital⁽⁶⁾. There-

(1) See: "Al-Mughny", [5: 81]; "Kashâf Al-Qinâ", [3: 508].

(2) See: "Asna Al-Matâlib" [1: 360]; "Al-Mubdi", [2: 395].

(3) See: "Al-Mabsût", [2: 171]; "Hâshiyat Ibn 'abidin", [2: 266]; "Al-Ishrâf 'la nukat masâ'il Al-khilâf", [1: 384]; "At-Tawdîh", [2: 247]; "Al-Hâwy Al-Kabîr", [3: 130]; "Rawdat At-Tâlibîn", [2: 192]; "Al-Mubdi", [2: 298]; "Kashâf Al-Qinâ", [2: 137].

(4) See: "Al-Mabsût", [3: 110]; "Al-Bahr Ar-Râ'iq", [2: 218].

(5) See: "Al-Mughny", [3: 74]; "Tashîh Al-Furû" by Al-Maradâwy [4: 13].

(6) See: "Bidayat Al-Mujtahid", [4: 105]; "Manâhij At-Tahsîl", [8: 206]; "Al-Fawakih =

fore, the trade is considered interrupted for the owner due to the theft, and zakah would not be obligatory on him.

This opinion can also be derived for the Shâfi`iah based on their claim that the actions of the thief in trading the seized property are invalid, and the profit from such actions is neither owned by the thief nor by the original owner⁽¹⁾. Consequently, the trade is considered interrupted for the owner due to the theft, and therefore, zakah is not obligatory on him.

Second opinion: Zakah is obligatory on them if the owner intended to trade them while with the thief. and he must pay zakah on it for the past years once he takes possession of it. This is an opinion among the Hanâbilah⁽²⁾.

Evidence and discussions:

Evidence of the first opinion: Those who argue that zakah is not obligatory on the owner of his stolen goods if the thief has traded with them provide the following reasoning:

First evidence: The intention of trade is a condition for the obligation of zakah, and with the theft of the assets, the intention of trade is interrupted (due to its impossibility), thus nullifying the condition⁽³⁾.

Second evidence: The reason for the obligation of zakah on trade assets is their growth and increase through flipping and trading, and the owner's path to growth has been obstructed by them being stolen from him, making zakah non-obligatory on them⁽⁴⁾.

Discussed: That the thief in this issue traded with the stolen goods, so they are growing in his possession, and if they return to the owner, they will return with their growth.

Third evidence: one of the conditions for the obligation of zakah is complete ownership, and the owner of the stolen goods has weak ownership and limited control, so it is necessary that zakah does not become obligatory upon

=Ad-Dawâny", [2: 177].

(1) See: "Khabâya Az-Zawâya" by Az-Zarkashy, [p.206]; "Asna Al-Matâlib" [2: 387]; "Mughny Al-Muhtâj", [3: 363].

(2) See: "Al-Mughny", [3: 74]; "Al-Furû'", [4: 13].

(3) See: "Al-Mughny", [3: 74].

(4) See: "Al-Mabsût", [2: 171]; "Al-Hâwy Al-Kabîr", [3: 130].

him in this case⁽¹⁾.

Evidence of the second opinion: Those who argue for the obligation of zakah on the owner of the stolen assets, if the thief traded them and the owner intended to trade them while they were in the thief's possession, support their opinion with the following: the goods did not leave the ownership of their owner due to the theft. If the owner's intention to trade them continued while they were with the thief, then his trading did not cease, and his intention remained valid, making zakah obligatory on him when he takes possession of them.

Discussed: The intention to trade the assets while they are in the possession of the thief is ineffective because the stolen assets have left the control of their owner, and their return is uncertain. Therefore, it is not conceivable for the owner to have a firm intention to trade them, unlike in the case where the assets are with an agent or proxy, where it is possible to manage and recover them.

Preference

The preferred is -and Allah is the all-knowing- is the first opinion, which is that zakah on stolen goods if the thief traded with them is not obligatory in all cases, even if the owner intended to trade them while being with the thief.

Reasons for the preference:

- 1- The strength of the evidence of the first opinion, and the weakness of the evidence of the second opinion and its vulnerability to criticism.
- 2- One of the conditions for the validity of the intention is that it must be resolute. The intention of the owner to trade with the seized goods is not a resolute intention because the goods are out of his control, and he cannot retrieve them; therefore, trading with them is interrupted in his case.

Reasons for the disagreement:

- 1- The disagreement regarding the determination of the owner of the profits from the seized goods that the thief has traded. Those who hold that the profits belong to the owner of the goods support the opinion that zakah is obligatory on him. In contrast, those who argue that the

(1) See: "Al-Hâwy Al-Kabîr", [3: 130]; "Al-Mughny", [3: 74].

profits belong to the thief or that neither party owns them do not support the opinion that zakah is obligatory on the owner of the goods.

- 2- The disagreement regarding the validity of the owner's intention to trade with his goods that are in the hands of the thief. Proponents of the first opinion argue that the owner's intention to trade is invalid while the goods are with the thief, thus zakah is not obligatory on them. In contrast, proponents of the second opinion maintain that the intention to trade is valid, meaning the owner is obligated to pay zakah on the seized goods if he intends to trade with them while they are with the thief.

The effect of intention on the issue:

The effect of intention appears in that the proponents of the second opinion believe the intention to trade does not cease due to the theft of the goods if the owner intends to trade with them while in the hands of the thief. However, the prevailing opinion is that the intention does cease due to the theft, rendering the intention to trade ineffective while the goods are with the usurper.



Chapter 2

The Effect of Intention in Matters of Giving Zakât

There are 12 Treatises as follows:

- 1- **Treatise 1:** The Topic of the intention to give zakât (*almsgiving*), its description, and its rulings, as well as the rulings when there is conflict, hesitation, or combining intentions.
- 2- **Treatise 2:** The timing of the intention to give zakât.
- 3- **Treatise 3:** The ruler's zakât collection without the owner's intention to give it.
- 4- **Treatise 4:** The intention to designate the wealth and its rightful recipients in zakât.
- 5- **Treatise 5:** The intention to give zakât for wealth not in the owner's possession.
- 6- **Treatise 6:** The effect of intention when delegating someone to give zakât.
- 7- **Treatise 7:** The intention to count expenses and what is given to others during holidays and special occasions as zakât.
- 8- **Treatise 8:** Giving charity without the intention of it being zakât.
- 9- **Treatise 9:** The effect of intention when a person gives zakât on behalf of someone else.
- 10- **Treatise 10:** The intention to give zakât from wealth that has been vowed for charity.
- 11- **Treatise 11:** The intention to give zakât from debt and deposits.
- 12- **Treatise 12:** The effect of intention in the obligation to give zakât on found property.

First Treatise

The Condition of Intending to Give Zakât, its Description and Rulings in Cases of Conflict, Hesitation, or Combination

First Topic: The Condition of Intending to Give Zakât

It is a condition for the validity of zakât that an intention (*niyyah*) be made when giving it, such that the one giving zakât intends in their heart that what they are giving is zakât from their wealth or the wealth of someone under their care, such as a child or a person of unsound mind.⁽¹⁾

The Opinions on the Issue:

The jurists have differed on this issue and divided into two opinions:

First Opinion: The intention is required for the validity of zakât, and thus, it is not valid to give zakât without an intention. This is the opinion of the majority of jurists⁽²⁾, including the Ḥanafîs⁽³⁾, the Mâlikîs⁽⁴⁾, the Shâfi'îs⁽⁵⁾, and the Ḥanbalîs.⁽⁶⁾

Second Opinion: The intention is not required for the validity of zakât, and it is valid to give it without an intention. This is the view of Al-Awza'i⁽⁷⁾ and

(1) See: "Bulghat As-Sâlik Li-Aqrab Al-Masâlik", [1: 666]; "Al-Mughni", [2: 477].

(2) See: "Al-Bayân", [3: 399]; "Al-Mughni", [2: 478].

(3) See: "Al-Mabsût", [3: 34]; "Badâ'i' As-Sanâ'i'", [2: 40]; "Al-Binâyah", [3: 311].

(4) See: "Jâmi' Al-Ummahât", (p. 166); "Adh-Dhakhîrah", [3: 136]; "Mawâhib Al-Jalîl", [2: 357].

(5) See: "Al-Hâwî Al-Kabîr", [3: 178]; "Asnâ Al-Matâlib", [1: 358]; "Tuhfat Al-Muhtâj", [3: 346].

(6) See: "Al-Hidâyah", (p. 145); "Sharh Az-Zarkashî", [2: 427]; "Kashshâf Al-Qinâ'", [2: 260].

(7) See: "Al-Binâyah", [3: 311]; "Al-Ishrâf", [1: 390]; "Al-Hâwî Al-Kabîr", [3: 178]; "Al-Mughni", [2: 476].

a position within the Mâlikî⁽¹⁾ and Shâfi'î schools, where some scholars, like Al-Qaffal and a group from the Shâfi'îs, held that verbal pronouncement replaces the intention in the heart specifically for zakât.⁽²⁾

Taken from Imâm Shâfi'î's statement in *al-Umm*: «Whether one intends in one's heart or verbalizes that what he has given is obligatory... What prevented me from making the intention for zakât like the intention for prayer is the difference between zakât and prayer in some of their circumstances. Don't you see that it is sufficient for him to pay zakât before its due time, and it is sufficient for the ruler to take it from him without his consent, and this is not valid in prayer.»⁽³⁾

Some Shâfi'îs have interpreted this text to mean that verbalization is intended along with the intention of the heart. However, the Imâm's reasoning by differentiating between zakât and prayer poses a challenge to this interpretation.⁽⁴⁾

Ibn Salah⁽⁵⁾ offered another interpretation, saying: «Imâm Shâfi'î only mentioned verbalization here because verbalization is not separate from the intention of the heart, unlike prayer and ablution; for they are repeated fre-

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- (1) Derived from the statement of Imâm Mâlik: The Imâm takes from the wealth of one who withholds zakât, and it suffices without intention, as they apply this ruling based on the opinion that the recipients of zakât are partners in the wealth in proportion to the zakât. See: "At-Tanbîh 'Alâ Mabâdi' At-Tawjîh", [2: 836]; "Jâmi' Al-Ummahât", (p. 166); "Sharh Ibn Nâjî At-Tanûkhî", [1: 303].
 - (2) Their intent is that as long as one does not intend in the heart something contrary to what is uttered by the tongue. See: "Nihâyat Al-Matlab", [3: 196]; "Al-Bayân", [3: 399]; "Al-Majmû'", [6: 180]; "Maqâṣid Al-Mukallifîn", (p. 118).
 - (3) *al-Umm*, [24/2].
 - (4) See: *Bahr al-Madhhab*, 83/3; *al-Majmu'*, [181/6]. These references direct the reader to specific treatises in two other major Islamic legal texts: *Bahr al-Madhhab* (The Ocean of the Madhhab) and *al-Majmu'* (The Collection), for further discussion on the topic.
 - (5) He is: 'Uthmân ibn 'Abd al-Rahmân ibn 'Uthmân ibn Mûsâ al-Nasrî al-Kurdî al-Shah-razûrî, Abû 'Amr, Taqî al-Dîn, known as Ibn Salah, one of the Shâfi'î jurists. He was a leading scholar of his time in tafsir (Quranic exegesis), ḥadîth (prophetic traditions), fiqh (Islamic jurisprudence), and the science of ḥadîth. He taught at the Nasiri Madrasa in Jerusalem and later at the Rawhahi Madrasa in Damascus. Among his many works are 'Ulûm al-Ḥadîth (Sciences of ḥadîth), Sharḥ Mushkil al-Wasîṭ (Commentary on the Difficult Parts of al-Wasîṭ), and Adab al-Mufti wa al-Mustafti (The Etiquette of the Jurist and the Questioner). He died in 643 AH. For his biography, see *Wafayât al-A'yân*, [244/3; Ṭabaqât 'Ulamâ' al-Ḥadîth, [214/4].

quently, and the heart may become distracted.» ⁽¹⁾

Arguments and Counterarguments

Arguments for the first opinion (that intention is necessary for zakât):

The majority of scholars argue that intention is necessary for the validity of paying zakât, based on the following:

- 1- First Evidence: The Prophet (peace and blessings of Allah be upon him) said: «*Actions are but by intentions, and everyone will be rewarded only for what they intended.*» ⁽²⁾

Explanation: Since paying zakât is an action, and the ḥadīth clearly states that actions are based on intentions, intention is necessary for zakât to be valid. ⁽³⁾

- 2- Second Evidence: Zakât, like prayer, fasting, and Hajj, requires intention because they are all acts of worship with a specific purpose. ⁽⁴⁾
- 3- Third Evidence: Intention is required to differentiate between various acts of worship, such as voluntary charity, obligatory charity, vows, and kaffârah (expiation). For example, giving money to someone could be considered a gift, an expense, a voluntary charity, zakât, a vow, or a kaffârah. Therefore, intention is necessary to clarify the nature of the act. ⁽⁵⁾

The Fourth Evidence: Zakât is analogous to prayer and fasting in requiring the intention (*niyyah*) for its performance. This is because they are all acts of worship that can be obligatory or voluntary, and intention is required to distinguish between the two. ⁽⁶⁾

The Fifth Evidence: Zakât is an act of worship whose obligation is repeated. Therefore, it requires intention, just like prayer and fasting. ⁽⁷⁾

(1) Sharḥ Mushkil al-Wasîṭ, [79/3]. This refers to a specific treatise in Ibn Salah's commentary on al-Wasîṭ, a middle-level text on Shâfi'î jurisprudence.

(2) Previously cited, see page 7 of this book.

(3) See: Badâ'i' al-Şanâ'i', [40/2]; al-Ishrâf, [390/1]; al-Hâwiy al-Kabîr, [178/3]; al-Mughnî, [476/2].

(4) See: al-Mabsûṭ, [34/3]; Badâ'i' al-Şanâ'i', [40/2].

(5) See: al-Amâniyya fî Idrâk al-Niyyah, (p. 31); al-Mubdi', 393/2; Maṭâlib Awlî al-Nahy, [121/2].

(6) See: al-Ishrâf 'ala Nukat Masâ'il al-Khilâf, [390/1]; al-Umm, 2[4/2]; al-Hâwiy al-Kabîr, [178/3].

(7) See: al-Amâniyya fî Idrâk al-Niyyah, (p. 31); al-Mubdi', [393/2]; Maṭâlib Awlî al-Nahy, [121/2].

Arguments Against the Necessity of Intention for Zakât:

The First Argument: When zakât becomes due, it becomes a debt upon the individual. Debts do not require a specific intention to be paid. ⁽¹⁾

- Counterargument: Comparing zakât to a human debt is misleading. Zakât is a divine obligation and a form of worship, unlike a human debt. Moreover, acts of worship related to the body, such as retaliation or punishment for slander, do require intention, even though they are based on rights. Therefore, an act of worship related to wealth, like zakât, should also require intention. ⁽²⁾

The Second Argument: Zakât is analogous to manumission, endowment, and bequest, which do not require a specific intention. All of these acts involve the disposal of wealth. ⁽³⁾

- Counterargument: Even if we accept that manumission, endowment, and bequest do not require specific intention, this analogy is flawed. The original acts (manumission, etc.) do not necessarily require verbalization, unlike zakât, which is a formal act of worship. Moreover, these acts are not obligatory, unlike zakât.

The Third Argument: The guardian of an incompetent person can pay zakât on their behalf, even if the incompetent person has no intention. Similarly, the authorities can forcibly take zakât from someone who refuses to pay, even if they have no intention. This suggests that intention is not essential. ⁽⁴⁾

- Counterargument: Both the guardian and the authorities are acting on behalf of the person who owes the zakât. Their intention is sufficient. However, if the intention of the person who owes the zakât were truly required, neither the guardian nor the authorities could fulfill this obligation. ⁽⁵⁾

The Fourth Argument:

Those entitled to zakât are partners in the wealth to the extent of the zakât, and a partner's taking his share from another partner does not require an in-

(1) See: al-Dhakhîrah, [136/3]; al-Hâwi al-Kabîr, [178/3].

(2) See: al-Hâwi al-Kabîr, [178/3]; al-Mughnî, [476/2].

(3) See: al-Baniyyah, [311/3].

(4) See: 'Aqd al-Jawâhir, [214/1]; al-Dhakhîrah, [136/3]; al-Hâwi al-Kabîr, [178/3].

(5) See: 'Ajâlah al-Muhtâj, [509/1]; al-Mughnî, [476/2].

tention from either the giver or the receiver. ⁽¹⁾

- Counterargument: It cannot be agreed upon that those entitled to zakât are partners in the wealth to the extent of zakât. The difference is that performing zakât is an act of worship, unlike giving money to a partner.

The Fifth Argument:

If someone who is obligated to pay zakât then apostatizes, they are still allowed to pay zakât while in a state of apostasy. An apostate is not considered to have the capacity for intention. This indicates that intention is not a condition for paying zakât. ⁽²⁾

- Counterargument: It cannot be agreed upon that paying zakât is valid in the case of an apostate. Even if we were to agree, we cannot accept that intention is not a condition for paying zakât in the case of an apostate because an apostate cannot be imagined to have the intention of drawing closer to God. However, the intention of purpose and distinction can be imagined. ⁽³⁾

The Sixth Argument:

Some Shâfi'î scholars have argued that verbalizing the payment of zakât is sufficient and replaces the need for a heartfelt intention, based on the fact that agency is permissible in paying zakât. Since one person can act on behalf of another in paying zakât, it follows that the tongue can act on behalf of the heart. ⁽⁴⁾

• Counterarguments:

- First: This is contradicted by the case of Hajj, where agency is also permissible, but intention is still required.
- Response: The difference between Hajj and zakât is that not everyone is eligible to perform Hajj on behalf of another, unlike zakât, where anyone can pay on behalf of someone else, including a slave or a non-Muslim. ⁽⁵⁾

(1) See: Kashâf al-Qinâ' [181/2]; Sharḥ Muntahâ al-Îrâdât [398/1].

(2) See: Nihâyat al-Maṭlab [196/3]; Bahr al-Madhhab [81/3].

(3) See: Fath al-'Azîz [523/5].

(4) See: Nihâyat al-Maṭlab [196/3]; al-Tahdhîb [63/3]; al-Majmû' [181/6].

(5) See: al-Tahdhîb [63/3].

- Second: This argument can be further challenged by distinguishing between the agency of a person and the agency of the tongue. The agency of a person is valid because the intention is present in the principal, thus achieving the purpose and distinction. However, the agency of the tongue may not achieve the same, as the tongue may speak jokingly or mistakenly without the heart intending it. ⁽¹⁾

The Preferred Opinion:

The preferred opinion, and Allah knows best, is the first one: that intention is a condition for the validity of paying zakât, and zakât is not valid without intention.

Reasons for the Preference:

1- Strength of the Evidence for the First Opinion:

The arguments supporting the first opinion (that intention is necessary for zakât) are stronger and more sound, while the arguments for the second opinion are weaker and have more flaws.

2- Zakât is a Specific Act of Worship:

Zakât is considered a specific act of worship ordained by Allah. The fact that it is also used to fulfill the needs of the poor does not change its fundamental nature as an act of worship. Therefore, denying its obligation is considered disbelief, and it is not nullified by neglecting those who are entitled to it. Given this, the topic of intention for zakât, like other specific acts of worship, is established.

Reason for the Difference of Opinion:

The disagreement arises because zakât combines two aspects: being an act of worship and being a right for the needy. Those who emphasize the first aspect (worship) require intention, while those who emphasize the second aspect (rights of the needy) do not necessarily require intention. ⁽²⁾

Consequences of the Difference of Opinion:

The difference of opinion on this matter has practical implications. For example, if someone gives an amount equal to zakât or more to those entitled to

(1) See: the previous reference.

(2) See: al-Tanbîh 'ala Mabâdî' al-Tawjîh [836/2]; Lawâmi' al-Durar [569/3].

it without intending to pay zakât, is this considered zakât? ⁽¹⁾

- First Opinion: This would not be considered zakât due to the lack of intention.
- Second Opinion: This would be considered zakât and is valid as if it were a debt.

Second Topic: The Nature of the Intention for Paying Zakât

First Issue:

Verbalizing the Intention to Pay Zakât

The Issue:

Scholars agree that intention originates in the heart, but they disagree on whether it is necessary to verbalize this intention. In other words, is it permissible for the person paying zakât to say, «I intend to pay zakât with this money»? ⁽²⁾

Clarification of the Points of Disagreement:

- 1- The scholars unanimously agree that verbalizing the intention (*niyyah*) does not invalidate it. ⁽³⁾
- 2- The scholars also agree that verbalizing the intention out loud is not legislated. ⁽⁴⁾
- 3- The scholars, however, differ regarding the ruling on verbalizing the intention for zakât. There are five opinions on this matter, which are explained as follows: ⁽⁵⁾

(1) See: Sharḥ al-Zarqânî ‘ala Mukhtaṣar Khalîl [323/2].

(2) Ibn Taymiyyah and al-Khaṭīb al-Sharbīnī have reported consensus on this; see: Majmû‘ al-Fatâwâ [217/22]; Mughnî al-Muḥtâj [343/1]; also see: al-Jawharah al-Nîrah [7/1]; Marâqî al-Falâḥ [p. 33]; al-Ma‘ûnah (p. 119); Sharḥ Mukhtaṣar Khalîl lil-Kharashî [266/1]; al-Ḥawî al-Kabîr [91/2]; Rawḍat al-Ṭâlibîn [228/1]; al-Mughnî [336/1]; al-Mumtî‘ fi Sharḥ al-Muqni‘ [335/1].

(3) See: At-Tanbîḥ ‘Alâ Mushkilât Al-Hidâyah, [1: 509]; Al-Baḥr Ar-Râ‘iq, [1: 293]; Irshâd As-Sâlik, (p. 15); Tâhbîr Al-Mukhtaṣar, [1: 282]; Al-Bayân, [3: 400]; Rawḍat At-Ṭâlibîn, [1: 228]; Al-Mughnî, [1: 336]; Kashshâf Al-Qinâ‘, [1: 87].

(4) Meaning: out loud, audible, as opposed to verbalizing it silently, which is with a low, inaudible voice.

(5) The consensus was reported by Shaykh Al-Islâm Ibn Taymiyyah. See: Majmû‘ =

Opinions on the Matter:

- First Opinion: Verbalizing the intention for zakât privately is recommended. This is the well-known view among the Ḥanafîs⁽¹⁾, and it is also the view of the Shâfi'îs⁽²⁾, the Ḥanbalîs⁽³⁾, and one opinion within the Mâlikî school⁽⁴⁾. It is particularly recommended for someone who has excessive doubts.⁽⁵⁾
- Second Opinion: Verbalizing the intention for zakât privately is permissible. This is a view among the Ḥanafîs⁽⁶⁾ and one opinion in the Mâlikî school.⁽⁷⁾
- Third Opinion: Verbalizing the intention for zakât privately is a condition for the validity of the intention. This is considered an irregular (*shâdh*) opinion within the Shâfi'î school.⁽⁸⁾
- Fourth Opinion: Verbalizing the intention for zakât privately is disliked. This is a view within the Ḥanafî school and the well-known opinion of the Mâlikî school, who expressed it as «contrary to what is preferable».⁽⁹⁾

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- = Al-Fatâwâ, [22: 218]; Tabyîn Al-Ḥaqâ'iq, [1: 99]; Marâqî Al-Falâh, (p. 33); Al-Fawâkih Ad-Dawâni, [1: 146]; Lawâmi' Ad-Durr on Ihkâk Astâr Al-Mukhtaṣar, [2: 68]; Asnâ Al-Maṭâlib, [1: 42]; Mughni Al-Muḥtâj, [1: 343]; Al-Furû', [1: 165]; Kashshâf Al-Qinâ', [1: 87].
- (1) I did not find a specific text from them regarding the intention of performing zakât, except that they stated the recommendation of verbalizing the intention for other acts of worship, such as wudû' and prayer, citing general evidence that applies to all acts of worship. See: Al-Mabsût by As-Sarakhsi, [1: 10]; Al-Hidâyah, [1: 46]; Al-Baḥr Ar-Râ'iq, [1: 293].
- (2) See: Al-Muhimmât fî Sharḥ Ar-Rawdah Wa Ar-Râfi', [4: 274]; An-Najm Al-Wahhâj, [1: 313]; Tuhfat Al-Muḥtâj, [1: 195].
- (3) See: Sharḥ Az-Zarkashî, [1: 182]; Al-Inṣâf, [1: 142]; Sharḥ Muntahâ Al-Îrâdât, [1: 53].
- (4) See: Ḥâshiyat Ad-Dusûqî on Ash-Sharḥ Al-Kabîr, [1: 234]; Manḥ Al-Jalîl, [1: 244].
- (5) See: Al-Baḥr Ar-Râ'iq, [1: 293]; Marâqî Al-Falâh, (p. 84).
- (6) See: Jawâhir Ad-Durar, [2: 57]; Sharḥ Az-Zarqânî on Mukhtaṣar Khalîl, [1: 346].
- (7) Some restricted this view to the intention of performing prayer, while others applied it to all acts of worship. An-Nawawî described this opinion as irregular (*shâdh*). See: Rawdat At-Ṭâlibîn, [1: 228]; An-Najm Al-Wahhâj, [3: 283]; Tuhfat Al-Muḥtâj, [3: 386].
- (8) See: At-Tanbîh 'Alâ Mushkilât Al-Hidâyah, [1: 509]; Al-Binâyah, [2: 140]; Al-Ashbâh Wa An-Naẓâ'ir by Ibn Nujaym, (p. 41).
- (9) "Contrary to what is preferable" (*khilâf al-awlâ*) is an intermediate level between =

Fifth Opinion:

Verbalizing the intention for zakât privately is a prohibited innovation (*bid'ah*). This is an opinion within the Ḥanafī school⁽¹⁾, and it was adopted and advocated by Shaykh Al-Islam Ibn Taymiyyah⁽²⁾, supported by the Ḥanbalīs.

Evidence and Discussions:

Evidence for the First Opinion:

Those who argue that it is recommended to verbalize the intention for zakât privately cite the following:

1. First Evidence:

A person's mind may become distracted, and if they verbalize their intention, it helps focus the heart and firm up their resolve⁽³⁾.

- Counterargument: A person may verbalize the intention without being mentally focused, especially if they are used to repeating certain phrases in specific situations. The intention does not require verbal confirmation since it naturally follows the knowledge of the act being performed ⁽⁴⁾ ⁽⁵⁾

2. Second Evidence:

Verbalizing the intention combines the act of the heart with the act of the tongue, and this is better.

- Counterargument: If combining the acts of the heart and the tongue were better, the Prophet (peace and blessings be upon him) would not have neglected it, and his practice would have been transmitted. ⁽⁶⁾ ⁽⁷⁾

= **dislike (karâhah) and permissibility, being less severe than what is disliked but still falling under it.** See: Sharḥ Az-Zarqânî on Mukhtaṣar Khalîl, [1: 384]; Ḥâshiyat Al-'Adawî on Sharḥ Al-Khurashî, [4: 27]; Al-Baḥr Al-Muḥîṭ by Az-Zarkashî, [1: 400].

(1) See: Tahbîr Al-Mukhtaṣar, [1: 282]; Sharḥ Az-Zarqânî on Mukhtaṣar Khalîl, [1: 346]; Sharḥ Al-Khurashî, [2: 246].

(2) See: Faṭḥ Al-Qadîr, [1: 267]; Al-Baḥr Ar-Râ'iq, [1: 293]; Majma' Al-Anhur, [1: 85].

(3) See: Al-Furû', [1: 165]; Kashshâf Al-Qinâ', [1: 87].

(4) See: Majmû' Al-Fatâwâ by Ibn Taymiyyah, [22: 223]

(5) See: Al-Mabsûṭ, [1: 10]; Al-Baḥr Ar-Râ'iq, [1: 293]; Al-Bayân, [1: 101]; Al-Mumti' Sharḥ Al-Muqni', [1: 335].

(6) See: Baḥr Al-Madhhab by Ar-Ruyânî, [1: 74]; Marâqî Al-Falâḥ, (p. 33).

(7) See: Majmû' Al-Fatâwâ by Ibn Taymiyyah, [22: 222].

3. Third Evidence:

Verbalizing the intention cuts off doubts and removes confusion.

- Counterargument: Verbalizing the intention may cause doubts for those who are not already prone to them. A person who gets accustomed to verbalizing the intention might start doubting their intention if they fail to verbalize it. For those prone to excessive doubts (*was-wasah*), verbalizing the intention does not eliminate their doubts; instead, ignoring the doubts and refusing to respond to them is what alleviates them, as experienced practitioners and specialists have observed^{(1) (2)}

Fourth Evidence: Verbalizing the intention helps in avoiding scholarly disagreement, which is recommended (*mustahabb*).⁽³⁾

This argument is refuted from two perspectives:

- 1- First Perspective: The opinion that verbalizing the intention is obligatory is considered irregular (*shâdh*), as stated by Shâfi'î jurists.⁽⁴⁾ One of the conditions for recommending avoiding disagreement is that the disagreement should be valid and significant (*mu'tabar*).⁽⁵⁾
- 2- Second Perspective: There is an opinion that prohibits verbalizing the intention, so it is not possible to avoid disagreement when there are opposing views on the issue, particularly when some consider verbalization obligatory and others consider it prohibited.⁽⁶⁾

Evidence for the Second Opinion:

Those who argue that verbalizing the intention for zakât privately is permissible base their argument on the same evidence used by those who consider it recommended, but they interpret that evidence as indicating permissibility.

Their Evidence are refuted using the same counterarguments raised against

(1) See: Manh Al-Jalil, [1: 244]; Mughnî Al-Muhtâj, [1: 343].

(2) See: Jam' As-Şalâh Li-Mariq Al-Waswâs Al-Qahrî by 'Abd Al-'Azîz Ash-Shibl, (p. 47).

(3) See: Asnâ Al-Maţâlib, [1: 42]; Tuhfat Al-Muhtâj, [1: 195].

(4) See: Rawdat At-Tâlibîn, [1: 228]; Al-Muhimmât fî Sharh Ar-Rawdah Wa Ar-Râfi'î, [3: 22].

(5) See: Qawâ'id Al-Ahkâm by 'Izz Ibn 'Abd As-Salâm, [1: 253]; Al-Ashbâh Wa An-Nazâ'ir by As-Subkî, [1: 112].

(6) See: Al-Manthûr fî Al-Qawâ'id Al-Fiqhiyyah, [2: 128]

the first opinion. Additionally, it is emphasized that the principle in acts of worship ('*ibādāt*) is that they are established through revelation (*tawqīf*). Therefore, no aspect of worship should be legislated unless explicitly prescribed by Allah. ⁽¹⁾

Evidence for the Third Opinion:

After extensive research, I found no specific evidence for those who argue that verbalizing the intention for zakât (or other acts of worship) is a condition for its validity. Their argument may be inferred from the broader notion that if the intention is verbalized for certain acts of worship, it becomes a condition for their validity. This is countered by the understanding that intention is an action of the heart, which does not depend on the tongue or any other physical actions⁽²⁾. Just as recitation, which is an action of the tongue, does not require other physical limbs to participate, the same applies to intention.

Evidence for the Fourth Opinion:

Those who argue that verbalizing the intention for zakât privately is disliked (*makrūh*) base their argument on the following:

1. First Evidence: It was narrated that Ibn 'Umar (may Allah be pleased with him) heard a man, while entering the state of *ihrām*, say: «O Allah, I intend Hajj (Haj) and 'Umrah.» Ibn 'Umar responded to him: «Are you teaching the people? Does not Allah know what is in your heart?»⁽³⁾

Indication of Evidence:

Ibn 'Umar (may Allah be pleased with him) disapproved of someone verbalizing their intention, indicating that such an act is disliked (*makrūh*). ⁽⁴⁾

Second Evidence:

The second argument is that intention resides in the heart, and Allah is

(1) See: *Al-Qawā'id An-Nūrāniyya* by Ibn Taymiyyah, (p. 164); *Al-Qawā'id Al-Fiqhiyyah Wa Taṭbīqātuhā fī Al-Madhāhib Al-Arba'ah*, [2: 769].

(2) See: *Al-Qawā'id An-Nūrāniyyah* by Ibn Taymiyyah, (p. 164); *Al-Qawā'id Al-Fiqhiyyah Wa Taṭbīqātuhā fī Al-Madhāhib Al-Arba'ah*, [2: 769].

(3) Related by *Al-Bayhaqī* in *As-Sunan Al-Kubrā, Book of Hajj (Haj)*, Chapter: "One who said that it is not required to name Hajj (Haj) or 'Umrah in his intention, as the niyyah suffices for both," ḥadīth no. (8996), [5: 61]. Ibn Kathīr said: "Its chain of narration is authentic." See *Irshād Al-Faqīh* by Ibn Kathīr, [1: 317].

(4) See: *Al-Bināyah* [2: 140], *Marāqī Al-Falāh* (p. 33).

All-Knowing of what is within the hearts. Therefore, there is no need for the tongue in this matter. ⁽¹⁾

Evidence for the Fifth Opinion:

Those who argue that secretly verbalizing the intention to perform zakât is a forbidden innovation present the following evidence:

First Evidence:

Allah says: {«Say, *Do you teach Allah about your religion? And Allah knows best what is in the heavens and what is on earth. And Allah is Knowing of all things.*»} ⁽²⁾

Explanation:

The one who verbalizes their intention is, in essence, informing Allah about their religion, which is already in their heart. This falls under the Quranic condemnation mentioned in the verse. ⁽³⁾

Second Evidence:

There is no authentic or weak narration from the Prophet (peace be upon him) that indicates he verbalized his intention when performing acts of worship. Likewise, there is no narration from the Companions or their followers supporting this. Given that it is generally prohibited, both customarily and religiously, to conceal such narrations, if it were proven that the Prophet or his Companions did not do this, it would be considered an innovation. ⁽⁴⁾

Counterargument:

It has been narrated that the Prophet (peace be upon him) verbalized his intention for Hajj. Anas ibn Malik reported that he heard the Messenger of Allah (peace be upon him) say, «*Here I am for Umrah and Hajj, here I am for Umrah*

(1) See: *Al-Tanbîh 'alâ Mushkilât Al-Hidâyah* [1: 509], *Sharh Al-Zurqânî 'alâ Mukhtasar Khalîl* [1: 346].

(2) The verse [16] from Surah Al-Hujurât: Allah says: {"Say, 'Do you acquaint Allah with your religion while Allah knows whatever is in the heavens and whatever is on the earth? And Allah is Knowing of all things.'"}
[Al-Hujurât (The Apartments): 16].

(3) See: *Al-Tanbîh 'alâ Mushkilât Al-Hidâyah* [1: 509], *Sharh Al-Zurqânî 'alâ Mukhtasar Khalîl* [1: 346].

(4) See: *Al-Bahr Al-Râ'iq* [1: 293], *Sharh 'Umdat Al-Fiqh* [2: 603].

and Hajj.»⁽¹⁾

Response to the Counterargument:

This is not an example of verbalizing one's intention but rather part of the *Talbiyah* (the words uttered during Hajj). It is comparable to the Takbir (saying «*Allahu Akbar*») at the start of prayer. The Prophet (peace be upon him) did not say, «*I intend to do such and such*,» nor was anyone else prescribed to say anything before the *Talbiyah*.⁽²⁾

Third Argument:

Intention is purely an act of the heart, and thus it is not prescribed to express it with the tongue.⁽³⁾

Fourth Evidence:

Articulating the intention verbally is redundant and unnecessary speech. It opens the door to doubts and overthinking the intention, and thus, it should be prohibited.⁽⁴⁾

The Preferred Opinion:

Upon examining the opinions, evidence, and discussions surrounding them, it appears that the most correct view—Allah knows best—is the fifth opinion, which states that verbalizing the intention for zakât is not legislated. Rather, it is a newly introduced innovation (*bid'ah*).

Reasons for the Preference:

- 1- The evidence supporting the fifth opinion is strong and free from significant counterarguments, while the evidence for the other opinions is weak and cannot withstand scrutiny.

(1) A similar narration was recorded by Al-Bukhârî in his *Ṣaḥîḥ*, Book of Pilgrimage, Chapter: The praise, tasbîḥ (glorification of Allah), and takbîr (saying "Allahu Akbar") before entering the state of iḥrâm while mounting an animal, hadîth no. 1551 [2: 139]. It was also narrated by Muslim in his *Ṣaḥîḥ* in the same wording, Book of Pilgrimage, Chapter: The Iḥrâm of the Prophet (peace and blessings of Allah be upon him) and his guidance, hadîth no. 1251 [2: 915].

(2) See: *Majmû' Al-Fatâwâ*, by Ibn Taymiyyah [22: 222], *Al-Sharḥ Al-Mumtî'* [1: 195].

(3) See: *Sharḥ 'Umdat Al-Fiḥ* [2: 604].

(4) Al-Tanbîḥ 'alâ Mushkilât Al-Hidâyah [1: 509], *Sharḥ Al-Zurqânî 'alâ Mukhtasar Khalîl* [1: 346].

- 2- Requiring the verbalization of intention is an odd opinion and is not relied upon. The inner workings of the heart are foundational. Although some later jurists held this view, it is based on subjective judgment (*istihsan*) and contradicts clear texts.
- 3- Verbalizing the intention is part of worship, and the foundational principle in acts of worship is to adhere strictly to what is legislated. No act is considered valid unless there is clear evidence for it. Without such evidence, verbalizing the intention is considered an invalid innovation.
- 4- Articulating the intention is unnecessary, serves no purpose, and has no impact on one's determination or confirmation of intention. Since the place of intention is the heart, once the objective is understood, speaking it aloud adds no value.

Second Issue: The Topic of Intending the Obligation when Paying Zakât The scholars agree that if someone, when paying zakât, intends that what they are giving is the obligatory zakât or the zakât that is due from their wealth, this suffices.⁽¹⁾ However, they disagreed on whether someone who intends to perform the obligation or duty, but this intention does not come to mind when actually giving the zakât, is considered valid or not. This issue has three scenarios, discussed in the following Treatises:

First Branch: Intending General Charity

Case Description:

If someone, at the time of paying zakât, intends that what they are giving is general charity, and the intention of it being obligatory or due does not come to mind—meaning they did not intend it as the obligatory or due zakât, and it did not cross their mind as such—does this intention suffice, and is what they gave considered valid for zakât purposes?

The Opinions on the Issue:

Scholars have differed on this matter, dividing into two opinions:

First Opinion:

What is given with the intention of charity does not count as zakât. This is the view of the majority, including the Ḥanafis⁽²⁾,.....

(1) Sharḥ 'Umdat Al-Fiqh [2: 604].

(2) Badâ'i' As-Sanâ'i' [2: 40]; Tabyîn Al-Ḥaqâ'iq [1: 257]; Al-Binâyah [3: 314].

Mâlikîs⁽¹⁾, and Ḥanbalîs⁽²⁾, and it is also the predominant view among the Shâfi'îs⁽³⁾

Second Opinion:

What is given with this intention does count as zakât. This is a view among the Shâfi'îs, though it is described as weak. ⁽⁴⁾

The Evidence and Discussions:

Evidence for the First Opinion:

The majority argue against the validity of giving zakât with the intention of charity, based on the following points:

1. First Evidence:

The purpose of intention is to distinguish between acts of worship. The intention of charity may refer to voluntary giving or the obligatory zakât. Since there is no clear distinction, the intention is not valid⁽⁵⁾.

2. Second Evidence:

In Islamic law, «charity» (*sadaqah*) is used for more than just giving money. For example, the Prophet (peace be upon him) said, «Every *tasbih* (glorification of Allah) is charity, and every *tahmid* (praise of Allah) is charity.» ⁽⁶⁾ Therefore, the intention of charity does not suffice for the intention of zakât⁽⁷⁾.

3. Third Evidence:

An analogy is made to someone who owes *kaffârah* (expiation) and frees a slave with the intention of general emancipation, rather than specifically for *kaffârah*. This does not fulfill the obligation of *kaffârah*, according to unan-

(1) Mawâhib Al-Jalîl [2: 285]; Manḥ Al-Jalîl [2: 95].

(2) Al-Furû' [4: 249]; Kashshâf Al-Qinâ' [2: 260]; Sharḥ Muntahâ Al-Îrâdât [1: 448].

(3) Al-Muhadhdhab [1: 312]; Al-Majmû' [6: 181]; Asnâ Al-Maṭâlib [1: 358].

(4) Faṭḥ Al-'Azîz [5: 523]; Al-Muhimmât Fî Sharḥ Ar-Rawḍah Wa Ar-Râfi'i [3: 577]; Bidâyat Al-Muḥtâj [1: 542].

(5) Al-Umm [2: 23]; Asnâ Al-Maṭâlib [1: 358]; Al-Kâfi [1: 417].

(6) Related by Muslim in his Ṣaḥîḥ, Book of Travelers' Prayer and Shortening It, Chapter on the Recommendation of the Ḍuḥâ Prayer, and that the Minimum is Two Rak'ahs, the Maximum is Eight Rak'ahs, and the Moderate Number is Four or Six Rak'ahs, with an Encouragement to be Consistent in It, hadîth no. (720), [1: 498].

(7) Bidâyat Al-Muḥtâj [1: 542].

imous agreement. Similarly, if someone gives money with the intention of charity, it does not fulfill the obligation of zakât, because the intention is not directed toward the obligatory act. ⁽¹⁾

Evidence for the Second Opinion:

Those who say that a general intention of charity suffices for zakât argue that the term «charity» is used in the Qurʾan to mean zakât, as in the verse: **«Indeed, the ṣadaqat (charities) are only for the poor and the needy...»** ⁽²⁾.

Allah says:

{“Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them to increase, and invoke [Allah’s blessings] upon them. Indeed, your invocations are reassurance for them. And Allah is Hearing and Knowing.”} ⁽³⁾

Discussion: the term *ṣadaqah* (charity) is general and can refer to wealth given voluntarily or as *zakât* (obligatory almsgiving). It may also refer to non-monetary charity, such as kind words and similar acts. The meaning of *zakât* is understood from the term *ṣadaqah* through contextual indicators or specific circumstances. Intention must specify the type of charity intended and distinguish it from others; a general intention of charity is insufficient, as it could imply either voluntary *ṣadaqah* or the obligatory *zakât*. ⁽⁴⁾

Preference:

The preferred opinion—and Allah knows best—is the first opinion, which is the stance taken by the majority of scholars: if a person intends a general charity when giving wealth, without specifying the intention for zakât, then this does not suffice in place of zakât. ⁽⁵⁾

Reason for the Conclusion:

The strength of the majority’s evidence and the opposition’s weakness in this issue.

(1) At-Tahdhīb [3: 63]; Al-Majmū‘ [6: 181].

(2) [At-Tawbah (Repentance): 60].

(3) [At-Tawbah (Repentance): 103].

(4) See: Bidāyat Al-Muhtâj, [1: 542].

(5) See: Mughnî Al-Muhtâj, [2: 130].

Second Sub-Issue: The Intention of Charity in Wealth

The Case in Question: If someone, when paying their zakât, gives wealth with the intention that it is a general charity, without specifying the intention of the obligatory or voluntary act of zakât, is this intention valid, and is what they gave considered as fulfilling zakât?

The scholars have differed on this issue, with two main opinions:

First Opinion: What they gave does not count as zakât, even if they had intended charity. This is the opinion of the Ḥanafî⁽¹⁾ and Mâlikî⁽²⁾ schools and the most correct view among the Shâfi'î⁽³⁾ scholars, and it is an opinion held by Ḥanbalî⁽⁴⁾ scholars.

Second Opinion:

What is given counts as zakât with this intention. This is the view of the Shâfi'î school⁽⁵⁾ and the Ḥanbalî school⁽⁶⁾.

Evidence and Discussions:

1. Evidence for the First Opinion:

The proponents of this view argue that it does not suffice, based on the following reasons:

A. Charity transitions to being an obligation when intended, and the intention for charity is directed towards something other than wealth related to the

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- (1) **The ḥanafî school did not go into detail regarding how the intention for zakât should be, but they did explicitly state that the valid intention is that of "zakât." This implies that the intention of general charity does not suffice. See:** Badâ'i' As-Sanâ'i', [2: 40]; An-Nahr Al-Fâ'iq, [1: 418]; Majma' Al-Anhur, [1: 196].
 - (2) **The Mâlikî scholars did not explicitly address the ruling on the intention of general charity, but they mentioned that the valid intention is either the intention of zakât or the intention to give the required charity due on wealth. This implies that if one does not intend zakât or does not have the intention of obligation, what they give does not suffice for zakât. See:** Adh-Dhakhîrah, [3: 136]; Mawâhib Al-Jalîl, [2: 285]; Manh Al-Jalîl, [2: 95].
 - (3) **See:** At-Tahdhîb, [3: 63]; Al-Majmû', [6: 181]; An-Najm Al-Wahhâj, [3: 255]; Asnâ Al-Matâlib, [1: 358].
 - (4) **See:** Al-Insâf, [3: 194].
 - (5) **See:** Al-Muhadhdhab, [1: 312]; 'Ujâlat Al-Muhtâj, [1: 508]; Mughnî Al-Muhtâj, [2: 130].
 - (6) **See:** Al-Kâfi, [1: 417]; Al-Mubdi', [2: 393]; Kashshâf Al-Qinâ', [2: 260].

hereafter. It is not specifically tied to the obligatory zakât, so what is given with this intention does not suffice for zakât⁽¹⁾.

2. Evidence for the Second Opinion:

The proponents of this view argue that it does suffice, for the following reasons:

- (a) General charity, when not specified with an intention towards zakât, can still be considered as fulfilling zakât if its intention was for the wealth to be given as charity and the action aligns with the purpose of zakât because Allah says: **{“Take from their wealth a charity by which you purify them and cause them to increase.”}**

⁽²⁾ This indicates that the intention of general charity suffices for zakât. ⁽³⁾

- (b) The apparent meaning of the term “charity” regarding wealth is zakât, so the presence of a possibility of intending voluntary charity does not negate the possibility of intending zakât, as the intention of charity does not contradict these possibilities.

Discussion of the Evidence:

A possible objection to this argument is that adding the word «charity» to wealth could imply general charity, not the charity specifically tied to zakât.

Analysis: The distinction in zakât is not between material aspects but rather the existence of an inward intention that differentiates zakât from voluntary charity. The core intention that is tied to zakât must either be the fulfillment of the obligatory act or an intention to fulfill the wealth-based obligation tied to charity. Thus, if no intention of zakât exists, what has been given does not suffice for zakât.

The Conclusion:

The preferred opinion-and Allah knows best-is the first view, which is that if someone gives wealth with the intention of charity and does not specify that it is zakât, then what has been given does not suffice as zakât.

(1) See: Al-Umm, [2: 23]; Asnâ Al-Matâlib, [1: 358].

(2) [At-Tawbah (Repentance): 60].

(3) See: Al-Majmû‘, [6: 181]; Bidâyat Al-Muhtâj, [1: 542].

Reasons for the Conclusion:

- 1- The strength of the first opinion's evidence and the weakness of the second opinion's evidence, particularly the lack of clarity in the latter's discussions.
- 2- When performing obligatory acts of worship, it is necessary to specify the intention for the required obligation. A general intention does not suffice. Thus, if one intends to fast as a general act of fasting, without specifying whether it is for missed fasts of Ramadan or any other obligatory fasts, it does not suffice.⁽¹⁾ Similarly, if someone intends to give charity or general alms and does not specify zakât, it does not suffice as zakât.

Third Branch:

The intention must be for zakât only.

The Case in Question:

If someone, when paying zakât, gives wealth without intending that it is zakât or an obligatory act, nor does the intention of obligation or voluntary charity come to mind, does this intention suffice, and does what they gave count as zakât?

Scholarly Opinions:

The scholars have differed on this issue, with two main opinions:

1. First Opinion:

What is given counts as zakât with this intention. This is the opinion of the majority of the Ḥanafî⁽²⁾ and Mâlikî⁽³⁾ and Ḥanbalî scholars⁽⁴⁾, and it is also the view of the Shâfi'î school⁽⁵⁾.

2. Second Opinion:

What is given does not count as zakât with this intention, nor is it sufficient

(1) See: Al-Mughnî, [3: 113]; Kashshâf Al-Qinâ', [2: 315].

(2) See: Al-Bahr Ar-Râ'iq, [2: 227]; An-Nahr Al-Fâ'iq, [1: 418]; Majma' Al-Anhâr, [1: 196].

(3) See: Adh-Dhakhîrah, [3: 136]; Mawâhib Al-Jalîl, [2: 357]; Sharh Al-Khurashî, [2: 222].

(4) See: Al-Furû', [4: 250]; Kashshâf Al-Qinâ', [2: 260]; Sharh Muntahâ Al-Îrâdât, [1: 448].

(5) See: Bahr Al-Madhhab, [3: 82]; Fath Al-'Azîz, [5: 523]; Rawdat At-Tâlibîn, [2: 207]; Tahrîr Al-Fatâwâ, [1: 513].

to fulfill an obligatory or voluntary act. This is the view of the Shâfi‘î school⁽¹⁾.

Evidence and Discussions:

1. Evidence for the First Opinion:

The majority of scholars argued that the intention for zakât is sufficient, and it is not necessary to explicitly intend obligation. They based this on the fact that prayer, fasting, and other acts of worship transition to an obligatory status when the intention for these is established. Therefore, if one intends zakât, the obligation is fulfilled. ⁽²⁾

2. Evidence for the Second Opinion:

Those who held the second opinion argued that the intention for obligation must be present for zakât to suffice, based on the following evidence:

First Evidence:

The Prophet (peace and blessings of Allah upon him) said: “*Zakât is only for the obligatory acts.*” ⁽³⁾

Evidence Explanation:

The Prophet (peace and blessings of Allah be upon him) referred to the lending of jewelry as zakât, indicating that the term zakât can be applied to non-obligatory charity as well. Therefore, specifying the intention of obligation is required for proper designation. ⁽⁴⁾

Discussed from Two Perspectives:

- The First Perspective:

The ḥadīth is not established by the Prophet (peace and blessings of Allah be upon him). ⁽⁵⁾

(1) See: Mukhtasar Al-Muzanî, [8: 140]; Al-Wasîṭ Fî Al-Madḥḥab, [2: 443]; An-Najm Al-Waḥḥâj, [3: 255].

(2) See: Bahr Al-Madḥḥab, [3: 82]; Asnâ Al-Matâlib, [1: 358]; Kashshâf Al-Qinâ‘, [2: 260].

(3) The ḥadīth is mentioned by the jurists in their books, attributed to the Prophet (PBUH), but I have not found it in the books of ḥadīth. It was narrated as a statement of Ibn ‘Umar (RA) by Al-Bayḥaqî in As-Sunan Al-Kubrâ, Book: zakât, Chapter: “Who said that zakât on jewelry is its lending,” no. (7551), [4: 236].

(4) See: *Kifâyat al-Nabîḥ* (1/24).

(5) See: *Al-Maqâṣid al-Ḥasanah* by Al-Sakhâwî (p. 377).

- The Second Perspective:

Using the term «zakât» to describe the *qard* (loan) of jewelry is metaphorical, not literal. The meaning is that its provision is obligatory, making it akin to zakât. This is similar to when the Prophet (peace and blessings of Allah be upon him) was asked by his wives about jihad during the pilgrimage, and he referred to the pilgrimage as jihad⁽¹⁾.

Second Evidence:

Giving money to the poor can be either obligatory or supererogatory, so the intention of obligation is necessary for it to be properly designated⁽²⁾.

Debated:

It is argued that the intention of zakât is sufficient for its designation, since zakât is by definition obligatory⁽³⁾.

Third Evidence:

Zakât is analogous to the five daily prayers in the matter of intending obligation, as every obligatory act requires the intention for its validity to be correct⁽⁴⁾.

Debated:

There is a distinction that the five daily prayers can become supererogatory, such as for a child or someone who prays alone and then joins the congregation. However, zakât never becomes supererogatory. Therefore, there is no reason to require the intention of obligation for zakât, as one who intends general charity without intending the obligation does not fulfill zakât. This is analogous to one who intends zakât without specifically intending the obligation⁽⁵⁾.

Fourth Evidence:

One who intends general charity without intending the obligation is compared to one who intends zakât without intending the obligation. The inten-

(1) Related by Al-Bukhârî in his *Ṣaḥîḥ*, Book of Jihad and Military Expeditions, Chapter: The Jihad of Women, Hadith no. 2876, (4/32).

(2) See: *Al-Umm* (2/24).

(3) See: *Al-Majmû‘* (2/24).

(4) See: *Nihâyat al-Maṭlab* (3/196).

(5) See: *Nihâyat al-Maṭlab* (3/197); *Faṭḥ al-‘Azîz* (5/523).

tion of general charity encompasses both obligatory and supererogatory acts, but it leans more towards the supererogatory, unlike the intention of zakât, which exclusively assumes the obligatory nature of zakât. ⁽¹⁾

Preference:

The more valid opinion—and Allah knows best—is the first view: one who intends zakât without specifically intending the obligation still fulfills the requirements of zakât.

Reasons for preference:

- 1- The strength of the evidence supporting the first opinion and the weakness and flaws of the evidence for the second opinion.
- 2- The disagreement on this issue is weak, as the majority of scholars agree that the intention of obligation is not required along with the intention of zakât. The other opinion is a minority view among the Shâfi'is, weakened by Al-Nawawi and others⁽²⁾.
- 3- The intention of zakât suffices to specify the obligatory zakât; since zakât can only be obligatory, there is no basis for requiring the intention of obligation along with the intention of zakât.

Case scenario: If the intention of zakât conflicts with what the obligated person verbally expresses at the time of its disbursement—like intending in his heart that what he is disbursing is his zakât, but verbally stating—either intentionally or slip of the tongue—that it is a gift, qard (loan), or similar, does his intention validate and suffice for his zakât?

Opinions on the issue: The jurists differ on this issue into two opinions⁽³⁾:

The first opinion: What matters is what he intended, not what he verbalized, thus his intention is valid, and it suffices for his zakât. This is the correct

(1) See: *Al-Tahdhīb* (3/63).

(2) See: *Rawdat al-Talibeen* [206/2], *An-Najm Al-Wahaj* [255/3].

(3) I have not come across a text regarding the conflict between intention and verbal expression in zakât except among the ḥanafis. The other three schools have stipulated the conflict between intention and verbal expression in prayer and Hajj, and they argued their view with evidence that encompasses all acts of worship, thereby clarifying their stance on this issue.

view according to the Ḥanafis⁽¹⁾, Mâlikî⁽²⁾, Shâfi'î⁽³⁾, and Ḥanbalî⁽⁴⁾ schools.

The second opinion: His intention is not valid and what he disbursed does not suffice for his zakât. This is another view among the Ḥanafis⁽⁵⁾ and Mâlikî⁽⁶⁾ in terms of his intention.

Evidence and Discussions:

The majority have reasoned that the determining factor in the performance of zakât and other acts of worship when there is a conflict is the intention, not the verbal expression. The evidence for the first view includes:

First Evidence: Allah says:

{«Allāh does not impose blame upon you for what is unintentional in your oaths, but He imposes blame upon you for what your hearts have earned. And Allāh is Forgiving and Forbearing.»} ⁽⁷⁾

God Almighty has informed us that verbal expression has no consideration if it is not affirmed by the heart. Thus, if verbal expression conflicts with intention, the intention is considered and the verbal expression becomes insignificant. ⁽⁸⁾

Second Evidence: The Prophet (peace and blessings of Allah upon him) said: *«Deeds are to be judged only by intentions, and a man will have only what he intended.»* ⁽⁹⁾

(1) See: Al-Mabsut [94/12], Al-Bahr Al-Ra'iq [228/2], Hashiyat Al-Shalabi on Tibyin Al-Haqa'iq [258/1].

(2) See: Al-Jami' Li-Masail Al-Mudawwanah [402/4], At-Tawdih [550/2], Tahbir Al-Mukhtasar [282/1].

(3) See: Fath Al-Aziz [263/3], Asna Al-Matalib [143/1], Mughni Al-Muhtaj [343/1], Hashiyat Al-Jamal on Sharh Al-Minhaj [330/1].

(4) See: Al-Mughni [265/3], Al-Furu' [166/1], Al-Mubdi' [109/3].

(5) See: Hashiyat Al-Shalabi on Tibyin Al-Haqa'iq [258/1], Hashiyat Al-Shurnbalali Durar Al-Hukkam [174/1], Majma' Al-Anhar [196/1].

(6) See: Sharh Az-Zurqânî on Mukhtasar Khalîl [346/1], Al-Sharh Al-Kabîr by Ad-Dardîr [234/1], Minh Al-Jalîl [244/1].

(7) [Al-Baqarah (The Cow): 225].

(8) See: Tafsir al-Baghawi [296/1], the audio commentary on Zad al-Mustaqni' by Ibn Uthaymeen [244/1].

(9) Previously cited, see page 7 of this book.

The Prophet (peace and blessings of Allah upon him) stated that what counts in actions is the intention, so the individual is not bound by what is spoken if it is not believed in the heart, especially in matters not involving the rights of others, such as the performance of acts of worship.⁽¹⁾

Third Evidence: There is a consensus that if someone intends to perform Hajj (Haj) but verbally expresses Umrah, or intends to perform Umrah but verbally states Hajj (Haj), what matters is the intention, not the verbal expression. Ibn Al-Mundhir stated, «Everyone we know from the scholars agrees that if someone intended to start Hajj (Haj) and said the words for Umrah, or intended Umrah and said the words for Hajj (Haj), what binds him is what his heart has resolved, not what his tongue has uttered.» This consensus includes that the determining factor in Hajj (Haj) and zakât, as acts of worship, is the intention required for their valid performance.^{(2) (3)}

Fourth Evidence: The determining factor in intention is what the heart intends, not what the tongue expresses, because the tongue is not the determinant of intention by consensus.⁽⁴⁾

Fifth Evidence:

The intention to perform acts of worship is the primary consideration, and it is prioritized over verbal expressions when there is a conflict between the two. However, in cases like divorce, verbal expression is considered, regardless of intention, and the words are given precedence when they conflict with the intention⁽⁵⁾.

(1) See: Al-Taj wal-Iklil [207/2].

(2) He is Muhammad ibn Ibrahim ibn al-Mundhir al-Naysaburi, Abu Bakr, a jurist scholar residing in Mecca and a Sheikh of the Haram. He is among the independent jurists who do not follow others blindly. Some have included him among the ranks of the Shâfi'î scholars. He authored significant works considered authoritative by the leaders of Islam, including Al-Ishraf, Al-Ijma', and Al-Iqna', among others. He passed away in the year 318 AH. For his biography, see Tadhkirat al-Huffaz [5/3] and The Great Classes of the Shâfi'î [102/3].

(3) See: Al-Ishraf on the views of the scholars [186/3], and also see: Al-Mughni [265/3], Al-Furu' [166/1].

(4) See: Asna al-Matalib [143/1], Mughni al-Muhtaj [343/1], Al-Mumtî in the explanation of Al-Muqni' [335/1].

(5) See: Al-Mughnî [3: 265].

Evidence for the Second Opinion:

Those who argue that if someone utters words contradicting the intention of zakât, their zakât is not valid, support their claim with the following:

- First Evidence: It is a condition of zakât that the recipient knows it is zakât. If the payer utters words that contradict the intention, the recipient may not realize that it is zakât, and thus, the zakât would not be valid. ⁽¹⁾

This was countered by denying the Topic that the recipient must know it is zakât, as there is no evidence for this. What matters in zakât is the intention of the payer, not the knowledge of the recipient. ⁽²⁾

- Second Evidence: The utterance of something conflicting with the intention shows that the payer's intention is not connected to zakât, as speech stems from the heart, and the tongue reflects it. Therefore, there is the possibility that the payer's intention for zakât may not be sincere if they utter something opposing it, and thus, the zakât is invalid. ⁽³⁾

This was discussed by stating that such a possibility should not be considered. The issue concerns someone whose intention for zakât is sincere, but they mistakenly or deliberately said something else—such as calling it a gift to console the needy or a favor to please them.

The Preferred Opinion:

The stronger opinion, and Allah knows best, is the first one, which is the view of the majority of scholars: in performing acts of worship, what matters is the intention of the heart, not the words of the tongue. Therefore, if someone intended to give zakât but mistakenly said otherwise, their intention remains valid, and the zakât is accepted.

Reasons for Favoring the First Opinion:

- 1- The strength of the evidence for the first opinion and its immunity from strong refutation, especially the consensus mentioned by Ibn Al-Mundhir, which affirms the importance of intention in cases where

(1) See: Al-Bahr Ar-Râ'iq [2: 228]; Ḥāshiyat Ash-Sharnubalāli on Durar Al-Ḥukkām [1: 174].

(2) See: Majma' Al-Anhur [1: 196].

(3) See: Previous reference.

intention and words conflict, such as in Hajj (Haj). zakât is analogous to Hajj (Haj) in this matter.

- 2- Those who hold the second opinion, mainly from the Ḥanafî school, base their argument on the condition that the recipient must know they are receiving zakât. However, this opinion was weakened by most Ḥanafî scholars due to the lack of evidence, and because their school allows zakât to be counted when taken by oppressive authorities, even though they do not take it as zakât. ⁽¹⁾
- 3- Those who support the second opinion from the Mâlikî school, in the case of deliberately speaking words that contradict the intention, base their opinion on the possibility that the intention is linked to what the tongue utters. However, this possibility should not be considered, because intention is rooted in the heart, and the tongue may speak what the heart does not intend.

Forth Topic: Indecision in Intention:

Indecision in intention refers to the lack of certainty regarding the intended action. This can happen either by wavering between performing the intended act or another or by making the act contingent on some condition⁽²⁾. In the case of zakât, indecision in intention means being unsure of the intention itself, not just the specific asset to be given as zakât. ⁽³⁾

Forms of Indecision in the Intention of Giving zakât:

There are two forms of indecision in the intention to give zakât, which will be discussed in the following branches.

Problem statement:

If the individual is unsure whether to give the money as zakât or for another purpose, such as voluntary charity or a gift, does this intention still count, and is the zakât fulfilled by what was given?

Ruling on the Issue:

The Shâfi'î and Ḥanbalî schools explicitly state that if a person gives money

(1) See: Ḥāshiyat Ash-Shalbî on Tabyîn Al-Ḥaqā'iq [1: 258].

(2) See: Badā'i' As-Ṣanā'i' [2: 78], Al-Bayān [3: 401], At-Ta'rîfât (p. 16).

(3) Discussion on indecision in determining the asset for zakât will follow; see: p. 279 of this book.

with an intention wavering between zakât and something else, such as charity or a gift, this does not fulfill the obligation of zakât ⁽¹⁾

I could not find a specific text from the Ḥanafî or Mâlikî schools that directly addresses indecision in the intention of giving zakât. However, both schools have stated that performing obligatory prayers or fasting with an indecisive intention does not fulfill the obligation. Therefore, by analogy, the same would apply to zakât, indicating a consensus among scholars that a clear intention is required to fulfill the obligation of zakât. ⁽²⁾

Evidence on the Issue:

The jurists based their rulings on the following evidence:

- First Evidence: The purpose of intention is to specify the intended action and distinguish it from other actions. With indecision, this is not achieved, so the intention is invalid. ⁽³⁾
- Second Evidence: Intention is the resolve to perform an act, and indecision contradicts resolve. Therefore, the intention does not materialize. ⁽⁴⁾

Problem statement:

If an individual makes their intention to give zakât conditional upon a specific event, such as the safety of the wealth or its entry into their ownership, does their intention count, and does what they give count as zakât?

The scholars of the Shâfi'î and Ḥanbalî⁽⁵⁾ schools discussed the issue of conditional intention for giving zakât and differentiated between two cases:

First Case: If the condition upon which the zakât intention is based is a fundamental one, for example, if the person intends that what they give will be zakât if their absent wealth is safe, but if it is lost, it will be voluntary charity. Here, the intention is conditional upon the wealth's safety and continuity. In

(1) See: Al-Bayân [3: 401], Rawdat Aṭ-Ṭalibîn [2: 208], Asnâ Al-Maṭâlib [1: 359], Al-Mughnî [2: 477], Ar-Ri'āyah Aṣ-Ṣughrā in Fiqh [1: 429], Kashshāf Al-Qinā' [2: 260].

(2) See: Badā'i' As-Ṣanā'i' [2: 78], Faṭḥ Al-Qadīr [1: 268], Al-Baḥr Ar-Rā'iq [1: 298], Adh-Dhakhīrah [1: 246], Jawāhir Ad-Durar [1: 440], Mawāhib Al-Jalīl [1: 239].\

(3) See: Badā'i' As-Ṣanā'i' [2: 78], Mawāhib Al-Jalīl [1: 234], Al-Bayân [3: 401].

(4) See: Ḥāshiyat Ibn 'Ābidīn [2: 383], Mawāhib Al-Jalīl [1: 234], Al-Mughnî [1: 337].

(5) I did not find a specific text on this issue in the ḥanafî and Mâlikî schools, so I followed the approach of extrapolation based on their similar rulings in other branches.

this case, the jurists differed on two opinions:

First Opinion: The intention is valid, and what was given counts as zakât if the condition is fulfilled. This is the view of the Shāfi‘ī school⁽¹⁾ and the Ḥanbalī school.⁽²⁾

This opinion can also be extended to the Ḥanafī school, based on their ruling that if a person misses one of the five obligatory prayers but does not know which one, they should perform prayers for an entire day and night, intending for each prayer to be the obligatory one they missed. If it turns out that the prayer being performed is the missed one, then the obligation is fulfilled, as the intention was tied to the fundamental obligation, which remained in their responsibility.⁽³⁾

Similarly, this opinion can be extended to the Mālikī school, based on their ruling that if someone intends on the 30th night of Ramadan the next day is Ramadan, they will fast, and if it turns out to be Ramadan, then their fast is valid. This is because their intention was tied to the fundamental reality, which is the continuity of Ramadan.⁽⁴⁾

The Second Opinion:

What is given does not fulfill the obligation of zakât, even if it becomes clear that the condition upon which the intention was based has been met. This is a view held by the Ḥanbalīs, as stated by Abu Bakr Al-Khallāl⁽⁵⁾.

Evidence and Discussions:

Evidence for the First Opinion:

The majority of scholars argue for the validity of an intention for zakât that

(1) See: Al-Umm [2: 24], Al-Ḥawī Al-Kabīr [3: 182], Nihāyat Al-Maṭlab [2: 452].

(2) See: Al-Mughnī [2: 477], Al-Inṣāf [3: 194], Kashshāf Al-Qinā‘ [2: 260].

(3) See: Badā‘i‘ As-Ṣanā‘i‘ [1: 133], Al-Bināyah [2: 597], Ḥāshiyat Ash-Shalbī on Tabyīn Al-Ḥaqā‘iq [1: 189].

(4) See: Al-Qawānīn Al-Fiqhiyyah (p. 80), Mawāhib Al-Jalīl [2: 419], Sharḥ Al-Khurashī [2: 246].

(5) He is: ‘Abd Al-‘Azīz ibn Ja‘far ibn Aḥmad ibn Yazdād ibn Ma‘rūf, Abū Bakr, known as "Ghulām Al-Khallāl," a prominent ḥanbalī scholar. He was known for his understanding, knowledge, piety, and devotion. He authored several works, including Ash-Shāfi‘, Al-Muqni‘, and Al-Khilāf Ma‘a Ash-Shāfi‘i. He passed away in the year 363 AH. For more on his biography, see: Ṭabaqāt Al-Ḥanābilah, Abū Ya‘lā [2: 119], Al-Maqṣid Al-Arshad [2: 127].

is contingent upon a fundamental assumption, with the following reasoning:

First Evidence: If the conditional intention is based on a fundamental assumption and it becomes clear that the assumption is correct, the initial hesitation is resolved⁽¹⁾, and the intention becomes valid as it is supported by that assumption.

Second Evidence: The conditional intention, based on a fundamental assumption, relies on a strong likelihood, and the slight hesitation does not affect it⁽²⁾.

Evidence for the Second Opinion:

Those who argue against the validity of a conditional intention for zakât, in any form, the reason that a conditional intention, whether based on a fundamental assumption or not, is an indecisive intention, and one of the conditions of intention is certainty and the absence of hesitation⁽³⁾.

Discussion:

It is argued that if the intention is contingent upon a fundamental assumption, it is built on a strong likelihood, which is supported by evidence that reaches the level of near-certainty⁽⁴⁾, so the hesitation is minor and does not have a significant impact.

The Preferred Opinion and its Reasoning:

The preferred opinion, and Allah knows best, is the first one: the validity of a conditional intention for zakât based on a fundamental assumption. This is because the evidence for the first opinion is stronger, as a conditional intention based on a fundamental assumption is built on a strong likelihood, and the hesitation is weak and therefore does not affect the validity of the intention.

The Second Case:

If the condition upon which the zakât intention is based contradicts the fundamental assumption, for example, if the person has an heir whose death

(1) See: *Ar-Ri'āyah Aṣ-Ṣughrā in Fiqh* [1: 429], *Al-Furū'* [4: 251], *Al-Mubdi'* [2: 394].

(2) See: *Ḥāshiyat Ash-Shalbī on Tabyīn Al-Ḥaqā'iq* [1: 189], *Al-Ḥawī Al-Kabīr* [3: 182], *Al-Majmū'* [6: 182].

(3) See: *Al-Qawānīn Al-Fiqhiyyah* (p. 80), *Mawāhib Al-Jalīl* [2: 419].

(4) See: *Al-Furū'* [4: 251], *Al-Mubdi'* [2: 394].

is uncertain, and they intend that if the heir has died, the zakât is from the wealth inherited from them, then the zakât intention is contingent upon the heir's death. This is contrary to the fundamental assumption, as the assumption is that the heir is alive unless there is strong evidence of death, such as in the case of someone whose ship has sunk. This would fall under the first case⁽¹⁾.

In this case, the Shāfi'ī and Ḥanbalī scholars have clearly stated that the intention for giving zakât is invalid if the condition upon which the intention was based is met, and that what the individual gave does not fulfill the obligation of zakât⁽²⁾.

This opinion can also be extended to the Ḥanafī and Mālikī schools based on their view that if someone makes their intention to fast conditional on the beginning of Ramadan while doubting whether it has begun, their fast will not be valid for Ramadan, even if it is later confirmed that Ramadan had begun. This is because the intention was based on something contrary to the fundamental assumption, which is that Sha'ban is still ongoing⁽³⁾. Thus, their opinion in zakât would be the same, since the intention for performing an act of worship was made based on something contrary to the fundamental assumption. Therefore, this issue would be agreed upon by the jurists who require intention for zakât.

Evidence for the Issue:

The jurists argue that an intention based on something contrary to the fundamental assumption is invalid because the intention is built on doubt, and the hesitation is strong. Therefore, the intention is invalid because it lacks the condition of certainty in the intended action⁽⁴⁾.

Fifth Topic: Combining the Intention of zakât with Other Purposes

The act of combining two purposes under one intention is called *tashrīk*

(1) See: Ghamz 'Uyūn Al-Baṣā'ir [1: 193], Durar Al-Ḥukkām fī Sharḥ Majallat Al-Aḥkām [1: 22].

(2) See: At-Ta'liqah [2: 1106], Nihāyat Al-Maṭlab [2: 452], Asnā Al-Maṭālib [1: 359], Al-Furū' [4: 251], Al-Inṣāf [3: 194], Kashshāf Al-Qinā' [2: 260].

(3) See: Badā'i' As-Ṣanā'i' [2: 78], Al-Hidāyah [1: 118], Tabyīn Al-Ḥaqā'iq [1: 318], 'Uqd Al-Jawāhir [1: 252], Sharḥ Al-Khurashī [2: 246], Mawāhib Al-Jalīl [2: 419].

(4) See: Tabyīn Al-Ḥaqā'iq [1: 318], 'Uqd Al-Jawāhir [1: 252], Tuḥfat Al-Muḥtāj [3: 347].

(combining intentions). The general rule is that combining intentions in acts of worship is not permitted, except for some exceptions made by the jurists⁽¹⁾. What concerns us in this Treatise is the study of *tashrîk* in the intention to give zakât, where the individual combines in their intention the giving of zakât and the performance of another act of worship, such as kaffârah (expiation) (kaffârah) or voluntary charity, or a transaction, such as a gift or paying off a debt.

Problem statement:

If someone gives money to a recipient eligible for zakât with the intention of both zakât and something else—such as intending both zakât and voluntary charity, zakât and kaffârah (expiation), or zakât and a gift—does this intention count, and does what they give to fulfill the obligation of zakât?

Clarification of the Disputed Issue:

- 1- The jurists who require an intention for performing zakât agree that if someone gives money with the intention of both zakât and something else—except for voluntary charity—such as kaffârah (expiation), vows, gifts, and the like, this does not fulfill the obligation of zakât⁽²⁾, because the intention is not exclusively for fulfilling the obligation of zakât.
- 2- The jurists who require an intention for zakât differ in the case of someone who gives money with the intention of both zakât and voluntary charity. Does what they gave count as zakât or not? There are two opinions:

First Opinion: What they gave with that intention does not count as zakât. This is the view of the Shâfi‘î school⁽³⁾ and one of the two opinions of the Ḥanafî school, held by Muḥammad ibn Al-Ḥasan⁽⁴⁾. I did not find specific

(1) See: Al-Majmū‘ [5: 57], Kashshāf Al-Qinā‘ [1: 314], Maqāṣid Al-Mukallifin (p. 255).

(2) **This consensus is derived from their texts, which stipulate the need for specifying the intention for zakât and the invalidity of performing zakât with a shared intention between zakât and other obligations.** See: Al-Mabsūṭ [3: 38], Tabyîn Al-Ḥaqā‘iq [1: 302], Faṭḥ Al-Qadîr [2: 270], At-Tanbîh ‘Alā Mabādi’ At-Tawjîh [2: 836], Adh-Dhakhîrah [3: 136], Taḥbîr Al-Mukhtaṣar [2: 119], Al-Ḥawî Al-Kabîr [3: 182], Al-Muhadhdhab [1: 312], Rawḍat Aṭ-Ṭalibîn [2: 208], Al-Kāfi [1: 417], Al-Furū‘ [4: 251], Sharḥ Muntahā Al-Irādāt [1: 447].

(3) See: Badā‘i’ As-Ṣanā‘i’ [2: 40], Tabyîn Al-Ḥaqā‘iq [3: 13], Al-Jawhara An-Nayyira [1: 116].

(4) See: Baḥr Al-Madhdhab [3: 84], Al-Bayān [3: 400], Mughnī Al-Muḥtāj [1: 514].

texts from the Mālikī and Ḥanbalī schools regarding combining the intention of zakāt with voluntary charity, but they state that zakāt requires an intention to distinguish it from other acts of worship or transactions. Therefore, this opinion can be extended to them, as the intention here does not serve to distinguish⁽¹⁾ zakāt from other purposes, and the intention for zakāt must be exclusively for it.

Second Opinion: What they gave with that intention counts as zakāt but not as voluntary charity. This is one of the two opinions of the Ḥanafī school, held by Abū Yūsuf⁽²⁾.

Evidence and Discussions:

Evidence for the First Opinion:

Those who argue that giving money with the intention of both zakāt and voluntary charity does not fulfill the obligation of zakāt provide the following evidence:

First Evidence: The reality of the matter is that there are two conflicting intentions for one action, and when there is a conflict, the intention is not determined, so the intention is nullified⁽³⁾.

Second Evidence:

There is no basis for considering both the intention of zakāt and the intention of voluntary charity for a single act, due to the conflict between them in both cause and ruling. Additionally, there is no basis for considering one of them, either specifically or non-specifically, so both intentions are invalidated⁽⁴⁾.

Third Evidence:

If someone intends to perform prayer with the intention of both the obligatory Ṣalāt and a voluntary prayer, their prayer does not count for Ṣalāt⁽⁵⁾. This

(1) See: At-Tanbīh ‘Alā Mabādi’ At-Tawjīh [2: 836], Adh-Dhakhīrah [3: 136], Taḥbīr Al-Mukhtaṣar [2: 119], Al-Kāfi Fī Fiqh Al-Imām Aḥmad [1: 417], Kashshāf Al-Qinā’ [2: 260], Sharḥ Muntahā Al-Irādāt [1: 447].

(2) See: Badā’i’ As-Ṣanā’i’ [2: 40], Al-Muḥīṭ Al-Burhānī [2: 280], Al-Baḥr Ar-Rā’iq [2: 228].

(3) See: Badā’i’ As-Ṣanā’i’ [2: 40], Ḥāshiyat Ash-Shalbī on Tabyīn Al-Ḥaqā’iq [1: 258].

(4) See: Al-Muḥīṭ al-Burhān al-Burhānī, [2: 280].

(5) See: Al-Bayān, [3: 400].

is analogous to someone who gives money with the intention of both zakât and voluntary charity, as both involve combining the intention for an obligatory act and a voluntary act.

Counter-argument:

This analogy is not accepted by the proponents of the second opinion. According to them, if someone intends both *ẓuhr* and a voluntary prayer, their prayer counts for *ẓuhr*⁽¹⁾.

Evidence for the Second Opinion:

Those who argue that giving money with the intention of both zakât and voluntary charity fulfills the obligation of zakât but not voluntary charity, base their view on the following:

First Evidence:

When there is a conflict between an obligatory act and a voluntary act, the stronger one, which is the obligation, takes precedence. Thus, the money given counts for zakât, just as when two pieces of evidence conflict, the stronger one is prioritized⁽²⁾.

Counter-argument:

The obligation is stronger in terms of ruling, but the voluntary act is stronger in that it is the lesser of the two, making it certain, while anything beyond it is uncertain. When there is a conflict, both are nullified, just as two conflicting pieces of evidence are nullified when they cannot be reconciled or prioritized⁽³⁾.

Second Evidence:

The designation by intention is necessary for zakât but not for voluntary charity. Therefore, the intention for charity defaults to the voluntary act⁽⁴⁾, because the intention is focused on what requires designation (zakât), and not on what does not (voluntary charity). If both intentions are present, the act is

(1) See: Tabyîn al-Ḥaqā'iq, [3: 13]; Fath al-Qadîr, [4: 275].

(2) See: Badā'i' al-Ṣanā'i', [2: 40]; Tabyîn al-Ḥaqā'iq, [3: 13].

(3) See: Badā'i' al-Ṣanā'i', [2: 40].

(4) See: Al-Muhadhdhab fî 'Ilm Uṣûl al-Fiqh al-Muqāran al-Muqāran, al-Namlah, [5: 2414].

attributed to voluntary charity⁽¹⁾.

Counter-argument:

You concede that zakât requires designation by intention, but in this case, the combination and conflict of intentions prevent the necessary designation, so the money given does not count for zakât due to the lack of proper designation.

Preferred Opinion:

The stronger opinion, and Allah knows best, is the first opinion, which states that zakât is not valid if the intention is shared between zakât and voluntary charity.

Reasons for Preference:

- 1- The strength of the evidence for the first opinion and the weakness of the evidence for the second opinion, which fails to withstand scrutiny.
- 2- The intention is prescribed to specify the act of worship and distinguish it from others. When combining different acts of worship, specification does not occur, hence the intention is not valid.
- 3- Zakât and voluntary charity are acts of worship intended for their own sake. Therefore, they do not overlap when combined in intention, making the combination invalid.



(1) See: Badâ' i' al-Şanâ' i', [2: 40]; Al-Muḥiṭ al-Burhân al-Burhânî, [2: 280].

Second Treatise

Time of Intention for Paying Zakât

First Topic: Comparison of the Intention for Paying Zakât

Statement of the Issue

If one intends to pay zakât at the time of its disbursement and give it to the deserving, is his intention valid, and does what he has given count as zakât?

Ruling The scholars are unanimous that the original principle regarding intention is that it should coincide with the action. And whoever intends to pay zakât when giving the money to the deserving, then his intention is valid, and what he has given counts as zakât. The Ḥanbalīs specifically state that the intention to pay zakât should coincide with the act of giving. ^{(1) (2)}

Evidence for the Ruling

First Evidence: The original principle regarding intention is that it should coincide with the intended action; because if it is delayed, then the initial action is devoid of intention. ⁽³⁾

Second Evidence: Intention is prescribed to specify what is intended and to distinguish it from other things, and this is necessary at the time of performance. ⁽⁴⁾

The Ḥanbalīs have argued that the intention to pay zakât should coincide with its disbursement rather than preceding it, based on the following: the conjunction of the intention to pay zakât with its disbursement and giving it to

(1) See: *Badā' i' al-Ṣanā' i'*, [2: 41]; *Al-Muḥiṭ al-Burhānī*, [1: 289]; *Al-Bahr al-Rā'iq*, [2: 226]; *Mawāhib al-Jalīl*, [1: 233]; *Sharḥ Mukhtaṣar Khalīl lil-Khurashī*, [2: 222]; *Ash-Sharḥ al-Kabīr lil-Dardīr*, [1: 500]; *Baḥr al-Mazhab*, [10: 409]; *At-Tahdhīb*, [3: 63]; *Al-Ghurar al-Bahiyyah*, [2: 184]; *Al-Hidāyah*, [p. 145]; *Al-Inṣāf*, [3: 195]; *Kashf al-Qinā'*, [2: 260].

(2) See: *Al-Hidāyah*, (p. 145); *Al-Mubdi'*, [2: 394]; *Sharḥ Muntahā al-Irādāt*, [1: 448].

(3) See: *Mawāhib al-Jalīl*, [1: 233]; *Qā'idah al-Umūr bi-Maqāṣidihā*, (p. 125).

(4) See: *Al-Muḥiṭ al-Burhānī*, [1: 289].

the deserving is a departure from the opinion of those who made it obligatory, and departing from a difference of opinion is preferable. ⁽¹⁾

The Second Issue: Preceding the Intention Before Paying Zakâh

The Case:

Does it suffice to intend to pay zakâh before the actual payment, and then make the payment without a conscious, real-time intention? For instance, if someone intends to pay zakâh before disbursing it, but when the payment is made, they are unaware of their intention, though the prior intention remains legally intact without being revoked or replaced by a contrary intention—does this prior intention suffice, and is the payment considered valid as zakâh?

The Opinions on the Matter:

The jurists have differed on this issue, with four main views:

- 1- **First Opinion:** It is absolutely valid to intend to pay zakâh before disbursing it. This opinion is attributed to Muhammad ibn al-Hasan from the Ḥanafî school. It is narrated that he was asked about a man who said, «Whatever I give in charity until the end of the year, I intend it as zakâh,» and then proceeded to give charity without the presence of a conscious intention. Muhammad ibn al-Hasan replied, «I hope this is valid.»⁽²⁾
- 2- **Second Opinion:** It is valid to intend to pay zakâh before disbursing it, provided the intention is either associated with setting aside the zakâh funds or follows it. If the intention precedes the setting aside of the funds, it is not valid. This is the predominant view of the Ḥanafîs and the sounder opinion among the Shâfi'îs.^{(3) (4)}
- 3- **Third Opinion:** It is valid to intend to pay zakâh before disbursing it, provided the interval between the intention and the payment is short

(1) See: *Kashf al-Qinâ'*, [2: 260].

(2) 'Uyûn Al-Masâ'il by As-Samarqandî, p. 41; see also: Al-Muḥiṭ Al-Burhânî [2: 279]; Al-Binâyah [3: 312].

(3) See: Badâ'i' As-Ṣanâ'i' [2: 41]; Al-Hidâyah [1: 96]; Al-Ikhtiyâr Li-Ta'lîl Al-Mukhtâr [1: 101].

(4) See: Al-Umniyyah Fî Idrâk An-niyyah, p. 43; Sharḥ Mukhtaṣar Khalîl by Al-Khurashî [2: 222]; Ḥâshiyat As-Ṣâwî 'Alâ Ash-Sharḥ Aṣ-Ṣaghîr [1: 666].

according to customary practice. If a long period elapses, the intention is not valid, even if it is associated with setting aside the zakâh funds. This is the view of the Ḥanbalî school. ^{(1) (2)}

- 4- Fourth Opinion: It is never valid to precede the intention before disbursing zakâh. The intention must coincide with the time of paying zakâh. This is one view among the Shâfi'is and a position held by some Ḥanbalîs. ^{(3) (4)}

The Evidence and Discussions:

Evidence for the First Opinion:

I have not found explicit textual evidence supporting the validity of preceding the intention before disbursing zakâh in all cases. However, it is argued that the intention remains legally present at the time of performance. When a person intends to perform an act of worship, and then forgets the intention at the time of performing it, it is known that the intention remains valid legally, as long as it is not revoked or replaced by a contrary intention.

Discussion:

It is argued that ruling on the validity of a previously held intention while being unaware of it during the act is only valid if the intention was made at the proper time. If the intention was made long before the act of payment, it is considered null, as it is not connected with the act itself or anything related to it⁽⁵⁾, nor does it meet the Topic of specifying the intended action at the time of performance.

Evidence for the Second Opinion:

Those who argue that it is valid to intend zakâh before payment, provided the intention coincides with setting aside the zakâh funds or follows it, support their view with the following evidence:

- 1- First Evidence: Requiring the intention to be simultaneous with the

(1) See: Al-Majmû' [6: 182]; Bidâyat Al-Muḥtâj [1: 543]; Asnâ Al-Maṭâlib [1: 360].

(2) See: Al-Mughnî [2: 477]; Al-Furû' [4: 252]; Sharḥ Muntahâ Al-Îrâdât [1: 448].

(3) See: Al-Ḥâwî Al-Kabîr [3: 178]; Al-Muhadhdhab [1: 312]; Al-Bayân [3: 399].

(4) See: Al-Mubdi' [2: 394]; Al-Inṣâf [3: 195].

(5) See: Baḥr Al-Madhhab, [10: 409].

payment of zakâh imposes hardship and difficulty, since zakâh is often distributed in multiple installments. Thus, having the intention at the time of setting aside the zakâh funds is deemed sufficient as an ease and is analogous to allowing the intention for fasting to be made in advance, due to the difficulty of aligning it precisely with the act.⁽¹⁾

Counterargument: Setting aside zakâh funds may precede the payment by a long period, and allowing the intention to be made in advance is only permitted due to the need to alleviate hardship, which is assessed in proportion. Hence, it is not valid to intend to fast long before the time of fasting.

- 2- Second Evidence: Setting aside the zakâh funds is directly related to the intended action, so the intention made at that time is sufficient, as it is connected with the act of paying zakâh.⁽²⁾
- 3- Third Evidence: The primary legal objective of zakâh is to meet the needs of those in poverty. Therefore, appointing an agent to pay zakâh on one's behalf is permissible, even when one is capable of doing so directly, without requiring the agent's intention to coincide with the act of payment. If we were to argue that the intention cannot precede the payment, this would invalidate the permissibility of delegating the payment of zakâh.⁽³⁾
- 4- Fourth Evidence: zakâh is an act of worship that can be performed before its due time without a valid excuse, so it is also permissible for the intention to precede the act of payment.⁽⁴⁾

Counterargument: It is argued that just because it is permissible to pay zakâh in advance, this does not entail that the intention can also be made in advance, as there is no common legal basis. For this reason, while zakâh can be delayed for a valid reason, the intention cannot be delayed, even if there is an excuse.⁽⁵⁾

Evidence for the Third Opinion:

Those who argue that it is valid to precede the intention of paying zakâh by

(1) See: Badâ'i' As-Şanâ'i', [2: 41]; Al-Hidâyah, [1: 96]; Al-Ghurar Al-Bahiyyah, [2: 184].

(2) See: Tabyîn Al-Ĥaqâ'iq, [1: 257].

(3) See: Al-Bayân, [3: 400]; Al-Ghurar Al-Bahiyyah, [2: 184].

(4) See: Kifâyat An-Nabîh, [6: 128].

(5) See: Fath Al-'Azîz, [5: 550]; Rawḍat Aṭ-Ṭalibîn, [2: 225]

a short period, according to customary practice, otherwise it is invalid, provide the following reasoning:

- 1- First Evidence: Allah says: *{“And He has not placed upon you in the religion any difficulty.”}*⁽¹⁾

Reasoning: Requiring the intention to coincide with the payment of zakâh would cause hardship and difficulty, and hardship is to be alleviated in Islamic law.⁽²⁾

1. Second Evidence:

The slight delay in making the intention before paying zakâh does not invalidate the act of worship, similar to fasting, where a short delay in intention does not affect its validity. As long as the person paying zakâh remains aware of their intention, the zakâh remains intended.⁽³⁾

Evidence for the Fourth Opinion:

Those who argue that it is never valid to precede the intention before paying zakâh, regardless of the time gap, present the following evidence:

1. First Evidence:

They compare zakâh to prayer and purification, where the intention must coincide with the act. Both are forms of worship that require intention for their validity, and one enters into the act of worship with the intention at the time of performance.⁽⁴⁾

Counterargument: This analogy is refuted in two ways:

- First: There is a distinction between zakâh and prayer or purification, as one cannot appoint an agent to perform prayer or purification on their behalf, unlike zakâh, where delegation is permissible.⁽⁵⁾
- Second: The analogy is flawed because those who hold the third opin-

(1) [Al-Hajj (The Pilgrimage): 87].

(2) See: Kashshâf Al-Qinâ', [1: 316]; Sharḥ Muntahâ Al-Îrâdât, [1: 175].

(3) See: Al-Mughnî, [1: 339]; Kashshâf Al-Qinâ', [1: 316].

(4) They mentioned the description of "entering it by action" as a distinction from fasting, which is an act of refraining, not an action. See: Al-Hâwî Al-Kabîr, [3: 178]; At-Tahdhîb, [3: 63].

(5) See: Baḥr Al-Madḥḥab, [10: 409].

ion allow for a short delay in the intention before the act of worship, even in prayer and purification.⁽¹⁾

Conclusion (Preferred Opinion):

The stronger view—and Allah knows best—is a combination of the second and third opinions. It is valid to precede the intention of paying zakâh if the intention is made when setting aside the zakâh funds, even if there is a long interval between the intention and the payment. However, if the intention is not associated with setting aside the funds, then it is only valid to precede the intention by a short period according to customary practice.

Reasons for Preferring this Opinion:

- 1- The strength of the evidence supporting the second and third opinions, and the weakness of the evidence for the other opinions.
- 2- The weakness of the first opinion is that it leads to the possibility of allowing the intention to precede the act by a long period of time. A long gap between the intention and the intended act interrupts the specification for which the intention was prescribed.
- 3- The general rule is that one's intention should accompany the act of worship. However, in the case of zakât, it is permissible for the intention to precede the act due to the practical difficulty of forming the intention at the exact moment of giving. This permission, however, is limited to instances where the intention is formed relatively close to the act of giving, such as when one authorizes someone else to give zakât on their behalf or when they set aside a specific amount for zakât. If there is a significant gap between the intention and the act, then the intention must be formed at a time that is close enough to the act to be considered practical and not excessively delayed.

Third Topic: Delaying the Intention After Paying Zakât

Statement of the Issue: Is it valid to delay the intention to pay zakât until after the money has been given? For example, if a person gives money to a zakât recipient without intending it for zakât, and then later intends that the given money was zakât, is their intention valid, and does what they gave count as zakât?

(1) See: Al-Mughnî, [2: 477]; Al-Mubdî', [2: 394].

Clarifying the Area of Disagreement:

- 1- Scholars who condition the validity of zakât on the presence of intention have agreed that if someone gives money to a zakât recipient intending it as a gift or voluntary charity, they cannot later change their intention to make it zakât. And what they gave does not count as zakât. ⁽¹⁾
- 2- Scholars who condition the validity of zakât on the presence of intention have agreed that if someone gives money to a zakât recipient without any intention, and then intends it for zakât after the recipient has consumed the money, their intention is not valid, and what they gave does not count as zakât. ⁽²⁾
- 3- Scholars who condition the validity of zakât on the presence of intention have differed regarding the case of someone who gives money to a zakât recipient without any intention and then intends it for zakât while the money is still in the possession of the recipient. Is their intention valid, and does what they gave count as zakât?

One might imagine a situation where the person gives the money without intending zakât due to forgetfulness or unawareness that the recipient has taken the money until after they have already taken possession of it, such as if the recipient steals or robs the money, and then the owner intends that it was zakât.

Opinions on the Issue: Scholars have differed on this issue, with two main opinions:

The first opinion: It is valid to delay the intention after giving the zakât, as long as the intention is formed while the money is still in the possession of the recipient. This is the opinion of the Ḥanafî school. ⁽³⁾

The Second Opinion: The Invalidity of Delaying the Intention for Zakât

(1) See: Al-Binâ, [3:313]; Al-Bahr Al-Râ'iq, [2:226]; Sharh Al-Zarqânî, [2:323]; Al-Fawâ'ih Al-Dawânî, [1:346]; Al-Umm, [2:24]; Al-Hawâwî Al-Kabîr, [3:179]; Al-Mubdi', [2:394]; Kashshâf Al-Niqâb, [2:260].

(2) See: Marâqî Al-Falâh, p. 271; Majma' Al-Anhâr, [1:196]; Hâshiyat Al-Dusûqî 'Alâ Sharh Al-Kabîr, [1:500]; Al-Fawâ'ih Al-Dawânî, [1:346]; Al-Umm, [2:24]; Al-Hawâwî Al-Kabîr, [3:179]; Al-Mubdi', [2:394]; Kashshâf Al-Niqâb, [2:260].

(3) See: Al-Binâ, [3:313]; Al-Bahr Al-Râ'iq, [2:226]; Majma' Al-Anhâr, [1:196].

The majority of Mālikīs⁽¹⁾, Shāfi'īs⁽²⁾, and Ḥanbalīs⁽³⁾ hold the opinion that it is absolutely impermissible to delay the intention to pay zakât after the money has been disbursed.

Arguments and Counterarguments:

Argument for the First Opinion: The Ḥanafīs argue that if the intention to pay zakât is formed while the money is still in the possession of the recipient, it is equivalent to forming the intention at the time of giving. This is because the money has not yet been consumed by the recipient, and a legal equivalence is considered the same as an actual equivalence⁽⁴⁾.

Counterargument: It is argued that even if the money remains in the possession of the recipient after the act of giving, forming the intention afterward is not equivalent to forming it concurrently with the act. The fact that the money has reached the recipient indicates that the act of giving has already occurred. Moreover, the money may remain in the recipient's possession for a prolonged period, making it unreasonable to consider a subsequent intention as equivalent to a concurrent one.

Arguments for the Second Opinion:

The majority of scholars argue against the permissibility of delaying the intention for zakât based on the following:

- **Analogy with Other Acts of Worship:** zakât can be likened to other obligatory acts of worship, where the intention must precede the act. This is because all acts of worship require a sincere intention to be valid.⁽⁵⁾
- **The Act Itself Requires Intention:** The act of giving zakât specifically requires the intention to pay zakât. Delaying the intention means that the act was performed without the required intention.⁽⁶⁾

(1) See: Dasûqî's Commentary on the Great Commentary, [1:500]; Al-Fawâ'ih Al-Dawâni (The Dawâni Fruits), [1:346].

(2) See: Al-Umm, [2:24]; Al-Hawâwî Al-Kabîr, [3:179]; Fath Al-Mu'in by Al-Mu'barî, p. 246.

(3) See: Al-Mubdi', [2:394]; Kashshâf Al-Niqâb, [2:260]; Sharh Muntahâ Al-Îrâdât, [1:448].

(4) See: Sharh Al-Sharnibîlî on Durar Al-Ahkâm, [1:174]; Ibn 'Âbidîn's Commentary, [2:269].

(5) See: Al-Hawâwî Al-Kabîr, [3:178].

(6) See: Al-Umm, [2:24]; Fath Al-'Azîz, [1:316]; Sharh 'Umdah Al-Fiqh, [3:142].

- Distinguishing zakât from Other Transactions: Giving money to a recipient can represent various transactions, such as charity, a gift, or a *qard* (loan). It is necessary to specify the intention of zakât to differentiate it from these other transactions. This specification must occur before the act of giving.

The Prevailing Opinion:

The more sound opinion, according to the majority of scholars, is the second one. This means that it is not permissible to delay the intention to pay zakât after the money has been given. Consequently, if someone gives money to a zakât recipient without intending it for zakât and then forms the intention later, their action is not considered valid zakât.

Reasons for Preferring the Second Opinion:

- 1- The evidence for the second opinion is stronger, while the evidence for the first opinion is weaker and not free from criticism.
- 2- The Ḥanafī opinion would lead to the conclusion that it is permissible to delay the intention to pay zakât for a long period, possibly even a month or more. This is because the money may remain in the possession of the recipient for an extended period. Undoubtedly, this is not considered legally equivalent to performing the act of giving zakât. It is a condition of intention that it be concurrent with the intended act. While it is permissible to form the intention slightly before the act to alleviate hardship, there is no need to delay it.



Third Treatise

The Governor Collecting Zakâh

Without the Payer's Intention of Giving It

First Topic: When the Owner of the Wealth is Compliant

Issue Description:

If someone gives money to the governor — or to his representative in charge of collecting zakâh — willingly and without coercion, but without the intention of paying zakâh at the time of payment, does this fulfill the obligation of zakâh?

The Opinions on the Issue:

The jurists who stipulated the Topic of intention for the payment of zakâh differed on this issue, resulting in two opinions:

First Opinion:

The payment made to the Imâm (governor) or his representative voluntarily, without the intention of zakâh, does not suffice for fulfilling the obligation of zakâh. This is the view of:

- The Mâlikî school⁽¹⁾
- The more correct opinion among the later Shâfi'î scholars⁽²⁾
- The predominant opinion in the Ḥanbalî school⁽³⁾

I did not find a specific text on this issue in the Ḥanafî school, but it can be derived from their opinion that the Imâm acts as a deputy on behalf of the

(1) See: Al-ʿAdawî's Commentary on Kifâyat Al-Tâlib [1: 509], Ath-Thamar Ad-Dânî: Sharh Risâlah Ibn Abî Zayd Al-Qayrawânî (p. 354).

(2) See: At-Tahdhîb [3: 63], Al-Majmûʿ [6: 184], ʿUjâlat Al-Muhtâj [1: 509].

(3) See: Al-Mughnî [2: 478], Al-Inṣâf [3: 196], Kashshâf Al-Qinâʾ [2: 261].

zakâh recipients⁽¹⁾. Since payment to the recipients themselves does not suffice without the intention of zakâh, the same should apply to their deputy.

The payment made to the Imâm (governor) or his representative voluntarily, without the intention of zakâh, suffices for fulfilling the obligation of zakâh. This is the stated opinion of Imâm Al-Shâfi 'î⁽²⁾ and is also one view within the Shâfi 'î school⁽³⁾.

An Opinion within the Ḥanbalî School: This view was adopted by Al-Qadi Abu Ya'la⁽⁴⁾.

Evidence and Discussions:

Evidence for the First Opinion: Those who argued that paying zakâh without intention does not suffice provided the following evidence:

First Evidence: The statement of the Prophet (peace and blessings of Allah be upon him): «*Indeed, actions are only by intentions*»⁽⁵⁾.

Reasoning: This hadith indicates that intention is a condition for the validity of an action. Since the intention is absent here, the payment does not fulfill the obligation of zakâh⁽⁶⁾.

Second Evidence: An analogy (qiyas) to prayer, which does not suffice without intention for those upon whom it is obligatory, as both are mandatory acts of worship⁽⁷⁾.

(1) See: Al-Muḥîṭ Al-Burhânî [2: 268], Al-Baḥr Ar-Râ'iq [2: 227], Ibn 'Âbidîn's Commentary [2: 270].

(2) Imâm Al-Shâfi 'î said in Al-Umm: "If the governor collects zakâh from a man, whether the man intended to pay it or not, whether he was willing or unwilling, and regardless of whether the governor had the intention of zakâh or not, the payment suffices on his behalf." (Al-Umm, [2: 24]). However, later Shâfi 'î scholars disagreed with this text, interpreting it in various ways. An-Nawawi opted for the interpretation that it suffices outwardly but not between the individual and Allah. Zakariyya Al-Ansari did not accept this interpretation and commented, "There is a need for further consideration." See: Al-Majmû' [6: 184], Asnâ Al-Maṭâlib [1: 359].

(3) See: Al-Bayân [3: 402], Rawdat At-Tâlibîn [2: 208], Bidâyat Al-Muḥtâj [1: 543].

(4) See: Al-Mughnî [2: 478], Al-Furû' [4: 256], Al-Inṣâf [3: 196].

(5) Previously referenced. See: p. (7) of this book.

(6) See: Al-Ḥâwî Al-Kabîr [3: 185], Al-Majmû' [6: 184].

(7) See: Sharḥ Az-Zarkashî [2: 428], Al-Mubdi' [2: 394].

Third Evidence: The Imâm acts as a deputy for the rightful recipients of zakâh, so paying him without the intention of zakâh is invalid, just as paying the recipient or their agent without the intention of zakâh is invalid⁽¹⁾.

Fourth Evidence: The Imâm, in addition to collecting obligatory zakâh, may also collect voluntary charity, as he is more knowledgeable about how to distribute it. Therefore, intention is necessary when paying him to specify that it is zakât⁽²⁾.

Evidence for the Second Opinion: Those who argued that paying zakâh without intention does suffice provided the following evidence:

First Evidence: The apparent assumption is that whatever the Imâm or his deputy collects and distributes to the eight categories of recipients is zakâh. Thus, this outward assumption takes the place of intention.⁽³⁾

Counterargument: The Imâm, as he collects zakâh, also collects other types of charity because he is more knowledgeable about how to distribute it. Therefore, even if most of what the Imâm collects is zakâh, it does not remove the need for intention - just as fasting in Ramadan requires the intention to fast, even though it cannot be directed toward anything else.⁽⁴⁾

Second Evidence: The Imâm's collection of zakâh is analogous to the division of wealth among partners, where the payer does not need an intention⁽⁵⁾.

Counterargument: The analogy of zakâh to the division of wealth is flawed because division is not an act of worship and does not require intention, unlike zakâh⁽⁶⁾.

Third Evidence: The Imâm has authority to collect zakâh, and therefore, he collects it even from those who refuse to pay. If this did not suffice for them, he would not have taken it⁽⁷⁾.

This was refuted from two perspectives:

First Perspective: The Imâm collects zakâh from those who refuse to pay as a matter of public interest and to uphold religious symbols. However, this

(1) See: Baḥr Al-Madhḥab [3: 85], At-Tahdhīb [3: 63].

(2) See: Kifāyat An-Nabīh [6: 123].

(3) See: Al-Ḥawī Al-Kabīr [3: 185], Bidāyat Al-Muḥtāj [1: 543].

(4) See: Kifāyat An-Nabīh [6: 123].

(5) See: Al-Umm [2: 24], Al-Mughnī [2: 478].

(6) See: Al-Mughnī [2: 479], Al-Mubdi' [2: 394].

(7) See: Al-Mughnī [2: 478], Al-Furū' [4: 255].

does not mean that it suffices for the individual in relation to Allah, just as one can be forced to pray, but if they pray without intention, it does not fulfill the obligation⁽¹⁾.

Second Perspective: The Imâm has no authority over the compliant individual's payment of zakâh, unlike his authority over the one who refuses to pay. A similar case is the forced marriage of a ward who refuses to marry or the sale of their property to settle debts⁽²⁾.

Preference of Opinion:

The stronger view, and Allah knows best, is the first opinion — that paying zakâh to the Imâm or his deputy voluntarily, without the intention of zakâh, does not suffice.

Reasons for Favoring This Opinion:

- 1- The strength of the first opinion's evidence and the clarity of its arguments, as well as the weakness of the second opinion's evidence.
- 2- The principle is that intention is required for zakâh, and the assumption that whatever is given to the Imâm is obligatory zakâh is not strong enough to override this principle. Even if we assume the Imâm only collects zakâh, this does not negate the need for intention, as the intention from the responsible individual is a condition for the validity of acts of worship.

Second Topic: When the Owner of the Wealth is Compelled

If the Imâm or his deputy forcibly takes zakâh from the wealth owner without their intention, this situation can be divided into two cases: First, the Imâm or his deputy intends to distribute the zakâh to the rightful recipients. Second, the Imâm or his deputy does not have this intention. I will address these two cases in the following Treatises.

First Issue: The Imâm or His Deputy Intends to Pay zakâh When Distributing It to the Rightful Recipients

Issue Description:

If the person obligated to pay zakâh refuses to do so, and the Imâm or his deputy forcibly collects it without the owner of the wealth intending to give it,

(1) See: Al-Mughnî [2: 478].

(2) See: Al-Furû' [4: 255].

but the Imâm intends to distribute it to the rightful recipients, does this fulfill the obligation of zakâh for the owner?

Opinions on the Issue:

The jurists who require intention for the fulfillment of zakâh have differed on this issue, resulting in five opinions:

First Opinion: The payment suffices in all cases, both outwardly⁽¹⁾ and inwardly⁽²⁾. This is one view in the Ḥanafî school⁽³⁾, a view in the Mâlikî school chosen by Ibn Rushd Al-Jadd⁽⁴⁾ and affirmed by later scholars⁽⁵⁾, and the stated opinion of Imâm Al-Shâfi‘î, which is also the more correct view in the Shâfi‘î school⁽⁶⁾, and it is implied by the statements of Imâm Ahmad and the predominant view among early Ḥanbalî scholars.⁽⁷⁾

Second Opinion: The payment does not suffice in any case, neither outwardly nor inwardly. This is a view in the Ḥanafî⁽⁸⁾ and Mâlikî⁽⁹⁾ schools.

Third Opinion: The payment suffices in all cases for apparent wealth⁽¹⁰⁾ but

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- (1) What is intended by apparent validity (al-ijzâ’ ṣāhiran) is the exemption from the obligation of paying Zakât again. See: *Fath Al-‘Azîz* (5/526); *Al-Mughnî* (2/478).
 - (2) What is intended by internal validity (al-ijzâ’ bâṭinan) is what lies between him and Allah Almighty. See: *Al-Hāwî Al-Kabîr* (3/185); *Nihāyat Al-Maṭlab* (194).
 - (3) See: *Sharḥ Mukhtaṣar Al-Ṭahāwî* (2/268); *Al-Bināyah* (3/311); *Al-Baḥr Al-Rā‘iq* (2/227).
 - (4) He is Muḥammad ibn Aḥmad ibn Muḥammad ibn Rushd, known as Abū Al-Walîd Al-Qurṭubî Al-Mâlikî, chief judge in Cordoba, renowned for his virtue, dedication to the pursuit of knowledge, insight as a jurist, expertise in the statements of the Mâlikî Imams, proficiency in the sciences of inheritance and foundational principles, with an exceptional rank in scholarship, eloquence, and understanding, as well as piety and virtue. His works include: *Al-Bayân Wa Al-Taḥṣîl*, *Al-Muqaddimât*, and *Ikhtisâr Mushkil Al-Āthār*. He passed away in 520 AH. For more on his biography, see: *Bughyat Al-Multamis* in the History of Andalusian Figures, by Al-Ḍabbî (51); *Siyar A‘lām Al-Nubalâ’* (19/502).
 - (5) See: *Al-Bayân Wa Al-Taḥṣîl* (2/481); *Aqd Al-Jawāhir Al-Thamīna* (1/214); *Al-Sharḥ Al-Kabîr* by Al-Dardîr (1/503).
 - (6) See: *Al-Umm* (2/24); *Rawḍat Al-Ṭalibîn* (2/209); *Asnā Al-Maṭālib* (1/359); *Mughnî Al-Muḥtāj* (2/132).
 - (7) See: *Al-Mumtî fî Sharḥ Al-Muqni’* (1/766); *Taṣḥîḥ Al-Furū’* (4/256); *Al-Inṣāf* (3/195).
 - (8) See: *Tuḥfat Al-Fuqahā’* (1/312); *Badā’i’ Al-Ṣanā’i’* (2/56); *Hāshiyat Ibn ‘Ābidîn* (2/290).
 - (9) See: *Al-Bayân Wa Al-Taḥṣîl* (2/481); *Sharḥ Zarūq on Matn Al-Risālah* (2/874); *Sharḥ Al-Zurqānî on Mukhtaṣar Khalîl* (2/328); *Al-Sharḥ Al-Kabîr* by Al-Dardîr (1/503).
 - (10) The term “apparent wealth” (al-amwāl al-ṣāhirah) refers to visible assets, such as livestock, crops, and fruits. See: *Al-Bināyah* (300); *Al-Hawāshî Al-Sābiḡhāt* by Al-Qa‘imî (p. 193).

not for hidden wealth⁽¹⁾.

And this is the ruling adopted by the Ḥanafī school⁽²⁾.

The fourth opinion: Fulfillment is achieved in all cases, though without reward. This is the view of Abû Bakr Ibn Al-‘Arabī⁽³⁾ from the Mâlikīs.⁽⁴⁾

The fifth opinion: Fulfillment outwardly but not inwardly. This is one view among the Shâfi‘īs⁽⁵⁾ and a view within the Ḥanbalī school, chosen by Abû Al-Khaṭṭâb⁽⁶⁾, Ibn ‘Aqīl⁽⁷⁾, and Shaykh Al-Islâm Ibn Taymiyyah⁽⁸⁾, and later adopted by the Ḥanbalīs⁽⁹⁾.

Evidence and Discussions of the Opinions:

Evidence for the First Opinion: Those who argue that if the imâm forcibly

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- (1) The term “hidden wealth” (al-amwāl al-bāṭinah) refers to assets not visible to people, such as currency, trade goods, and minerals. See: *Badā’i’ Al-Ṣanā’i’* (2/7); *Al-Ḥawāshī Al-Sābiḡhāt* (p. 193).
- (2) See: Al-Baḥr Ar-Râ’iq [2: 227], Ḥāshiyat Ibn ‘Ābidīn [2: 290].
- (3) He is Muḥammad Ibn ‘Abd Allāh Ibn Aḥmad Al-Ma‘āfarī Al-Ishbīlī, Abû Bakr, known as Ibn Al-‘Arabī, a renowned ḥāfiẓ and scholar, considered the last of the great scholars and leaders of Al-Andalus. He served as a judge before dedicating himself fully to teaching and issuing fatwas for forty years. Among his many works are ‘Arāḍat Al-Aḥwadhī fī Sharḥ At-Tirmidhī, Tartīb Al-Masālik fī Sharḥ Muwaṭṭa’ Mālik, and Aḥkām Al-Qur’ān. He died in 543 AH. For his biography, see Wafayāt Al-A‘yān [4: 296], Shajarat An-Nūr Az-Zakiyyah [1: 199].
- (4) See: At-Tawḍīḥ [2: 356], Sharḥ Ibn Nājī At-Tanūkhī ‘Alā Matn Ar-Risālah [1: 303].
- (5) See: Nihāyat Al-Maṭlab [1993], At-Tahdhīb [3: 64], Al-Bayān [3: 403].
- (6) He is Maḥfūẓ Ibn Aḥmad Ibn Al-ḥasan Ibn Aḥmad Al-Kalūdhānī, Abû Al-Khaṭṭāb Al-Baghdādī, a prominent Ḥanbalī scholar of Baghdad. He studied under Al-Qāḍī Abû Ya‘lā and excelled in jurisprudence and legal theory. Known for his piety, wisdom, and praiseworthy character, his notable works include Al-Hidāyah, Ru‘ūs Al-Masā’il, and At-Tamhīd fī Uṣūl Al-Fiqh. He died in 510 AH. For his biography, see Dhayl Ṭabaqāt Al-Ḥanābilah [1: 270], Al-Maqṣad Al-Arshad [3: 22].
- (7) He is ‘Alī Ibn ‘Aqīl Ibn Muḥammad Ibn ‘Aqīl Al-Baghdādī, Abû Al-Wafā, a versatile scholar who led the Ḥanbalī school in both jurisprudence and theology. Renowned for his piety, generosity, and knowledge, his works include Kitāb Al-Funūn (spanning 200 volumes, or more according to some) and At-Tadhkirah fī Al-Fiqh. He died in 513 AH. For his biography, see Manāqib Al-Imām Aḥmad (p. 701), Siyar A‘lām An-Nubalā’ [19: 446].
- (8) See: Al-Furū’ [4: 255], Al-Mubdī’ [2: 394], Al-Inṣāf [3: 195].
- (9) See: Kashshāf Al-Qinā’ [2: 261], Sharḥ Muntahā Al-‘Irādāt [1: 447].

collects zakâh, it suffices for the payer if the imâm intends to distribute it to the rightful recipients, base their reasoning on the following:

First Proof: The imâm has authority to collect zakâh, as evidenced by the verse:

{“Take, [O Muhammad], from their wealth a charity by which you purify them and cause them increase”}⁽¹⁾, and the Prophet’s (peace and blessings be upon him) statement: *«It is taken from their wealthy and returned to their poor»*.⁽²⁾

His act of taking [the zakâh] and his intention stands in place of the intention of the owner, just as the guardian’s intention when paying zakâh substitutes for that of a minor or an insane person.⁽³⁾

Response: The imâm’s authority to collect zakâh does not indicate that it suffices for one who refuses [to pay] in relation to his standing before Allah. Moreover, it cannot be analogized to a minor or an insane person because intention is impossible for them, unlike in the case of someone who refuses.

Second Proof: The intention is impossible for the one who refuses; thus, it is waived for him, just as it is waived for a minor or an insane person due to its impossibility for them⁽⁴⁾.

Third Proof: If what was taken from the one who refuses did not suffice for zakâh, the imâm would not have been legislated to take it⁽⁵⁾.

Response: The imâm only takes zakâh from the one who refuses to maintain outward order and display the religious rites; this does not mean that it suffices for him, just like prayer, where the one who refuses is compelled to perform it, yet if he prays without intention, it does not suffice for him⁽⁶⁾.

It is answered by differentiating between prayer and zakâh: prayer does not allow deputization, so the doer’s intention is necessary, unlike zakâh⁽⁷⁾.

(1) [At-Tawbah (Repentance): 103].

(2) Previous reference: see p. 57 of this book.

(3) See: Sharḥ Mukhtaṣar Aṭ-Ṭaḥâwî [2: 268], Al-Bayân Wa At-Taḥṣîl Wa At-Taḥṣîl [2: 481], At-Tahdhîb [3: 64], Sharḥ Az-Zarkashî [2: 428].

(4) See: Al-Mughnî [2: 478].

(5) See: Al-Mumtî ‘ fî Sharḥ Al-Muqni ‘ [1: 766], Al-Furû ‘ [4: 256].

(6) See: Al-Mughnî [2: 478].

(7) See: Previous reference.

Fourth Proof: If someone divorces during menstruation and refuses to revoke [the divorce], the imâm revokes it on his behalf, and the revocation is valid. Thus, one who refuses to pay zakâh is similarly treated, as the imâm takes it from him, and it is valid⁽¹⁾.

Response: Revocation is not an act of worship requiring intention, so it cannot be analogized with zakâh.

Fifth Proof: The one refusing to pay zakâh knows that what the imâm takes from him is taken as an obligation, and this knowledge stands in place of intention⁽²⁾.

Discussion: merely knowing the obligation does not suffice in place of the intention to perform the act of worship and to draw closer to Allah Almighty, and that such an intention was absent, which makes it impermissible.⁽³⁾

Sixth Proof: The most apparent objective of zakâh is to fulfill the needs of the entitled recipients, and this objective is achieved when the imâm collects zakâh from one who refuses, thus it should suffice⁽⁴⁾.

Response: Achieving the apparent objective does not necessarily mean that it suffices. zakâh is an act of worship that requires intention, and since the condition (intention) is not fulfilled, it is not valid⁽⁵⁾.

Evidence for the Second Opinion: Those who argue that if the imâm col-

(1) See: Al-Jâmi' Li-Masâ'il Al-Mudawwanah [4: 113].

(2) See: 'Uqd Al-Jawâhir Ath-Thamînah [1: 214], Sharḥ Ibn Nâjî At-Tanûkhî 'Alâ Matn Ar-Risâlah [1: 303].

(3) See: Mughnî Al-Muḥtâj [2: 132].

(4) See: Nihâyat Al-Maṭlab [1993].

(5) In this context, Al-Ghazâlî states: "Fulfilling the needs of the poor is one objective, but it is not the only one. The obligations of the Sharī'ah fall into three categories: The first is pure worship with no worldly interests, such as the throwing of stones during Hajj... The second type of obligation is one where the objective is a rational benefit, not worship, such as repaying human debts or returning usurped property; thus, the act itself and intention are not required... The third type is a combination of both objectives: benefiting people and testing the individual with submission to Allah. This combines the worship aspect of throwing stones with the benefit of returning rights. It is rational in itself, and when prescribed by Sharī'ah, it requires fulfilling both objectives. One should not forget the more subtle objective—worship and submission—because it may be the more important one, and this is likely the most significant. zakâh falls into this category." Iḥyâ' 'Ulûm Ad-Dîn [1: 212-213].

lects zakâh forcibly without the owner's intention but with the imâm's intention, it does not suffice in any case, base their reasoning on the following:

First Proof: Intention is a condition for the validity of zakâh, and since the owner did not have it, what was taken from his wealth does not suffice for zakâh⁽¹⁾.

Response: This only proves that it does not suffice internally between the individual and Allah. As for the outward sufficiency—which would mean the obligation to pay it again—it is not addressed by this evidence, since intention is not required for outward sufficiency.

Second Proof: zakâh is an act of worship, and it must be performed willingly by the one upon whom it is obligatory in order for it to suffice. In this case, there was no voluntary performance, so it does not suffice at all.

Response: The premise that zakâh must be performed voluntarily by the individual is not accepted. It is lawful for the imâm or his deputy to forcibly collect it from the one who refuses, based on the generality of the verse: *{“Take from their wealth a charity”}*⁽²⁾, and the Prophet's (peace be upon him) statement: *“Whoever withholds it, we will take it, along with half of his wealth, as a decisive action from our Lord, Exalted and Glorified”*⁽³⁾.

Third Opinion: Those who argue that if the imâm forcibly collects zakâh without the owner's intention but with the imâm's intention, it does not suffice in any case for «hidden wealth,» but does for «apparent wealth,» base their reasoning on the following: The imâm has the authority to collect zakâh on apparent wealth, so his intention stands in place of the owner's. However, for hidden wealth, the imâm does not have the authority to collect it, and if he does so without the owner's intention and consent, his collection is invalid and does not suffice for zakâh.⁽⁴⁾

(1) See: Al-Baḥr Ar-Râ'iq [2: 227], Al-Bayân Wa At-Taḥṣîl [2: 481].

(2) [At-Tawbah (Repentance): 103].

(3) Related by Abû Dâwûd in his Sunan, Book of zakâh, Chapter: On zakâh for Livestock, no. 1575 [3: 26]; also related by An-Nasâ'î with the wording: "We will take it and half of his camels," Book of zakâh, Chapter: The Punishment for Withholding zakâh, no. 2444 [5: 15]. The hadîth is related by Bahz Ibn Ḥakîm, from his father, from his grandfather. Bahz's reliability is disputed, but this hadîth has been classified as ḥasan by Al-Mundhirî and Ibn Al-Mulqin. See: Al-Badr Al-Munîr [5: 487-488], At-Talkhiṣ Al-Ḥabîr [2: 357].

(4) See: Al-Baḥr Ar-Râ'iq [2: 227], Ḥāshiyat Ibn 'Ābidîn [2: 290].

Response: The imâm's authority to collect zakâh does not imply sufficiency for the owner in terms of inner fulfillment since the condition of intention is absent.

Fourth Opinion: I did not find explicit evidence for Ibn Al-‘Arabî's statement that if the imâm forcibly collects zakâh without the owner's intention, it suffices entirely, but without reward. However, his view on sufficiency can be supported by the same evidence used for the first opinion. His view on the absence of reward can be explained by the lack of an intention to seek closeness to Allah, which is a condition for obtaining reward.

Fifth Opinion: Those who argue that if the imâm forcibly collects zakâh without the owner's intention but with his own, it suffices outwardly but not inwardly, base their reasoning on the following:

First Proof: zakâh is an act of worship that requires intention, so it does not suffice for someone who gives it without intention, whether voluntarily or under compulsion⁽¹⁾.

Second Proof: The imâm is either a representative of the owner in distributing zakâh, or of the recipients in receiving it, or both. In all these cases, his intention does not substitute for the owner's intention⁽²⁾.

Response: The imâm is not a representative of anyone; rather, he is a ruler over the owner⁽³⁾.

Third Proof: Outward sufficiency without intention occurs in other cases, such as someone who refuses to pray or an apostate. The one who refuses to pray is compelled to perform it, and the apostate is ordered to declare the two testimonies of faith. In both cases, their outward compliance suffices to avoid punishment, but if there is no intention or faith, it does not suffice in their standing before Allah. Similarly, zakâh, being a religious obligation, follows the same principle⁽⁴⁾.

Preferred Opinion: After considering the evidence and the responses, the most likely correct view-Allah knows best-is the fifth opinion. If the imâm or his deputy forcibly collects zakâh from someone who refuses to pay, it suffices

(1) See: At-Tahdhîb [3: 64], Al-Mughnî [2: 478].

(2) See: Al-Mubdi‘ [2: 394].

(3) See: Al-Mughnî [2: 478].

(4) See: Al-Mughnî [2: 478], Al-Furû‘ [4: 255].

outwardly, meaning they are not required to pay it again. However, it does not suffice inwardly, so the obligation remains between them and Allah.

Reasons for the Preferred Opinion:

- 1- The strength of the evidence supporting the fifth opinion, and the weakness of the other opinions, which are not free from valid objections.
- 2- zakâh is an act of worship that, like other acts, requires intention for its validity. If performed without intention, it does not suffice because the condition (intention) is missing. However, outward sufficiency is achieved when the imâm forcibly collects it from the one refusing to pay, because it is legislated for the imâm to collect it. If outward sufficiency were not valid, zakâh would have to be collected repeatedly until the payer's wealth is exhausted.

Practical Implications of the Disagreement:

The disagreement has practical consequences, as shown below:

- 1- According to the first opinion (complete sufficiency) or the fourth opinion (sufficiency without reward), if the one refusing to pay zakâh repents, they are not required to pay zakâh on the wealth that the imâm forcibly collected⁽¹⁾.
- 2- According to the second opinion (complete insufficiency), the one refusing to pay zakâh must be imprisoned and compelled to pay it with intention and choice⁽²⁾.

According to the fifth opinion (outward sufficiency, but not inward), the obligation to pay zakâh is lifted for the wealth that the imâm forcibly collected, but the individual remains liable for it internally. If they repent, they must pay it again with intention and choice.

Second Issue: The imâm or his deputy does not intend to pay zakâh when distributing it to the recipients.

Issue Description:

If an individual refuses to pay zakâh, and the imâm or his deputy forcibly

(1) See: *Tuḥfat Al-Fuqahâ'* [1: 312], *Al-Baḥr Ar-Râ'iq* [2: 227].

(2) See: *Sharḥ Zarûq 'Alâ Matn Ar-Risâlah* [2: 874].

collects it and distributes it to the entitled recipients without intention from the owner or the imâm, does this suffice for the owner in terms of fulfilling their obligation of zakâh?

Opinions on the Issue: Scholars who agree that intention is a condition for paying zakâh have three views on this matter:

First Opinion: It does not suffice at all, neither outwardly nor inwardly. This is the most correct view among later Shâfi'î scholars⁽¹⁾.

I did not find any explicit texts from the Ḥanafis or Mâlikîs on this issue. However, those among them who hold that the zakâh forcibly collected by the imâm from a person who refuses to pay it suffices argue that the imâm's intention stands in place of the intention of the one refusing. From this, it follows that if the imâm does not have the intention, then sufficiency is negated⁽²⁾.

Third Opinion: It suffices outwardly but not inwardly. This is the explicit opinion of Imâm Ash-Shâfi'î and a position held by the Shâfi'îs⁽³⁾, as well as by Al-Qâḍî Abû Ya'la of the Ḥanbalîs⁽⁴⁾.

Fourth Opinion: It suffices outwardly but not inwardly. This is also the explicit opinion of Imâm Ash-Shâfi'î and a position held by the Shâfi'îs⁽⁵⁾, and it is the prevalent view among the Ḥanbalîs⁽⁶⁾.

Evidence and Discussions

Evidence for the First Opinion: Those who argue that if the imâm collects zakâh forcibly without intention from either the imâm or the owner, it does not suffice at all, base their reasoning on the following:

First Proof: The imâm, in his handling of zakâh, is like a guardian for a minor or an insane person, and therefore, he must have the intention. If he does not have the intention, the collection does not suffice at all⁽⁷⁾.

(1) See: Al-Majmû' [6: 184], Taḥrîr Al-Fatâwî [1: 514], Asnâ Al-Maṭâlib [1:359].

(2) See: Sharḥ Mukhtaṣar Aṭ-Ṭaḥâwî [2: 268], Al-Binâyah [3: 311], Ḥāshiyat Ash-Shalabî 'Alâ Tabayyin Al-Ḥaqqâ'iq [1: 257], Al-Bayân Wa At-Taḥṣîl [2: 481], Sharḥ Az-Zurqânî 'Alâ Khalîl [2: 328], Ḥāshiyat Al-'Adawî 'Alâ Kifâyat At-Ṭalib [1: 473].

(3) See: Al-Umm [2: 24], Al-Ḥâwî Al-Kabîr [3: 185], Baḥr Al-Madḥhab [3: 85].

(4) See: Al-Furû' [4: 256], Al-Inṣâf [3: 196].

(5) See: At-Taḥdhîb [3: 64], Al-Bayân [3: 403], Fath Al-'Azîz [5: 527].

(6) See: Taṣḥîḥ Al-Furû' [4: 256], Al-Mubdi' [2: 394], Al-Inṣâf [3: 196].

(7) See: Nihâyat Al-Maṭlab [3: 199], Rawḍat Aṭ-Ṭalibîn [2: 209].

Response: There is a distinction here: the imâm has the authority to forcibly collect zakâh from someone who can pay it but refuses, in order to uphold the rites of religion. This type of authority differs from that of a guardian over a minor or an incapacitated person.

Second Proof: Intention is a condition for the valid performance of zakâh, and since it was not made by the owner, the collection does not suffice at all. ⁽¹⁾

Response: This evidence supports the idea that the collection does not suffice inwardly, but it does not address outward sufficiency, as the owner's intention is not required for outward sufficiency.

Evidence for the Second Opinion: Those who argue that if the imâm forcibly collects zakâh without intention from either the imâm or the owner, it still suffices completely, base their reasoning on the following:

First Proof: What the imâm or his deputy takes forcibly and distributes to the eight categories is considered zakâh, so this serves in place of the intention. ⁽²⁾

Response: This does not substitute for the intention of performing the act of worship. Just as fasting in Ramadan requires the intention of performance, despite it being obligatory by Sharî'ah ⁽³⁾.

Second Proof: The imâm's collection of zakâh is akin to dividing shares among partners, which does not require intention. ⁽⁴⁾

Response: Comparing zakâh to the division of property is flawed, as division is not an act of worship and does not require intention, unlike zakâh ⁽⁵⁾.

Evidence for the Third Opinion: Those who argue that if the imâm forcibly collects zakâh without intention from either the imâm or the owner, it suffices outwardly but not inwardly, base their reasoning on the following:

First Proof: zakâh is an act of worship that requires intention. If the one upon whom it is obligatory does not have the intention, it is not valid, whether they pay it willingly or the imâm collects it forcibly, and regardless of whether

(1) See: Al-Baḥr Ar-Râ'iq [2: 227], Al-Bayân Wa At-Taḥṣîl [2: 481].

(2) See: Al-Ḥawî Al-Kabîr [3: 185], Bidâyat Al-Muḥtâj [1: 543].

(3) See: Kifâyat An-Nabîh [6: 123].

(4) See: Al-Umm [2: 24], Al-Mughnî [2: 478].

(5) See: Al-Mughnî [2: 479], Al-Mubdi' [2: 394].

the imâm has the intention or not⁽¹⁾.

Second Proof: Sufficiency occurs outwardly even if neither the imâm nor the owner has the intention, by analogy to someone who refuses to pray or an apostate. The one who refuses to pray is compelled to perform it, and the apostate is commanded to recite the two testimonies of faith. In both cases, outward compliance suffices to avoid punishment, but if it is without intention or faith, it does not suffice inwardly before Allah. Similarly, zakâh follows this pattern, as both are obligatory acts⁽²⁾.

Preferred Opinion: The strongest opinion, and Allah knows best, is the third one: If the imâm forcibly collects zakâh from someone who refuses to pay, without intending zakâh when distributing it to the recipients, it suffices for the owner outwardly but not inwardly.

Reasons for the Preference:

- 1- The strength of the evidence for the third opinion and the weakness of the first and second opinions, which are not free from valid objections.
- 2- The previously established preference that if the imâm collects zakâh forcibly and with intention, it does not suffice inwardly for the one refusing. It follows even more so if the imâm does not have the intention.
- 3- The evidence that permits forcible collection in non-essential matters, such as the imâm forcibly collecting zakâh from someone who refuses, the mosque imâm collecting from those obligated, the imâm collecting land taxes from those who refuse, or the collection of *jizyah* from non-Muslims-, is not necessarily evidence for outward sufficiency in the case of refusal. This is because these proofs specifically address the issue of forcibly taking wealth, but they are not general proofs that establish sufficiency for those who refuse to pay, outwardly. This distinction is clear to those who do not follow the mainstream opinion.



(1) See: At-Tahdhîb [3: 64], Al-Mughnî [2: 478].

(2) See: Al-Mughnî [2: 478], Al-Furû' [4: 255].

Fourth Treatise
The intention of Specifying
the Asset and the Recipient in Zakâh

Second Topic: Intention of Designating the Asset for zakâh

First Issue: Ruling on the Intention of Designating the Asset for zakâh

Description of the Issue:

If a person possesses various assets subject to zakâh and intends to pay the zakâh on only some of them, is it required to specify the asset being paid from?

For example, if a person owns 40 sheep and five camels, and he wants to give a sheep as zakâh, must he specify which asset (the sheep or the camels) the zakâh is being paid from?

Another example: if a person has cash at home and another sum of money in his shop, and he wants to pay 100 riyals as zakâh for his cash, must he specify which amount the zakâh is for?

Clarification of the Points of Disagreement:

- 1- I did not find any disagreement among the scholars regarding the situation where the assets are of the same type and condition. In this case, it is not required to specify which asset the zakâh is being paid from. For example, if a person has 10 camels and wants to give a sheep for them, or if he has 4,000 riyals and wants to pay 50 riyals, it is not required to specify which part of the assets the zakâh is for. The zakâh is paid on one part, and the remaining part still requires zakâh⁽¹⁾.

(1) See: Al-Baḥr Ar-Râ'iq [2: 228], Ḥāshiyat Ash-Shalabî 'Alâ Tabyiyn Al-Ḥaqâ'iq [1: 258], Al-Muḥadhdhab [1: 312], Asnâ Al-Maḥālib [1: 359], Al-Kāfi fī Fiqh Al-Imâm Aḥmad [1: 417], Al-Mubdi' [2: 394].

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- 2- Scholars have differed on whether the intention of specifying the asset is required when the assets differ in type (e.g., camels and sheep, or cash and trade goods), or in condition (e.g., 200 dirhams present and 200 dirhams absent). Should the payer specify the asset for zakâh when paying it in such cases?

The Opinions on the Issue: Scholars have differed on this matter, and there are two opinions:

First Opinion: It is not required to specify the asset from which zakâh is being paid in any circumstance. This is the view of the Ḥanafis⁽¹⁾, the Shâfi'is⁽²⁾, and the dominant opinion among the Ḥanbalîs⁽³⁾.

I did not find a specific text from the Mâlikîs on this issue, but their stance could be inferred based on their view that if someone intends to pay expiation for intentional killing or other financial expiations without specifying the asset from which the payment is made, it is valid and sufficient⁽⁴⁾.

Second Opinion: It is required to specify the asset being paid from if the assets differ in type or condition. This is a view mentioned among the Ḥanbalîs, as related by Al-Qâḍî Abû Ya'î⁽⁵⁾.

Evidence and Discussions:

Evidence for the First Opinion: Those who argue that it is not required to specify the asset from which zakâh is paid in any circumstance present the following arguments:

First Proof: zakâh is compared to expiation in that there is no obligation to specify which obligation is being fulfilled. If someone is required to pay

= I did not find a specific text from the Mâlikîs on this issue, but it is possible to infer their stance of not requiring the designation of the asset being paid from, based on their opinion that specifying the act being expiated for is not required when there are multiple expiations. Both zakâh and expiation are financial acts of worship. See: Jâmi' Al-Ummihât (p. 311), Sharḥ Al-Khurashî [4: 123].

(1) See: Al-Baḥr Ar-Râ'iq [2: 228], An-Nahr Al-Fâ'iq [1: 418], Ḥâshiyat Ash-Shalabî 'Alâ Tabyiyn Al-Ḥaqâ'iq [1: 258].

(2) See: Al-Ḥawî Al-Kabîr [10: 485], Al-Wasîṭ [2: 443], Mughnî Al-Muḥtâj [2: 130].

(3) See: Al-Mughnî [2: 477], Al-Inṣâf [3: 194], Kashshâf Al-Qinâ' [2: 260].

(4) See: 'Uyûn Al-Adillah fî Masâ'il Al-Khilâf by Ibn Al-Qaṣṣâr [3: 1095], 'Uyûn Al-Masâ'il (p. 363), Sharḥ Al-Khurashî 'Alâ Mukhtaṣar Khalîl [4: 121].

(5) See: Al-Furû' [4: 250], Al-Mubdî' [2: 394], Al-Inṣâf [3: 194].

different types of expiations, such as for killing, *ẓihâr*, or an oath, and they free a slave without specifying which expiation it is for, it is valid, and they can apply it to whichever they wish. *zakâh* is similar, as both are financial acts of worship⁽¹⁾.

Second Proof: The primary objective of *zakâh* is fulfilled whether the asset being paid from is specified or not, so there is no need to require specification⁽²⁾.

Third Proof: If someone owns 40 dinars and pays half a dinar as *zakâh*, it is valid and applies to 20 unspecified dinars. This can be applied to different types of assets, as all of them are subject to *zakâh* and belong to the same owner.⁽³⁾

Second Argument: I have not found evidence for those who stipulate the necessity of specifying the wealth from which *zakâh* is due when the types of wealth differ. However, an argument for this position might be drawn by analogy with prayer, where specifying the type of prayer—whether *Fajr*, *Dhuhr*, *‘Asr*, *Maghrib*, or *‘Ishâ*—is required at the time of performance.

Third Requirement: Must the individual specify the wealth from which *zakâh* is being paid before or after the payment?

Issue of Initiation:

The jurists have disagreed on this matter, with two well-known positions: one follows the views of Imâm Ahmad, the Shâfi‘is, and the Ḥanbalîs; the other aligns with Imâm Mâlik, Abû Hanîfa, and his followers among the Ḥanafîs.

The Preponderant Opinion:

The more likely correct view—Allah knows best—is the first view, which holds that specifying the wealth from which *zakâh* is being paid is not required at the time of payment under any circumstances.

Reasons for Favoring the First View:

- 1- The strength of the evidence supporting the first view.
- 2- If the imâm forcibly collects *zakâh* from an individual, it still fulfills the

(1) See: *Al-Baḥr Ar-Râ‘iq* [2: 228], *Baḥr Al-Madhhab* [3: 84].

(2) See: *Faṭḥ Al-‘Azîz* [5: 523], *Asnâ Al-Ma‘âlib* [1: 359], *Kashshâf Al-Qinâ‘* [2: 260].

(3) See: *Al-Mughnî* [2: 477], *Kashshâf Al-Qinâ‘* [2: 260].

obligation, even if the individual has not specified which wealth the zakâh is drawn from before its collection.

- 3- The absence of any explicit statement by the jurists on this issue, and their consensus on the first view.

Result of the Disagreement:

The disagreement on this issue is substantive, and its implications appear when a person owns two different types of wealth, or wealth in different states, with the same zakâh rate for both. If one pays zakâh on one of them without specifying or with an ambiguous intention regarding which of the two is being covered, such as owning forty sheep and five camels, and he gives a sheep intending it as zakâh without specifying which type of wealth it covers, or if he has four thousand riyals at hand and another four thousand absent, and he gives one hundred riyals without specifying from which wealth the zakâh is due—would this be sufficient? According to the first opinion, this is sufficient, and the payer may apply the payment to either wealth as he chooses. According to the second opinion, it is not sufficient because of the failure to specify the wealth from which the zakâh is due.

Second Issue: Redirecting zakâh After Its Payment to Different Wealth

The Scenario:

If a person owns multiple properties that are subject to zakâh, and he pays a certain amount of the zakâh he owes, intending it as zakâh for a specific type of wealth, is it permissible for him to redirect the payment to another type of wealth after the fact?

Example: A person owns forty sheep and five camels. He gives a sheep, intending it as zakâh for the camels. Can he later apply it to the sheep's zakâh if he realizes that he had already paid zakâh on the camels, or something similar?

Another Example: A person owns four thousand riyals at hand and another four thousand absent. He gives one hundred riyals, intending it as zakâh for the absent wealth. Can he later apply it to the zakâh on the present wealth if he remembers that he had already paid zakâh on the absent wealth, or something similar?

Result of the Disagreement on the Issue:

- 1- I have not found any disagreement among the jurists that it is impermissible to redirect zakâh after it has been paid to a different type of wealth than what was specified at the time of payment when the types of wealth differ. For example, if one gives a sheep as zakâh for forty sheep, it cannot be redirected after payment to five camels⁽¹⁾.
- 2- However, the jurists have disagreed on whether it is permissible to redirect zakâh after it has been paid to a different portion of wealth when the type of wealth is the same. For instance, if someone gives five dirhams as zakâh for two hundred absent dirhams, can it be redirected after payment to two hundred present dirhams?

Positions on the Issue: The jurists have differed on this issue, holding two main positions:

- First Position: It is permissible to redirect zakâh after payment to a different portion of the same type of wealth. This is the view of the Ḥanafis⁽²⁾.
- Second Position: There is no clear evidence prohibiting the redirection of zakâh after payment to a different portion of wealth than what was specified at the time of payment. This is the explicit view of Imâm Ahmad⁽³⁾, and it is also the opinion of Al-Qâdî Abû Ya'la⁽⁴⁾.

(1) See: Al-Mabsût [23/3], Badâ'i' Al-Sanâ'i' [52/2], Al-Ta'liqa by Al-Qâdî Husayn [412/1], Asnâ Al-Matâlib [1/359], Al-Ri'âya Al-Sughrâ [1/429], Ghâyat Al-Muntahâ [1/328].

No explicit text was found from the Mâlikis on this issue. However, their position on the invalidity of redirecting expiations [kafârat] from one cause to another, as when a person frees a slave for a specific expiation but later wants to apply it to a different one, might support the view of invalidity. See: Al-Tanbîh 'Alâ Mabâdi' Al-Tawjîh [2/836], Jâmi' Al-Ummahât [p. 166].

(2) See: Al-Mabsût [23/3], Badâ'i' Al-Sanâ'i' [52/2], Fath Al-Qadîr [2/207].

The jurists have also disagreed on whether gold and silver coins and trade goods are considered one category of wealth. Some argue that they are effectively one type because they can be combined to complete the zakâh threshold [nisâb], while others argue that they are different categories due to their differing nisâb requirements. See: Al-Muhîṭ Al-Burhânî [2/275], Al-Bahr Al-Râ'iq [2/242].

(3) See: Al-Umm [2/24], Nihâyat Al-Matlâb [19/73], Mughnî Al-Muhtâj [2/130].

(4) See: Al-Mughnî [2/477], Al-Ri'âya Al-Sughrâ [1/429], Sharh Muntahâ Al-Îrâdât [1/448].

I have not found any explicit text from the Mālikīs on this issue, but it could be inferred from their ruling on the case of someone who owes multiple expiations (*kafârat*) and frees a slave intending it for a specific expiation, only to later want to redirect the expiation to a different one. In this case, it would not be valid⁽¹⁾.

Evidence and Discussions:

Evidence for the Second Position: Those who prohibit the redirection of zakâh after payment to a different portion of wealth than what was specified argue as follows:

First Proof: If zakâh is paid on a specific portion of wealth, redirecting it to a different portion effectively transfers the payment to something it was not intended for, akin to giving zakâh for wealth other than what is due, which is impermissible.

Evidence for First Proof: The intention of designating the individual for whom the zakâh is paid is considered between different categories. However, when the category is the same, there is no benefit from this designation, so it becomes redundant. Therefore, it is valid to allocate the zakâh to any other required amount of the same category⁽²⁾.

Response: It is argued that even if we accept that designating the individual for whom the zakâh is paid within the same category has no benefit, the lack of benefit does not invalidate the correctness of the intention and its occurrence. Once the intention is valid, it is not permissible to change the intended recipient after the payment is made.

Second Proof: The intention to designate the individual for whom the zakâh is paid is not considered within the same category, based on analogy with designating specific days when making up missed fasts. For example, if someone is required to make up several missed days from Ramadân and they fast the same number of days with the intention of making up the fasts, it is sufficient, even if they do not specify in their intention whether it is for the first or second day, or whether it is for Thursday or Friday. Even if they mistakenly designate the wrong day, it will suffice for another. The same applies to the individual for

(1) See: Al-Tanbîh 'Alâ Mabâdi' Al-Tawjîh [2/836], Jâmi' Al-Ummahât [p. 166], Sharh Al-Manhaj, Al-Manjûr [1/213]. (2) See: Badâ'i' As-Sanâ'i' [2: 52].

whom the zakâh is paid within the same category⁽¹⁾.

Response: The analogy is not accepted, because if someone intends to make up a fast for a specific day, they cannot apply it to another day⁽²⁾.

Evidence of the Second Opinion: Those who argue that it is not valid to reallocate zakâh after its payment to a different obligation, even if the category of wealth is the same, provide the following proofs:

First Proof: The Prophet (peace and blessings of Allah be upon him) said: *«Indeed, actions are by intentions, and each person will have what they intended»*⁽³⁾.

Inference: The Prophet (peace and blessings of Allah be upon him) clarified that a person only receives the reward for what they intended. Therefore, if one intends to pay zakâh on specific wealth, it is not permissible to reallocate it after the payment, as the other wealth was not intended⁽⁴⁾.

Second Proof: zakâh is compared to expiation in terms of the inability to reallocate it after designation. For instance, if someone owes multiple expiations and frees a slave for a particular expiation, then later remembers that they had already freed a slave for that specific expiation, they are not allowed to reallocate the act of freeing to another expiation. Similarly, zakâh cannot be redirected after designation, as both are financial acts of worship⁽⁵⁾.

The Preferred Opinion:

The stronger opinion—Allah knows best—is the second opinion, which holds that it is not valid to reallocate zakâh to another zakâh obligation after it has been paid, even if the two assets are of the same category.

Reasons for Preference:

- 1- The strength and soundness of the second opinion's evidence, which remains unchallenged, and the weakness of the first opinion's evidence.
- 2- Just as the individual for whom zakâh is paid becomes specified by intention when the categories of wealth differ according to both opin-

(1) See: Al-Mabsût [3: 23].

(2) See: Hilyat Al-'Ulamâ' [3: 158], Al-Majmû' [6: 365].

(3) Previously cited, see p. 7 of this book.

(4) See: Al-Umm [2: 24], An-Najm Al-Wahhâj [3: 256], Kashshâf Al-Qinâ' [2: 260].

(5) See: Al-Bayân [3: 401], Al-Mughnî [2: 477].

ions, the same specification occurs when the category is the same, as there is no difference. Once the individual is specified by intention, it is not valid to reallocate the zakâh to someone else after payment, because changing the intended recipient after completing the act of worship is not permissible.

Second Topic: The Intention of Specifying the Asset for zakâh Issue:

Does the asset set aside for zakâh become fixed by designation? For example, if a person is obligated to pay zakâh after the passing of a year and sets aside part of their wealth with the intention of paying it, such as separating 1,000 riyals for zakâh from 40,000 riyals owed, or designating one sheep from 40 sheep for zakâh, is it obligatory for them to pay that specific designated asset, or can they pay a different one?

Scholarly Opinions:

Scholars have differed on this issue, with two main opinions:

- First Opinion: The intention of designating the asset for zakâh is permissible. This is the opinion of the Ḥanafīs⁽¹⁾, Shâfi'īs⁽²⁾, and Ḥanbalīs⁽³⁾.
- Second Opinion: The designated asset for zakâh becomes fixed by the act of designation. This is the view of the Mâlikīs⁽⁴⁾.

Evidence and Discussions:

Evidence for the First Opinion:

Proponents of the first opinion argue that the asset set aside for zakâh does not become fixed by merely separating it and intending to give it as zakâh, for the following reasons:

First Proof: The amount for zakâh does not become fixed until it is given to the entitled recipients. Only then does it officially count as zakâh. Before that, it remains like any other part of the person's wealth⁽⁵⁾.

(1) See: Al-Mabsûṭ [12: 13], Badâ'i' As-Sanâ'i' [5: 68], Al-Binâyah [4: 494], Ḥāshiyat Ibn 'Ābidīn [2: 270].

(2) See: Nihāyat Al-Maṭlab [3: 199], Kifāyat An-Nabīh [5: 409], Nihāyat Al-Muḥtāj [3: 139].

(3) See: Al-Mughnī [2: 511], Al-Furū' [4: 274], Kashshāf Al-Qinā' [2: 269].

(4) See: Al-Mudawwanah [1: 381], Al-Ishrāf [1: 383], Adh-Dhakhirah [3: 136], Mawāhib Al-Jalīl [2: 357].

(5) See: Kifāyat An-Nabīh [5: 409].

Response: It is argued that a sheep designated for *udhiyah* (sacrifice) becomes fixed by intention, without needing to be slaughtered to confirm its designation. The same should apply here⁽¹⁾.

It was responded to by distinguishing between zakâh and the sacrifice; because the recipients of zakâh are partners with the owner in its amount, and their partnership is not dissolved until they receive their share of the wealth⁽²⁾.

The second proof: The analogy between the wealth set aside for zakâh and the wealth set aside to pay off a debt, in that neither becomes specified through intention nor segregation before it is owned by its rightful recipient, as both are considered wealth owed to others⁽³⁾.

The evidence for the second opinion: Proponents of the second opinion argue that the designated wealth for zakâh becomes specified once it is segregated and intended for zakâh because the owner is entrusted with disbursing the zakâh and delivering it to its rightful recipients, thus it becomes specified by their designation, just as it does with the imâm⁽⁴⁾.

This is debated by stating that the imâm's receipt of zakâh from the owner is like the recipients' receipt, thus it becomes specified in his hands, unlike the owner.

Reasons for the preferred opinion:

- 1- The strength of the evidence for the first opinion and the weakness of the evidence for the second opinion, which is not free from critique.
- 2- Zakâh is related to the debtor's liability, and they are not absolved from it until it is discharged, which is done by giving it to its rightful recipients or their agents. However, segregating and specifying the wealth with intention is not considered a discharge, thus it does not become specified by that.

A subsidiary issue from the consequences of the disagreement if the wealth is destroyed after being specified:

Case scenario:

If the wealth designated for zakâh is destroyed before reaching its rightful

(1) See: *Nihâyat Al-Muhtâj* [3: 139].

(2) See: the previous reference.

(3) See: *"Kashshâf Al-Qinâ"* [2: 269].

(4) See: *"Mawâhib Al-Jalîl"* [2: 357].

recipients, is the obligation of zakâh annulled? Or does it remain a liability, and should it be paid from other wealth?

Proponents of the first opinion, who hold that the wealth for zakâh does not become specified by mere designation, state: If it is destroyed before the recipients take possession of it, the obligation of zakâh is not annulled, whether or not there was negligence⁽¹⁾.

Proponents of the second opinion, who hold that the wealth for zakâh becomes specified by designation, state: If it is destroyed after being segregated and designated, but before the recipients take possession of it, and without negligence, the obligation of zakâh is annulled⁽²⁾.

Evidence and Discussions:

Evidence for the first opinion: Those who argue that the obligation of zakâh is not annulled if the designated wealth is destroyed provided the following evidence:

- First proof: Zakâh is an obligation on the debtor's liability and is not discharged until it is delivered to its rightful recipient⁽³⁾.
- Second proof: The designated wealth for zakâh is a duty owed by the wealth owner, and they are not absolved from it if the wealth is destroyed before reaching its rightful recipient. This is analogous to a human debt, as both are fixed obligations on the debtor's liability⁽⁴⁾.

Evidence for the second opinion: Those who argue that the obligation of zakâh is annulled if the designated wealth is destroyed provided the following evidence:

- First proof: Once the wealth for zakâh is segregated and designated, the owner holds it in trust. Therefore, if it is destroyed without negligence, the owner is not liable, just like the zakâh collector⁽⁵⁾.

This is countered by not accepting that the owner holds the designated wealth for zakâh in trust; rather, they are liable for it until it is delivered to its

(1) See: "Al-Mabsût" [13: 12], "Badâ'i' As-Sanâ'i'" [5: 68], "Nihâyat Al-MATLAB" [3: 199], "Kifâyat An-Nabîh" [5: 409], "Al-Furû'" [4: 274], "Kashshâf Al-Qinâ'" [2: 269].

(2) See: "Al-Ishrâf" [1: 383], "Az-Dhakhîrah" [3: 136], "Mawâhib Al-Jalîl" [2: 357].

(3) See: "Al-Bahr Ar-Râ'iq" [3: 78].

(4) See: "Al-Mughnî" [2: 511].

(5) See: "Al-Ishrâf 'Ala Nukat Masâ'il Al-Khilâf" [1: 383].

rightful recipients. The analogy with the zakâh collector is flawed, as the collector is acting on behalf of the recipients, unlike the owner.

Second proof: If the *niṣâb* is destroyed after the completion of the year and before the ability to pay, the obligation of zakâh is annulled. Therefore, the destruction of the designated amount for zakâh after it has been segregated and designated, without negligence in its payment, is akin to its destruction along with the rest of the wealth⁽¹⁾.

This is countered by distinguishing between the two cases: Zakâh is annulled when the *niṣâb* is destroyed due to the absence of wealth and the occurrence of poverty, which is not the case when only the amount designated for zakâh is destroyed.

The preferred opinion and its rationale: Based on the previously established preference that the wealth designated for zakâh does not become specified through mere designation, the stronger opinion—Allah knows best—is that if it is destroyed before the recipients take possession of it, the obligation of zakâh is not annulled, whether or not there was negligence on the part of the owner.

Topic Three: The intention to pay zakâh to a specific recipient and then giving it to someone else.

Case scenario:

If someone sets aside wealth for zakâh and intends to give it to a specific recipient, is it obligatory to give it to that person, or can it be given to another eligible recipient?

Opinions on the matter: The jurists have differed on this issue, with two main opinions:

First opinion: The recipient is not specified by intention, and it is permissible to give the zakâh to someone else before they take possession of it. This is the view of the Hanafis⁽²⁾, and it was the fatwa given by Sheikh Ṣâliḥ bin Fawzân Al-Fawzân⁽³⁾.

(1) See: "At-Tâj Wa Al-Ikhlâl" [3: 253].

(2) See: "Al-Mawsû'ah Al-Fiqhiyyah" [6: 119], "Al-Majmû'" [5: 47], "Fath Al-Qadîr" [2: 280].

(3) See: "Majmû' Fatâwâ" by Sheikh Ṣâliḥ bin Fawzân [2: 461].

I have not found a specific text on this issue from the Shafi'is and Hanbalis, but it is possible to derive this opinion based on their view that the wealth set aside for zakâh is not specified by intention, but only by the recipient taking possession of it. Before possession, it is permissible to give it to someone else⁽¹⁾, and by analogy, the recipient can be viewed as a pillar of zakâh, just like the wealth itself.

Second opinion: It is not permissible to give the zakâh to someone other than the recipient specified by intention if the owner has designated it for that recipient, meaning that they made it theirs from the moment of intention⁽²⁾. The owner is liable for it if they give it to someone else. However, if they only intended to give it to the recipient without making it theirs from the moment of intention, it is disliked to give it to someone else. This is the fatwa given by Ibn Rushd Al-Jadd and followed by the Mâlikîs⁽³⁾.

Evidence and Discussions:

Evidence for the first opinion: Those who argue that the recipient is not specified by intention and that it is permissible to give the zakâh to someone else before they take possession, base their view on the following:

- First proof: The primary objective of zakâh, which is to meet the needs of the poor, does not change depending on the recipient. Thus, specifying the recipient by intention is void⁽⁴⁾.
- Second proof: It can also be argued that it is permissible to change the intention before carrying out the act, and the recipient does not own the zakâh until they take possession of it.

Evidence for the second opinion: I have not found direct evidence for the Maliki opinion, but it can be argued that designating the zakâh for a specific

(1) See: "Kifâyat An-Nabîh" [5: 409], "Nihâyat Al-Muhtâj" [1393], "Al-Furû'" [4: 274], "Al-Mubdi'" [2: 398], "Kashshâf Al-Qinâ'" [2: 269].

(2) Some Maliki scholars interpret "intention" here as internal speech (*kalâm nafsî*), which holds a higher status than mere intent. Therefore, they have differed on whether divorce occurs through this internal speech, unlike mere intention, which does not result in divorce under any opinion. See: "Mawâhib Al-Jalîl" [6: 55], "Fath Al-'Alî Al-Mâlik" by 'Ulaysh [1: 248].

(3) See: "Masâ'il Abî Al-Walîd Ibn Rushd" [2: 1318], "Mawâhib Al-Jalîl" [6: 55], "Fath Al-'Alî Al-Mâlik" [1: 248].

(4) See: "Al-Mawsû'ah Al-Fiqhiyyah" [6: 119].

recipient by intention transfers ownership to that recipient, as the internal intention is equivalent to verbal designation⁽¹⁾.

Discussion: It is not accepted that internal speech (*kalâm nafsî*) holds the same status as verbal expression. Even if we were to accept this, the recipient of zakâh does not acquire ownership until they take possession of it, and mere verbal designation is not sufficient, as if the zakâh were destroyed before the recipient took possession, a replacement would be required.

Preferred opinion:

The stronger opinion—Allah knows best—is the first one, which holds that the zakâh recipient is not specified by mere intention, and intention alone is not sufficient to designate the recipient.

Reasons for the preference:

- 1- The strength of the evidence for the first opinion and its freedom from critique.
- 2- The second opinion lacks supporting evidence and is based on a Maliki view that divorce can occur through internal speech, a position that is not widely accepted.



(1) This argument is based on the reasoning given by the author of "Mawâhib Al-Jalîl" regarding the occurrence of divorce through internal speech according to the Mâlikîs. See: "Mawâhib Al-Jalîl" [6: 55].

Fifth Treatise

Intention to Pay Zakâh on Wealth Not in the Owner's Possession

Topic One: Intention to Pay Zakâh on Wealth that Cannot Be Accessed by the Owner Due to Being a Prisoner or Missing

Issue One: The Ruling on Zakâh for the Wealth of Prisoners and Missing Persons

Before discussing the matter of paying zakâh on the wealth of prisoners and missing persons, it is beneficial to mention the juristic disagreement on the obligation of zakâh on their wealth, as the ruling on paying zakâh depends on whether it is obligatory in such cases.

Case scenario:

If the owner is separated from their wealth due to a circumstance specific to the owner⁽¹⁾, such as captivity, imprisonment⁽²⁾, or disappearance, is zakâh still obligatory on that wealth?

Opinions on the matter: The jurists have differed on this issue and offered four opinions:

First opinion: Zakâh is obligatory on the wealth of both the prisoner and the missing person without exception. This is the view of the majority of jurists, and it is the opinion of the Hanafis⁽³⁾, one opinion within the Maliki

(1) Separation between the wealth and its owner can be due to a cause related to the wealth itself, as in this case, or due to a cause related to the owner, such as being seized or lost, which jurists refer to as *damâr* (lost or inaccessible wealth). See: "Badâ'i' As-Sanâ'i'" [2: 9], "Sharḥ Az-Zarkashī" [2: 521].

(2) Captivity refers to when an enemy is captured alive by their opponent, which is more specific than imprisonment. See: "Mu'jam Lughat Al-Fuqahâ'" [p. 67].

(3) See: "At-Tajrid" [3: 1193], "Al-Mabsûṭ" [3: 10], "Al-Binâyah" [3: 306].

school⁽¹⁾, and the dominant opinion among the Shafi'is⁽²⁾ and Hanbalis⁽³⁾.

Second opinion: Zakâh is obligatory on the prisoner and the missing person for visible wealth-such as livestock, crops, fruits, and minerals-on a yearly basis. However, it is not obligatory for hidden wealth, such as gold, silver, and trade goods.

And this is the well-known opinion within the Maliki school.⁽⁴⁾

Third opinion: Zakâh is obligatory on the wealth of prisoners and missing persons for visible wealth every year, and for hidden wealth for one year after it is taken into possession. This is one opinion within the Maliki school⁽⁵⁾.

Fourth opinion: Zakâh is not obligatory on the wealth of prisoners and missing persons in any case. This is the opinion of the Shafi'is⁽⁶⁾ and Hanbalis⁽⁷⁾.

Evidence and Discussions of the Opinions:

Evidence for the first opinion: Those who argue that zakâh is obligatory on the wealth of prisoners and missing persons present several pieces of evidence, including:

- First proof: The generality of the texts indicating the obligation of zakâh, such as the verse: «**And establish prayer and give zakâh**»⁽⁸⁾, and the statement of the Prophet (peace and blessings of Allah be upon him): «*Inform them that Allah has made zakâh obligatory upon them, to be taken from their rich and given to their poor.*»⁽⁹⁾.

(1) See: "Ḥāshiyat Al-'Adawī 'Ala Sharḥ Al-Khurashī" [2: 202], "Ḥāshiyat Al-Bannānī 'Ala Sharḥ Az-Zurqānī" [2: 291], "Ḥāshiyat Ad-Dusūqī 'Ala Ash-Sharḥ Al-Kabīr" [1: 481].

(2) See: "Al-Hāwī Al-Kabīr" [3: 131], "Baḥr Al-Madhḥab" [3: 49], "Al-Majmū'" [5: 342].

(3) See: "Al-Mughnī" [3: 74], "Kashshāf Al-Qinā'" [2: 175], "Sharḥ Muntahā Al-Irādāt" [2: 542].

(4) See: "Al-Nawādir wa Al-Ziyādāt" [2: 137], "Al-Tabsirah" [2: 882], "At-Tāj wa Al-Ikhlāl" [3: 197].

(5) See: "Sharḥ Az-Zurqānī 'Ala Mukhtaṣar Khalīl" [2: 291], "Ḥāshiyat Al-'Adawī 'Ala Sharḥ Al-Khurashī" [2: 202].

(6) See: "Al-Muḥadḥḥab" [1: 263], "At-Tahdhīb" [3: 35], "Al-Bayān" [3: 144].

(7) See: "Ar-Ri'āyah As-Ṣuḡhrā fī Al-Fiqh" [1: 377], "Al-Furū'" [3: 450], "Al-Inṣāf" [3: 23].

(8) [Al-Baqarah (The Cow): 43]

(9) Previously cited, see p. 57 of this book.

Reasoning: The address in these texts is general and includes every wealthy Muslim, which would encompass prisoners, missing persons, and others in similar circumstances⁽¹⁾.

Second proof: The prisoner or missing person retains full ownership of their wealth, and the absence of physical possession does not negate the obligation of zakâh, as they can appoint an agent to handle it⁽²⁾.

Third proof: The prisoner or missing person retains the right to manage their wealth, as it is valid for them to sell, gift, or appoint an agent, thus zakâh remains obligatory upon them⁽³⁾.

Response to the second and third proofs: It is argued that the prisoner or missing person may be in a situation where they are unable to manage their wealth themselves or appoint an agent.

Evidence for the second opinion: Those who argue that zakâh is obligatory on the visible wealth of prisoners and missing persons but not on hidden wealth present the following evidence:

First proof: The visible wealth of a prisoner or missing person-such as livestock, crops, and fruits-grows by itself, thus zakâh is obligatory on it. In contrast, hidden wealth only grows through the actions of its owner, and since they are separated from it, zakâh is not obligatory on it, similar to lost wealth⁽⁴⁾.

This is countered by the argument that it is not accepted that the hidden wealth of a prisoner or missing person cannot grow, as it can be managed and increased through an agent or similar means, unlike lost wealth.

Response: It is possible that the prisoner or missing person is in a situation where they cannot manage their wealth, either by themselves or through a representative or agent.

Second proof: It is possible that the prisoner or missing person has debts, which would prevent the obligation of zakâh on hidden wealth, but not on visible wealth⁽⁵⁾.

(1) See: "Al-Mumtî' fî Sharḥ Al-Muqni'" [1: 671].

(2) See: "At-Tajrîd" [3: 1193], "Al-Binâyah" [3: 306], "Kashshâf Al-Qinâ'" [2: 175].

(3) See: "Al-Majmû'" [5: 342], "Al-Mughnî" [3: 73].

(4) See: At-Tabsirah [2: 882], Hâshiyat Ad-Dusûqî 'Alâ Ash-Sharḥ Al-Kabîr [1: 481].

(5) See: At-Tanbîḥ 'Alâ Mabâdi' At-Tawjîḥ [2: 797].

This is countered by stating that the possibility of debt does not prevent the obligation of zakâh on their wealth, but rather it delays its payment until the prisoner or missing person regains access to their wealth.

Evidence for the third opinion: They argue for the obligation of zakâh on visible wealth using the same reasoning as the second opinion. As for the obligation of zakâh on hidden wealth for one year, they argue by analogy between the hidden wealth of a prisoner or missing person and lost or seized wealth. Both are removed from the owner's possession, and zakâh is obligatory for one year after the wealth is regained, as it enters the owner's possession twice: once before the separation and once after. The period between these two times is considered a single year, even if it is long, due to the impossibility of growing the wealth before it returns to the owner⁽¹⁾.

This is countered by not accepting that the wealth cannot be managed or grown before returning to the owner's possession, as the prisoner or missing person can manage their wealth either by themselves or through a representative. Therefore, the zakâh year (ḥawl) does not cease due to captivity or disappearance. If we were to say that the zakâh year is interrupted, then the owner would begin a new zakâh year upon regaining possession of the wealth, and there is no justification for the obligation of zakâh for just one year.

Evidence for the fourth opinion: Those who argue that zakâh is not obligatory on the wealth of a prisoner or missing person present the following evidence:

First proof: The wealth has left the owner's possession and control, and they are prevented from managing it. Therefore, zakâh is not obligatory on it, similar to seized wealth⁽²⁾.

The first argument is refuted by distinguishing between the two situations: the seized property cannot be managed or grown, unlike the wealth of a captive or a missing person.⁽³⁾

Second argument: Zakâh is obligatory in return for actual or potential profit from the property's growth, which is absent in this case.

(1) See: Al-Ishrâf 'Alâ Nukat Masâ'il Al-Khilâf [1: 384], Sharh Az-Zurqânî 'Alâ Mukhtasar Khalîl [2: 290].

(2) See: Al-Muhadhdhab [1: 263], Al-Mughnî [3: 73].

(3) See: Bahr Al-Madhdhab [3: 49].

This argument is refuted by denying the absence of growth in the wealth of the captive or missing person. Visible assets grow on their own, and if the owner cannot manage the hidden assets, they can appoint an agent to do so.

Preferred opinion and reasoning:

The disagreement in this issue revolves around whether the captive or missing person can manage and grow their wealth. Those who believe that they can manage their wealth, either personally or through an agent, are obligated to pay zakâh. Those who believe this is impossible are exempt from zakâh on hidden assets but not visible ones, as the latter grow on their own. Others exempt them entirely.

A reconciliation can be made as follows—Allah knows best: If the captive can manage their wealth personally or through an agent, or if the missing person had an agent for their wealth before disappearing, zakâh is obligatory on all their wealth, and the first opinion is preferred. However, if they are completely disconnected from their wealth and cannot manage it, either personally or through an agent, zakâh is not obligatory on hidden assets but remains obligatory on visible assets, and a second opinion is preferred.

Second Issue: Paying the zakâh on the wealth of a captive or missing person

Description of the issue:

If zakâh is obligatory on the wealth of a captive or missing person, is it permissible to pay it from their wealth before their return without their appointment? Or should the payment be left for them to make after they regain access to their wealth?

Clarification of the dispute:

- 1- Those who consider zakâh obligatory on the wealth of a captive or missing person agree that it is not permissible for anyone other than the ruler or his deputy to pay it.⁽¹⁾
- 2- They differ on whether the ruler or the tax collector may take the zakâh from the wealth of a captive or missing person before the owner's return.

(1) See: Al-Mabsût [2: 200], Badâ'i' As-Sanâ'i' [2: 9], Hâshiyat Al-'Adawî 'Alâ Sharh Al-Khurashî [2: 202], Al-Fawâkih Ad-Dawâni [1: 333], Bahr Al-Madhhab [3: 49], Al-Bayân [3: 144], Al-Furû' [4: 256], Al-Mubdi' [2: 394]

Opinions on the issue: Scholars have differed on this issue, with three main opinions emerging:

First Opinion: It is not permissible to take or pay the zakâh until the owner's presence. This is the position of the Hanafîs⁽¹⁾ and Shâfi'îs⁽²⁾.

Second Opinion: It is permissible to collect zakâh on visible assets, while hidden assets should only be paid when the owner regains access to them. This is the view of the Mâlikîs⁽³⁾.

Third Opinion: It is permissible to take zakâh on all assets, and the payment is considered valid on behalf of the owner. This is the Hanbalî position⁽⁴⁾.

Evidence and Discussions:

Evidence for the First Opinion: Those who argue that it is not permissible to collect zakâh on the wealth of a captive or missing person without their presence base their position on the following:

- First Evidence: Zakâh is an act of worship that requires intention for its validity, which is absent when the owner is not present. Therefore, it should only be paid when the owner is present⁽⁵⁾.

Counterargument: The intention of the ruler or his deputy substitutes for the owner's intention when the owner is unable to express it⁽⁶⁾.

- Second Evidence: Zakâh cannot be collected or paid if only the wealth is present but not the owner, just as it cannot be paid if only the owner is present without the wealth. Both the owner and the wealth are essential pillars of zakâh⁽⁷⁾.

Counterargument: There is a distinction between the two cases. The ruler or the tax collector acts on behalf of the absent owner, but nothing can act on behalf of the missing wealth.

(1) See: Al-Mabsût [2: 200], Badâ'i' As-Sanâ'i' [2: 9].

(2) See: Al-Hâwî Al-Kabîr [3: 131], Bahr Al-Madhab [3: 49], Al-Bayân [3: 144].

(3) See: Hâshiyat Al-'Adawî 'Alâ Sharh Al-Khurasî [2: 202], Hâshiyat Al-Bannânî 'Alâ Sharh Az-Zurqânî [2: 291], Lawâmi' Ad-Durar Fî Hatk Astâr Al-Mukhtasar [3: 458].

(4) See: Al-Furû' [4: 256], Qawâ'id Ibn Rajab [2: 370], Al-Mubdi' [2: 394], Kashshâf Al-Qinâ' [2: 261].

(5) See: Rawdat At-Tâlibîn [2: 206].

(6) See: Hâshiyat Ad-Dusûqî 'Alâ Ash-Sharh Al-Kabîr [1: 481].

(7) See: Al-Mabsût [2: 200], Badâ'i' As-Sanâ'i' [2: 36].

Evidence for the Second Opinion: Those who argue for collecting zakâh on visible assets but not on hidden ones base their view on the principle that the ruler or his deputy has the authority to collect zakâh on visible assets, and their intention stands in place of the owner's when the owner is absent. In contrast, hidden assets remain under the responsibility of their owners due to their concealed nature⁽¹⁾.

Counterargument: It is argued that the ruler or his deputy does have the authority to collect zakâh on hidden assets as well, based on the general statement of Allah: «*Take, [O Muhammad], from their wealth a charity*» ⁽²⁾ and the saying of the Prophet (PBUH): «*It is taken from their rich and returned to their poor*» ⁽³⁾. These are general statements that apply to both visible and hidden wealth.

Evidence for the Third Opinion: Those who argue for the permissibility of collecting zakâh on the wealth of a captive or missing person, and that it suffices for them, base their view on the following:

- First Evidence: The ruler or his deputy has the authority to collect zakâh generally, and this includes the wealth of a captive or missing person. Their intention substitutes for the owner's intention, as is the case for a guardian over a minor or a mentally incapable person⁽⁴⁾.
- Second Evidence: Since the owner's intention is impossible due to no fault of their own, the ruler's or his deputy's intention suffices for the payment of zakâh⁽⁵⁾.

Preferred Opinion:

The preferred view—Allah knows best—is the third opinion, which holds that it is permissible for the ruler or his deputy to collect zakâh on the wealth of a captive or missing person if it is impossible to reach them, and their intention stands in place of the owner's intention.

Reasons for the Preference:

- 1- The strength of the evidence supporting the third opinion and its immunity from criticism, whereas the evidence for the first and second

(1) See: Al-Fawâkih Ad-Dawâni [1: 333]. (2) [At-Tawbah (Repentance): 103]

(3) Previously cited, see p. 57 of this book. (4) See: Kashshâf Al-Qinâ' [2: 261].

(5) See: Al-Mubdi' [2: 394].

opinions has been subject to valid critique.

- 2- The owner's intention, in this case, is unattainable due to circumstances beyond their control, placing them in the same category as a minor or mentally incapable person, for whom the guardian's intention suffices for paying zakâh.

Second Topic: Intention in Paying Zakâh on Absent Wealth

If a person has wealth that is absent and they are uncertain of its status or safety but wish to pay zakâh on it, their intention when paying the zakâh can take one of five forms. Some of these are universally accepted, while others are subject to differing opinions among scholars who require intention for the validity of zakâh. These forms are as follows:

- First Case: The person firmly intends to pay zakâh and specifies the absent wealth alone.

Example: The person intends that what they are paying is the zakâh for their absent wealth.

- Second Case: The person firmly intends to pay zakâh without specifying the absent wealth.

Example: The person intends that what they are paying is the zakâh for their wealth in general.

In these two cases, there is no disagreement among scholars about the validity of the intention and the sufficiency of what the individual paid as zakâh on the absent wealth if it remains intact. This is due to the certainty in the intention and the absence of anything that would invalidate it⁽¹⁾, and because it is not required to specify the particular wealth being purified in the second case⁽²⁾.

(1) See: Al-Mabsût [23: 3]; Al-Bahr Ar-Râ'iq [2: 228]; Hâshiyat Ash-Shalabî 'Alâ Tabyîn Al-Haqâ'iq [1: 258]; Adh-Dhakhîrah [3: 136]; Mawâhib Al-Jalîl [2: 357]; Hâshiyat Ad-Dusûqî 'Alâ Ash-Sharh Al-Kabîr [1: 500]; Nihâyat Al-Matlâb [3: 197]; Bahr Al-Madhab [3: 84]; Asnâ Al-Matâlib [1: 359]; Al-Mughnî [2: 477]; Kashshâf Al-Qinâ' [2: 260]; Sharh Muntahâ Al-Îrâdât [1: 448].

(2) The agreement in the second scenario is based on the absence of another minimum threshold (nisâb) that would share the same type of produce with the owner, or if the produce varies in kind or condition. If such a situation arises, the previously mentioned disagreement over the necessity of specifying the wealth to be purified (zakâh) =

Third Case: The individual is uncertain in their intention, oscillating between paying zakâh on the absent wealth and giving a voluntary charity.

An example of this would be if the individual intended for their payment to either be zakâh for their absent wealth or a voluntary charity.

In this case, there is no disagreement among scholars—who require intention for the validity of zakâh —that such an intention is invalid, and what the individual paid does not suffice for the zakâh on the absent wealth.

The Shâfi‘î and Hanbalî scholars explicitly state that if someone pays an amount with an intention fluctuating between zakâh on absent wealth and voluntary charity, it does not fulfill the obligation of zakâh⁽¹⁾.

Although there is no explicit text from the Hanafîs and Mâlikîs on the issue of indecision between zakâh and voluntary charity, they have stated that performing obligatory prayers or fasting with a mixed intention between obligatory and voluntary does not count⁽²⁾. By analogy, this applies to zakâh, as the uncertainty in the intention for performing obligatory acts would render the act invalid. Thus, the issue is agreed upon among scholars who require intention for the validity of zakâh.

Evidence for the Issue:

Scholars support this ruling with the following:

First Evidence: Once the intention is affirmed, either verbally or mentally, it is sufficient, and there is no need to specify the exact asset being purified⁽³⁾.

The second opinion: If the intention is established verbally but not in the heart, it is not sufficient to distinguish the object being purified (*zakâh*)⁽⁴⁾.

The fourth opinion: If there is uncertainty in the intention between the absent and present wealth:

= **with intention occurs. See:** The Issue of Specifying the Wealth for Zakâh in this book, p. 263.

(1) See: Al-Bayân [3: 401]; Rawdat At-Tâlibîn [2: 208]; Asnâ Al-Matâlib [1: 359]; Al-Mughnî [2: 477]; Ar-Ri‘âyah As-Sughrâ fî Al-Fiqh [1: 429]; Kashshâf Al-Qinâ‘ [2: 260].

(2) See: Badâ‘i‘ As-Sanâ‘i‘ [2: 78]; Fath Al-Qadîr [1: 268]; Al-Bahr Ar-Râ‘iq [1: 298]; Adh-Dhakhîrah [1: 246]; Jawâhir Ad-Durar [1: 440]; Mawâhib Al-Jalîl [1: 239].

(3) See: Badâ‘i‘ As-Sanâ‘i‘ [2: 78]; Mawâhib Al-Jalîl [1: 234]; Al-Bayân [3: 401].

(4) See: Hâshiyat Ibn ‘Âbidîn [2: 383]; Mawâhib Al-Jalîl [1: 234]; Al-Mughnî [1: 337].

For example: The liable person intends that what they give is for the *zakâh* of either their absent or present wealth.

In this scenario, scholars have differed regarding the validity of the intention, with two opinions:

The first opinion: If the intention is established verbally, it is sufficient for whichever of the two assets the individual chooses. This is the view of the Shafi'is⁽¹⁾ and Hanbalis⁽²⁾.

I did not find a specific text from the Hanafis and Mâlikîs on this issue, but this opinion can be derived from the Hanafis based on their stance that specifying the wealth subject to *zakâh* is not required at the time of payment. If a person owns two types of wealth subject to the same amount of *zakâh* and they give without specifying, it is valid and sufficient for one of them⁽³⁾. This implies that hesitation in specifying the threshold does not affect the validity of the *zakâh*.

This can also be derived from the Mâlikîs based on their view that if someone is obligated to make multiple expiations and they free a slave for one of them without specifying, it is valid, and they can apply it to any of them⁽⁴⁾. *Zakâh* can be compared to expiation since both are financial acts of worship and if specifying the object of *zakâh* is not required, then hesitation in specifying it does not affect its validity.

The second opinion: The intention is not valid, and what is given suffices for the *zakâh*. This opinion is attributed by Ibn Ar-Rif'ah⁽⁵⁾ to Qâdî Ḥusayn⁽⁶⁾

(1) See: Al-Muhadhdhab [1: 312]; Al-Bayân [3: 401]; Asnâ Al-Matâlib [1: 359].

(2) See: Al-Mughnî [2: 477]; Al-Inṣâf [3: 194]; Kashshâf Al-Qinâ' [2: 260].

(3) See: Al-Bahr Ar-Râ'iq [2: 228]; An-Nahr Al-Fâ'iq [1: 418]; Hâshiyat Ash-Shalabî 'Alâ Tabyîn Al-Haqâ'iq [1: 258].

(4) See: 'Uyûn Al-Adillâh fî Masâ'il Al-Khilâf [3: 1095]; 'Uyûn Al-Masâ'il [p. 363]; Sharh Al-Khurashî [4: 121].

(5) He is Aḥmad Ibn Muḥammad Ibn 'Alî Al-Anṣârî Ash-Shâfi'î, Abû Al-'Abbâs, Najm Ad-Dîn, known as Ibn Ar-Rif'ah, the jurist and leader of the Shâfi'is of his time. He held the position of ḥisbah in Egypt and acted as a judge. He was devout, and kind to students, and authored works such as Kifâyat An-Nabîh fî Sharḥ At-Tanbîh and Al-Maṭlab fî Sharḥ Al-Wasît. He died in 710 AH. See: A'yân Al-'Aṣr by Aṣ-Ṣafadî [1: 325]; Ṭabaqât Ash-Shâfi'iyyah by Ibn Qâdî Shuhbah [2: 213].

(6) He is Al-Ḥusayn Ibn Muḥammad Ibn Aḥmad Al-Marwazî Ash-Shâfi'î, Abû 'Alî, =

from the Shafi'is⁽¹⁾.

This is an opinion among the Hanbalis, as related by Qâḍî Abû Ya'la⁽²⁾.

Evidence and Discussions:

Evidence for the First Opinion: Those who argue for the validity of the intention and that the zakâh is applicable to either of the two assets support their view with the following:

First evidence: If the individual giving zakâh intends it generally and has two assets, one present and one absent, the zakâh applies to one of them. Therefore, specifying it in the intention is not required⁽³⁾.

Second evidence: The individual giving zakâh has intended to give it, which is an obligatory act. Hesitation in specifying the asset being purified does not harm the intention because specifying it is not obligatory⁽⁴⁾.

Evidence for the Second Opinion: The Shafi'is who hold that the intention is invalid argues:

The person giving zakâh did not form a firm intention, and certainty is a condition for its validity.⁽⁵⁾

This is countered by stating that the person was certain about giving zakâh but only hesitated in specifying which asset. Such hesitation does not invalidate the intention since specifying the asset is not a required condition.

Some Hanbalis argue that the intention is invalid in this case because specifying the asset being purified by zakâh is a condition for its validity when the assets differ in type or condition. In this situation, no specification occurred,

= known as Qâḍî Ḥusayn, leader of the Shâfi'is in Khurâsân. He was a prominent jurist, producing works in both jurisprudence and legal theory, and he taught many, including Al-Baghawî. His works include *At-Ta'liqah Al-Kubrâ* and *Al-Fatâwâ*. He died in 462 AH. See his biography in *Wafayât Al-A'yân* [2: 135] and *Siyar A'lâm An-Nubalâ'* [18: 261].

(1) See: *Kifâyat An-Nabîh fî Sharḥ At-Tanbîh* [6: 128].

(2) This refers to the condition of specifying the asset being purified (zakâh) when the two assets differ in type or condition. See: *Al-Furû'* [4: 250]; *Al-Mubdi'* [2: 394]; *Al-In-ṣâf* [3: 194].

(3) See: *Al-Muhadhdhab* [1: 312].

(4) See: *At-Tahdhîb* [3: 65]; *Asnâ Al-Maṭâlib* [1: 359]; *Al-Mughnî* [2: 477].

(5) See: *Kifâyat An-Nabîh* [6: 128].

only hesitation, so the intention is invalid⁽¹⁾.

This is countered by rejecting the notion that specifying the asset being purified is a condition.

Preponderant Opinion:

The preponderant opinion—Allah knows best—is the first one, which holds that the intention is valid and the zakâh applies to one of the two assets. The person giving zakâh may choose to apply it to either one while remaining obligated to purify the other asset.

Reasons for the Preponderant Opinion:

- 1- The strength of the evidence for the first opinion and its immunity from refutation, as well as the weakness of the evidence for the second opinion.
- 2- The previously supported opinion that specifying the asset subject to zakâh is not required at the time of payment⁽²⁾, thus hesitation in specifying it does not invalidate the zakâh.

Fifth Scenario: When the intention to give *zakâh* is conditional upon the safety of the absent asset.

This scenario branches into two branches, in which the scholars have differed. The explanation is as follows:

First Branch: The intention to give zakâh is conditional upon the safety of the absent asset, either absolutely or with the condition that if the asset is lost, the amount will count as voluntary charity (*ṣadaqah*).

For example: The individual intends that what they give is zakâh for their absent wealth if it remains intact, or they intend that it is zakâh for their absent wealth if it remains intact, but if it is lost, then the amount will count as voluntary charity.

In this Branch, scholars have differed on the validity of the intention, with two opinions:

First Opinion: The intention is valid, and the amount given suffices as zakâh for the absent wealth if it remains intact; otherwise, it counts as volun-

(1) See: Al-Furû' [4: 250]; Al-Inṣâf [3: 194].

(2) See: p. 265 of this book.

tary charity. This is the view of the Shafi'is⁽¹⁾ and the official position of the Hanbalis⁽²⁾.

After researching, I did not find a specific text on this issue from the Hanafis and Mâlikîs, but this view can be derived from the Hanafis based on their opinion that if someone misses one of the five daily prayers and does not know which one, they missed, they should pray for a full day and night, intending for each prayer that it be the obligatory prayer they missed or a voluntary prayer. If it turns out to be the missed prayer, it is valid with that intention because the intention was linked to an essential obligation still owed⁽³⁾.

Similarly, this view can be derived from the Mâlikîs based on their opinion that if someone intends on the night of the 30th of Ramadan tomorrow is part of Ramadan, they are fasting, and it turns out that the next day is indeed part of Ramadan, the fast is valid because their intention was linked to the continuation of Ramadan⁽⁴⁾.

Second Opinion: The intention is invalid, and what is given does not suffice as zakâh in any case. This is an opinion among the Hanbalis, chosen by *Abû Bakr Ghulâm Al-Khallâl*⁽⁵⁾.

Evidence and Discussions:

Evidence for the First Opinion: Those who argue for the validity of the intention present the following evidence:

First Evidence: The default assumption is that the absent asset remains intact, and if the conditional intention is based on this default assumption, any hesitation in the intention is reinforced and strengthened by that assumption, making the intention valid⁽⁶⁾.

(1) See: Al-Umm [2: 24]; Nihâyat Al-Maṭlab [2: 452]; Al-Bayân [3: 401]; Asnâ Al-Maṭâlib [1: 359].

(2) See: Al-Mughnî [2: 477]; Al-Inṣâf [3: 194]; Kashshâf Al-Qinâ' [2: 260].

(3) See: Badâ'i' As-Sanâ'i' [1: 133]; Al-Binâyah [2: 597]; Hâshiyat Ash-Shalabî 'Alâ Tabyîn Al-Haqâ'iq [1: 189].

(4) See: Al-Qawânîn Al-Fiqhiyyah [p. 80]; Mawâhib Al-Jalîl [2: 419]; Sharḥ Al-Khurashî [2: 246].

(5) See: Ar-Ri'âyah As-Sughrâ fî Al-Fiqh [1: 429]; Al-Furû' [4: 251]; Al-Mubdi' [2: 394].

(6) See: Hâshiyat Ash-Shalabî 'Alâ Tabyîn Al-Haqâ'iq [1: 189]; Al-Ḥawî Al-Kabîr [3: 182]; Al-Majmû' [6: 182].

Second Evidence: If the individual giving zakâh intends to give it for their absent wealth without conditioning it on the asset's safety, the zakâh applies to that asset if it remains intact. If it is lost, the amount is considered voluntary charity (*ṣadaqah*). Therefore, conditioning the intention on the asset's safety does not alter the ruling that would apply without such a condition⁽¹⁾.

Third Evidence: An intention that is contingent upon the default assumption—here, the safety of the asset—is based on a predominant presumption, and hesitation does not invalidate the intention when this predominant presumption exists⁽²⁾.

Evidence for the Second Opinion: Those who argue that the intention is invalid state that the individual has made the zakâh intention conditional and a conditional intention is considered hesitant, whether it is based on the default assumption or otherwise. One of the conditions for intention is certainty in what is intended, without any hesitation⁽³⁾.

Counterargument: The claim that a conditional intention is hesitant is rejected, because it is based on a predominant presumption, and a presumption reinforced by evidence is treated as equivalent to certainty⁽⁴⁾.

Preponderant Opinion and Its Reasoning:

The preponderant opinion—Allah knows best—is the first one, which holds that conditioning the intention of zakâh for absent wealth on its safety, either absolutely or with the condition that if it is lost, it will count as voluntary charity, is valid. This is because the evidence supporting the first opinion is strong and free from refutation, while the evidence for the second opinion is weak.

Second Branch: The intention to give zakâh is conditional upon the safety of the absent wealth, otherwise it applies to the present wealth.

For example: The individual intends that what they give is zakâh for their absent wealth if it remains intact, but if it is lost, the zakâh applies to their present wealth.

(1) See: Al-Furû' [4: 251].

(2) See: Al-Qawânin Al-Fiqhiyyah [p. 80]; Mawâhib Al-Jalîl [2: 419].

(3) See: Al-Furû' [4: 251]; Al-Mubdi' [2: 394].

(4) See: Ghamz 'Uyûn Al-Başâ'ir [1: 193]; Durar Al-Ḥukkâm fî Sharḥ Majallat Al-Aḥkâm [1: 22].

In this branch, scholars have differed on the validity of the intention, with four opinions:

The First Opinion:

The *niyyah* (intention) is valid, and zakâh will be fulfilled according to the intention. If the absent wealth is intact, the zakâh will be counted for it; otherwise, it will be counted for the present wealth. This is the view of the Shâfi‘iyyah ⁽¹⁾ and one of the opinions within the Hanâbilah ⁽²⁾.

There is no explicit text found regarding this issue from the Hanafiyyah and Mâlikiyyah. However, this view may be derived for the Hanafiyyah and Mâlikiyyah concerning the validity of the intention, with its being conditional on the absent wealth being intact, based on what has been previously derived for them in the prior issue ⁽³⁾. Regarding the validity of the intention wavering between absent and present wealth, it can be derived from the Hanafiyyah based on their stance that specifying the wealth for which zakâh is given is not obligatory ⁽⁴⁾. For the Mâlikiyyah, it can be derived from their stance that specifying the person being expiated for is not obligatory when there are multiple expiations ⁽⁵⁾. Zakâh is compared to expiation since both are financial acts of worship and if specifying the wealth being given zakâh is not obligatory, then the intention being conditional or wavering does not affect its validity.

The Second Opinion:

The intention is valid, and the zakâh will be fulfilled for the intact wealth. If both are intact, it will be counted for one of them, and the zakâh for the other will remain due. This is the view of the Hanâbilah ⁽⁶⁾.

The Third Opinion:

The intention is valid for the absent wealth, and zakâh will be fulfilled for it if it is intact. If it is lost, it will not be counted for the present wealth. This is

(1) See: Al-Ĥawî Al-Kabîr [3/182], Rawḍat Aṭ-Ṭâlibîn [2/207], Asnâ Al-Maṭâlib [1/359].

(2) See: Al-Kâfi [1/417], Ar-Ri‘âyah Aṣ-Ṣughrâ [1/429].

(3) See: p. 282 of this book.

(4) See: Al-Baḥr Ar-Râ‘iq [2/228], An-Nahr Al-Fâ‘iq [1/418], Ḥâshiyat Ash-Shalabî ‘Alâ Tabyîn Al-Ḥaqâ‘iq [1/258].

(5) See: ‘Uyûn Al-Adillah Fi Masâ’il Al-Khilâf [3/1095], ‘Uyûn Al-Masâ’il [p. 363], Sharḥ Al-Khurashî [4/121].

(6) See: Al-Mughnî [2/477], Al-Inṣâf [3/194], Kashshâf Al-Qinâ’ [2/260].

one of the views of the Shâfi'iyah⁽¹⁾.

The Fourth Opinion:

The intention is not valid, and the zakâh will not be counted for either of the two types of wealth. This is one of the views of the Hanâbilah⁽²⁾.

Evidence and Discussions:

Evidence for the First Opinion:

Those who maintain that the intention is valid and that the zakâh will be fulfilled for the absent wealth if it is intact, and otherwise for the present wealth, support their opinion with the following:

First Evidence: The individual paying zakâh has sincerely made the intention for zakâh and has only assigned the wealth for which zakâh is to be paid. This does not affect its validity, as specifying the wealth for which zakâh is to be paid is not obligatory, unlike in salâh (*prayer*)⁽³⁾.

Second Evidence: If the one paying zakâh makes a general intention for zakâh, and he has two properties, one absent and one present, and it turns out that the absent property is lost, the zakâh will count for the present property. Hence, it does not harm if this is specified in the intention.⁽⁴⁾

Third Evidence: Specifying the property for which zakâh is paid through intention is not obligatory. Therefore, it does not matter if the intention for specification is conditional or wavering⁽⁵⁾.

Evidence for the Second Opinion:

The proponents of the second opinion relied on the same evidence as those of the first opinion. I did not find any explicit evidence from the Hanbalis for their view in this issue, stating that the zakâh will be applied to the intact wealth of the two, or to one of them if both are intact. This contradicts the intention of the one paying zakâh, as he intended it to apply to the absent wealth upon its safety. Therefore, correcting his intention necessitates that zakâh not

(1) See: Nihâyat Al-Maṭlab [3/198], Al-Wasīṭ [2/443], Rawḍat Aṭ-Ṭālibīn [2/208].

(2) See: Al-Furū' [4/250], Al-Mubdī' [2/394], Al-Inṣāf [3/194].

(3) See: Al-Ḥawī Al-Kabīr [3/183], Baḥr Al-Madhhab [3/84].

(4) See: Al-Muhadhdhab [1/312].

(5) See: Asnâ Al-Maṭālib [1/359], Al-Mughnī [2/477].

be applied to the present property unless the absent one is lost. Perhaps they based their view on the idea that the intention of specification is void, but this contradicts their stance when it comes to specifying only the absent wealth. They explicitly stated that if one intends zakâh for the absent wealth and it turns out to be lost, it cannot be diverted to the present property because the zakâh was intended for the absent one⁽¹⁾.

Evidence for the Third Opinion:

Those who argue that zakâh does not apply to the absent property, even if intact, nor to the present property if the absent one is lost, base their reasoning on the idea that the intention of specifying the absent property is based on the assumption of its safety, so it is valid. However, the intention for the present property is wavering and based on the assumption that the absent property is lost, while the default assumption is that it is intact, not lost. Therefore, the intention is invalid⁽²⁾.

This is refuted by the argument that the zakâh intention is not wavering. The wavering applies to specifying the wealth for which zakâh is paid, and this does not harm the validity, as specification is not obligatory in the first place.

Evidence for the Fourth Opinion:

Those who argue that zakâh does not apply to either of the two types of wealth base their view on the idea that the intention to specify the wealth for which zakâh is paid is a condition when there are two properties that differ in type or condition. In this case, specification was not absolute because the intention was to apply it to the present property if the absent one is lost⁽³⁾.

This is refuted by rejecting the necessity of specifying the wealth when the two properties differ.

Preponderant Opinion:

The preponderant opinion—and Allah knows best—is the first one: that the intention is valid and the zakâh is applied to the absent property if it is intact, but if it is lost, then it applies to the present property.

(1) See: Al-Mughnî [2/477], Ar-Ri'âyah Aş-Şughrâ Fî Al-Fiqh [1/429], Sharh Muntahâ Al-Îrâdât [1/448].

(2) See: Nihâyat Al-Maṭlab [3/198], Kifâyat An-Nabîh [6/127].

(3) See: Al-Mubdi' [2/394], Al-Inşâf [3/194].

Reasons for Preference:

- 1- The strength of the evidence supporting the first opinion, its immunity from criticism, and the weakness of the other opinions' evidence. Thus, it is not harmful if [the opinions] are presented hesitantly or conditionally.⁽¹⁾
- 2- The intention to specify the one for whom the zakâh is paid is not obligatory, as previously mentioned when there is certainty in the intention for zakâh.

The Three Categories of Illicit Wealth:

- 1- Wealth that is inherently illicit, such as alcohol, pigs, idols, and the like.
- 2- Wealth that is illicit due to someone else's rights—this is the wealth taken from its rightful owner without just cause, such as usurped, stolen, or unjustly denied property.
- 3- Wealth that is illicit due to an attached description, meaning it is obtained through an invalid contract, such as *ribâ* (interest), gambling (*maysir*), or contracts involving excessive uncertainty (*gharar*) and similar⁽²⁾.

The type of illicit wealth referred to in this issue is the second category: wealth taken from its rightful owner without just cause. It is not in the possession of its rightful owner but rather in the possession of someone who holds it unjustly. Shaykh Al-Islâm Ibn Taymiyyah refers to this type, saying: «This is the most well-known category of prohibition»⁽³⁾. This category is singled out for investigation because the wealth is not in the possession of its rightful owner, and the person holding it might pay zakâh on it.

If someone holds illicit wealth by taking it from its rightful owner without just cause and then pays zakâh on it, is this payment valid? Does it fulfill the owner's zakâh obligation if the wealth returns to him, based on the view that zakâh is obligatory on the owner when he regains possession? And what is the effect of intention in this case?

Example:

If someone usurped livestock for three years and paid zakâh on it each year,

(1) See: p. 265 of this book.

(2) See: Ihyâ' 'Ulûm Al-Dîn [2/92], Majmû' Fatâwâ Ibn Taymiyyah [28/593].

(3) See: Majmû' Al-Fatâwâ [28/593].

and then the livestock returned to its rightful owner, based on the opinion that zakâh is obligatory on the owner for the past years⁽¹⁾, would the owner still be required to pay zakâh for those years, or does the usurper's payment suffice?

The Opinions on the Matter:

The scholars have differed on this issue, forming three opinions:

- 1- **First Opinion:** The zakâh paid by the possessor of illicit wealth does not suffice for the owner's obligation, under any circumstances. This is the official position in the Hanbalî school⁽²⁾. I did not find a specific statement from the Hanafî school regarding this issue, as their view is that zakâh is not obligatory on the owner if the wealth returns to him, and he would restart the hawl (the zakâh cycle). However, Zufar held the opinion that zakâh is obligatory on the owner⁽³⁾. Based on this view, it can be inferred that zakâh paid by the possessor would not suffice for the owner's obligation, in accordance with their principle that intention is required for the payment of zakâh⁽⁴⁾, and in this case, the intention did not come from the owner.
- 2- **Second Opinion:** The zakâh paid by the possessor of illicit wealth does not suffice for the owner's obligation if the possessor himself pays it. However, if the imâm or his deputy takes it from the possessor, it suffices for the owner's obligation. This is the position of the Mâlikî school⁽⁵⁾ and the Shâfi'î school⁽⁶⁾.
- 3- **Third Opinion:** The zakâh paid by the possessor of illicit wealth suffices for the owner's obligation in all cases. This is one opinion in the Mâlikî

(1) This is the opinion of the majority, endorsed by Zufar from the Hanafî school, one of the two opinions in the Mâlikî school, and the official position in the Shâfi'î and Hanbalî schools. See: Al-Mabsût [2/171], Tabyîn Al-Haqâ'iq [1/256], Al-Nawâdir wa Al-Ziyâdât [2/141], Al-Dhakhîrah [3/99], Al-Bayân [3/143], Al-Majmû' [5/341], Al-In-şâf [3/21], Kashshâf Al-Qinâ' [2/173].

(2) See: Al-Mubdi' [5/46], Al-In-şâf [6/206], Kashshâf Al-Qinâ' [4/112].

(3) See: Al-Mabsût [2/171], Tabyîn Al-Haqâ'iq [1/256].

(4) See: Al-Mabsût [3/34], Badâ'i' Al-Şanâ'i' [2/40], Al-Binâyah [3/311].

(5) See: Al-Jâmi' li-Masâ'il Al-Mudawwanah [4/298], Al-Tâj wa Al-Iklîl [3/146], Hâshiyat Al-Dusûqî [1/457].

(6) See: Al-Hâwî Al-Kabîr [7/193], Baḥr Al-Madḥḥab [6/448].

school⁽¹⁾ and a narration in the Hanbalî school⁽²⁾.

Evidence and Discussions:

Evidence for the First Opinion:

1. First Evidence: The intention (*niyyah*) is a condition for the validity of zakâh, and it did not come from the owner⁽³⁾.

2. Second Evidence: The possessor (*ghâsib*) has acted with property he does not own, and thus his actions are not valid⁽⁴⁾.

Discussion of the Evidence:

These arguments apply if the possessor distributes the zakâh himself. However, if the imâm or his deputy takes the zakâh from him, this is not considered an action by the possessor, and the intention of the imâm or his deputy would suffice in place of the owner's intention, as it is not possible for the owner to express it.

The Evidence for the Second Opinion:

Those who argue that zakâh is not valid if the possessor distributes it themselves, but it is valid if taken by the Imâm or his deputy, base their argument on the following:

First Evidence: They argue that if the possessor distributes zakâh themselves, it is not valid because the intention is a condition for the validity of zakâh, and the necessary intention is absent. The possessor's intention does not substitute for the owner's intention, as the possessor does not have authority over the wealth⁽⁵⁾.

Second Evidence: They argue that zakâh is valid on behalf of the owner if the Imâm takes it from the possessor unlawfully because when the Imâm or his deputy takes zakâh from someone who refuses to pay, it is valid even with-

(1) This is based on their opinion that intention is not a requirement for the performance of zakâh. Al-Qarâfi said about zakâh: "According to the opinion that intention is not required for it, the actions of others should suffice absolutely, as is the case with debt." Al-Furûq [3/187], and see: Sharh Ibn Nâjî Al-Tanûkhî [1/303].

(2) See: Sharh Al-Zarkashî [2/522], Al-Mubdi' [5/46], Al-Inşâf [3/22].

(3) See: Al-Inşâf [6/207].

(4) See: Al-Rawḍ Al-Murbi' (p. 307).

(5) See: Al-Hâwî Al-Kabîr [7: 193].

out their intention. The Imâm's or his deputy's intention substitutes for the owner's intention. Therefore, it is analogous to taking it from the possessor unlawfully, as in both cases, the owner's intention is obstructed⁽¹⁾.

Third Evidence: Another possible analogy can be made with the Imâm or his deputy taking zakâh from the wealth of a prisoner or a missing person. Zakâh is valid on behalf of the owner even without their intention⁽²⁾. Similarly, in this case, the owner's intention is obstructed without their will.

The Evidence for the Third Opinion:

Those who argue that zakâh is valid in all cases argue that denying its validity would lead to zakâh being paid twice on the same wealth, which is impermissible⁽³⁾.

Counter-Argument: It is argued that when zakâh is unlawfully distributed by the possessor of wealth, it is not valid. Therefore, the impermissible double payment of zakâh does not occur, and the possessor is liable to the owner for what they unlawfully distributed.

The Preferred Opinion:

The stronger opinion—and *Allah knows best*—is the second opinion: that if the possessor of unlawful wealth distributes zakâh themselves, it is not valid on behalf of the owner. However, if the Imâm or his deputy takes it from the possessor, it is valid on behalf of the owner.

Reasons for Preferring This Opinion:

- 1- The strength of the evidence for the second opinion and the weakness of the evidence for the first and third opinions, which are not free from critique.
- 2- The owner's intention is a condition for the validity of zakâh. Thus, it is not valid without the owner's intention unless the Imâm or his deputy takes it when the owner's intention is obstructed without fault on their part. In such a case, the Imâm's or his deputy's intention substitutes for the owner's intention due to their authority over the collection of zakâh, just as the guardian of a minor or an insane person pays zakâh

(1) See: Al-Dhakhîrah [3: 100].

(2) See: Page 278 of this book

(3) See: Sharh Al-Zarkashî [2: 522].

on their behalf, and their intention substitutes for the minor's or insane person's intention.

The Impact of Intention in this Issue:

The impact of intention in this issue is that the reason zakâh is not valid if it is distributed by the possessor of unlawful wealth is the absence of the owner's intention to fulfill the obligation. The possessor's intention does not substitute for the owner's intention because they lack authority over the wealth.

Topic Four: The Intention for Paying Zakâh on the Wealth of a Fool ⁽¹⁾

The jurists unanimously agree that a fool (*safîh*) is legally accountable and obligated to perform acts of worship⁽²⁾, and they also agree that zakâh is obligatory on their wealth⁽³⁾. However, they differ on whether the intention to pay zakâh is required from the fool themselves, given their legal accountability, or whether it is required from their guardian due to the legal restriction on the fool's financial transactions. This is what I will examine in this section.

The Scenario:

Given the requirement for intention to validate the payment of zakâh, is the intention required from the fool when zakâh is paid on their wealth, or is it required from their guardian? Alternatively, is it required from either one of them without specification?

The Opinions on the Matter:

The jurists have differed on this matter into three views:

First Opinion: The intention for paying zakâh is required from the fool. This is the view of the Hanafis⁽⁴⁾, one opinion within the Malikî school⁽⁵⁾, and

(1) **Safîh (fool) comes from the root safh, which linguistically means lightness and lack of intellect. See: Maqâyis Al-Lughah [3: 79]; Al-Misbâh Al-Munîr [1: 208], under the entry "S F H."**

(2) **See: Al-Binâyah [11: 89]; Al-Bahr Ar-Râ'iq [8: 92]; At-Tanbîh 'Alâ Mabâdi' At-Tawjîh [2: 754]; At-Tâj Wa Al-Iklîl [6: 644]; Al-Hâwî Al-Kabîr [9: 72]; Asnâ Al-Matâlib [1: 449]; Al-Mughnî [7: 382]; Ar-Ri'âyah As-Sughrâ [2: 994].**

(3) **See: Tabyîn Al-Haqâ'iq [5: 197]; Al-Jawhar An-Nayyirah [1: 244]; Mawâhib Al-Jalîl [2: 294]; Minah Al-Jalîl [2: 95]; Al-Majmû' [6: 184]; Asnâ Al-Matâlib [1: 359]; Al-Inşâf [5: 337]; Kashshâf Al-Qinâ' [3: 454].**

(4) **See: Al-Mabsût [24: 171]; Tabyîn Al-Haqâ'iq [5: 197]; Al-'Inâyah [9: 267].**

(5) **See: Jawâhir Ad-Durar [3: 130]; Lawâmi' Ad-Durar fî Hatk As-târ Al-Mukhtaşar [3: 568].**

the apparent position of the Hanbalî school⁽¹⁾.

Second Opinion: The intention for paying zakâh is required from the guardian of the fool. This is one opinion within the Malikî school⁽²⁾ and the well-known position of the Shâfi‘î school⁽³⁾.

Third Opinion: The intention is required either from the fool (*safîh*) or their guardian, and the intention of either one suffices. This is the other opinion within the Shâfi‘î school⁽⁴⁾.

Evidence and Discussions for the Opinions

Evidence for the First Opinion:

Those who argue that the intention is required from the fool present the following evidence:

First Evidence: The fool is the one addressed with the duty of distributing and paying zakâh, not their guardian. Zakâh is an act of worship, and the fool is accountable for performing acts of worship, so the intention to pay zakâh is required from the fool, not the guardian⁽⁵⁾.

Counter-Argument: It is not accepted that the fool is addressed with the duty of distributing zakâh, as they are legally restricted and prohibited from handling their wealth. Distributing zakâh involves managing wealth.

Second Evidence: Since zakâh is an act of worship, the intention for it must come from the fool, as they are legally accountable, just like in prayer and fasting. The guardian's role in distributing zakâh does not negate the requirement of intention from the fool, similar to when an agent (appointed to pay zakâh) must also have the intention alongside their principal⁽⁶⁾.

(1) **I said: Their apparent position is that they did not explicitly state that the intention for zakâh is required from a fool, but they did state that it is required from every legally accountable person. Since the fool is legally accountable according to them, they exclude only minors and the insane from this obligation. See:** Hâshiyat Al-Hijâwî ‘Alâ At-Tanqîh (p. 155); Ma‘ûnat Ulî An-Nuhâ [3: 298]; Dalîl At-Tâlib (p. 86).

(2) **See:** Bulghat As-Sâlik [1: 666]; Minah Al-Jalîl [2: 95].

(3) **See:** Al-Majmû‘ [6: 184]; Bidâyat Al-Muhtâj [1: 542]; Asnâ Al-Matâlib [1: 359].

(4) **See:** Kifâyat An-Nabîh [6: 131]; Hâshiyat Ash-Sharbînî ‘Alâ Al-Ghurur Al-Bahiyyah [2: 183]; Hâshiyat Qalyûbî ‘Alâ Sharh Al-Mahallî [2: 54].

(5) **See:** Tabyîn Al-Haqâ‘iq [5: 197].

(6) **See:** Jawâhir Ad-Durar [3: 130]; Ma‘ûnat Ulî An-Nuhâ [3: 298].

Evidence for the Second Opinion:

Those who argue that the intention is required from the guardian of the fool base their argument on the following:

First Evidence: The fool is coerced into complying with zakâh, so the guardian's intention substitutes for the fool's intention out of necessity, similar to how a minor or an insane person's zakâh is handled by their guardian⁽¹⁾.

Counter-Argument: This analogy between the fool and minors or the insane is flawed, as the fool is legally accountable and capable of forming intentions, unlike minors and the insane.

Second Evidence: The obligation to distribute zakâh is upon the guardian, and thus, the intention to distribute it should also be required from the guardian, as both are actions the owner (the fool) cannot perform⁽²⁾.

Counter-Argument: It is not accepted that the owner (the fool) is incapable of forming the intention, as they are legally accountable and capable of forming intentions.

Evidence for the Third Opinion:

Those who argue that the intention is required either from the fool or their guardian base their argument on the fact that the fool is capable of forming intentions, so their intention is valid, like that of a sane, responsible person. Additionally, the guardian's intention may also suffice in place of the fool's, similar to the case of a minor or an insane person⁽³⁾.

Counter-Argument: Considering the fool (*safih*) as capable of forming the required intention implies that the guardian's intention would not be valid on their behalf. The guardian's role in distributing zakâh is akin to an agent acting on behalf of a principal, and the agent's intention does not substitute for the principals.

Preferred Opinion:

The stronger opinion-*and Allah knows best*-is the first opinion, which states that the intention to pay zakâh must come from the fool. If they do not intend it, the zakâh is invalid. The guardian must inform them that they will

(1) See: Al-Majmû' [6: 185].

(2) See: Bidâyat Al-Muhtâj [1: 542].

(3) See: Tuhfat Al-Muhtâj [3: 348].

be paying zakâh on their behalf to ensure the intention is formed, or the fool may delegate and authorize the guardian to pay their zakâh on their behalf.

Reasons for Preferring This Opinion:

- 1- The strength of the first opinion's evidence, which is free from critique, and the weakness of the evidence for the other two opinions.
- 2- The fool is like a fully competent person (*rashîd*) in performing acts of worship, and zakâh is an act of worship. Thus, the fool is required to form the intention. The guardian merely acts on their behalf in distributing the zakâh, as this is a financial transaction, and the fool is restricted from handling their wealth. However, this delegation does not negate the need for the zakâh payer (the fool) to form the intention, just as a principal must form the intention when appointing an agent.

Causes of Disagreement:

- 1- The disagreement over whether the fool must pay their own zakâh, or if the guardian can do it on their behalf. The Hanafis maintain that the fool must pay their own zakâh⁽¹⁾, which necessitates the requirement of intention from the fool. The majority, however, hold that the guardian may act on behalf of the fool in paying zakâh⁽²⁾, leading some to argue that the intention should come from the guardian or from either the guardian or the fool.
- 2- The uncertainty of the fool's position as a legal category, oscillates between two primary comparisons: the competent person (*rashîd*) and minors or the insane. The fool resembles the competent person in performing acts of worship, as both are legally accountable and obligated to worship. However, they also resemble minors and the insane in being restricted from managing their wealth. Zakâh is both a financial act and a form of worship. Those who favor the first opinion make an analogy with the competent person, considering them to be more similar. Those who favor the second opinion make an analogy with minors and the insane, as they are also restricted from financial transactions.

(1) See: Badâ'i' As-Sanâ'i' [7: 171]; Al-Jawharah An-Nayyirah [1: 244].

(2) See: Hâshiyat Ad-Dusûqî 'Alâ Ash-Sharḥ Al-Kabîr [1: 500]; Minah Al-Jalîl [2: 95]; 'Ujâlat Al-Muḥtâj [1: 508]; Asnâ Al-Maṭâlib [1: 359]; Al-Inṣâf [5: 337]; Kashshâf Al-Qin-â' [3: 454].

The third opinion holds that the fool's intention is valid by analogy with the competent person, while the guardian's intention is valid by analogy with minors and the insane.

Topic Five: The Intention for Paying Zakâh on the Wealth of Non-Adults and the Insane⁽¹⁾

First Issue: The Impact of Intention on the Zakâh Ruling for the Wealth of Non-Adults and the Insane

The Scenario:

Is zakâh obligatory on the wealth of non-adults and the insane? And what is the impact of intention in this matter?

The Opinions on the Matter:

The jurists have differed on this issue into two opinions⁽²⁾, which are:

First Opinion: Zakâh is not obligatory on the wealth of non-adults and the insane. This opinion is reported from 'Abdullâh Ibn 'Abbâs⁽³⁾ (may Allah be pleased with them both), and it is also the view of Shurayh Al-Qâḍī⁽⁴⁾, Sa'îd

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- (1) The phrase 'non-Adults' includes both male and female, as well as discerning and non-discerning minors.
 - (2) There are two additional opinions on this issue, but they are not well-known. The first states that zakâh is obligatory on the wealth of a minor and an insane person, but it is not paid until the child reaches adulthood or the insane person regains sanity, at which point they are required to pay it themselves. This is related from 'Abdullâh ibn Mas'ûd (RA), al-Thawrî, and al-Awzâ'î. See: Hilyat al-'Ulamâ' [9:3], Al-Mughnî [2:465]. The second opinion is that zakâh is not obligatory on the wealth of a minor or an insane person except in livestock and agricultural produce. This is related from al-Hasan al-Basrî and Ibn Shubrumah. See: Sharh Mukhtasar al-Tahâwî [2:261], Al-Mu-hallâ [4:4].
 - (3) It was related from Ibn Lahî'ah, whose narrations are not relied upon. See: Sunan al-Dâraquṭnî [9:3], Al-Khilâfiyyât [4:316].
 - (4) He is Shurayh ibn al-Hârith ibn Qays al-Kindî, Abû Umayyah, a scholar and jurist, and the judge of Kufa. He accepted Islam during the lifetime of the Prophet (PBUH), and it is said that he was a Companion. He moved from Yemen during the time of Abu Bakr al-Siddîq (RA). 'Umar (RA) appointed him as the judge of Kufa, and he served in that position for a long time. It is said that he judged between people for sixty or seventy years. He died before or shortly after 80 AH, at the age of one hundred and sixty-eight or more. For his biography, see: Siyar A'lâm al-Nubalâ' [4:100], Taqrîb al-Tahdhîb (p. 265).

Ibn Al-Musayyab, and Ibrâhîm An-Nakha'î⁽¹⁾. It is the position of the Hanafis, except for wealth that comes from the land⁽²⁾.

Second Opinion: Zakâh is obligatory on the wealth of non-adults and the insane. This opinion is reported from 'Umar Ibn Al-Khaṭṭâb, 'Alî Ibn Abî Ṭâlib, Jâbir Ibn 'Abdullâh, and 'Â'ishah (may Allah be pleased with them all)⁽³⁾. It is also the view of Mujâhid Ibn Jabr⁽⁴⁾, Muḥammad Ibn Sîrîn, and 'Aṭâ' Ibn Abî Rabâḥ,⁽⁵⁾ and it is the position of the Maliki⁽⁶⁾, Shâfi'î⁽⁷⁾, and Ḥanbalî⁽⁸⁾ school.

Evidence and Discussions:

Evidence for the First Opinion:

Those who argue that Zakâh is not obligatory on the wealth of a minor or an insane person base their opinion on several pieces of evidence, including:

First Evidence:

Allah's statement:

{“Take from their wealth a charity by which you purify them and cause them increase”}.⁽⁹⁾

(1) See: Al-Muḥallâ [4:4], Bidâyat al-Mujtahid [2:5], Al-Mughnî [2:465].

(2) The Ḥanafis do not obligate zakâh on any wealth of a minor or an insane person except for agricultural produce. See: Al-Mabsûṭ.

(3) See: Al-Mudawwanah [1:308], Al-Umm [31:2], Sharh al-Zarkashî [2:414].

(4) He is Mujâhid ibn Jabr, and it is also said: Ibn Jubayr, the client of 'Abdullâh ibn al-Sâ'ib al-Makhzûmî, Abû al-Hajjâj. He was a master of Qur'anic recitation and exegesis, a knowledgeable scholar, a devout worshipper, and one of the greatest students of Ibn 'Abbâs (RA). He recited the Qur'an to him thirty times. He died in prostration in 102 AH, or it is said in 103 AH. For his biography, see: Mashâhîr 'Ulamâ' al-Amsâr (p. 133), Siyar A'lam al-Nubalâ' [4:449].

(5) See: Al-Mudawwanah [1:308], Al-Mughnî [2:465].

(6) See: Al-Mudawwanah [1:308], Al-Tawdhîh [2:225], Mawâhib al-Jalîl [2:292]. Al-Lakhmî derived an opinion for the Malikis, stating that zakâh is not obligatory on the wealth of a minor or an insane person if it does not grow by itself and there is no one to manage its growth, by analogy to the wealth of an adult who is incapable of growing it. Others have weakened this derivation. See: Al-Tabsirah by Al-Lakhmî [2:881], Mawâhib al-Jalîl [2:292].

(7) See: Al-Umm [30:2], Al-Muḥadhdhab [1:261], Mughnî al-Muhtâj [2:123].

(8) See: Al-Jâmi' li-'Ulûm al-Imâm Ahmad [7:177], Al-Kâfi [1:382], Kashshâf al-Qinâ' [2:169].

(9) [al-Tawbah. (Repentance): 103]

Reasoning:

Allah explains that Zakâh was prescribed to purify sins, and a non-accountable individual (a minor or insane person) does not need purification from sin since they are not held accountable. Therefore, Zakâh is not obligatory on their wealth.⁽¹⁾

This has been challenged from two perspectives:

First Perspective:

The primary purpose of Zakâh is typically purification, but this is not a strict condition. This is evidenced by the fact that Zakâh al-Fitr is obligatory for non-accountable individuals, despite its original purpose being purification.⁽²⁾

Second Perspective:

The purification applies to the wealth itself, and the wealth of non-accountable individuals can also be subject to purification.⁽³⁾

Second Evidence:

The Prophet (PBUH) said:

“The pen is lifted from three: the sleeper until he awakens, the child until he reaches maturity, and the insane person until he regains sanity or recovers”.⁽⁴⁾

Reasoning:

The Prophet (PBUH) informs us that accountability is lifted from the child and the insane person, and making Zakâh obligatory on them contradicts this lifting of accountability.⁽⁵⁾

(1) See: Al-Tajrîd [3:1217].

(2) See: Al-Majmû‘ [5:330].

(3) See: Mughnî al-Muhtâj [2:123].

(4) Related by Ibn Mâjah in his Sunan, Book of Divorce, Chapter: Divorce of the Insane, Child, and Sleeper, hadîth no. 2041 [1:658]; Abû Dâwûd in his Sunan, Book of Hudûd, Chapter: The Insane Person Who Steals or Commits a Punishable Offense, hadîth no. 4398 [4:139]; and al-Nasâ’î in Al-Sughrâ, Book of Divorce, Chapter: Divorce Does Not Apply to Certain Spouses, hadîth no. 3432 [6:156]. The hadîth is authentic, as authenticated by al-Hâkim and Ibn al-Mulqin. See: Al-Badr al-Munîr by Ibn al-Mulqin [3:226].

(5) See: Sharh Mukhtasar al-Tahâwî [2:262].

Counterargument:

The lifting of the pen refers to the lifting of sin and religious obligation. However, this does not negate financial responsibilities. Zakâh is a financial right and thus must be paid from their wealth by their guardian.⁽¹⁾

Third Evidence:

Zakâh is an act of worship, and therefore it should not be obligatory on non-accountable individuals, by analogy to prayer and fasting.⁽²⁾

Counterargument:

Zakâh is not a purely devotional act, so it cannot be compared to purely devotional acts such as prayer and fasting. Zakâh has both a right owed to Allah and a right owed to the deserving recipients. Thus, it resembles the financial obligations of supporting relatives and spouses.⁽³⁾

Fourth Evidence:

Zakâh is an act of worship, and one of its conditions is the intention (*niyyah*), which non-accountable individuals are not capable of fulfilling. The guardian's intention is not valid because acts of worship cannot be performed based on someone else's intention.⁽⁴⁾

Counterargument:

Zakâh can be fulfilled through someone else's intention in cases of necessity. For example, the ruler's intention substitutes for that of an accountable person who is unwilling or absent because it is impossible for the person to have intention. Similarly, the guardian's intention serves in place of the minor or insane person's intention, since they are unable to form it themselves.⁽⁵⁾

Fifth Evidence:

There is no authentic narration from the Prophet (PBUH) regarding Zakâh on the wealth of a minor or an insane person. No valid evidence exists from the actions of some Companions to support this, so the default rule (original

(1) See: Sharh al-Risâlah [1:405], Al-Majmû' [5:330], Al-Mughnî [2:465].

(2) See: Badâ'i' al-Şanâ'i' [4:2], Al-Ghurrah al-Munîfah by Al-Ghaznawî (p. 51).

(3) See: Al-Mughnî [2:465], Sharḥ al-Zarkashî [2:415].

(4) See: Al-Mabsûṭ [2:163], Tabyîn al-Ḥaqâ'iq [1:252].

(5) See: Al-Muḥallâ [4:10], Al-Mubdi' [2:394].

state) applies in the absence of a specific text. The default is that wealth is protected, and therefore Zakâh is not obligatory on the wealth of a minor or insane person. ⁽¹⁾

Counterargument:

The actions of the Companions are considered evidence when no opposing views are known from them. There is no record of any Companion opposing the obligation of Zakâh on the wealth of a minor or insane person. ⁽²⁾

The Hanafis make an exception for agricultural produce from the general rule that Zakâh is not obligatory on the wealth of a minor or insane person. They argue that the '*Ushr* (one-tenth) is not a purely devotional act because it carries the meaning of being an expense for the growing land, similar to *kharâj* (land tax). Therefore, '*Ushr* is obligatory on both accountable and non-accountable individuals, as it does not require a minimum threshold (*niṣâb*) or the passing of a year (*ḥawl*), and is not voided by debt. ⁽³⁾

Counterargument:

The argument that '*Ushr* is an expense for the land is rejected because if it were so, it would be obligatory even if the land were not cultivated, and it would be determined by the value of the land rather than the produce. It would also apply to *dhimmîs* (non-Muslim subjects) like *kharâj*, and the proceeds would be allocated to the same beneficiaries as *fay*' (war spoils). Since these attributes do not apply, it becomes clear that '*Ushr* is Zakâh on wealth, like Zakâh on livestock and currency, so there is no basis for distinguishing between it and other forms of wealth. ⁽⁴⁾

First Evidence:

The general evidence indicating the obligation of Zakâh, such as Allah's statement:

{“Zakâh expenditures are only for the poor and the needy”} ⁽⁵⁾, and His statement:

(1) See: Al-Sayl al-Jarrâr al-Mutadaffiq 'alâ Ḥadâ'iq al-Azhâr (p. 228).

(2) See: Sharḥ al-Zarkashî [2:414].

(3) See: Al-Mabsûṭ [2:163], Al-Binâyah [3:298], Al-Baḥr al-Râ'iq [2:217].

(4) See: Al-Sharḥ al-Kabîr 'alâ Matn al-Muqni' [2:574].

(5) [At-Tawbah (Repentance): 60].

{“Take, [O Muhammad], from their wealth a charity by which you purify them and cause them increase”} ⁽¹⁾

The Prophet (PBUH) also said:

“Inform them that Allah has made obligatory upon them a charity [Zakâh] to be taken from their wealthy and distributed to their poor.” ⁽²⁾

And his statement:

“On silver, one-quarter of one-tenth [is due].”⁽³⁾

These texts are general and apply to all wealth, without distinguishing between the wealth of accountable individuals and non-accountable individuals.⁽⁴⁾

Counterargument:

These texts are addressed to those who are suitable to receive the address, namely accountable individuals, not non-accountable ones.

Response:

Some texts extend the address to include non-accountable individuals and their guardian is instructed to fulfill the obligation on their behalf, such as in the case of paying for maintenance and blood money (*diyyah*).

Second Evidence:

‘Amr ibn Shu‘ayb narrated from his father, from his grandfather, that the Messenger of Allah (PBUH) addressed the people, saying:

“Whoever is the guardian of an orphan with wealth, let him engage in trade with it and not leave it idle until it is consumed by charity [Zakâh].” ⁽⁵⁾

(1) [At-Tawbah (Repentance): 103].

(2) Previously cited; see page (57) of this book.

(3) See: Al-Ishrâf ‘Ala Nukat Masâ’il Al-Khilâf [1: 388], Al-Umm [2: 30], Al-Furû‘ [3: 439].

(4) See: Al-Rawdah Al-Nadiyyah Sharh Al-Durar Al-Bahiyyah [1: 185].

(5) This was related in this wording through Al-Muthannâ Ibn Sabâh from ‘Amr Ibn Shu‘ayb. It was related by Al-Tirmidhî in Sunan, Book of Zakâh, Chapter: "What has been related concerning the zakâh of the orphan's wealth," hadith no. (641) [3: 23], and by Al-Dâraqutnî in Sunan, Book of Zakâh, Chapter: "Obligation of zakâh on the wealth of a child and the insane," hadith no. (1970) [3: 5]. Al-Bayhaqî related it with the wording "the zakâh does not consume it" in Sunan Al-Kubra, Book of Zakâh, =

Reasoning:

Charity consumes wealth only when it is given, and the giving of charity from the wealth of the orphan indicates that Zakâh is obligatory on their wealth. This can be extended by analogy to include other minors and the insane.⁽¹⁾

Counterargument:

This hadith is not authentic from the Prophet (PBUH).⁽²⁾

Third Evidence:

It is related by 'Umar ibn al-Khaṭṭâb (RA) that he said:

"Seek investment for the wealth of orphans, lest it be consumed by Zakâh."⁽³⁾

The issue was discussed from two perspectives:

The first perspective: It is argued that what is meant by *ṣadaqah* (charity) is spending, because the text refers to consuming all of the wealth, and it is spending that consumes all the wealth, unlike zakâh, which only takes what exceeds the *niṣâb* (minimum threshold for zakâh)⁽⁴⁾.

The response to this is that zakâh is explicitly mentioned in another narration. As for the statement that all wealth is consumed, the meaning is that zakâh consumes most of the wealth, leaving only a small amount that does not qualify for zakâh⁽⁵⁾.

= Chapter: "Who must give charity," hadith no. (7339) [4: 179]. The hadith is weak, as declared by Imâm Ahmad. See: Al-Talkhîs Al-Habîr [2: 353]. Al-Tirmidhî said: "Its chain of transmission has been criticized," Sunan Al-Tirmidhî [3: 23]. It was related similarly through Mandil Ibn 'Ali, who is considered weak. See: Taqniḥ Al-Tahqîq by Ibn 'Abd Al-Hâdî [3: 27].

(1) See: Kifâyat Al-Nabîh [5: 187], Al-Mughnî [2: 465].

(2) See: Al-Tajrîd [3: 1218], Al-Lubâb Fî Al-Jam' Bayna Al-Sunnah Wa Al-Kitâb by Al-Manbijî [1: 340].

(3) Related by Al-Dâraqutnî in Sunan, Book of Zakâh, Chapter: "Obligation of zakâh on the wealth of a child and the insane," hadith no. (1973) [3: 6], and by Al-Bayhaqî in Sunan Al-Kubra, Book of Zakâh, Chapter: "Who must give charity," hadith no. (7340) [4: 179]. Al-Bayhaqî said: "This chain is authentic, and it has supporting narrations from 'Umar." Sunan Al-Kubra [4: 179].

(4) See: Al-Mabsûṭ [2: 163].

(5) See: Al-Majmû' [5: 329].

The second perspective: It is argued that the statement of a Companion does not constitute proof when contradicted by another. It is related from Ibn ‘Abbâs (may Allah be pleased with him) that he said, «There is no zakâh on the wealth of a minor» ⁽¹⁾, and neither of the two statements is more valid than the other⁽²⁾.

The response to this is that the narration from Ibn ‘Abbâs (may Allah be pleased with him) is weak and cannot be used as evidence. Moreover, there is no verified opposition from any of the Companions regarding the obligation of zakâh on the wealth of minors or the insane⁽³⁾.

Fourth evidence: The statement of Al-Qâsim Ibn Muhammad: «‘Â’ishah (may Allah be pleased with her) was my guardian and my brother’s while we were orphans under her care, and she used to pay zakâh from our wealth»⁽⁴⁾.

The inference: ‘Â’ishah (may Allah be pleased with her) used to pay zakâh from the wealth of the orphans. If she had not believed it was obligatory, she would not have done so. Furthermore, there is no record of any of the Companions opposing her action, which serves as proof⁽⁵⁾.

Fifth evidence: Zakâh was legislated for the reward of the zakâh-giver and to aid those in need. A non-competent person (such as a minor or insane) can receive the reward and can be someone who aids others in need, thus zakâh is obligatory on their wealth just as it is on the wealth of a competent person⁽⁶⁾.

Sixth evidence: Zakâh is a right that is linked to the wealth itself, so it is obligatory for minors and the insane, just like expenditures, compensation for damages, and blood money for injuries⁽⁷⁾.

(1) Related by Al-Dâraqutnî in Sunan, Book of Zakâh, Chapter: "Borrowing by the Guardian from the Orphan's Wealth," hadith no. (1981) [3: 9], and by Al-Bayhaqî in Al-Khilâfiyyât, hadith no. (3215) [4: 316]. The narration is weak, as it contains Ibn Luhay‘ah, whose narrations are not relied upon. See: Sunan Al-Dâraqutnî [3: 9].

(2) See: Al-Dirârî Al-Mudhiyyah Sharh Al-Durar Al-Bahiyyah by Al-Shawkânî [2: 152].

(3) See: Al-Majmû‘ [5: 329], Sharḥ Al-Zarkashî [2: 414].

(4) Previously cited; see page (165) of this book.

(5) See: Al-Tawdhîḥ [2: 225], Al-Umm [2: 30], Sharḥ Al-Zarkashî [2: 414].

(6) See: Al-Muhadhdhab [1: 261], Sharḥ Muntahâ Al-‘Irâdât [1: 288].

(7) See: Al-Iṣṭilâm Fî Al-Khilâf Bayna Al-Imâmayn Al-Shâfi‘î Wa Abî Hanîfah [2: 54], Al-Mughnî [2: 465].

It was argued that zakâh is an act of worship, and comparing it to expenditures and compensation for damages is an invalid analogy because those are rights owed to other people and can be fulfilled without intention⁽¹⁾.

Seventh evidence: The analogy with zakâh on produce from the land and *zakâtul-fitr*. The Hanafis obligate both on the wealth of minors and the insane, unlike other forms of zakâh, despite the absence of a significant difference⁽²⁾.

This was challenged by arguing that there is indeed a difference. The '*ushr*' (land tax) is an obligation tied to the land itself and not purely an act of worship. Likewise, *zakâtul-fitr* is obligated on the father from his wealth for his child, making it similar to expenditures that one is required to pay on behalf of others⁽³⁾.

The response to this is to reject the claim that '*ushr*' is merely a cost of the land's yield, because if it were so, it would be required even if the land were not cultivated, and it would be determined by the land's value rather than the value of its produce⁽⁴⁾. As for *zakâtul-fitr*, it is a financial act of worship, as evidenced by your stipulation that intention is required for its fulfillment⁽⁵⁾.

Conclusion: The stronger view-Allah knows best-is the second opinion, which is the view of the majority of jurists that zakâh is obligatory on the wealth of minors and the insane.

Reasons for preferring this view:

- 3- The strength of most of the evidence supporting the second opinion and its immunity from criticism, compared to the weakness of the evidence for the first opinion and its susceptibility to objections.
- 1- It has been authentically transmitted from the Companions that zakâh on the wealth of orphans is obligatory, and there is no record of any disagreement among them. What is narrated from Ibn 'Abbâs (may Allah be pleased with him) is weak and cannot be considered authen-

(1) See: Tabyîn Al-Ḥaqâ'iq [1: 253].

(2) See: Al-Ishrâf 'Ala Nukat Masâ'il Al-Khilâf [1: 388], Al-Najm Al-Wahhâj Fî Sharḥ Al-Minhâj [3: 242].

(3) See: Sharḥ Mukhtaṣar Al-Ṭahâwî [2: 264].

(4) See: Al-Sharḥ Al-Kabîr 'Ala Matn Al-Muqni' [2: 574].

(5) See: Badâ'i' Al-Ṣanâ'i' [6: 69], Tabyîn Al-Ḥaqâ'iq [1: 133].

tic⁽¹⁾, and the insane are treated analogously to orphans.

3. Zakâh is a financial act of worship, legislated for the purification of wealth and to support those in need, and thus applies equally to the wealth of the competent and the non-competent.

Reason for the disagreement on the issue:

The disagreement stems from differing views on the concept of zakâh. Is zakâh purely an act of worship, like prayer and fasting? Or is it not purely an act of worship and also a right owed to the poor by the wealthy? Those who view it as purely an act of worship do not obligate it on those who are not legally responsible (non-competent individuals), similar to other acts of worship. Those who view it as not purely an act of worship but also as a right of others (humans) obligate it on those who are not legally responsible, as they are eligible for financial obligations⁽²⁾.

The effect of zakâh payment on this issue:

The effect of paying zakâh on this issue is that the proponents of the first view argue that zakâh is a purely devotional act and is not obligatory for minors and the insane. They base this on the requirement of intention for its fulfillment, asserting that a non-competent person cannot form a valid intention, and acts of worship cannot be performed on behalf of another person. On the other hand, proponents of the second view maintain that zakâh has a devotional aspect, which is why intention is required. However, this does not make it a purely devotional act like prayer and fasting. As for the inability of a non-competent person to form an intention, this does not negate the obligation of zakâh on their wealth, and the intention of their guardian suffices for them out of necessity.

The second issue: Intention for paying the zakâh of a discerning minor (ṣabî)⁽³⁾

(1) See: page (296) of this book.

(2) See: Badâ'i' Al-Şanâ'i' [2: 4], Bidâyat Al-Mujtahid [2: 6].

(3) A child (ṣabî) refers to one who has not yet reached puberty and is divided into discerning and non-discerning. The non-discerning child is one who does not understand buying and selling, and cannot distinguish between significant and minor deception in transactions. The discerning child is one who can respond to questions and engage in conversation, and some say it is one who understands buying and selling without being significantly deceived. Most jurists set the age of discernment at seven =

Description of the issue:

The jurists agree that the intention for paying zakâh on the wealth of a non-discerning minor and the insane must come from their guardian, as they are not capable of forming the intention⁽¹⁾. However, they disagree on whether a discerning minor can form the intention for paying zakâh on their own wealth, or if their guardian must form the intention for them, similar to the case of a non-discerning minor or the insane.

Clarification of the point of disagreement:

- 1- The jurists agree that it is not necessary for a discerning minor to form the intention when paying zakâh on their wealth, and that the guardian's intention suffices in place of the minor's intention⁽²⁾.
- 2- The jurists differed on the validity of a discerning minor's intention to pay zakâh on their wealth if the guardian delegated the intention to them.

Opinions on the Issue:

The jurists differed on this matter, forming two opinions:

First opinion: Some jurists considered it valid for a discerning minor to pay zakâh independently. This is the view of the Hanafis⁽³⁾, Shafi'is⁽⁴⁾, the well-

= years, based on common practice and to avoid inconsistencies in legal rulings. See: Al-Majmû' [7: 28], Al-Qawâ'id by Ibn Al-Laḥḥâm (p. 34), Al-Ashbâh Wa Al-Nazâ'ir by Al-Suyûṭî (p. 394), Al-Qâmûs Al-Fiqhî (p. 207).

- (1) See: Tabyîn Al-Ḥaqâ'iq [1: 14], 'Uyûn Al-Adillah [1: 133], 'Aqd Al-Jawâhir [1: 214], Rawḍat Al-Ṭâlibîn [1: 15], Mughnî Al-Muḥtâj [1: 311], Sharḥ Al-Zarkashî [2: 427], Ghâyat Al-Muntahâ [1: 327].
- (2) Their consensus is derived from assigning the intention for paying zakâh on the wealth of the minor and the insane to the guardian, without differentiating between the discerning and non-discerning minor. See: Tabyîn Al-Ḥaqâ'iq [1: 257], Al-Binâyah [3: 311], 'Aqd Al-Jawâhir [1: 214], Al-Dhakhîrah [3: 136], Rawḍat Al-Ṭâlibîn [2: 208], Kifâyat Al-Nabîh [6: 131], Sharḥ Al-Zarkashî [2: 427], Kashshâf Al-Qinâ' [2: 258].
- (3) They explicitly stated that the guardian is the one who forms the intention on behalf of the minor and the insane when paying zakâh al-fiṭr, without distinguishing between a discerning minor and a non-discerning one. The same applies to zakâh on produce from the land. However, beyond these cases, zakâh is not obligatory on the wealth of minors and the insane, as discussed in the previous issue. See: Sharḥ Mukhtaṣar Al-Ṭahâwî [2: 268], Tabyîn Al-Ḥaqâ'iq [1: 257].
- (4) See: 'Aqd Al-Jawâhir [1: 214], Al-Dhakhîrah [3: 136], Sharḥ Al-Zurqânî 'Ala Mukhtaṣar =

known opinion of the Malikîs⁽¹⁾, and the Hanbalîs.⁽²⁾

Second opinion: Some jurists restricted a discerning minor from paying zakâh unless their guardian delegated the responsibility to them. This is the view of some Shafî'is.⁽³⁾

Evidence and Discussions:

Evidence for the first opinion:

Those who argue that a discerning minor cannot pay zakâh independently base their view on the premise that the minor is not legally responsible, and thus their intention for fulfilling an obligation (such as zakâh) is not valid, similar to a non-discerning minor⁽⁴⁾.

Evidence for the second opinion:

Those who argue that a discerning minor can validly form the intention to pay zakâh if delegated by their guardian provide the following evidence:

First evidence:

A discerning minor is capable of forming an intention, and therefore, their intention to pay zakâh is valid, just as their intention to perform prayer is valid⁽⁵⁾.

Response:

It is argued that a minor, even if discerning, is not capable of forming a valid intention for zakâh. Unlike prayer, for which the minor is competent, they are not competent to handle financial matters. The valid intention is the one associated with a legitimate transaction, and therefore, the minor's intention to pay zakâh is invalid⁽⁶⁾.

= Khalîl [2: 323].

(1) See: Kifâyat Al-Nabîh [6: 131], Mughnî Al-Muhtâj [2: 131], I'ânât Al-Ṭâlibîn [2: 209].

(2) See: Sharḥ Al-Zarkashî [2: 427], Ghâyat Al-Muntahâ [1: 327], Kashshâf Al-Qinâ' [2: 258].

(3) **Ibn Ḥajar Al-Haytamî and some later scholars mentioned this.** See: Ḥāshiyat Al-'Ab-bâdî 'Ala Tuḥfat Al-Muhtâj [3: 348], Ḥāshiyat Al-Shabrâmlisî 'Ala Nihâyat Al-Muhtâj [1393].

(4) See: Ḥāshiyat Al-Sharwânî 'Ala Tuḥfat Al-Muhtâj [3: 348].

(5) See: Ḥāshiyat Al-Shabrâmlisî 'Ala Nihâyat Al-Muhtâj [1393].

(6) See: Fatâwâ Al-Subkî [1: 201].

Second evidence:

A discerning minor can be validly appointed as an agent to pay zakâh, and since their payment is accepted, their intention should also be considered valid⁽¹⁾.

Response:

It is argued that we do not accept the validity of appointing a minor as an agent for paying zakâh. Even if we accept it, the validity of the payment does not necessarily imply the validity of the intention. This is evidenced by the fact that you consider it valid to appoint a non-Muslim to pay zakâh, yet their intention is not valid⁽²⁾.

Conclusion:

The stronger opinion-Allah knows best-is the first view, which is that a discerning minor's intention to pay zakâh is not valid under any circumstances.

Reasons for preferring this view:

- 1- The strength of the evidence supporting the first view and its immunity from objections, while the evidence supporting the second view is weak.
- 2- If the discerning minor's intention for paying zakâh were valid, this would invalidate the guardian's intention on their behalf. This is because the guardian's intention is only valid when the owner (the minor) cannot form the intention. The proponents of the second view argue that the intention can be made by either the minor or the guardian, which leads to a contradiction in their position.



(1) See: Ḥāshiyat Al-Sharwānī 'Alā Tuḥfat Al-Muḥtāj [3: 349].

(2) See: Tuḥfat Al-Muḥtāj [3: 344].

Sixth Treatise

The Impact of Intention on Delegation

in Disbursing Zakâh

Topic 1: Intention of Zakâh Disbursement When Delegating Its Payment

This topic includes two issues:

The jurists agree on the permissibility of delegating the disbursement of zakâh because it is a financial act of worship similar to the settlement of debts. There is a need for delegation in such cases due to the absence of wealth or other reasons⁽¹⁾. In this topic, I will address who is responsible for the intention of disbursing zakâh when it is delegated to someone else.

First Issue: Disbursing Zakâh from the Principal's Wealth

Issue Illustration:

If the obligated person delegates someone else to disburse their zakâh, and the payment is made from the principal's wealth, is the intention of zakâh disbursement required from the principal, the agent, or both?

Clarification of the Dispute:

- 1- The jurists agree on the validity of both the principal and the agent intending the disbursement of zakâh together. ⁽²⁾
- 2- They also agree, among those who stipulate the requirement of intention, that if neither the principal nor the agent makes the intention, the

(1) See: Badâ'i' As-Sanâ'i' [2: 40], Tabyîn Al-Haqâ'iq [1: 252], Bidâyat Al-Mujtahid [4: 85], 'Aqd Al-Jawâhir [2: 825], Al-Majmû' [6: 165], Mughnî Al-Muhtâj [3: 236], Al-Mughnî [5: 66], Al-Mubdi' [4: 328].

(2) See: Al-Binâyah [3: 314], Al-Bahr Ar-Râ'iq [2: 226], Al-Umniyyah Fî Idrâk An-Niyyah (P. 41), Al-Qawânin Al-Fiqhiyyah (P. 126), Al-Hâwî Al-Kabîr [3: 184], Al-Bayân [3: 402], Al-Hidâyah (P. 145), Al-Kâfi [1: 417].

disbursement is invalid.⁽¹⁾

- 3- However, they disagree on whether the intention is required solely from the principal, from both the principal and the agent, or from either one of them.

Opinions on the Issue: The jurists have differed on this matter into four opinions:

- 1- First Opinion: The intention is required only from the principal, not the agent. This is the view of the Ḥanafīs⁽²⁾, the prevalent view among the Shâfi'īs⁽³⁾, and one view among the Ḥanbalīs⁽⁴⁾.
- 2- Second Opinion: The intention is required from either the principal or the agent; if either of them intends, it suffices. This is the view of the Mâlikīs⁽⁵⁾ and some of the Shâfi'īs⁽⁶⁾.
- 3- Third Opinion: The intention is required from both the principal and the agent together. This is one view among the Shâfi'īs⁽⁷⁾.
- 4- Fourth Opinion: The intention is required from the principal alone if the delegation and the disbursement occur close in time. However, if a significant time has passed, the intention is required from both the principal and the agent together. This is the official view of the Ḥanbalīs.⁽⁸⁾

(1) See: Badâ'i' As-Sanâ'i' [2: 40], Tabyîn Al-Haqâ'iq [1: 252], Al-Umniyyah Fî Idrâk An-Niyyah (P. 41), Ḥāshiyat As-Sâwî 'Alâ Ash-Sharḥ As-Ṣaghîr [1: 239], Al-Muhadhdhab [1: 312], Rawḍat Aṭ-Ṭalibîn [2: 209], Ar-Ri'âyah As-Ṣughrâ [1: 428], Al-Furû' [4: 253].

(2) See: Tabyîn Al-Haqâ'iq [1: 252], Al-Binâyah [3: 314], Al-Bahr Ar-Râ'iq [2: 226].

(3) See: Fath Al-'Azîz [5: 527], Al-Majmû' [6: 183], Asnâ Al-Maṭâlib [1: 360].

(4) See: Al-Hidâyah (p. 145), Al-Muḥarrar [1: 224], Al-Inṣâf [3: 197].

(5) See: Al-Qawânîn Al-Fiqhiyyah (p. 126), Sharḥ Az-Zurqânî 'Alâ Khalîl [2: 323], Ḥāshiyat As-Sâwî [1: 239].

(6) Some of the Shâfi'īs opined that the mere act of delegating the disbursement of Zakâh includes delegating the intention to the agent; hence, the intention of either suffices. See: Tuḥfat Al-Muḥtâj [3: 348], Ḥāshiyat Al-'Abbâdî [2: 183].

(7) This opinion is based on the requirement that the intention should not precede the actual distribution of Zakâh. They stated that the agent must also make the intention at the time of disbursement, except in cases where the principal made the intention when giving to the eligible recipients. In such cases, the principal's intention alone is unanimously accepted. See: Al-Ḥâwî Al-Kabîr [3: 184], Nihâyat Al-Maṭlab [3: 199], Rawḍat Aṭ-Ṭalibîn [2: 209].

(8) See: Al-Inṣâf [3: 197], Ma'ûnat Uli An-Nuhâ [3: 301], Kashshâf Al-Qinâ' [2: 261].

Evidence and Discussions of the Opinions:

Evidence for the First Opinion: Those who assert that the intention is required only from the principal and not the agent base their view on the following arguments:

- 1- First Evidence: The principal is the one who is truly discharging zakâh; therefore, the intention must be his. The agent is merely a representative in delivering the wealth to the eligible recipient, so his intention is not considered⁽¹⁾.
- 2- Second Evidence: The principal is not obliged to inform the agent that the disbursement is zakâh if he specifies the eligible recipient for him. This indicates that the agent's intention is not a condition⁽²⁾.
- 3- Third Evidence: If the principal has made the intention, the designated amount becomes specified for zakâh, and no further intention is needed afterward⁽³⁾.

Fourth Evidence: The association of the intention with handing over the wealth to the agent is analogous to its association with handing it to the eligible recipients because it is linked to an act related to the disbursement of zakâh⁽⁴⁾.

Fifth Evidence: An analogy can be drawn with the intention of the zakâh-payer when giving zakâh to the Imâm or his deputy. The intention of the payer suffices for the Imâm's intention since both involve giving the wealth to someone who will deliver it to the recipients⁽⁵⁾.

Discussion: This was countered by distinguishing between the cases. The Imâm is a representative of the eligible recipients, so his receipt is equivalent to theirs, whereas in our case, the payment is being made to the agent of the zakâh-payer⁽⁶⁾.

Evidence for the Second Opinion: Those who assert that the intention can be made by either the principal or the agent provide the following arguments:

(1) See: Badâ'i' As-Sanâ'i' [2: 40].

(2) See: Tabyîn Al-Haqâ'iq [1: 252].

(3) See: Al-Muhadhdhab [1: 312].

(4) See: Nihâyat Al-Maṭlab [3: 199], Asnâ Al-Maṭâlib [1: 360].

(5) See: Fath Al-'Azîz [5: 527], Asnâ Al-Maṭâlib [1: 360].

(6) See: Kifâyat An-Nabîh [6: 130].

First Evidence: No specific evidence from the Mâlikîs supports this opinion. However, it could be argued that the purpose of the intention for zakâh disbursement is to specify the act for zakâh and distinguish it from similar acts. This purpose is fulfilled by the intention of either the principal or the agent.

Discussion: It was argued that the objective of the intention cannot be achieved except by the owner of the wealth, as the obligation and sufficiency are related to him⁽¹⁾.

Second Evidence: Those Shâfi'is who support this opinion argue that delegating the disbursement of zakâh implies delegating the intention to the agent. If the principal makes the intention, it suffices because his intention is fundamental; if the agent makes the intention, it also suffices because he is authorized to do so.

Discussion: This is contested by denying that delegating the disbursement of zakâh necessarily includes delegating the intention to the agent. Even if this is conceded, it does not follow that delegation of intention is valid, as intention is an act of the heart and is not subject to delegation.

Evidence for the Third Opinion: Those who argue that the intention is required from the principal base their argument on the evidence cited by those holding the first opinion. They also argue that the intention from the agent is required alongside the principal's intention, based on the following:

First Evidence: The place for intention is at the time of payment and disbursement. If we do not require the agent's intention at the time of disbursement, the intention will not occur at its proper place⁽²⁾.

Discussion: This is contested by rejecting the necessity of associating intention with disbursement, as it can precede the act when needed, as in the case of delegation⁽³⁾.

Second Evidence: An analogy can be made with Ḥajj regarding the requirement of the agent's intention during performance, as both are acts of worship where delegation is permissible⁽⁴⁾.

Discussion: This is contested by distinguishing between the cases, as the

(1) See: Al-Muhadhdhab [1: 312], Al-Mughnî [2: 477].

(2) See: Al-Ḥawî Al-Kabîr [3: 184].

(3) See: Asnâ Al-Maṭâlib [1: 360].

(4) See: Bahr Al-Madhhab [3: 82]; Kifâyat An-Nabîh [6: 130].

obligation in Ḥajj is fulfilled through the agent's act, making the agent's intention necessary to attribute the act to the principal. However, in the case of zakâh, the obligation is fulfilled through the principal's wealth, so the principal's intention alone suffices⁽¹⁾.

Evidence for the Fourth Opinion: Those who support the fourth opinion argue for the necessity of the principal's intention based on the evidence cited by the proponents of the first opinion. They also argue for the necessity of the agent's intention alongside the principal's if there is a significant time gap between the delegation and the disbursement, as the absence of the agent's intention in such cases would result in the disbursement occurring without a simultaneous or proximate intention, which is invalid⁽²⁾.

Discussion: It is countered that the principal's intention is valid if it coincides with, or follows, the transfer of wealth to the agent and occurs before the disbursement. It is not necessary for the intention to coincide or be proximate with the disbursement itself.

Preference:

The preferred opinion, and Allah knows best, is the first opinion, which requires the intention solely from the principal. It should coincide with the transfer to the agent or follow it before the disbursement, as discussed in the issue of the timing of zakâh intention⁽³⁾.

Reasons for the Preference:

- 1- The strength and unchallenged nature of the evidence supporting the first opinion, along with the weakness of the other opinions' evidence.
- 2- The previously established preference for allowing the intention to precede the disbursement of zakâh if it coincides with the act of the principal, such as separation or delegation. Thus, the agent's intention during disbursement is unnecessary.
- 3- Requiring the agent's intention imposes hardship and difficulty, especially if the agent represents multiple principals, as in charitable organizations, where it is challenging to separate funds and specify the person for whom zakâh is being disbursed.

(1) See: Al-Majmû' [6: 184].

(2) See: Al-Mubdi' [2: 395]; Kashshâf Al-Qinâ' [2: 261].

(3) See: p. 247 of this book.

Note: The Shâfi'is have opined that it is permissible, in all cases, to delegate the agent with the intention of disbursing zakâh if the agent is qualified to make the intention⁽¹⁾. An example would be for the owner to tell the agent, «When a year has passed on my wealth, disburse its zakâh and make the intention on my behalf.» I have not found a similar text among non-Shâfi'is permitting this, and it appears—Allah knows best—that this is not permissible, as intention is a matter of the heart and cannot be delegated. If intention is obligatory on the responsible person, they cannot appoint someone else to perform it, and there is no need to delegate the intention, as it occurs automatically upon delegation.

The Case: If a legally responsible person appoints someone else to pay their zakâh, and the payment is made from the agent's own money, is the intention to pay zakâh required from the principal (the one who appointed the agent), from the agent, or from both?

The Opinions on the Case: After researching, I found that only the Shâfi'is distinguish between this case and the previous one. They state that if the agent pays the zakâh from their own money, both the agent's intention and the principal's intention are required, with no disagreement among them on this point⁽²⁾. However, the Hanafis, Mâlikis, and Hanbalis make no distinction between the agent paying the zakâh from their own money or from the principal's money, so their opinions on this matter remain the same as in the previous case.

The Shâfi'is' Evidence for Their Opinion of Requiring Both the Agent's and the Principal's Intention When the Agent Pays from Their Own Money:

- First Evidence: The obligation here is fulfilled by the agent's action and from their money, so their intention is required, by analogy to Hajj, where the agent's intention is a condition for the obligation to be fulfilled by their action⁽³⁾.
- Second Evidence: Since the payment is made from the agent's money, it requires an intention to transfer the action from the agent to the principal⁽⁴⁾.

(1) See: *Nihâyat Al-Matlub* [3: 199]; *Rawdat At-Tâlibîn* [2: 209]; *Asnâ Al-Matâlib* [1: 360].

(2) See: *Al-Bayân* [3: 402]; *Al-Majmû'* [6: 184]; *Asnâ Al-Matâlib* [1: 360].

(3) See: *Al-Majmû'* [6: 184].

(4) See: *Hâshiyat Ash-Sharwânî* [3: 348].

The Preferred Opinion and Its Reason: The preferred opinion in this case-Allah knows best-is that of the Shâfi'is, who require the agent's intention if they are paying the zakâh from their own money on behalf of the principal. This is because the agent is paying from their own money, and their action requires an intention to transfer it as a payment of zakâh on behalf of the principal.

A Related Branch: The Occurrence of the Principal's Intention After Appointing the Agent and Before the Agent Pays the Zakâh

The Case: If the principal hands over their money to someone and says: «Distribute this on my behalf as a voluntary act or for my expiation,» then the principal makes an intention for zakâh shortly before the agent pays the money, will that suffice for zakâh if the recipient is eligible to receive it?

The Opinions on the Case: Scholars differ on this matter, holding two opinions:

First Opinion: The intention is valid, and the payment counts as zakâh. This is the view of the Hanafis⁽¹⁾, Shâfi'is⁽²⁾ and the more prevalent opinion among the Hanbalis⁽³⁾.

I did not find a specific text on this issue from the Mâlikis, but this view could be inferred based on their stance that allows for the intention to precede the payment if it coincides with setting the money aside or follows it⁽⁴⁾, and setting the money aside would include giving it to an agent.

Second Opinion: The intention is not valid, and the payment does not count as zakâh. This is an opinion held by some Hanbalis⁽⁵⁾.

Evidence and Discussions:

- Evidence for the First Opinion: Those who consider the payment valid argue that the principal (the one who appointed the agent) is the one paying zakâh in essence, and the agent's payment is akin to the principal's

(1) See: Badâ'i' As-Sanâ'i' [2: 41]; Al-Muḥiṭ Al-Burhâni [2: 292]; Al-Binâyah [3: 313].

(2) See: Al-Majmû' [6: 184]; Asnâ Al-Maṭâlib [1: 360]; Mughnî Al-Muḥtâj [2: 131].

(3) See: Al-Inṣâf [3: 198]; Kashshâf Al-Qinâ' [2: 262]; Maṭâlib Ulî An-Nuhâ [2: 126].

(4) See: Al-Umniyyah fî Idrâk An-Niyyah [p. 43]; Sharḥ Mukhtaṣar Khalîl by Al-Khurashî [2: 222]; Ḥâshiyat As-Sâwî 'ala Ash-Sharḥ Aṣ-Ṣaghîr [1: 666].

(5) See: Al-Furû' [4: 254]; Kashshâf Al-Qinâ' [2: 262].

payment. It is as if the principal made the intention and then paid the zakâh themselves. Since making the intention shortly before payment or after setting aside the money is permissible, the intention is valid⁽¹⁾.

- Evidence for the Second Opinion: Those who argue that the payment does not count as zakâh state that the principal did not make the intention at the time of appointing the agent, and the intention must be made when the agent is appointed. Therefore, an intention made afterward is not valid⁽²⁾.

Discussion: This argument is countered by rejecting the claim that the intention must be made at the time of appointing the agent, as there is no evidence for this requirement. Appointing an agent is not equivalent to making the payment, so it cannot be said that the intention must not be delayed.

Preferred Opinion and Its Reason: The preferred opinion-Allah knows best-is the first one, which states that if the principal makes the intention shortly after appointing the agent and before the agent makes the payment, the intention is valid and the payment counts as zakâh, provided that the recipient is eligible to receive it. This is due to the strength of the evidence for the first opinion and the weakness and vulnerability of the evidence for the second opinion.

Second Topic: The Divergence of Intention Between the Principal and the Agent When Paying Zakâh

If the principal and the agent have differing intentions regarding the payment, such as the principal intending zakâh while the agent intends it to be a voluntary payment or expiation, or vice versa, does this suffice for zakâh?

Scholarly Opinions on the Matter: Scholars have two views on this issue:

First Opinion: The decisive factor is the intention of the principal. If the principal intends zakâh, the payment is valid. This is the view of the Hanafis⁽³⁾, the predominant view among the Shâfi'îs⁽⁴⁾, and a view held by some Hanbalîs⁽⁵⁾.

(1) See: Badâ'i' As-Sanâ'i' [2: 41]; Tuḥfat Al-Muḥtâj [3: 348]; Al-Furû' [4: 254].

(2) See: Al-Inṣâf [3: 198]; Kashshâf Al-Qinâ' [2: 262].

(3) See: Badâ'i' As-Sanâ'i' [2: 40]; Al-Muḥîṭ Al-Burhânî [2: 292]; Al-Baḥr Ar-Râ'iq [2: 226].

(4) See: Al-Majmû' [6: 184]; Asnâ Al-Maṭâlib [1: 360]; Mughnî Al-Muḥtâj [2: 131].

(5) See: Al-Furû' [4: 254]; Al-Inṣâf [3: 198]; Kashshâf Al-Qinâ' [2: 262].

I did not find a specific text from the Mâlikîs on this matter, but their stance could be inferred based on their well-known view that a sacrifice (*udhiyah*) offered on behalf of the principal is valid if the principal intends it, even if the agent has a different intention when performing the slaughter ⁽¹⁾. This is because appointing an agent to slaughter a sacrifice is like appointing an agent to pay zakâh; the act of worship is attributed to the principal, not the agent. For example, it is said: «So-and-so offered a sacrifice,» even if the slaughter was done by someone else, just as it is said: «So-and-so paid their zakâh,» even if the payment was made by someone else.

Second Opinion: The payment does not count as zakâh. This view can be derived as an alternative opinion from the Mâlikîs, based on their position that the sacrifice is not valid on behalf of the principal if the agent's intention in slaughtering differs from that of the principal⁽²⁾.

This view also corresponds to one position held by the Shâfi'îs, where they require both the agent's and the principal's intention to be aligned for the zakâh to be valid⁽³⁾. If their intentions differ, the zakâh is not considered to have been fulfilled by either of them.

A similar view can be attributed to the Hanbalîs in cases where the payment is delayed after the principal's intention⁽⁴⁾. According to their view, if the agent's intention and the principal's intention must align when there is a delay in payment, any divergence in intention means that the zakâh is not validly intended by either party, and thus the obligation is not fulfilled.

Evidence and Discussions:

Evidence for the First Opinion: Those who argue that the decisive factor is the principal's intention, and that the payment is valid if the principal intended zakâh, present the following reasoning:

First Evidence: The principal is the one who is truly paying the zakâh, so their intention is what counts. The agent is merely a representative in deliv-

(1) **They provide an example of this by stating that the agent intends the sacrifice (udhiyah) for themselves instead of the principal at the time of slaughter. See:** Adh-Dhakhîrah [4: 156]; Taḥbîr Al-Mukhtaṣar [2: 348]; Sharḥ Al-Khurashî [3: 43].

(2) **See:** Sharḥ Ibn Nâjî 'ala Matn Ar-Risâlah [1: 364]; Mawâhib Al-Jalîl [3: 252].

(3) **See:** Al-Ḥâwî Al-Kabîr [3: 184]; Nihâyat Al-Maṭlûb [3: 199]; Rawdat At-Tâlibîn [2: 209].

(4) **See:** Al-Inṣâf [3: 197]; Ma'ûnat Uli An-Nuhâ [3: 301]; Kashshâf Al-Qinâ' [2: 261].

ering the money to the eligible recipient, and thus the agent's intention is not relevant⁽¹⁾.

Second Evidence: By analogy to someone who orders another person to perform ablution for them, the decisive factor is the intention of the one who gave the order, not the intention of the one carrying it out⁽²⁾.

Evidence for the Second Opinion: Those who argue that the payment does not count as zakâh when the principal's and the agent's intentions differ present the following reasoning: The intention for zakâh is a condition for both the principal and the agent. This condition cannot be met if their intentions differ, and without fulfilling this condition, the payment does not count as zakâh⁽³⁾.

Discussion: This argument is countered by rejecting the claim that the intention for zakâh is a condition for both the principal and the agent. Rather, it is a condition solely for the principal, as they are the one who is legally responsible for paying the zakâh.

Preferred Opinion and Its Reason: The preferred opinion—Allah knows best—is the first one, which holds that in the case of differing intentions between the principal and the agent in paying zakâh, the principal's intention is what matters. If the principal intended zakâh, the payment is valid; otherwise, it is not. This is due to the strength of the evidence for the first opinion, the weakness of the evidence for the second, and the earlier conclusion that only the principal's intention is required, without needing the agent's intention.

Reason for Disagreement on the Issue: The disagreement in this issue arises from differing views on whether the intention for paying zakâh is required from both the principal and the agent. Those who require it from both do not consider the payment valid if their intentions differ, while those who require only the principal's intention consider it sufficient without the agent's intention.⁽⁴⁾

Third Topic: The Role of Intention in the Preference for Delegating the Payment of Zakâh

The Case: Is it preferable for the individual responsible for zakâh (*muzakkî*)

(1) See: Badâ'i' As-Sanâ'i' [2: 40].

(2) See: Sharḥ Ibn Nâjî 'ala Matn Ar-Risâlah [1: 364]; At-Tâj Wa Al-'Ikîl [4: 384].

(3) See: Al-Majmû' [6: 184]; Maṭâlib Ulî An-Nuhâ [2: 126].

(4) See: p. 304 of this book.

to pay it themselves, or to appoint someone to act on their behalf in distributing it to eligible recipients? And what role does intention play in this?

This issue does not include the case of paying zakâh to the imâm or his deputy, as that does not constitute delegation of payment. Rather, it is a case of delivering the zakâh to the recipient's agent, since the imâm or his deputy receives the payment on behalf of the eligible recipients⁽¹⁾.

Opinions on the Issue: Scholars have two opinions on this matter:

First Opinion: It is preferable for the one obligated to pay zakâh to distribute it personally. This is the view of the majority of scholars from the Ḥanafî⁽²⁾, Shâfi'î⁽³⁾, and Ḥanbalî⁽⁴⁾ schools of thought.

Second Opinion: The second opinion states: it is preferable for the one giving Zakât to appoint a representative to discharge it on their behalf. This is the position of the Mālikî school.⁽⁵⁾

Evidence and Discussions:

Evidence for the First Opinion:

The majority of scholars support the idea that it is preferable for the one paying zakâh to distribute it personally, based on the following arguments:

First Evidence: If the person obligated to pay zakâh distributes it personally, they are certain it has reached those they believe to be deserving of it. However, if they appoint someone else to distribute it, there is uncertainty regarding its proper delivery. Moreover, if the appointed person betrays this trust, the obligation is not lifted from the person who appointed them. Thus, distributing zakâh personally is better, as it clears one's responsibility more thoroughly⁽⁶⁾.

(1) See: Al-Muḥīṭ Al-Burhânî [2: 268]; At-Tabṣīrah [3: 1003]; Kifāyat An-Nabīh [6: 130]; Al-Mughnī [2: 477].

(2) See: Mukhtaṣar Ikhtilāf Al-'Ulamā' [1: 484], Tabyīn Al-Ḥaqā'iq [6: 9], Al-Ikhtiyār Li-Ta'līl Al-Mukhtār [5: 20].

(3) See: Al-Jāmi' Li-Masā'il Al-Mudawwanah [4: 170], 'Uqd Al-Jawāhir [1: 248], Mawāhib Al-Jalīl [2: 353].

(4) See: Al-Ḥawī Al-Kabīr [3: 186], Nihāyat Al-Maṭlab [3: 200], Al-Majmū' Sharḥ Al-Muḥadhdhab [6: 165].

(5) See: Al-Mughnī [2: 479], Al-Furū' [4: 261], Kashshāf Al-Qinā' [2: 258].

(6) See: Mukhtaṣar Ikhtilāf Al-'Ulamā' [1: 484], Al-Majmū' [6: 165], Kashshāf Al-Qinā' [2: 258].

Second Evidence: By personally distributing zakâh, the person performing the obligation earns the reward of directly engaging in the act of worship and relieving the distress of those in need. This does not occur when appointing someone else to distribute it, so personal distribution is preferable⁽¹⁾.

Third Evidence: By analogy to the slaughtering of Uḍḥiyah (sacrificial animals), it is better to personally perform the slaughter than to delegate it. zakâh is similar because both are financial acts of worship in which delegation is permissible.⁽²⁾

Fourth Evidence: When distributing zakâh personally, the person can give it to deserving relatives, thereby strengthening family ties, which is preferable. This may not be possible when delegating the task to another⁽³⁾.

Evidence for the Second Opinion:

The Mâlikî school argues that it is preferable to appoint someone to distribute zakâh, based on the concern that if the person distributes it themselves, they may be motivated by the desire for public praise, recognition, or reciprocation with favorable services⁽⁴⁾, and the like. Delegating the distribution helps prevent such undesirable intentions.

Discussion from Two Perspectives:

First Perspective: If we were to accept this reasoning, many forms of charitable acts would be prevented out of fear of seeking praise from people.

Second Perspective: The fundamental principle is sincerity in one's actions for the sake of Allah. The occurrence of ostentation or the desire for people's praise is merely a possibility, and one should not abandon the reward of directly performing the act of worship based on a mere possibility.

Preferred Opinion:

The stronger opinion—Allah knows best—is that of the majority, which holds that it is preferable for the one obligated to pay zakâh to distribute it personally.

(1) See: Mukhtaṣar Ikhtilâf Al-‘Ulamâ’ [1: 484], Al-Mughnî [2: 480].

(2) See: Al-Dhakhîrah [3: 150].

(3) See: Al-Mughnî [2: 480].

(4) See: Al-Jâmi‘ Li-Masâ’il Al-Mudawwanah [4: 170], Al-Tawḍîḥ [2: 359].

Reasons for Preference:

- 1- The strength of the evidence supporting the first opinion, and its soundness against refutation, while the evidence for the second opinion is weak.
- 2- What further demonstrates the weakness of the second opinion is that personally distributing zakâh does not necessarily require it to be publicized or announced. The one paying zakâh can distribute it themselves while keeping it hidden and secret.

The Impact of Intention on the Issue:

The impact of intention in this matter is evident in the fact that the Mâlikîs based their opinion of preferring delegation in the distribution of zakâh on the idea that it is farther removed from the intention of seeking praise and recognition from others. Meanwhile, the majority believe that the potential for such an intention does not affect the preference.

Topic Four: The Impact of Intention on the Ruling Regarding Delegating a Non-Muslim to Distribute zakâh:

The Scenario:

Is it permissible for the one obligated to pay zakâh to delegate a non-Muslim to distribute and allocate it to those entitled? And what is the impact of intention in this matter?

Opinions on the Issue:

The scholars have differed on this matter into four opinions:

First Opinion: It is permissible to delegate a non-Muslim to distribute zakâh without any restrictions. This is the view of the Ḥanafîs⁽¹⁾, one opinion in the Shâfi'î school⁽²⁾, and one view in the Ḥanbalî school⁽³⁾.

I have not found a specific text on this issue from the Mâlikîs. Still, it can

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- (1) **They restricted the permissibility to a non-Muslim dhimmî or those under similar statuses, such as a musta'min (temporary resident) or mu'âhid (covenant holder), excluding a non-Muslim ḥarbî (enemy combatant). See:** Badâ'i' Al-Şanâ'i' [2: 40], Al-Ikhtiyâr Li-Ta'lîl Al-Mukhtâr [2: 156], Al-Baḥr Ar-Râ'iq [2: 226].
 - (2) **See:** Nihâyat Al-Maṭlab [18: 179], At-Tahdhîb [3: 63], Al-Majmû' [6: 181].
 - (3) **See:** Al-Furû' [4: 253], Al-Mubdi' [2: 395], Al-Inṣâf [3: 197].

be inferred from Ashhab's opinion in the Mâlikî school, which allows the delegation of a non-Muslim from the People of the Book to slaughter *Uḏḥiyah*⁽¹⁾, as distributing zakâh is similar to slaughtering *Uḏḥiyah* in that both involve carrying out a financial act of worship.

Second Opinion: It is absolutely impermissible to appoint a non-Muslim (*kâfir*) as an agent for paying zakât. This is one view held by the Shâfi'iyyah⁽²⁾, and it is the adopted position of the Hanâbilah⁽³⁾. The Mâlikiyyah also support this opinion based on their stance that appointing a non-Muslim as an agent for slaughtering the sacrificial animal (*udhiyyah*) is impermissible⁽⁴⁾.

Third Opinion: It is impermissible to appoint a non-Muslim as an agent for paying zakât except in situations where the agent's intention is not required⁽⁵⁾. This is the opinion of some of the Shâfi'iyyah⁽⁶⁾ and some of the Hanâbilah⁽⁷⁾.

Fourth Opinion: It is permissible to appoint a non-Muslim as an agent for paying zakât, provided that the person to whom the zakât is being paid is specified. This is the well-known position of the Shâfi'iyyah⁽⁸⁾.

Evidence and Discussions on the Opinions:

Evidence for the First Opinion: Those who argue for the absolute permissibility provide the following evidence:

First Evidence: They draw an analogy between paying zakât and slaughtering the sacrificial animal, as it is permissible to appoint a non-Muslim of the People of the Book to slaughter the sacrificial animal, and thus it should be

(1) See: At-Tabsirah [4: 1560], Al-Dhakhîrah [4: 155], At-Tawdîh [272/3].

(2) See: Bahr Al-Madhhab [3: 82].

(3) See: Al-Insâf [3: 198]; Kashshâf Al-Qinâ' [2: 261]; Matâlib Uwlî An-Nuhâ [2: 123].

(4) See: Adh-Dhakhîrah [4: 155]; At-Tawdîh [3: 272]; Sharh Al-Khurashî 'Alâ Mukhtasar Khalîl [3: 43].

(5) This applies to some of the Shâfi'iyyah when the principal (muwakkil) intends at the time of payment, and to the Hanâbilah when the principal's intention coincides with the payment. See: p. 302 of this book.

(6) Mentioned by Ibn Ar-Rif'ah. See: Kifâyat An-Nabîh [8: 88]; An-Najm Al-Wahhâj [9: 502].

(7) related by Al-Mardâwî from the author of Ar-Ri'âyah, and he reinforced it. See: Al-Insâf [3: 198]; Matâlib Uwlî An-Nuhâ [2: 123].

(8) See: Al-Muhimmât fî Sharh Ar-Rawdah Wa Ar-Râfi'î [3: 576]; Asnâ Al-Matâlib [1: 360]; Tuhfat Al-Muhtâj [3: 344].

permissible to appoint them to pay zakât. Both are financial acts of worship, and delegation for their performance is allowed⁽¹⁾.

This argument is critiqued from two angles:

- 1- First Angle: The premise of the analogy, i.e., the permissibility of appointing a non-Muslim of the People of the Book for slaughtering the sacrificial animal, is not accepted.
- 2- Second Angle: Paying zakât differs from slaughtering the sacrificial animal in that it requires careful discernment and ijtihâd to identify the rightful recipients, and a non-Muslim is not qualified for this role.

Second Evidence: The one obligated to pay zakât is the Muslim, and the non-Muslim is merely acting as an agent in the payment, without the need for their intention. Therefore, there should be no objection to appointing them⁽²⁾.

This is critiqued as follows: The absence of a need for the agent's intention does not necessarily justify appointing a non-Muslim, as there are other considerations, such as their inability to exercise ijtihâd in determining the rightful recipients and the issue of a non-Muslim holding a position of superiority over Muslims, among others.

Evidence for the Second Opinion: Those who argue for the absolute impermissibility provide the following evidence:

First Evidence: The Prophet (peace and blessings be upon him) said to a polytheist during the Battle of Badr: *"Go back, for I will not seek help from a polytheist."* ⁽³⁾

Reasoning: The Prophet (peace and blessings be upon him) refused to seek help from a polytheist, which indicates its impermissibility. This includes seeking their help in paying zakât and slaughtering the sacrificial animal⁽⁴⁾.

Counter-argument: The assistance mentioned in the ḥadīth refers to seeking the help of a polytheist in battle, as indicated by the context of the ḥadīth. However, seeking help in other matters is permissible, as the Prophet (peace

(1) See: Al-Majmû' [6: 181]; Al-Furû' [4: 253].

(2) See: Badâ'i' As-Sanâ'i' [2: 40]; Hâshiyat Ibn 'Âbidîn [2: 269].

(3) Related by Muslim in his Sahîh, Book of Jihad and Expeditions, Chapter on the Dislike of Seeking Help from a Non-Muslim in Battle, ḥadīth no. (1817), [3: 1449].

(4) See: Adh-Dhakhîrah [4: 155].

and blessings be upon him) sought the help of a polytheist to guide him to Madinah during his migration⁽¹⁾.

Second Evidence: Appointing someone as an agent to pay zakât is a matter of trust, and a non-Muslim is not suitable for such a responsibility. ‘Umar ibn Al-Khattâb (may Allah be pleased with him) objected to Abû Mûsâ Al-Ash‘arî (may Allah be pleased with him) appointing a Christian as his scribe, saying: “Do not honor them when Allah has humiliated them, do not bring them close when Allah has distanced them, and do not trust them when Allah has deemed them treacherous” ⁽²⁾.

Counter-argument: A non-Muslim may be trustworthy with wealth, as Allah says: **{“Among the People of the Scripture are those whom, if you entrust with a great amount [of wealth], will return it to you.”}** ⁽³⁾ Moreover, ‘Umar’s objection was in the context of appointing non-Muslims for positions of authority in Muslim affairs.

Third Evidence: The distribution of zakât to its rightful recipients is an act of devotion for which the one performing it is rewarded. A non-Muslim is not qualified for such an act⁽⁴⁾.

Counter-argument: The distribution of zakât is not a purely religious act of worship that would necessitate the one performing it to be Muslim. Rather, it is the execution of a Muslim’s act of worship, similar to the case of slaughtering the sacrificial animal.

Evidence for the Third Opinion: Those who argue that appointing a non-Muslim to pay zakât is impermissible except in situations where the agent’s intention is not required, base their reasoning on the idea that a non-Muslim is not

(1) Related by Al-Bukhârî in his Sahîh, from the narration of ‘Â’ishah (may Allah be pleased with her), who said: "The Messenger of Allah (peace and blessings be upon him) and Abû Bakr hired a man from Banî Ad-Dîl, a skilled guide who was still following the religion of the disbelievers of Quraysh..." related in the Book of Hiring, Chapter on Hiring Non-Muslims in Times of Necessity, ḥadîth no. (2263), [3: 88].

(2) Related by Al-Bayhaqî in As-Sunan Al-Kubrâ, Book of the Judge’s Manners, Chapter on It Is Not Fitting for a Judge or Governor to Employ a Non-Muslim Scribe or Place a Non-Muslim in a Position of Superiority over a Muslim, ḥadîth no. (20409), [10: 216]. Al-Albânî authenticated it; see: Irwâ’ Al-Ghalîl [8: 255].

(3) [Âl-‘Imrân (The Household of ‘Imrân): 75].

(4) See: At-Tawdîh [3: 272]; Kashshâf Al-Qinâ’ [2: 261].

eligible to have the proper intention. Thus, appointing them is only valid in cases where the agent's intention is not necessary, such as when the intention of the principal (*muwakkil*) occurs at the time of payment to the eligible recipients ⁽¹⁾.

This argument is addressed in the same way as the second evidence for the first opinion.

Evidence for the Fourth Opinion: Those who argue for permissibility on the condition that the recipient is specified, base their reasoning on the idea that appointing a non-Muslim with the designation of the recipient is merely a form of assistance and employment, which is permissible. However, if the recipient is not designated, this grants the non-Muslim authority to give to whomever they wish and withhold from whomever they wish, which is impermissible⁽²⁾.

Preferred Opinion: The most correct opinion—Allah knows best—is the fourth opinion, which allows appointing a non-Muslim to pay zakât on the condition that the rightful recipient is specified. In this case, the non-Muslim's role is limited to delivering the money. It is also preferable not to inform the non-Muslim that it is zakât or charity to avoid a situation where they feel superior to the Muslim recipient.

Reasons for Preferring This Opinion:

- 1- The strength of the evidence supporting the fourth opinion, and the rebuttals that apply to the evidence supporting the other opinions.
- 2- The more correct view, as previously mentioned, is that the agent's intention is not required for paying zakât⁽³⁾. Thus, it cannot be said that it is impermissible solely because a non-Muslim is ineligible to have the proper intention.
- 3- The fourth opinion strikes a balance between the evidence for both permissibility and prohibition. By stipulating that the recipient must be specified, the agency is restricted to mere delivery, thereby preventing the non-Muslim from exercising *ijtihâd* in determining and identifying the rightful recipients.

(1) See: An-Najm Al-Wahhâj [9: 502]; Al-Insâf [3: 197].

(2) See: Al-Muhimmât fî Sharh Ar-Rawdah wa Ar-Râfi' [3: 576].

(3) See: p. 302 of this book.

The Role of Intention on the Issue: The issue of intention is significant because those who hold the first opinion argue for the general permissibility of appointing a non-Muslim to pay zakât based on the claim that the agent's intention is not required. Thus, there is no barrier to appointing a non-Muslim. On the other hand, those who hold the third opinion prohibit appointing a non-Muslim except in situations where the agent's intention is not necessary, as a non-Muslim is not qualified to have the proper intention.

Topic Five: Sufficiency of One Partner's Intention in Paying Zakâh on Behalf of the Company⁽¹⁾

The Issue: If one partner pays the Zakâh on behalf of the company without the permission or authorization of the other partners, does this suffice, and is their Zakâh considered paid by his intention?

Scholarly Opinions: The jurists have differed on this issue, presenting three positions:

- 1- **First Opinion:** It is not valid to pay Zakâh on behalf of the other partners under any circumstances. This is the position of the Hanafi school⁽²⁾, the preferred view among the Hanbalîs, and the explicitly stated opinion of Imâm Ahmad⁽³⁾.
- 2- **Second Opinion:** It is only valid if the partner paying the Zakâh is a relative or a close friend of the other partners, and it is customary for him to pay Zakâh on their behalf. This view aligns with the Mâlikîs' position, which allows paying Zakâh on behalf of another without their permission only if the payer is a relative or friend and customarily does so due to the close relationship⁽⁴⁾. There is no distinction between a partner and others in this view because, according to the Mâlikîs, a

(1) **Partnerships are divided into two types: Shirkah al-Milk, which is the shared ownership of one asset by two or more individuals, and Shirkah al-'Aqd, which is a contract between two or more individuals to undertake a financial venture, with profits shared according to an agreed-upon ratio. See:** Al-Mabsût [11/151], Al-Sharh Al-Saghîr by Al-Dardîr [3/455], Tuhfat Al-Muhtâj [5/281], Sharh Al-Zarkashî (4/124), Majallat Al-Ahkâm Al-'Adliyyah (p. 254).

(2) **See:** Al-Mabsût [3/40], Al-Hidâyah [3/14], Tabyîn Al-Haqâ'iq [3/323].

(3) **See:** Al-Ri'âyah Al-Sughrâ fi Al-Fiqh [1/419], Al-Mubdi' (2/297), Al-Insâf [3/86].

(4) **See:** Al-Furûq [3/186-187], Mawâhib Al-Jalîl [2/356], Lawâmi' Al-Durar [3/569].

partner can only act with the permission of the other partner or within the scope of commercial activities that benefit the partnership if authorized⁽¹⁾.

- 3- Third Opinion: It is valid to pay Zakâh on behalf of the other partners without restriction. This is the position of the Shâfi'îs⁽²⁾ and is also a view within the Mâlikî⁽³⁾ and Hanbalî⁽⁴⁾ schools.

The First Set of Evidence and Arguments:

Evidence for the First Opinion (Non-Validity of Paying Zakâh on Behalf of Others Without Permission):

- 1- First Evidence: The partner who pays Zakâh is neither a guardian (*walî*) nor an agent (*wakîl*) for the other partners in discharging Zakâh. Thus, paying Zakâh on behalf of their wealth constitutes an overreach, making the payer liable, and the action does not suffice on their behalf⁽⁵⁾.
- 2- Second Evidence: Zakâh is an act of worship that requires an intention (*niyyah*). Since the other partners did not give permission for the Zakâh to be paid, their intention is absent, and thus the payment is invalid on their behalf⁽⁶⁾.

Evidence for the Second Opinion (Validity with Exceptions for Close Friends or Relatives):

Proponents of the second opinion use the same evidence as those supporting the first opinion. However, they justify the exception for close friends or relatives who commonly pay Zakâh on behalf of others by arguing that:

Agency (*niyâbah*) can be established through custom, not just verbal agreement. If it is customary for someone (like a friend or relative) to pay Zakâh on

(1) See: 'Uyûn Al-Masâ'il (p. 555), Bidâyat Al-Mujtahid [4/39], Al-Qawânîn Al-Fiqhiyyah (p. 187).

(2) See: Asnâ Al-Matâlib [1/350], Tuhfat Al-Muhtâj [3/231], Fath Al-Mu'în Bi Sharh Qurrat Al-'Ayn (p. 247).

(3) This is based on their view that intention is not a requirement for paying Zakâh and that it is permissible for someone else to discharge it, as with debt payments. See: Al-Tanbîh 'Alâ Mabâdi' Al-Tawjîh [2/836], Jâmi' Al-Ummuhât (p. 166), Mawâhib Al-Jalîl [2/356].

(4) See: Al-Furû' [3/466], Al-Insâf [3/86], Kashshâf Al-Qinâ' [2/202].

(5) See: Al-Mabsût [3/40], Sharh Muntahâ Al-Îrâdât [1/392].

(6) See: Hâshiyat Ibn 'Âbidîn [4/328], Al-Furûq [3/187], Al-Insâf [3/86].

behalf of the payer, it is understood that the payer consents to this, and their satisfaction is equivalent to intention (*qasd*)⁽¹⁾.

Counterargument: Even if we concede that satisfaction was achieved, we do not agree that satisfaction can substitute for intention. Paying Zakâh requires the payer's specific intention.

Evidence for the Third Opinion (Validity of Paying Zakâh Without Permission):

First Evidence: The partners' wealth is mixed (due to the partnership), making it like a single entity. Thus, paying Zakâh on the entire amount by one partner suffices without needing permission from the others, as his intention covers their obligation⁽²⁾.

Counterargument: Even though the wealth is mixed, the ownership is divided among multiple individuals. The intention of paying Zakâh is required from each individual, and without permission, intention is absent, meaning the payment does not suffice.

Second Evidence: The partnership contract implies that each partner is, in effect, granting permission to the other to discharge Zakâh on their behalf, as they have entered a partnership under Islamic law, which mandates the payment of Zakâh⁽³⁾.

Reasons for Preference:

- 1- The strength of the evidence supporting the first opinion and its immunity from critique, alongside the weakness of the evidence for the other two opinions.
- 2- The arguments presented by proponents of the third opinion cannot be relied upon to justify the sufficiency of one partner's intention for the others. The intention (*niyyah*) must originate from the individual responsible for paying Zakâh. Another person's intention cannot replace this, except in cases where there is a legitimate guardian (*walî*), such as when the imâm collects Zakâh from those who refuse, or when the guardian of a child or an insane person pays Zakâh on their behalf.

(1) See: Hâshiyat Al-'Adawî 'Alâ Sharh Al-Khurashî [3/43].

(2) See: Asnâ Al-Matâlib [1/350], Tuhfat Al-Muhtâj [3/231].

(3) See: Al-Furû' [3/466], Kashshâf Al-Qinâ' [2/202].

Seventh Treatise

Intention to Count Mandatory Spending and Gifts Given on Holidays and Special Occasions as *Zakâh*

Topic One: Intention to Count Mandatory Spending Imposed by the Judge as *Zakâh*

The Issue: If someone has poor relatives whom they are legally obligated to support by order of a judge, can they pay the required amount with the intention of fulfilling their *Zakâh* obligation? Does this count as *Zakâh*?

Clarification of the Dispute:

- 1- The scholars unanimously agree that it is not permissible to give *Zakâh* to parents or children for whom financial support is obligatory, nor can such support be counted as *Zakâh*⁽¹⁾.
- 2- There is consensus among the scholars that it is not permissible to count the financial support of one's wife as *Zakâh*.⁽²⁾
- 3- However, the scholars differed regarding other relatives beyond those mentioned, resulting in two opinions.

Opinions on the Issue:

First Opinion: It is not permissible to count the mandatory financial support ordered by the judge as *Zakâh*, and doing so does not fulfill the *Zakâh*

(1) See: *Al-Ijmâ' by Ibn Al-Mundhir* (p. 48), *Badâ'i' Al-Sanâ'i'* [2/49], *Fath Al-Qadîr* [2/269], *Al-Mudawwanah* [1/344], *Al-Tabsirah by Al-Khamî* [3/966], *Al-Umm* (2/87), *Al-Majmû'* [6/229], *Al-Mughnî* [2/482], *Al-Insâf* [3/254].

(2) See: *Al-Ijmâ' by Ibn Al-Mundhir* (p. 49), *Tuhfat Al-Fuqahâ'* [1/304], *Tabyîn Al-Haqâ'iq* [1/301], *Al-Dhabb 'An Madhhab Al-Imâm Mâlik* (2/502), *Al-Dhakhîrah* [3/141], *Al-Muhadhdhab* [1/320], *Al-Bayân* [3/443], *Al-Mughnî* [2/484], *Kashshâf Al-Qinâ'* [2/290].

obligation. This is a view held by some Hanafis, related from Abû Yûsuf⁽¹⁾, and is the position of the Mâlikîs⁽²⁾, Shâfi'îs⁽³⁾, and the official view of the Hanbalîs⁽⁴⁾.

Second Opinion: It Is Permissible to Pay the Mandatory Support Ordered by the Judge with the Intention of Discharging Zakâh, and This Suffices

This is the other view held by the Hanafis and is related from Imâm Abû Hanîfah⁽⁵⁾. This opinion is also applicable to the Hanbalîs regarding relatives who are not direct ascendants or descendants (*non-umûd an-nasab*)⁽⁶⁾, based on the second narration in their school, which permits giving Zakâh to such relatives, even if the giver is obligated to support them. If Zakâh is given to them and they become self-sufficient, the obligation of support is lifted⁽⁷⁾.

Evidence and Discussions:

Evidence for the First Opinion (Non-Permissibility):

- 1- First Evidence: Counting the mandatory support ordered by the judge as Zakâh benefits the payer because it protects their wealth from having to pay both support and Zakâh. This is akin to using Zakâh for personal benefit, which is not allowed⁽⁸⁾.
- 2- Second Evidence: The mandatory support is a debt upon the payer, just

(1) See: 'Uyûn Al-Masâ'il (p. 39), Al-Muhîr Al-Burhânî (2/288), Al-Bahr Al-Râ'iq [2/217].

(2) **The principle in their madhhab is that it is impermissible to give Zakâh to those whose financial support is obligatory, and Zakâh cannot be used to discharge the obligatory support.** See: Al-Mudawwanah [1/344], Manâhij Al-Tahşîl (2/308), Al-Dhakhîrah [3/141].

(3) **They explicitly state that it is not permissible to substitute obligatory support with Zakâh.** See: Bahr Al-Madhhab [6/371], Al-Ghâyah fî Ikhtisâr Al-Nihâyah (5/61), Kifâyat Al-Nabîh.

(4) **Al-Mardâwî stated that the official position is that it is not permissible to give Zakâh to relatives whose financial support is obligatory. Hanbalî scholars justify this by noting that it would result in personal benefit by eliminating the obligatory support.** See: Al-Mubdi' [2/422], Al-Insâf [3/258], Kashshâf Al-Qinâ' [2/293].

(5) See: Al-Mabsût [9/7], Al-Muhîr Al-Burhânî [2/288], Hâshiyat Ibn 'Âbidîn [2/257].

(6) **This refers to parents and grandparents [upward] and children and grandchildren [downward].** See: Al-Insâf [3/254], Kashshâf Al-Qinâ' [2/290].

(7) See: Sharh Al-Zarkashî [2/430], Al-Mubdi' [2/422], Al-Insâf [3/259].

(8) See: Al-Tabsirah [3/966], Al-Hâwî Al-Kabîr [10/519], Sharh Al-Zarkashî [2/429].

as Zakâh is a debt upon them. It is not permissible to eliminate two debts with a single payment⁽¹⁾.

- 3- Third Evidence: The relative entitled to mandatory support is considered wealthy due to their right to this support, and Zakâh cannot be given to someone who is wealthy⁽²⁾.

Counterargument: The amount of mandatory support may not be sufficient to lift the recipient out of poverty or need.

Evidence for the Second Opinion (Permissibility):

First Proof: The Prophet (peace and blessings be upon him) said: «*Giving charity to a poor person is charity, and (giving) to a relative is two things, charity and upholding the ties of kinship.*» ⁽³⁾.

The Reasoning:

The ḥadīth is general in its praise for giving charity to relatives, without distinguishing between those whose financial support is obligatory on the giver and those for whom it is not. This indicates the permissibility of giving zakâh to those whose financial support is obligatory on the giver⁽⁴⁾.

The Discussion has Two Aspects:

- First Aspect: It is argued that the ḥadīth may pertain to voluntary charity or zakâh given to those whose financial support is not obligatory on the giver, and thus it should be understood in that way⁽⁵⁾.
- Second Aspect: Even if we concede the generality of the ḥadīth, it does not imply the permissibility of counting obligatory financial support as zakâh, which is a separate matter beyond merely giving zakâh to those

(1) See: Al-Mabsût [5/196], Al-Ghâyah fî Ikhtisâr Al-Nihâyah [5/61].

(2) See: Al-Umm [2/87], Al-Mubdi' [2/423].

(3) Related by Ibn Mâjah in his Sunan in the chapter on Zakâh, under the section "The virtue of charity," ḥadīth no. 1844 [1/591]. Also related by Al-Tirmidhî in his Sunan, under the section on Zakâh, ḥadīth no. 658 [2/39], and by Al-Nasâ'î in Al-Sunan Al-Kubrâ, under the chapter "Zakâh for relatives," ḥadīth no. 2374 [3/73]. Al-Tirmidhî classified it as a "ḥasan" ḥadīth, and Ibn Al-Mulaqqin authenticated it. See: Al-Badr Al-Munîr [7/411].

(4) See: Sharḥ Az-Zarkashî [2: 430], Al-Mubdi' [2: 422].

(5) See: Al-Mughnî [2: 483].

for whom financial support is obligatory.

Second Proof: Obligatory financial support is considered a form of kinship care according to Islamic law, and zakâh can serve in its place, as it fulfills the purpose of meeting the need⁽¹⁾.

Discussion: It is argued that one obligatory duty cannot substitute for another. ⁽²⁾

Third Proof: An analogy is made to purchasing a relative with the intention of expiation (*kaffârah*), which fulfills the expiation even though the purchase is an obligatory act of kinship care and kindness. Thus, giving obligatory financial support with the intention of zakâh is analogous⁽³⁾.

The Discussion has Two Aspects:

- First Aspect: The original ruling is not accepted, as one who purchases their father with the intention of expiation does not fulfill the expiation⁽⁴⁾.
- Second Aspect: The analogy is refuted by the case of parents and children, as there is agreement on the impermissibility of counting their financial support as zakâh.

Conclusion: The strongest opinion—Allah knows best—is the first one, which is the impermissibility of giving obligatory financial support, enforced by a judge, with the intention of zakâh.

Reasons for Preferring the First Opinion:

- 1- The strength of the evidence supporting the first opinion, and the second opinion's lack of sound evidence upon examination.
- 2- Zakâh was not legislated for the zakâh giver (*muzakkî*) to use it to cover their obligatory expenses. The opinion allowing this focuses on the benefit of the zakâh giver rather than the benefit of those entitled to receive it.

(1) See: Al-Mabsûṭ [7: 9], Al-Muḥîṭ Al-Burhânî [2: 288].

(2) See: Fath Al-Qadîr [2: 270].

(3) See: Al-Muḥîṭ Al-Burhânî [2: 288].

(4) See: Al-Mughnî [9: 559], Sharḥ Az-Zarkashî [7: 140].

Second Topic: Intention to Count Gifts Given on Holidays and Occasions as Zakâh

Case Scenario:

Is it permissible for a person to intend that what they give to relatives on holidays and special occasions, such as weddings or the custom of “*‘îdiyyah*”⁽¹⁾, be counted as zakâh? Does this fulfill the obligation of zakâh if the recipient is among those entitled to it and whose financial support is not obligatory?

Opinions on the Matter:

Scholars have differed on this issue with two main views:

- First Opinion: It is permissible and counts as zakâh without restriction. This is the opinion of the Ḥanafis⁽²⁾.

I did not find a specific text on this issue from the Shâfi‘is, but it can be inferred from their general position that it is permissible to give zakâh to relatives who are not under one’s financial obligation, even if the giver regularly gives them non-zakâh gifts⁽³⁾.

- Second Opinion: It is not permissible, and it does not count as zakâh if it involves retaining wealth or avoiding reproach.

This is the position of the Mâlikîs. It is mentioned in *Al-Mudawwanah*: «*Mâlik disliked a man giving his zakâh to his relatives whom he does not financially support because they would praise him or because of past obligations or anticipated favors from him*»⁽⁴⁾. This dislike is understood as a prohibition, because they stated that if such reasons are absent, it does count as zakâh, implying that it does not count when those reasons exist⁽⁵⁾.

This is also the opinion of the Ḥanbalîs⁽⁶⁾. Imâm Aḥmad was asked: «*Can a person give zakâh to his brother or sister?*» He replied: «*Yes, as long as he*

(1) ‘Îdiyyah: A gift given on the day of ‘Îd. See: Mu‘jam Al-Lughah Al-‘Arabiyyah Al-Mu‘âṣirah [2: 1573].

(2) See: Al-Binâyah [3: 314], Al-Jawharah An-Nayyirah [1: 131], Ḥāshiyat Ibn ‘Âbidîn [2: 356].

(3) See: Al-Umm [7: 68], Al-Ḥâwî Al-Kabîr [8: 535], Al-Majmû‘ [6: 220].

(4) Al-Mudawwanah [1: 347].

(5) See: At-Taḥdhîb Fî Ikhtisâr Al-Mudawwanah [1: 444], Adh-Dhabb ‘An Madhhab Al-Imâm Mâlik [2: 500], At-Tanbîhât Al-Mustanbaṭah by Qâḍî ‘Iyâḍ [1: 395].

(6) See: Al-Mughnî [2: 513], Al-Furû‘ [4: 361], Al-Iqnâ‘ [1: 299].

does not use it to protect his wealth or to avoid reproach.» ⁽¹⁾ Imâm Aḥmad further clarified the meaning of «*avoiding reproach*,» saying: «*Avoiding reproach means that one of his relatives has a right over him, and he compensates them with zakâh*» ⁽²⁾.

Shaykh Muḥammad ibn ‘Uthaymîn also chose this opinion⁽³⁾.

Evidence and Discussions:

Evidence for the First Opinion:

Those who permit it argue that the gifts given on holidays and special occasions are not obligatory for the giver, and the giver can withhold them. Thus, it is permissible to count them as zakâh, because the zakâh giver does not benefit from retaining their wealth⁽⁴⁾.

Discussion:

The benefit of retaining wealth does not necessarily require that the money retained must be obligatory to give, such as in the case of obligatory financial support. Rather, the benefit of retaining wealth in this case occurs when giving on holidays and special occasions is customary, and hardship arises from not giving. Therefore, the zakâh is intended to retain wealth.

Evidence for the Second Opinion:

Those who prohibit it base their argument on the following:

- First Evidence: Counting what is given on holidays and special occasions as zakâh involves preserving and protecting wealth, allowing the

(1) Masâ’il Al-Imâm Aḥmad narrated by Abû Dâwûd (p. 119).

(2) Al-Furû‘ [4: 361].

(3) Shaykh Muḥammad ibn ‘Uthaymîn was asked: "If an ‘aqîqah is slaughtered on the occasion of a guest's arrival, does it fulfill the ‘aqîqah?" He replied: "No, it does not fulfill the ‘aqîqah, because the act of worship must be sincere. If this door were opened, it would close the door to the ‘aqîqah, and every time someone had an occasion, they would slaughter something and intend it as an ‘aqîqah... Also, the purpose of this action is to preserve and protect one's wealth. Imâm Aḥmad, may Allah have mercy on him, mentioned regarding the zakâh payer that they should neither show favoritism in their zakâh nor use it to avoid reproach, nor to preserve and protect their wealth." Majmû‘ Fatâwâ Wa Rasâ’il Al-‘Uthaymîn [25: 208].

(4) See: Al-Binâyah [3: 314].

zakâh giver to benefit from their zakâh, which is impermissible⁽¹⁾.

- Second Evidence: If the zakâh giver distributes their zakâh in the form of gifts given on holidays and special occasions, they benefit by avoiding reproach and gaining praise, which is not allowed⁽²⁾.

Conclusion:

The stronger opinion—Allah knows best—is the second one, which is that it is impermissible to count what is given on holidays and special occasions as zakâh, and it does not fulfill the obligation of zakâh, even if the recipient is eligible, provided two conditions are met:

- First: The zakâh giver's wealth is preserved and retained. This occurs when giving on holidays and special occasions is necessary. If it is not necessary, and the giver can abstain, then they are not retaining their wealth by counting it as zakâh.
- Second: The zakâh giver uses the zakâh to avoid reproach. This happens if the zakâh giver knows that by not giving to a relative or friend on such an occasion, they would be criticized, so they give with the intention of zakâh.

If one of these two conditions is not met—such as when the poor recipient does not have a close relationship with the zakâh giver, and the giver gives zakâh in the form of an 'idiyyah or a wedding gift, then it is permissible because the reason for prohibition does not exist.

Reasons for Preference:

- 1- The strength of the evidence supporting the second opinion and its immunity from critique, as well as the weakness of the evidence for the first opinion.
- 2- Zakâh is a right of Allah (SWT), and it is impermissible for the one giving Zakâh to benefit from it by preserving their wealth or avoiding criticism, as this contradicts sincerity.



(1) See: Mawâhib Al-Jalîl [2: 343], Al-Mughnî [2: 513], Al-Iqnâ' [1: 299].

(2) See: Al-Mudawwanah [1: 347], Al-Furû' [4: 361].

Eighth Treatise

Giving Charity Without the Intention of Paying *Zakâh*

Topic 1: Giving All of One's Wealth Without the Intention of Paying Zakâh

The Issue: If a person gives all their wealth or the full zakâh-nisâb to the poor and needy after the completion of the zakâtable year and the obligation of zakâh has been established, but without intending to pay zakâh, does this absolve them of the obligation of zakâh on the given wealth or not?

The Opinions on the Issue: The scholars differed on this matter, holding two positions:

- 1- First Opinion: Zakâh is not absolved. This is the view of Zufar and one narration from Muhammad ibn Al-Hasan of the Hanafis⁽¹⁾, as well as the view of the Mâlikîs⁽²⁾, Shâfi'îs⁽³⁾, and Hanbalîs.⁽⁴⁾
- 2- Second Opinion: Zakâh is absolved. This is the position of the Hanafis⁽⁵⁾ and the view of Qâdî Abû Ya'îla from the Hanbalîs.⁽⁶⁾

There is also a possible view from the Mâlikîs based on their opinion that the intention (*niyyah*) is not a condition for paying zakâh. If intention is not required, then giving to the eligible recipients is sufficient in any form. ⁽⁷⁾

(1) See: Al-Ikhtiyâr [1: 101], Al-'Inâyah [2: 170], Al-Binâyah [3: 312].

(2) See: Al-Dhakhîrah [3: 137], Mawâhib Al-Jalîl [2: 357], Lawâmi' Al-Durrar [3: 570].

(3) See: Bahr Al-Madhhab [3: 83], Al-Bayân [3: 400], Al-Majmû' [6: 185].

(4) See: Al-Mughnî [2: 477], Al-Mubdi' [2: 393], Kashshâf Al-Qinâ' [2: 260].

(5) See: Al-Mabsût [3: 34], Badâ'i' Al-Sanâ'i' [2: 40], Al-Muḥîṭ Al-Burhânî [2: 296].

(6) See: Al-Furû' [4: 250], Al-Inṣâf [3: 194].

(7) See: Al-Tanbîh 'Alâ Mabâdi' Al-Tawjîh [2: 836], Jâmi' Al-Ummahât (p. 166), Sharḥ Ibn Nâjî Al-Tanûkhî [1: 303].

Evidence and Discussions:

Evidence for the First Opinion: Those who argue that zakâh is not absolved provide the following evidence:

First Evidence: zakâh is a deliberate act of worship that requires an intention (*niyyah*). Therefore, if one does not intend zakâh, it is not absolved.⁽¹⁾

Second Evidence: If one does not intend the obligatory zakâh, it is not absolved, just as if someone prays one hundred rak'ât without intending the obligatory prayer, it does not absolve them of the obligation.⁽²⁾

Third Evidence: Allocating wealth to the poor and needy can be done for different reasons, such as zakâh, expiation, vows, or voluntary charity. Therefore, the intention (*niyyah*) is necessary, similar to how it is in prayer.⁽³⁾

Fourth Evidence: If one disposes of their wealth after zakâh becomes obligatory without the intention of paying zakâh, they remain liable for it. This is analogous to someone who gifts or destroys their wealth after zakâh has become obligatory.⁽⁴⁾

Rebuttal: There is a distinction here. Gifting or destroying wealth after zakâh is due results in liability because the obligation does not reach the rightful recipients. In this case, however, the required amount did reach the eligible recipients.

Fifth Evidence: If a person gives part of their wealth without the intention of paying zakâh after it has become obligatory, zakâh is not absolved. The same should apply if they give all of their wealth.⁽⁵⁾

Rebuttal: There is a difference here, as the required amount is definitely included when one gives all their wealth, unlike giving only part.

Evidence for the Second Opinion:

First Evidence: The core of zakâh is transferring ownership to the rightful recipients in a charitable manner, and this has occurred. By giving everything,

(1) See: Badâ'i' Al-Sanâ'i' [4: 20].

(2) See: Mawâhib Al-Jalîl [2: 357], Bahr Al-Madhhab [3: 83], Al-Mughnî [2: 477].

(3) See: Al-Inshâf [3: 194], Al-'Inâyah [2: 170].

(4) See: Al-Majmû' [6: 185], Asnâ Al-Maṭâlib [1: 360].

(5) See: Al-Mughnî [2: 477].

the person has also given the required portion, thus zakâh is absolved. ⁽¹⁾

Rebuttal: Fulfilling the core requirement is insufficient when a condition, such as intention, is missing.

Second Evidence: The intention is required for specification, but the portion due in zakâh is automatically specified when everything is given, without other parts competing for this specification, similar to fasting during Ramadan, which does not require specific intention due to the lack of competing obligations. ⁽²⁾

Third Evidence: The intention is required solely for designation, as the obligatory portion to be paid in zakat is already designated by setting it apart without the interference of other portions, just as fasting during Ramadan does not require specification due to the absence of competing obligations. ⁽³⁾

Rebuttal: The obligation is either specified by the one fulfilling it or by the lawgiver (*Sharî'ah*). The former did not occur, and the latter only applies when there is no competing obligation, such as fasting in Ramadan, which differs from zakâh. ⁽⁴⁾

Response: The obligation in this case is indeed specified by the one fulfilling it, as inferred from the circumstances. It is apparent that a person would not voluntarily give charity and neglect the obligatory duty. Similarly, when someone makes an unrestricted intention for Ḥajj while owing the obligatory Ḥajj, it counts as the Ḥajj of Islâm. ⁽⁵⁾

(1) See: Al-Mabsûṭ [3: 34], Al-Ikhtiyâr Li Ta'lîl Al-Mukhtâr [1: 101].

(2) See: Badâ'i' Al-Şanâ'i' [2: 40], Ḥāshiyat Al-Shalabî 'Alâ Tabyîn Al-Ḥaqâ'iq [1: 257].

(3) See: Al-Hidâyah [1: 97], Al-Ikhtiyâr Li Ta'lîl Al-Mukhtâr [1: 101], Al-Binâyah [3: 312].

(4) See: Al-'Inâyah Sharḥ Al-Hidâyah [2: 170].

(5) See: Ibid.

Counter-response: The assumption that the obligation is automatically specified is not accepted. The analogy with Ḥajj is flawed, as Ḥajj is more strongly emphasized. This is evidenced by the fact that even a corrupt Ḥajj is considered valid and binding. Furthermore, Ḥajj does not require a distinct intention between obligatory and voluntary acts, as it is not repeatedly obligated.⁽¹⁾

Fourth Evidence: The individual has acted appropriately with their wealth, and they are considered beneficent. A beneficent person is not liable for any wrongdoing.⁽²⁾

Rebuttal: It cannot be accepted that the person acted without fault. In fact, they neglected their duty by disposing of the required portion of zakâh without the intention of paying it, and thus they are liable.⁽³⁾

Preference:

The more likely correct view—Allah knows best—is the first opinion, which holds that zakâh is not absolved for one who gives all their wealth or the full zakâh-nisâb after the year has passed without intending to pay zakâh.

Reasons for Preference:

- 1- The strength and soundness of some of the evidence for the first opinion, as well as the weakness of the second opinion's evidence.
- 2- The earlier conclusion is that intention is a necessary condition for the payment of zakâh. Since this condition is absent, the payment is not valid.⁽⁴⁾
- 3- The arguments of the second opinion rely on mere preference (*istiḥsân*), which contradicts proper analogy (*qiyâs*).

Topic 2: Giving Part of the Wealth Liable for Zakâh Without the Intention of Paying It

The Issue:

If someone gives part of their wealth, on which zakâh has become obligatory, to the poor or needy without the intention of paying zakâh—for example, if they own 40,000 and give 20,000 of it in charity without intending it as

(1) See: Al-Ḥawî Al-Kabîr [3: 404], Sharḥ Al-Zarkashî [2: 566].

(2) See: Al-Furû' [4: 249].

(3) See: Mawâhib Al-Jalîl [2: 357].

(4) See: p. 220 of this book

zakâh—does this absolve them of the zakâh or not?

Clarification of the Dispute:

- 1- The scholars unanimously agree that if a person gives part of their wealth, on which zakâh is obligatory, without the intention of paying zakâh, this does not absolve them of the zakâh due on their entire wealth. For instance, if someone with 40,000 gives 20,000 without intending zakâh, the zakâh due on the full 40,000 is not waived by consensus.⁽¹⁾
- 2- However, the scholars differ regarding the zakâh on the portion given to charity. If someone gives 20,000 out of 40,000 without intending zakâh, does the zakâh on the 20,000 (which would be 500) fall away, leaving them only liable for the zakâh on the remaining 20,000 (500)? Or are they still responsible for the zakâh on the full 40,000, which would be 1,000?

The Opinions on the Matter:

The scholars differ on this issue, with two primary opinions:

- 1- First Opinion: The zakâh on the portion given in charity is not absolved, and the individual remains liable for the zakâh on the entire amount. This is the well-known opinion of the Hanafis, the view of Abû Yûsuf⁽²⁾, and the position of the Mâlikîs⁽³⁾, Shâfi'îs⁽⁴⁾, and Hanbalîs.⁽⁵⁾
- 2- Second Opinion: The zakâh on the portion given in charity is absolved. This is the view of Muhammad ibn Al-Hasan from the Hanafis.⁽⁶⁾

(1) See: Badâ'i' As-Sanâ'i' [2: 40]; Al-Bahr Ar-Râ'iq [2: 227]; Mawâhib Al-Jalîl [2: 285]; Sharh Az-Zurqânî [2: 239]; Al-Bayân [3: 400]; Al-Majmû' [6: 185]; Al-Mughnî [2: 477]; Kashshâf Al-Qinâ' [2: 260].

(2) See: Badâ'i' As-Sanâ'i' [2: 40]; At-Tanbîh 'Alâ Mushkilât Al-Hidâyah [2: 819]; Hâshiyat Ibn 'Âbidîn [2: 270].

(3) See: Al-Bayân Wa At-Tahsîl [2: 480]; Mawâhib Al-Jalîl [2: 285]; Sharh Al-Khurashî 'Alâ Mukhtasar Khalîl [2: 172].

(4) See: Al-Bayân [3: 400]; Al-Majmû' [6: 185]; Asnâ Al-Matâlib [1: 360].

(5) See: Al-Mughnî [2: 477]; Ar-Ri'âyah As-Sughrâ Fî Al-Fiqh [1: 428]; Ma'ûnah Uwlî An-Nuhâ [3: 299].

(6) See: Al-Muhît Al-Burhânî [2: 279]; Al-Jawharah An-Nayrah [1: 115]; Tabyîn Al-Haqâ'iq [1: 258].

Evidence and Discussions:

Evidence for the First Opinion:

Those who argue that the zakâh on the portion given in charity is not absolved provide the following evidence:

First Evidence: If someone gives all of their wealth after zakâh has become obligatory without intending to pay zakâh, it does not absolve them, as the condition of intention (*niyyah*) is missing. Therefore, if giving all the wealth does not absolve zakâh, giving only part of it without the intention of zakâh is even more likely not to absolve it. ⁽¹⁾

Second Evidence: The second argument is that after the passing of one lunar year, the *nişâb* becomes shared between the owner of the wealth and the poor. If the wealth owner gives charity from part of it, his action pertains to his own portion and not the portion of the poor. The right of the poor remains fully intact in the remaining amount, and thus, it becomes obligatory to pay it. ⁽²⁾

Third Evidence: Those among the Ḥanafis who argue that zakâh is not waived in this case, unlike the previous case, base their argument on the following: the basic principle is the requirement of intention for the valid discharge of zakâh, and that it cannot be validly discharged without intention. Zakâh is only waived for someone who donates all their wealth because their ownership of the wealth is nullified for the sake of a charitable act. This does not apply to someone who gives charity from part of their wealth. ⁽³⁾

Evidence for the Second Opinion: Those who argue that zakâh is waived for the portion given in charity base their argument on the following:

First Evidence: The amount that must be paid as zakâh is spread throughout the wealth. If one gives all their wealth in charity without intending it as zakâh, the zakâh obligation is waived. Similarly, if one gives part of it, the zakâh for the donated portion is waived, since the part is considered analogous to the whole. ⁽⁴⁾

(1) See: Al-Bayân [3: 400].

(2) See: Al-Muhîṭ Al-Burhânî [2: 279].

(3) See: Badâ'i' As-Sanâ'i' [2: 40].

(4) See: Badâ'i' As-Sanâ'i' [2: 40]; Al-Jawharah An-Nayrah [1: 116].

This argument is refuted in two ways:

- 1- The principle upon which the analogy is based is not accepted; we do not concede that if someone donates all their wealth without intending zakâh, the zakâh obligation is waived.
- 2- There is a distinction between donating part of one's wealth and donating all of it. When donating part of the wealth after the passing of one lunar year, the remaining amount of the *nişâb* is subject to the zakâh obligation. This is unlike the case where all of the wealth is donated, in which case the wealth subject to zakâh no longer exists.⁽¹⁾

Second Evidence: The analogy to the destruction of part of the wealth after zakâh becomes obligatory is made here. Zakâh is waived for the destroyed portion of the wealth, and similarly, zakâh should be waived for the portion of the wealth that is given in charity.⁽²⁾

This is refuted by differentiating between the two cases: the destruction of wealth is beyond the individual's control, thus excusing them. However, giving charity without the intention of zakâh is a voluntary action, and hence the individual is not excused.⁽³⁾

Preference:

The preferred opinion – and Allah knows best – is the first view, which states that zakâh on the portion donated from one's wealth does not cease for the person who donates part of their wealth after a full lunar year without the intention of paying zakâh.

Reasons for Preferring this View:

- 1- The strength and soundness of the evidence for the first opinion, which remains unchallenged, and the weakness of the evidence for the second opinion.
- 2- The previous preference for the requirement of the intention to pay zakâh⁽⁴⁾, and here, the condition is absent, so what is given does not suffice.

(1) See: At-Tanbîh 'Alâ Mushkilât Al-Hidâyah [2: 819].

(2) See: Tabyîn Al-Haqâ'iq [1: 258].

(3) See: Previous reference.

(4) See: p. 220 of this book.

The previous preference that zakâh does not cease for the one who donates all of their wealth without the intention of paying zakâh⁽¹⁾, thus, it is even more fitting that zakâh does not cease for the one who donates part of their wealth.



(1) See: p. 325 of this book.

Ninth Treatise

The Impact of Intention on Paying Zakâh on Behalf of Another

First Topic: The Impact of Intention on Paying Zakâh on Behalf of the Deceased

The Issue: If zakâh becomes obligatory on a person who has the ability to pay it but dies before doing so, is zakâh to be paid from their estate, or does the obligation lapse? Additionally, what role does the intention play in this matter?

Scholarly Opinions on the Issue: The jurists have differing opinions on this issue, which can be summarized into three main views:

First Opinion: Zakâh does not lapse upon death and must be paid from the deceased's entire estate. This is the view of al-Ḥasan al-Baṣrî, 'Aṭâ' ibn Abî Rabâḥ, Qatâdah, and al-Zuhrî.⁽¹⁾ It is also the position of the Shâfi'îs⁽²⁾ and the official view of the Ḥanbalî school⁽³⁾.

The Ḥanafîs hold this view specifically for the *ḥushr zakâh*⁽⁴⁾, while the Mâlikîs adopt it for the current year's zakâh⁽⁵⁾ on outward wealth.⁽⁶⁾

(1) See: *Ikhtilâf Al-'Ulamâ'* by Al-Marwazî [p. 509], *Al-Ishrâf* by Ibn Al-Mundhir [3:58], *Al-Mughnî* [2:509].

(2) See: *Al-Hâwî Al-Kabîr* [3:367], *Al-Muhadhdhab* [1:321], *Asnâ Al-Maṭâlib* [1:356].

(3) See: *Masâ'il Al-Imâm Ahmad* narrated by his son 'Abdullâh [p. 225], *Al-Tadhkirah fî al-Fiqh* (p. 80), *Al-Inṣâf* [3:41].

(4) If the yield from the land is still standing, zakât (almsgiving) remains obligatory. However, for prior, ruined (decayed) yields, zakât is waived for the deceased according to them. Abû Ḥanîfa has a narration reported by Ibn al-Mubâarak that the tithe's zakât, like other types, is waived upon death without exception. See: *al-Mabsûṭ* (3/50), *Badâ'i' al-Ṣanâ'i'* (2/53), *al-Baḥr al-Râ'iq* (2/227).

(5) This refers to the year in which the person died and did not neglect the payment of zakât. See: *al-Tabsira* (8/3605), *al-Tanbîhât al-Mustanbaṭa* (1/321).

(6) They hold a view that no distinction should be made between apparent and hidden =

Second Opinion: Zakâh is nullified by death and is not to be paid on behalf of the deceased unless they had made a bequest to that effect. This is the opinion of al-Nakha‘î, al-Sha‘bî⁽¹⁾, Ibn Sîrîn, and al-Thawrî⁽²⁾, and it is the view of the Ḥanafîs⁽³⁾. It is also related as the early opinion of al-Shâfi‘î.

Furthermore, it is the view of the Mâlikîs regarding missed zakâh from past years and the zakâh on hidden wealth for the current year. ⁽⁴⁾

Third Opinion: Zakâh should be paid on behalf of the deceased from one-third of their estate, even if they did not make a bequest, but it should not exceed one-third. This is the opinion of al-Awzâ‘î, al-Layth ibn Sa‘d⁽⁵⁾, and one narration from the Ḥanbalîs. ⁽⁶⁾

Evidence and Discussion of the Opinions:

Evidence for the First Opinion: Those who support the view that zakâh does not lapse upon death and must be paid from the deceased's entire estate cite several arguments, including:

First Evidence: Allah's statement: {*“[This will be settled] after any bequest they [may] have made or debt”*} ⁽⁷⁾

= wealth. Accordingly, the zakât for the current year should be taken directly from the principal of the estate's assets, a view supported by Ashhab. See: al-Nawâdir wa al-Ziyâdât (2/196), al-Bayân wa al-Taḥṣîl (3/411), Sharḥ al-Kharshî ‘alâ Khalîl (1848), al-Sharḥ al-Kabîr, al-Dardîr (4/442).

(1) He is ‘Âmir ibn Sharâhîl ibn ‘Abd Dhî Kibâr Al-Hamdânî Al-Sha‘bî Al-Kûfî, Abû ‘Amr, one of the senior scholars of the Tâbi‘în. He was born six years into the caliphate of ‘Umar ibn Al-Khaṭṭâb, may Allah be pleased with him. Al-Ḥasan Al-Baṣrî said about him: "By Allah, he was highly knowledgeable, possessed great patience, and was of a great position in Islam." He passed away in 104 AH. For his biography, see: Ṭabaqât Al-Fuqahâ’ [p. 81], Wafayât Al-A‘yân [3:12].

(2) See: Al-Ishrâf ‘Alâ Madhâhib Al-‘Ulamâ’ [3:58], Al-Majmû‘ [5:335], Al-Mughnî [2:509].

(3) See: Sharḥ Mukhtaṣar Al-Ṭahâwî [2:357], Badâ‘î‘ Al-Ṣanâ‘î‘ [2:53], Al-Muḥîṭ Al-Burhânî [2:301].

(4) This was related by Abû Al-Ma‘âlî Al-Juwaynî, who deemed it weak, and this view was followed by ‘Izz Al-Dîn ibn ‘Abd Al-Salâm. See: Nihâyat Al-Maṭlab [11:184], Al-Ghâyah fî Ikhtîṣâr Al-Nihâyah [4:413].

(5) See: Al-Tabsirah [8:3605], Mawâhib Al-Jalîl [6:379], Al-Sharḥ Al-Kabîr by Al-Dardîr [4:441].

(6) See: Al-Ishrâf ‘Alâ Madhâhib Al-‘Ulamâ’ [3:58], Al-Majmû‘ [5:335], Al-Mughnî [2:509].

(7) [Sûrat Al-Nisâ’ [Women]: 7]

Indication: Allah made the division of inheritance contingent upon the settlement of debts and bequests, and this includes the debt of zakâh.⁽¹⁾

Second Evidence: Zakâh is a right owed to Allah, and it does not expire upon death as debts between people do.

Strength of the Argument: The verse is general and does not differentiate between debts owed to Allah and those owed to people.⁽²⁾

Third Evidence: Allah says: {***“Take, [O Muhammad], from their wealth a charity by which you purify them and cause them increase”***}⁽³⁾

Indication: The verse is general, encompassing the obligation to take zakâh from wealth both during life and after death.⁽⁴⁾

Third Evidence: Ibn ‘Abbâs (may Allah be pleased with him) related that a woman from the tribe of Juhainah came to the Prophet (peace and blessings be upon him) and said: «My mother had vowed to perform Ḥajj but she passed away before fulfilling it. Should I perform Ḥajj on her behalf?» The Prophet (peace and blessings be upon him) replied: «*Yes, perform Ḥajj on her behalf. If your mother had a debt, would you not have paid it off? Fulfill your obligation to Allah, for Allah is more deserving of repayment*».⁽⁵⁾

Indication: The Prophet (peace and blessings be upon him) referred to Ḥajj as a debt and indicated that it is more deserving of fulfillment after death than debts owed to people. There is no difference between Ḥajj and zakâh, as both are obligatory acts of worship for which delegation is permitted.⁽⁶⁾

Fourth Evidence: Zakâh is an obligatory right for the eight categories of recipients, and it is permissible to make a bequest for its payment. Therefore, it should not be nullified by death, just as personal debts are not.⁽⁷⁾

(1) See: Al-Muḥallâ [4:203].

(2) See: Sharḥ Mukhtaṣar Al-Ṭaḥâwî [2:359].

(3) [At-Tawbah [Repentance]: 103].

(4) See: Al-Hâwî Al-Kabîr [3:367].

(5) Related by Al-Bukhârî in his Ṣaḥîḥ, Book of Ḥajj, Chapter on Ḥajj and Vows on Behalf of the Deceased, and a Man Performing Ḥajj on Behalf of a Woman, ḥadîth no. 1852 [3/18]; a similar narration is related by Muslim in his Ṣaḥîḥ, Book of Fasting, Chapter on Making Up Fasts for the Deceased, ḥadîth no. 1148 [2/804].

(6) See: Al-Majmû‘ [5:335], Al-Mumti‘ fî Sharḥ Al-Muqni‘ [1:680].

(7) See: Al-Hâwî Al-Kabîr [3:367], Al-Ta‘lîqah Al-Kabîrah by Abû Ya‘lâ [1:85].

This was challenged in two ways:

- First Argument: It is not accepted that zakâh is a right for the eight categories. Rather, it is a right owed to Allah because it is an act of worship. It only becomes a right for the eight categories upon its distribution to them. If the obligated person dies before delivering the zakâh to its rightful recipients, the obligation is nullified because, after death, the wealth becomes subject to the rights of the heirs.⁽¹⁾

Response: Zakâh involves both a right owed to Allah and a right owed to people. Allah says: {**«Indeed, charitable donations are for the poor and the needy»**}⁽²⁾. This indicates that the recipients have a rightful claim to it. ⁽³⁾

- Second Argument: Zakâh differs from debts. Debts can be repaid on behalf of the debtor during their lifetime without their permission, and thus it can be repaid after their death without a bequest. Zakâh, however, is different.⁽⁴⁾

Response: Zakâh can be paid on behalf of another person without their permission if their consent or intention is unattainable, such as in the case of someone who refuses to pay, or in the case of a child, an insane person, or an absentee. In the case of the deceased, their consent and intention are similarly unattainable, so zakâh can be paid on their behalf.

Fifth Evidence: Zakâh is either obligatory on the individual's liability or on the wealth itself. If it is said that it is obligatory on the wealth, then after the passing of a full year (*ḥawl*), the rightful recipients become partners in the wealth in proportion to the zakâh owed. Therefore, it should not be nullified by death. If it is said that it is obligatory on the individual's liability, then what has absolved them from this liability? Thus, it is proven that it is not nullified by death. ⁽⁵⁾

The Ḥanafis base their argument for the non-forfeiture of 'Ushr zakâh specifically for the deceased on Allah's statement: {**«O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth»**} ⁽⁶⁾

(1) See: Al-Ghurrat Al-Manîfah (p. 60).

(2) [At-Tawbah [Repentance]: 60].

(3) See: Tafsîr Al-Bayḍâwî [3:86].

(4) See: Al-Tajrîd [3:1239].

(5) See: Al-Muḥallâ [4:204].

(6) [Sûrat Al-Baqarah (The Cow): 267].

Indication: Allah attributed the produce from the land to the whole (owner and recipients), making it a shared right between the owner and the entitled recipients. A shared right does not lapse due to the death of one of the partners. ⁽¹⁾

Counter-argument: All zakâtable wealth involves a shared right between the owner and the recipients, so there is no basis for distinguishing 'Ushr from other forms of zakâh.

Evidence for the Second Opinion:

Those who hold the view that zakâh is nullified by death and is not to be paid on behalf of the deceased except by bequest cite several proofs, including:

First Evidence: The Prophet (peace and blessings be upon him) said: «*The servant says: <My wealth, my wealth,> yet he only has three things from his wealth: what he ate and consumed, what he wore and wore out, or what he gave in charity and thus saved. Everything else is gone, left behind for others.*».⁽²⁾

Indication: The ḥadīth implies that wealth which the owner did not use during their lifetime provides no benefit after death, as it belongs to the heirs. This suggests that zakâh should not be taken from the deceased's estate. ⁽³⁾

Counter-argument: Paying zakâh from the deceased's estate is not a form of benefiting the deceased from their wealth but rather a fulfillment of their debt, which Islamic law mandates to be settled.

Second Evidence: Ibn 'Abbâs (may Allah be pleased with him) related that the Prophet (peace and blessings be upon him) said: «*Whoever possesses wealth sufficient to perform Ḥajj but does not do so, or has wealth on which zakâh is due but does not pay it, will ask to return [to life] at the time of death.*».⁽⁴⁾

(1) See: Badâ'i' Al-Şanâ'i' [2:53].

(2) Related by Muslim in his Şaḥīḥ, Book of Zuhd and Raqâ'iq, ḥadīth no. 2959 [4:2273].

(3) See: Al-Mabsûṭ [2:186], Al-Ghurraṭ Al-Manîfah [p. 60].

(4) Related by 'Abd Al-Razzâq in his Muşannaf, Book of Manâsik, Chapter: One Who Dies Without Performing Ḥajj, ḥadīth no. 9665 [5:362]; and by Al-Tirmidhî in his Sunan, both as a raised narration and a mawqûf report from Ibn 'Abbâs, in the Chapters of Qur'ân Exegesis, Chapter on Sûrat Al-Munâfiqûn, ḥadīth no. 3316 [5:418]. In its chain, there is Yahyâ ibn Abî Ḥayyâh, about whom Al-Tirmidhî said after transmitting this ḥadīth: "He is not strong in ḥadīth." See: Sunan Al-Tirmidhî [5:418]. Al-Albânî declared this ḥadīth weak. See: Silsilat Al-Aḥâdīth Al-Ḍa'îfah Wa Al-Mawḍû'ah [10:164].

Indication: The ḥadīth indicates that a person who neglected to pay zakāh requests to return at the time of death to fulfill this obligation. This suggests that the opportunity to pay zakāh ends with death, hence the deceased cannot fulfill this obligation posthumously.⁽¹⁾

This argument has been addressed in two ways:

First Point: The ḥadīth is weak and cannot be used as valid evidence.⁽²⁾

Second Point: The ḥadīth actually supports the obligation of zakāh and its continued requirement after death. The deceased requests to return to life in order to pay the zakāh, indicating that if zakāh were nullified by death, there would be no need to request to return. The request is due to the missed performance of the act, not the nullification of the obligation.⁽³⁾

Third Evidence: Zakāh is an act of worship that can only be validly performed with the intention of the person upon whom it is obligatory, whether they perform it themselves or delegate someone to do it on their behalf. If the person dies without making a bequest, the condition of intention is not fulfilled, and thus, the obligation lapses.⁽⁴⁾

This argument has been countered in two ways:

First Point: Zakāh is a practical form of worship that the Sharī‘ah has restricted to the individual responsible for it. No one else can take their place. The role of the heir or executor is limited to implementing what the deceased had already arranged concerning their wealth before death, or what they had bequeathed.⁽⁵⁾

argument: Zakāh is a financial act of worship, and such acts are only completed through the payment of wealth. This payment can be made either by the individual obligated or by someone acting on their behalf. The executor acts on behalf of the deceased in all matters related to their wealth, including paying zakāh.⁽⁶⁾

(1) See: Sharḥ Mukhtaṣar Al-Ṭaḥāwī [2:358].

(2) See: Silsilat Al-Aḥādīth Al-Ḍa‘īfah Wa Al-Mawḍū‘ah [10:164].

(3) See: Al-Hāwī Al-Kabīr [3:367].

(4) See: Al-Tajrīd [3:1237], Al-Mabsūṭ [2:186], Badā‘i‘ Al-Ṣanā‘i‘ [2:53].

(5) See: Nihāyat Al-Maṭlab [11:184], Al-Ta‘līqah Al-Kabīrah by Abū Ya‘lā [1:84].

(6) See: Al-Tajrīd [3:1237], Al-Mabsūṭ [2:186], Badā‘i‘ Al-Ṣanā‘i‘ [2:53].

Counter-argument:

Evidence indicates that the imâm or his deputy may forcibly collect zakâh from those who refuse to pay, as indicated by the general statement of Allah: {«**Take from their wealth a charity**»} ⁽¹⁾, and the Prophet's (peace and blessings be upon him) statement: «*Whoever withholds it, we will take it from them, along with half of their wealth, by the command of our Lord, Exalted and Glorious*» ⁽²⁾. Zakâh is also obligatory on the wealth of minors, as unanimously agreed upon by the Companions, as previously discussed. ⁽³⁾

Second Point: The intention was legislated to distinguish zakâh from other forms of giving. After death, only the obligatory zakâh is to be paid from the deceased's wealth, so there is no need for intention. ⁽⁴⁾

Response: Expiations and vows are paid from the deceased's estate, thus intention is necessary to distinguish them.

Fourth Evidence: Zakâh is an intended act of worship, and therefore, like ṣalâh, it is nullified upon death. ⁽⁵⁾

The analogy to ṣalâh is contested on two points:

- 1- First Point: The premise is not accepted, as ṣalâh is not nullified upon death; it remains an obligation on the person who did not perform it, and they meet Allah with it still due. ⁽⁶⁾
- 2- Second Point: The analogy between zakâh and ṣalâh is flawed because ṣalâh cannot be fulfilled by a bequest or proxy, and thus it is not performed on behalf of the deceased. Zakâh, on the other hand, allows for proxy and can be performed after death. ⁽⁷⁾

Fifth Evidence: Two rights are present in the estate: the right of Allah (*zakâh*) and the right of people (inheritance). When both rights pertain to the same wealth, the right of people takes precedence, as in the case of amputating the hand for theft or retribution. ⁽⁸⁾

(1) [At-Tawbah [Repentance]: 103].

(2) Previously cited, see: p. 257 of this book.

(3) See: p. 296 of this book.

(4) See: Al-Ta'liqah Al-Kabîrah by Abû Ya'îla [1:86].

(5) See: Sharḥ Mukhtaṣar Al-Ṭahâwî [2:357], Al-Tajrîd [3:1237].

(6) See: Al-Hâwî Al-Kabîr [3:367].

(7) ~~See~~ Al-Majmû' [5:336], Al-Mughnî

(8) See: Al-Tajrîd [3:1238], Al-Mabsûṭ [2:186].

Response: Zakâh is either tied to the wealth or the liability of the deceased prior to the inheritance being transferred, thus it takes precedence over inheritance, similar to a debt.

Sixth Evidence: Zakâh is an obligation of charity, as it does not involve a financial exchange. Since charitable obligations lapse upon death, zakâh should also lapse.⁽¹⁾

Response: Zakâh is a mandatory duty, a right of Allah and the people, and it is not a voluntary charity that lapses upon death.

The Mâlikîs argued that zakâh for past years and for hidden wealth in the current year lapses upon death because, if the deceased did not bequeath its payment, it is possible that they had already paid it secretly. Given this possibility, the heirs are not obligated to pay it, unlike the case of outward wealth, where its payment status can be known. Additionally, for the current year's zakâh, the default assumption is non-payment.⁽²⁾

Response: This issue concerns someone who is known to have died without paying their zakâh, not someone whose situation is unknown. Therefore, there is no reason to differentiate between zakâh for past years and the current year, nor between hidden and outward wealth.

Evidence for the Third Opinion: I have not found specific evidence for those who argue that zakâh should be taken from one-third of the deceased's estate even if they did not bequeath it, and that it should not exceed one-third. However, they could argue that if zakâh were taken from the entire estate, it would cause harm to the heirs. Thus, limiting it to one-third prevents the heirs from suffering due to the deceased's negligence.

Counter-argument: This reasoning is refuted by the fact that debts are paid from the entire estate, even if it harms the heirs. Likewise, zakâh is considered a debt on the deceased's liability.

Preferred View:

The stronger opinion-Allah knows best-is the first one, which holds that zakâh is not nullified by death and must be paid from the deceased's entire estate, whether they bequeathed it or not.

(1) See: Badâ'i' Al-Şanâ'i' [2:53].

(2) See: Al-Ishrâf 'Alâ Nukat Masâ'il Al-Khilâf [1:418].

Reasons for Preferring this View:

- 1- The strength and soundness of the evidence for the first opinion, and the weaknesses in the evidence for the second and third opinions.
- 2- Zakâh is an act of worship in which delegation is permitted, so it is not nullified by death, similar to Ḥajj.
- 3- The view that zakâh is nullified by death would harm the rightful recipients, as their entitlement to the wealth arises after zakâh becomes due.

Role of intention (*niyyah*) on the issue:

The fundamental disagreement between the Ḥanafis and the majority of scholars on this issue stems from the Ḥanafî position that zakâh is nullified by death and cannot be paid on behalf of the deceased unless they made a bequest. This is because, according to the Ḥanafis, delegation in zakâh is only valid with the explicit order and intention of the one obligated to pay. If their order and intention are not possible, then zakâh is not paid on their behalf. Hence, they state that zakâh cannot be forcibly taken from a defaulter; instead, the person is imprisoned until they pay it.⁽¹⁾ Additionally, they hold that zakâh is not obligatory on the wealth of minors or the insane. Therefore, they argue that zakâh is only taken from the deceased's estate if they specifically bequeathed it, in line with their principle.⁽²⁾

In contrast, the majority of scholars permit delegation in the payment of zakâh by compulsion, and the deputy's intention suffices when the payer's intention is unattainable⁽³⁾. This is the stronger view, as discussed previously, and accordingly, zakâh should be paid from the deceased's estate, with the executor's or heirs' intention substituting for that of the deceased.⁽⁴⁾

Second Topic: The Impact of Intention in Paying Zakâh on Behalf of Another with Permission

The Scenario: If someone seeks permission from another to pay zakâh on their behalf and the person agrees, is it permissible to do so? What if the per-

(1) See: Al-Tajrîd [3:1237], Al-Baḥr Al-Râ'iq [2:227].

(2) See: Al-Mabsûṭ [2:162], Tabyîn Al-Ḥaqâ'iq [1:252], Al-Binâyah [3:297].

(3) See: 'Aqd Al-Jawâhir Al-Thamīnah [1:214], Al-Dhakhīrah [3:100], Nihâyat Al-Maṭlab [11:184], Rawḍat Al-Ṭalībīn [2:209], Al-Ta'liqah Al-Kabīrah by Abû Ya'lâ [1:84], Al-In-ṣâf [3:195].

(4) See: p. 297 of this book.

son paying intends to claim the zakâh for themselves? Or if they intended to pay on behalf of the person but did not inform them?

Ruling on the Issue: The jurists unanimously agree that it is permissible to pay zakâh on behalf of another person with their permission, whether the payment is made from the other person's wealth or from one's own wealth.⁽¹⁾

Evidence for this Ruling:

- 1- First Evidence: Obtaining permission is akin to being appointed as an agent, and appointing an agent to pay zakâh is permissible without any disagreement.⁽²⁾
- 2- Second Evidence: The permission given by the person obligated to pay zakâh (the muzakkî) is inherently tied to their intention. Once the muzakkî's intention is established, there is no barrier to fulfilling the obligation.⁽³⁾
- 3- Third Evidence: Delegation is permissible in zakâh, so having another person pay on their behalf with their permission is equivalent to the muzakkî paying it themselves. The primary objective is achieved, which is to worship Allah by fulfilling the needs of those in poverty.⁽⁴⁾

Note: If the person authorized to pay zakâh uses their own wealth to pay on behalf of the muzakkî, they must intend specifically that the payment is zakâh on behalf of the other person. This is because they are paying from their own wealth, and therefore the action requires intention to differentiate between paying on behalf of themselves and on behalf of another. This follows the same reasoning applied to an agent paying zakâh from their own wealth on behalf of the one who appointed them.⁽⁵⁾

Role of intention (*niyyah*) on the issue:

The role of intention in this matter is evident in that the jurists consider the permission granted by the muzakkî to be inherently tied to their intention.

(1) See: Al-Aṣl [2:152], Al-Mabsûṭ [3:35], Al-Binâyah [3:489], Sharḥ Al-Talqîn [2:801], Mawâhib Al-Jalîl [2:356], Lawaami' Al-Durar [4:179], Al-Bayân [3:402], Al-Najm Al-Wahhâj [3:254], Asnâ Al-Maṭâlib [2:240], Al-Kâfi [1:471], Al-Inṣâf [3:198], Kashshâf Al-Qinâ' [2:262].

(2) See: Al-Majmû' [6:136], Al-Mughnî [3:96], Kashshâf Al-Qinâ' [2:262].

(3) See: Mawâhib Al-Jalîl [2:356], Tuḥfat Al-Muḥtâj [5:247].

(4) See: Al-Mabsûṭ [3:35].

(5) See: p. 305 of this book.

Therefore, once permission is given for someone to pay zakâh on their behalf, the intention is considered fulfilled, and the payment is valid. ⁽¹⁾

Third Topic: The Effect of Intention in Paying Zakâh on Behalf of Someone Else Without Their Permission

Problem Statement:

If someone pays zakâh on behalf of another person without their permission, does this payment fulfill the zakâh obligation of the owner of the wealth? What role does intention play in this?

Scholarly Opinions on the Issue:

The scholars have differed on this issue, resulting in four primary opinions:

First Opinion: The payment is not valid unless the payment comes from the wealth of the person liable for zakâh⁽²⁾, and they later approve of it, provided the money remains in the hands of the zakâh recipient. This is the view of the Ḥanafis⁽³⁾, a position mentioned by al-Mardâwî in *Al-Inṣâf*⁽⁴⁾, and also supported by others without the condition of the money remaining with the recipient⁽⁵⁾. This opinion was also chosen by Shaykh Muhammad ibn ‘Uthaymîn.⁽⁶⁾

Second Opinion: The payment is not valid unless the person acting on behalf of the zakâh-payer is a relative or close friend, from whom it is customary to pay zakâh without explicit permission due to the closeness of their relationship. This is the dominant view in the Mālikī school.⁽⁷⁾

Third Opinion: The payment is valid under all circumstances. This is another opinion within the Mālikī school.⁽⁸⁾

(1) **See:** Al-Binâyah [3:489], Mawâhib Al-Jalîl [2:356], Tuḥfat Al-Muḥtâj [5:247], Al-Inṣâf [3:198].

(2) **Meaning: approval after the payment. See:** Badâ’i’ As-Ṣanâ’i’ (2/41), Al-Mubdi’ (2/395).

(3) **See:** Badâ’i’ As-Ṣanâ’i’ (2/41), Al-Binâyah (3/314), Al-Fatâwâ Al-Hindiyyah (1/171).

(4) **See:** Al-Inṣâf (3/199).

(5) **See:** Ar-Ri’âyah As-Sughrâ fî Al-Fiqh (1/430), Al-Furû’ (4/254).

(6) **See:** Ash-Sharḥ Al-Mumtî’ ‘Alâ Zâd Al-Mustaqni’ (6/204). Shaykh Muhammad ibn ‘Uthaymîn also issued a fatwa in the Nûr ‘Alâ Ad-Darb program, in which he ruled that the payment is not valid under any circumstances. **See:** Fatâwâ Nûr ‘Alâ Ad-Darb by Al-‘Uthaymîn (2/10).

(7) **See:** Al-Furûq (3/186-187), Mawâhib Al-Jalîl (2/356), Lawâmi’ Ad-Durar (3/569).

(8) **This is based on the opinion within their school that intention is not a condition for =**

Fourth Opinion: The payment is not valid under any circumstances. This is the view of the Shâfi'îs⁽¹⁾, an alternative position within the Ḥanbalî⁽²⁾ school, and the choice of the Permanent Committee for Islamic Research and Iftâ' in Saudi Arabia.⁽³⁾

The Evidence and Discussions of the Opinions:

Evidence for the First Opinion:

The proponents of the first opinion, who argue that the payment is invalid if made from the deputy's wealth, even with the approval of the owner, provided the following evidence:

First Evidence: zakâh is an act of worship that includes a sense of trial and test. This meaning is not fulfilled if it is performed without the intention or permission of the one upon whom zakâh is obligatory⁽⁴⁾.

Second Evidence: The one obligated to pay zakâh has no ownership over the amount being paid, and they do not acquire it through approval, so zakâh cannot be performed on their behalf⁽⁵⁾.

Counter-Argument: This is refuted by the case where someone pays zakâh from their own wealth on behalf of another with their permission. In this scenario, the obligated person also does not own the amount being paid, yet the zakâh is still valid.

Third Evidence: The amount paid belongs to the person who made the payment, and they did not become a deputy for someone else due to the lack of permission. Therefore, it is considered a voluntary act on their part. The approval of the one upon whom zakâh is obligatory only affects actions that depend on their approval, as it is a matter of disposing of their property⁽⁶⁾.

Counter-Argument: Approval after the act does not have any effect, whether the payment is made from the wealth of the person obligated to pay zakâh

= **paying Zakâh.** See: Al-Furûq (3/187), Jâmi' Al-Ummahât (p. 166), Sharḥ Ibn Nâjî At-Tanûkhî (1/303).

(1) See: Al-Ḥawî Al-Kabîr (10/481), Baḥr Al-Madhhab (3/195), Asnâ Al-Maṭâlib (2/240).

(2) See: Al-Mubdi' (2/395), Al-Inṣâf (3/199), Kashshâf Al-Qinâ' (2/262).

(3) See: Fatâwâ Al-Lajnah Ad-Dâ'imah, **Second Collection** (8/339).

(4) See: Al-Mabsût (3/35).

(5) See: Badâ'i' As-Ṣanâ'i' (2/41).

(6) See: Al-Baḥr Ar-Râ'iq (2/227), Al-Furû' (4/254).

or from the wealth of the one paying it. This is because zakâh is an act of worship that requires intention before performance.

They also argued that the payment is valid if it is made from the wealth of the person obligated to pay zakâh, and the payment is approved, based on the following:

First Evidence: The statement of Allah (SWT): ***{“And cooperate in righteousness and piety, but do not cooperate in sin and aggression.”}***⁽¹⁾.

Reasoning: Paying zakâh on behalf of another is a form of cooperation in righteousness and piety. However, it might cause harm to the owner of the wealth by paying from what they intended to keep, or by requiring them to replace what was paid. Therefore, the matter depends on their approval⁽²⁾.

Counter-Argument: This would be valid if intention were not a condition for the validity of zakâh. However, since intention is required, it is not valid to pay without the permission of the one obligated to pay zakâh due to the absence of intention.

Fourth Evidence: The hadîth of Abû Hurayrah (RA), who said: The Messenger of Allah (peace and blessings of Allah upon him) entrusted me with guarding the zakâh of Ramadan. A man came and began to take handfuls of food, so I caught him and said: «I will surely take you to the Messenger of Allah (peace and blessings of Allah upon him).» He said: «I am in need, I have dependents, and I am in severe distress.» So I let him go. The next morning, the Prophet (peace and blessings of Allah upon him) said: «*O Abû Hurayrah, what did your prisoner do last night?*» I said: «O Messenger of Allah, he complained of severe need and dependents, so I had mercy on him and let him go.» The Prophet (peace and blessings of Allah upon him) said: «*Indeed, he lied to you and he will return.*»⁽³⁾

Indication of Evidence: Abû Hurayrah (may Allah be pleased with him) gave zakâh to someone who claimed poverty, despite the fact that he was only entrusted with its safekeeping and had not been given permission to distribute

(1) [Sûrat Al-Mâ'idah (The Table): 3].

(2) See: Badâ'i' As-Şanâ'i' (5/149).

(3) Related by Al-Bukhârî in his Şaḥîḥ, Book of Agency, Chapter: If a man appoints an agent, and the agent omits something and the principal approves it, it is valid; and if he lends it for a fixed term, it is valid (Hadîth no. 2311), (3/101).

it. However, the Prophet (peace and blessings of Allah upon him) approved of this action and validated it⁽¹⁾.

Counter-argument: It is argued that Abû Hurayrah (may Allah be pleased with him) acted as a representative of the Imâm in distributing the zakâh to those entitled to it, and such an action does not require the Imâm's intention. This differs from acting on behalf of someone who is obligated to give zakâh by distributing it from their wealth without their permission, as in that case, the intention of the owner of the wealth is required. Therefore, this hadîth does not serve as valid evidence for this issue.

Third Evidence: That permission given after an action is equivalent to permission given before it, and the intention of the one distributing zakâh stands in place of the intention of the owner of the wealth⁽²⁾.

Counter-argument: It is argued that representation in the intention of giving zakâh is only valid when the owner's intention is not possible. In this case, the owner's intention was not impossible, and we do not accept that permission after the distribution is equivalent to permission before it because the intention is not valid after the act of distribution.

Fourth Evidence: The distributed amount is not considered to have been given on behalf of the distributor, since it does not belong to him, but it is considered zakâh for the owner if he approves it⁽³⁾.

Counter-argument: The fact that the distributed amount does not count as being on behalf of the distributor does not necessitate that it counts as zakâh on behalf of the owner, because zakâh requires the intention of the owner, which is not present here.

Those who argue for the condition of approving the transaction while the wealth remains with the recipient of zakâh present the following reasoning: if the wealth perishes, its equivalent becomes a debt upon the distributor to the owner. If the owner then approves the distribution and we say that this suffices, it would become a repayment of the debt by distributing it as zakâh on behalf of the creditor, which is not permissible⁽⁴⁾.

(1) See: *Ash-Sharh Al-Mumti'* [6: 204].

(2) See: *Ar-Ri'âyah As-Sughrâ Fî Al-Fiqh* [1: 130], *Ash-Sharh Al-Mumti'* [6: 204].

(3) See: *Al-Furû'* [4: 254].

(4) See: *Badâ'i' As-Sanâ'i'* [2: 41], *Al-Inşâf* [3: 199].

Evidence of the Second Opinion: The proponents of the second opinion base their argument for non-sufficiency on the same evidence used by the proponents of the first opinion. They also argue that an exception is made for the case of a friend or relative who typically gives zakâh on behalf of the owner, as the representation may be implied by custom just as it is by verbal declaration. If the person distributing the zakâh typically does so for the owner, it indicates the owner's consent, and consent is considered equivalent to intent⁽¹⁾.

Counter-argument: We do not concede that the owner's consent is necessarily obtained, and even if it were, we do not accept that consent is equivalent to intent, because consent does not entail knowledge, unlike explicit permission.

Evidence for the Third Opinion: The proponents of the third opinion argue that zakâh is valid without condition, based on the idea that intention is not a prerequisite for its payment. Therefore, the act of another person discharging it on behalf of the owner is valid, just like the repayment of a debt⁽²⁾.

Counter-argument: It is argued that the claim that intention is not a prerequisite for zakâh is not accepted, as zakâh is a specific act of worship that requires intention for its performance, like other forms of worship, in contrast to debt⁽³⁾.

Evidence for the Fourth Opinion: The proponents of the fourth opinion argue for the complete invalidity of the zakâh payment in the following ways:

First Evidence: The verse of Allah Almighty: *{“And that there is not for man except that [good] for which he strives”}* ⁽⁴⁾.

Indication of Evidence: The payment of zakâh occurred without the effort of the owner of the wealth, as he neither appointed anyone nor gave permission for the zakâh to be paid on his behalf. Therefore, it does not suffice for his zakâh⁽⁵⁾.

Second Evidence: Zakâh is an act of worship that requires the intention of the one obligated to pay it, and if he did not give permission for its payment, his intention has not been fulfilled, so it does not suffice for him⁽⁶⁾.

(1) See: Hâshiyat Al-‘Adawî ‘Alâ Sharh Al-Khurashî [3: 43].

(2) See: Al-Furûq [3: 187], Sharh Ibn Nâjî At-Tanûkhî [1: 303].

(3) See: Sharh Muntahâ Al-Îrâdât [1: 520].

(4) [Sûrah An-Najm (The Star): 39].

(5) See: Al-Hâwî Al-Kabîr [10: 481].

(6) See: Al-Bayân [10: 382], Kashshâf Al-Qinâ’ [2: 262].

Third Evidence: The one who paid the zakâh is neither a guardian over the owner of the wealth nor his representative, so he cannot validly discharge zakâh on his behalf without his permission⁽¹⁾.

Preponderant Opinion: The stronger opinion, and Allah knows best, is the fourth: that paying zakâh on behalf of someone else without their permission is not valid in any case, whether the payment is from the payer's wealth or the wealth of the person obligated to pay zakâh, and whether the person obligated approves or disapproves of the payment.

Reasons for Preference:

- 1- The strength of the evidence for the fourth opinion, which remains uncontested, and the weakness of the evidence for the other opinions.
- 2- The requirement of intention for the payment of zakâh has already been established, and in this case, the condition of intention is absent without any valid excuse, so the payment is invalid.
- 3- Considering post-action approval as equivalent to prior permission is invalid in acts of worship that require intention, such as zakâh.

The Impact of Intention on the Issue:

Intention has a significant impact on this matter. The opinion of non-validity—which is the preponderant view—is based on the absence of the condition of intention without a valid excuse. The lack of permission from the owner of the wealth implies the absence of their intention, and the absence of intention means that the payment on their behalf is invalid. Consequently, the payment does not suffice, and the owner's obligation is not discharged.

Topic Four: The Impact of Intention on Reclaiming from the Person for Whom Zakâh Was Paid with Their Permission

The Scenario:

If someone pays zakâh on behalf of another person from their own wealth with the other person's permission, can they later reclaim the amount paid? And what is the impact of intention in this case?

Diverging Opinions:

- 1- The jurists unanimously agree that if someone pays zakâh on behalf

(1) See: Kashshâf Al-Qinâ' [2: 262].

of another person from their own wealth with their permission, and intended it as a donation, they cannot later reclaim the amount paid, as they are considered to have given charity on their behalf⁽¹⁾.

- 2- They differ, however, regarding cases where the payer did not intend to donate, forming three different views.

Opinions on the Issue:

First Opinion:

The payer has no right to reclaim the amount unless it was explicitly stipulated. This is the view of the Hanafis⁽²⁾ and one opinion among the Shâfi'is⁽³⁾.

Second Opinion:

The payer has the right to reclaim the amount unless they intended it as a donation, regardless of whether they explicitly intended to reclaim it or remained neutral and did not form any specific intention. This is the opinion of Abû Yûsuf from the Hanafis⁽⁴⁾, and it is also the view of the Mâlikîs⁽⁵⁾, one opinion among the Shâfi'is⁽⁶⁾, and a view among the Hanbalîs⁽⁷⁾, which was favored by Sheikh Muhammad ibn 'Uthaymîn⁽⁸⁾.

Third Opinion: The payer has the right to reclaim the amount if they intended to do so at the time of payment. This is one opinion among the Hanbalîs⁽⁹⁾.

Evidence for the Opinions and Counter-Arguments:

Evidence for the First Opinion:

Those who argue that the payer cannot reclaim the amount unless it was explicitly stipulated provide the following evidence:

(1) See: Al-Mabsût [3: 15], Badâ'i' As-Sanâ'i' [6: 132], Al-Mudawwanah [4: 70], 'Uqd Al-Jawâhir [2: 818], At-Tahdhîb [6: 174], Tuhfat Al-Muhtâj [5: 276], Al-Mughnî [4: 410], Kashshâf Al-Qinâ' [2: 262].

(2) See: Badâ'i' As-Sanâ'i' [6: 132], Al-Ikhtiyâr [3: 30], Majma' Adh-Dhamânât (p. 7).

(3) See: An-Najm Al-Wahhâj [4: 511], Nihâyat Al-Muhtâj [4: 463].

(4) See: Al-Bahr Ar-Râ'iq [2: 227], Hâshiyat Ibn 'Âbidîn [2: 269].

(5) See: At-Tâj Wa Al-Iklîl [7: 39], Mawâhib Al-Jalîl [5: 98], Ash-Sharh Al-Kabîr by Ad-Dardîr [2: 207].

(6) See: Bahr Al-Madhhab [3: 195], At-Tahdhîb [6: 174], 'Ujâlat Al-Muhtâj [2: 825].

(7) See: Sharh Az-Zarkashî [4: 121], Al-Mubdi' [4: 241], Al-Inshâf [5: 205].

(8) See: Ash-Sharh Al-Mumti' [9: 199].

(9) See: Al-Inshâf [3: 198]; Kashshâf Al-Qinâ' [2: 262]; Sharh Muntahâ Al-Irâdât [2: 128].

First Evidence:

The person obligated to pay zakâh is not compelled to do so, therefore the payer has no right to reclaim the amount unless it was stipulated, similar to someone being permitted to gift money to another person on behalf of the owner. The person who is granted permission has no right to reclaim the amount unless it was stipulated. This differs from repaying a debt on behalf of someone else, because a person is compelled to repay their debt, and by paying it, the obligation is discharged, allowing the payer to reclaim the amount without any stipulation⁽¹⁾.

Counter-argument:

This is challenged by the fact that it is not accepted that a person obligated to pay zakâh is not compelled to do so. According to the majority of scholars, if someone refuses to pay zakâh, it is forcibly taken from them⁽²⁾, and according to the Hanafis, the person is detained until they pay it⁽³⁾.

Second Evidence:

Reclaiming the amount from the person on whose behalf it was paid is not a necessary consequence of paying on behalf of another. Permission to make the payment does not imply the right to reclaim the amount unless it was stipulated⁽⁴⁾.

Counter-argument:

This is disputed by arguing that the basic rule for paying on behalf of another, with their permission, is that the payer has the right to reclaim the amount, not that it is considered a donation.

Evidence for the Second Opinion:

Those who argue that the payer has the right to reclaim the amount unless they explicitly intended it as a donation provide the following evidence:

First Evidence:

A person who is not donating would not pay on behalf of another without

(1) See: Al-Mabsûṭ [3: 15].

(2) See: 'Aqd Al-Jawâhir [1: 214]; Ash-Sharḥ Al-Kabîr by Ad-Dardîr [1: 503]; Rawḍat At-Tâlibîn [2: 209]; Asnâ Al-Maṭâlib [1: 359]; Al-Inṣâf [3: 195]; Kashshâf Al-Qinâ' [2: 261].

(3) See: At-Tajrîd [3: 1237]; Al-Baḥr Ar-Râ'iq [2: 227].

(4) See: 'Ujâlat Al-Muḥtāj [2: 825].

the intention of reclaiming the amount. If there is no intention of donating, the payer has the right to reclaim the amount, regardless of whether they explicitly intended to reclaim it or did not form any intention⁽¹⁾.

Second Evidence:

The factor that justifies reclaiming the amount is the act of fulfilling an obligation on behalf of another, and the factor that negates this right is the intention to donate. If the payer did not form any specific intention, the factor that justifies reclaiming is present, and the negating factor is absent⁽²⁾.

Evidence for the Third Opinion:

Those who argue that the payer has the right to reclaim the amount if they intended to do so at the time of payment provide the following evidence:

When someone fulfills an obligation on behalf of another without the intention of reclaiming the amount, they are considered a donor, as their action is fundamentally a form of kindness towards the one for whom the payment was made. However, if the payer intended to reclaim the amount, it indicates that they were not acting as a donor, thereby justifying the right to reclaim⁽³⁾.

Counter-argument:

against accepting that the default is kindness to the one being paid for, but rather, the default is recourse unless there is an opposing intention of voluntary donation⁽⁴⁾.

Preponderant View (*Tarjih*):

The stronger view – and Allah knows best – is the second opinion, which asserts the right to reclaim from the person for whom the zakāh was paid with their permission, unless there was the intention to donate, regardless of whether the intent to reclaim was present or absent.

Reasons for the Preference:

- 1- The strength of the evidence supporting the second opinion, which is free from refutation, while the evidence for the first and third opinions is weak.

(1) See: Ḥāshiyat Ad-Dusūqī ‘Alā Ash-Sharḥ Al-Kabīr [2: 207].

(2) See: Sharḥ Az-Zarkashī [4: 121].

(3) See: Al-Mughnī [4: 410].

(4) See: Ash-Sharḥ Al-Mumtī [9: 178].

- 2- Forgetting the intention to reclaim is a possible occurrence; thus, the person making the payment should not be deprived of their right to reclaim from the one on whose behalf it was paid if they later intend to do so, unless the impediment (i.e., the intention to donate) is present.

Impact on the Issue:

In this matter, intention is an impediment according to the proponents of the first and second opinions, while it is a condition for those holding the third opinion. The proponents of the first and second opinions consider the default to be the right of recourse unless the impediment, which is the intention to donate, is present. Those who hold the third opinion consider the default to be no recourse unless the condition, which is the intention to reclaim, is present. As for the proponents of the first opinion, what affects their view is the stipulation of recourse, not merely its intention.



Tenth Treatise

Intention for Paying *Zakāh*

on Vowed Wealth for Charity

Topic 1: The Ruling on Zakāh of Vowed Wealth for Charity

This topic discusses the ruling on zakāh of wealth that has been vowed for charity: is zakāh obligatory on such wealth or not? It is important to address this issue before delving into the matter of the intention behind paying zakāh on vowed wealth, as the latter is contingent on the ruling that zakāh is obligatory on such wealth.

The issue at Hand:

If someone vows to donate specific zakāh-eligible wealth, such as saying, «It is obligatory upon me to give this money or this livestock in charity for the sake of Allah,» but then delays giving the charity until a year passes and the wealth reaches the *niṣāb* either by itself or when combined with other assets, is zakāh obligatory on it?

Opinions on the Issue:

The jurists have differed on this issue, presenting two views:

- First Opinion: Zakāh is obligatory on wealth that has been vowed for charity. This is the view of the Ḥanafīs⁽¹⁾, one position among the Shāfiʿīs⁽²⁾, and a view within the Ḥanbalī⁽³⁾ school.
- Second Opinion: Zakāh is not obligatory on wealth that has been vowed for charity. This is the view of the Mālikīs⁽⁴⁾, the most reliable

(1) See: Al-Mabsūṭ [3: 38]; Al-Muḥīṭ Al-Burhānī [2: 295]; Faṭḥ Al-Qadīr [2: 162].

(2) See: Al-Ḥawī Al-Kabīr [3: 312]; Baḥr Al-Madhhab [3: 168]; Rawḍat At-Tālibīn [2: 199].

(3) See: Al-Mughnī [3: 70]; Al-Furūʿ [3: 463]; Al-Inṣāf [3: 28].

(4) See: Al-Mudawwanah [1: 380]; An-Nawādir Wa Az-Ziyādāt [2: 188]; Mawāhib Al-Jalīl [2: 298].

opinion among the Shāfi‘īs⁽¹⁾, and the official position of the Ḥanbalīs.⁽²⁾

Evidence and Discussions:

Evidence for the First Opinion: Those who argue that zakāh is not obligatory on wealth that has been vowed for charity present the following evidence:

First Evidence: Vowed wealth does not fully belong to its owner, as the vow gives rise to a right that precludes full ownership. Since zakāh is only obligatory on fully owned wealth, zakāh is not due on it.⁽³⁾

Argued: that not demanding the fulfillment of a vow does not mean that the vowed item remains in the possession of its owner; similar to endowment property, which exits the owner's possession without being claimed.

Second Evidence: Human debts do not prevent the obligation of zakāh, so the debt of a vow should be even more likely to require it⁽⁴⁾.

This is countered from two aspects:

- First Aspect: The assertion that human debts do not prevent the obligation of zakāh is not accepted, and this issue is a matter of dispute.
- Second Aspect: The vowed item in this case is specific and not a debt owed on one's liability, so it cannot be compared to human debt.
- Evidence for the Second Opinion: Those who argue that zakāh is not obligatory on money vowed for charity base their stance on the following:
 - First Evidence: This money became due to Allah before the passing of a full lunar year (*ḥawl*), so zakāh is not obligatory on it because its ownership has been removed⁽⁵⁾.
 - Second Evidence: Human debts attached to one's liability prevent the obligation of zakāh, so a specified vow should take precedence, as it is tied to the exact item⁽⁶⁾.

(1) See: Nihāyat Al-Maṭlab [3: 328]; Al-Bayān [3: 148]; Asnā Al-Maṭālib [1: 356].

(2) See: Al-Muḥarrar [1: 219]; Al-Inṣāf [3: 28]; Kashshāf Al-Qinā'.

(3) See: Al-Mabsūṭ [3: 38]; Al-Muḥīṭ Al-Burhānī [2: 295].

(4) See: Al-Ḥāwī Al-Kabīr [3: 312].

(5) See: Baḥr Al-Madhhab [3: 168]; Al-Furū' [3: 463].

(6) See: Al-Wasīṭ [2: 440]; Rawḍat At-Tālibīn [2: 199].

- Third Evidence: Money vowed for charity cannot be disposed of freely, so its ownership is deficient—even if we accept that ownership is not completely removed—and zakâh is only obligatory on fully owned property⁽¹⁾.

Preferred Opinion:

The more correct opinion, and Allah knows best, is the second one: that zakâh is not obligatory on money vowed for charity.

Reason for the Preference:

- 1- The strength of the evidence supporting the second opinion and their immunity from valid counterarguments, as well as the weakness of the evidence for the first opinion.
- 2- One of the conditions for the obligation of zakâh is full ownership, and money vowed for charity must be given away in its entirety, meaning it no longer remains in the owner's possession. Even if it is argued that ownership remains, it is deficient because the owner cannot freely dispose of it, thus the condition of full ownership is not fulfilled.

Topic Two: Intention of Paying Zakâh and Fulfilling a Vow Together

The Case:

According to the opinion that zakâh is obligatory on money vowed for charity, does giving it as charity for the vow suffice for its zakâh as well? Or are the vow and zakâh separate, requiring the zakâh to be paid from other funds?

An example of this is someone who vowed to donate forty specific sheep, and a full lunar year passed before the donation was made. According to the view that zakâh is obligatory on money vowed for charity, would donating the forty sheep fulfill both the vow and the zakâh obligation, or must the vow be fulfilled by donating the forty sheep and another sheep be given for zakâh?

The Opinions on the Matter:

The scholars have differed on this issue, resulting in three opinions:

- First Opinion: Giving the vowed money for charity suffices for its zakâh unconditionally. This is the well-known opinion among the Ḥanafis, who

(1) See: Fath Al-'Azîz [5: 509].

did not require the intention of zakâh when donating the vowed item. They stated that the vow is annulled to the extent of the zakâh, and what is given as charity counts for both the vow and zakâh simultaneously⁽¹⁾.

- Second Opinion: Giving the vowed money for charity suffices for its zakâh, provided the intention of both zakâh and the vow is made⁽²⁾.
- This is the more correct of the two opinions among the Ḥanbalīs⁽³⁾.
- Third Opinion: Giving the vowed money for charity does not suffice for its zakâh. This is an opinion within the Ḥanafī school⁽⁴⁾, and it is the position of the Shâfi‘is⁽⁵⁾, as well as a view among the Ḥanbalīs⁽⁶⁾.

Evidence and Discussions:

Those who hold the first opinion, that giving the vowed money suffices for its zakâh, provide the following evidence:

First Evidence: The amount of zakâh became due on the vowed money once a full lunar year passed. This is similar to a case where that amount was destroyed, in which case only the remainder would need to be fulfilled. Thus, if the entire amount is given as charity, it covers the portion due for zakâh⁽⁷⁾.

This is countered by distinguishing between the destruction of the money and the obligation of zakâh. In the case of destruction, it becomes impossible to donate all the vowed money because part of its substance is lost. However, when zakâh is due, the specific item pledged for donation remains intact, so one must fulfill the vow and still owe the zakâh amount.

(1) For example, if one vowed to donate two hundred, and a full lunar year passed, the vow would be annulled to the extent of the Zakâh. He would be required to donate one hundred and ninety-five for the vow and five for Zakâh. If he donates all two hundred, it would suffice for both the vow and Zakâh together. See: Al-Muḥīṭ Al-Burhânī [2: 295]; Al-Binâyah [3: 302]; Ḥāshiyat Ibn ‘Ābidîn [2: 261].

(2) This opinion and the first one must be qualified by the condition that the recipient of the charity is one of the eight categories eligible to receive Zakâh. I have not found anyone who explicitly mentioned this condition.

(3) See: Al-Furû‘ [3: 463]; Al-Mubdi‘ [2: 302]; Al-Inṣâf [3: 29].

(4) See: Al-Mawṣū‘ah Al-Fiqhiyyah [8: 128]; Al-Maḥajjah Al-Bayḍâ‘ [4: 292].

(5) This is based on their opinion that Zakâh is obligatory on money vowed for charity. See: Baḥr Al-Madhhab [3: 168]; Fath Al-‘Azîz [5: 509].

(6) See: Al-Furû‘ [3: 463]; Al-Mubdi‘ [2: 302]; Al-Inṣâf [3: 29].

(7) See: Al-Muḥīṭ Al-Burhânī [2: 295].

Second Evidence: The amount due for zakâh from the vowed money is determined by Allah's command, so there is no need for the individual to specify it. Donating the entire amount suffices for zakâh, even without the intention to pay it, just as it would if one gave the full amount of the *nişâb* (minimum amount subject to zakâh)⁽¹⁾.

This is countered in two ways:

- First Aspect: Specifying the zakâh amount does not replace the need for intention, as intention is required to define the action, and in this case, there was no intention of fulfilling the zakâh.
- Second Aspect: The assertion that donating the entire *nişâb* without the intention to pay zakâh would suffice is not accepted.

Evidence for the Second Opinion: Those who argue that donating the vowed money suffices for zakâh, provided that the intention for both zakâh and the vow is made, base their view on the fact that the person has vowed charity, and zakâh is also a form of charity. Therefore, if the person donates the vowed money and intends both zakâh and the vow, it suffices for both, similar to how one can perform two units of prayer with the intention of both the regular Sunnah prayer and the greeting of the mosque⁽²⁾.

This is countered in two ways:

- First Aspect: zakâh is a specific form of charity with its own distinct purpose, so it cannot be discharged simply with the general intention of charity⁽³⁾.
- Second Aspect: The regular Sunnah prayers and the greeting of the mosque are both non-obligatory (*nafl*) acts, so it is incorrect to compare obligatory actions like zakâh and vows to them, as obligatory actions do not overlap.

Evidence for the Third Opinion: Those who argue that donating the vowed money for charity does not suffice for zakâh base their view on the following:

First Evidence: The individual has vowed to donate the specific item, and by donating it, he fulfills a personal obligation. Fulfilling the vow is considered

(1) See: Al-Muḥiṭ Al-Burhânî [2: 295]; Al-Binâyah [3: 302].

(2) See: Al-Mughnî [3: 70]; Al-Furû' [3: 463]; Kashshâf Al-Qinâ' [2: 176].

(3) See (p. 229) of this book.

part of his own needs, making it analogous to spending the money on himself, thus he remains liable for the zakâh. ⁽¹⁾

The Second Evidence:

The same object cannot accommodate the fulfillment of two obligations. Therefore, the obligation applies to what is intended, and the other obligation must be compensated accordingly.⁽²⁾

Preference:

In the previous issue, I favored the opinion that zakâh is not obligatory on wealth specifically vowed for charity. However, according to the view that it is obligatory, the strongest opinion—Allah knows best—is the third one, which holds that giving the vowed wealth as charity does not suffice for its zakâh.

Reasons for Preference:

- 1- The strength of the evidence supporting the third opinion remains unchallenged, and the arguments for the first and second opinions are weak.
- 2- Both zakâh and vows (*nadhr*) are obligatory acts of worship with distinct purposes; thus, they cannot overlap.

Cause of Disagreement:

This issue stems from the differing views on whether zakâh pertains to the specific wealth (*'ayn al-mâl*) or to the individual's liability (*dhimmah*). The first and second opinions are based on the belief that zakâh is attached to the specific wealth. Therefore, they argue that if zakâh is taken from the vowed wealth, it fulfills both the vow and the zakâh obligations. The third opinion, however, is based on the view that zakâh is related to the liability of the individual, requiring the person to pay it from wealth other than that which must be given in charity as per the vow.



(1) See: Al-Mabsûṭ [38: 3].

(2) See: Al-Mabsûṭ [38:3]; Badâ'i' As-Şanâ'i' [5:87].

Eleventh Treatise

Intention to Pay Zakâh from Debt and Deposits

Topic 1: Referring a Zakâh Recipient to the Debtor with the Intention of Paying Zakâh

Description of the Issue:

If someone owes zakâh and refers the recipient or the zakâh collector to a debtor who owes him a debt, intending to fulfill his zakâh obligation through this referral, does this suffice as payment of zakâh and absolve him of the obligation simply through the referral? ⁽¹⁾

Opinions on the Issue:

The jurists have differed on this matter, resulting in two opinions:

First Opinion: Zakâh cannot be paid through referral. This is the position of the Ḥanafî school⁽²⁾, the predominant view among the Shâfi'îs⁽³⁾, and the official stance of the Ḥanbalîs⁽⁴⁾.

I did not find an explicit text on this issue from the Mâlikîs. However, their position could be inferred based on their view that referral (*hawâlah*) is only

(1) In Islamic legal terminology, it refers to the transfer of a debt from one person's liability to another's Al-Şiḥâḥ [4:1679]; Al-Misbâḥ Al-Munîr [1:157].

It is unanimously agreed upon as permissible, and it results in the release of the transferor's liability according to the majority of jurists. See: Al-Iqnâ' Fî Masâ'il Al-Ijmâ' [2:171]; Tabyîn Al-Ḥaqâ'iq [4:171]; Al-Jawharah An-Nayyirah [1:316]; Al-Ma'ûnah [P. 1228]; 'Aqd Al-Jawâhir [2:810]; Al-Bayân [6:279]; Asnâ Al-Maṭâlib [2:231].

(2) They stated that any debt for which a guarantee (*kafâlah*) is invalid, the referral (*hawâlah*) is also invalid, and they specifically mentioned that zakâh cannot be guaranteed. See: Badâ'i' As-Şanâ'i' [6:16]; Al-Binâyah [8:435]; Faṭḥ Al-Qadîr [7:180]; An-Nahr Al-Fâ'iq [3:586].

(3) See: Rawḍat Aṭ-Ṭâlibîn [4:230]; Asnâ Al-Maṭâlib [2:231]; Mughnî Al-Muḥtâj [3:191].

(4) See: Al-Inṣâf [3:251]; Ma'ûnat Uwli' An-Nuhâ [3:341]; Kashshâf Al-Qinâ' [2:269].

valid for an established debt⁽¹⁾, and zakâh, according to them, is not a binding debt, as it is waived if the *niṣâb* (the minimum amount subject to zakâh) is lost without negligence⁽²⁾.

Second Opinion:

Zakâh can be paid through referral (*ḥawâlah*). This is one opinion among the Shâfi‘îs⁽³⁾ and Ḥanbalîs⁽⁴⁾, and it is also the opinion of Ibn Ḥazm⁽⁵⁾ from the Zâhirî school⁽⁶⁾.

Evidence and Discussions:

Evidence for the First Opinion:

Those who argue that zakâh cannot be paid through *ḥawâlah* provide the following evidence:

- First Evidence: The statement of Allah, the Exalted: ***“And establish prayer and give zakâh”*** ⁽⁷⁾.
- Reasoning: Allah, Glorified and Exalted, commands giving zakâh, and *ḥawâlah* is not considered an act of giving; therefore, it does not suffice for zakâh⁽⁸⁾.
- Second Evidence: Zakâh is not truly a debt, as a debt is only discharged by payment or forgiveness, whereas zakâh is waived if the wealth is destroyed⁽⁹⁾.
- Third Evidence: Zakâh is an act of worship that must be performed as

(1) See: Taḥbîr Al-Mukhtaṣar [4:201]; Mawâhib Al-Jalîl [5:92]; Sharḥ Al-Khurashî ‘Alâ Mukhtaṣar Khalîl [6:17].

(2) See: Al-Ma‘ûnah [P. 367]; At-Tabṣirah [3:1035]; At-Tâj Wa-l-Ikleele [3:253].

(3) See: Rawḍat Aṭ-Ṭâlibîn [4:230]; Kifâyat An-Nabîh [10:101]; An-Najm Al-Wahhâj [4:480].

(4) See: Al-Furû‘ [4:343]; Al-Inṣâf [3:251–252].

(5) He is ‘Alî Ibn Ḥazm, author of Al-Muḥallâ, Abû Muḥammad Ibn Sa‘îd Ibn Ḥazm, a freedman of Yazîd Ibn Abî Sufyân. Originally from Persia, he was born in Cordoba and was the scholar of Andalusia in his time, one of the imams of Islam. He transitioned from the Shâfi‘î school to the Zâhirî school. He has numerous works, including Al-Muḥallâ bi-l-Âthâr, Al-Fiṣal fî Al-Milal wa-l-Ahwâ’ wa-n-Niḥal, and Marâtib Al-Ijmâ’. He passed away in 456 AH. For his biography, see: Wafayât Al-A‘yân [3:335]; Al-A‘lâm [4:254].

(6) See: Al-Muḥallâ [4:224].

(7) [Sûrah Al-Baqarah (The Cow): 110]

(8) See: Ma‘ûnat Uwli An-Nuhâ [3:341].

(9) See: Al-Binâyah [8:435]; Ḥâshiyat Ibn ‘Âbidîn [5:302].

commanded, by transferring it to the ownership of the recipient or their representative. Therefore, it cannot be analogized to debts in terms of the validity of *ḥawâlah*⁽¹⁾.

- Fourth Evidence: *Ḥawâlah* is a form of exchange, and it cannot be valid with something for which compensation cannot be accepted. Zakâh cannot be compensated for, thus *ḥawâlah* is invalid for zakâh.

Counter-argument: It is argued that *ḥawâlah* is not an exchange but rather an act of facilitation akin to receipt and fulfillment. Otherwise, it would be considered a form of «selling a debt for a debt» ⁽²⁾.

Evidence for the Second Opinion:

Those who argue that zakâh can be paid through *ḥawâlah* provide the following evidence:

First Evidence: Zakâh is a debt on the liable individual, and they are absolved by referring the recipient to the debtor, as with any other debt⁽³⁾.

Discussion:

It is argued that zakâh is an act of worship that requires transferring ownership, so it cannot be analogized to other debts.

Second Evidence:

Referral (*ḥawâlah*) is akin to authorizing someone to collect on one's behalf, thus it cannot be analogized to what is permissible in agency⁽⁴⁾.

Rebuttal:

It is argued that *ḥawâlah* is a form of exchange, which is only valid in transactions involving compensation. However, receiving money (*qabḍ*) is only considered an exchange in cases of sale or lease.

Preference:

The preponderant view-Allah knows best-is the first opinion, which holds that referring the zakâh recipient or the zakâh collector to the debtor with the intention of fulfilling zakâh is invalid and does not discharge the zakâh obligation.

(1) See: Al-Ghurar Al-Bahiyyah [3:146]; Maṭâlib Uwlî An-Nuhâ [2:150].

(2) See: *Al-Furû'* [4:343].

(3) See: *Rawḍat Aṭ-Ṭâlibîn* [4:230]; *Kifâyat An-Nabîh* [10:101].

(4) See: *Al-Furû'* [4: 343]; *Al-Inṣâf* [3: 252].

Reasons for Preference:

- 1- The strength of the first opinion's evidence, with most of it remaining uncontested, and the weakness of the second opinion's evidence.
- 2- Zakâh is an act of worship that requires the transfer of ownership to the recipient, and ḥawâlah may not result in such a transfer, thus zakâh cannot be paid through it.

Cause of Disagreement:

The primary reason for the disagreement on this issue is the differing views on the nature of ḥawâlah—whether it is a form of exchange or merely a means of collection (*ishfâ'*)⁽¹⁾. The view that ḥawâlah is an exchange conflicts with the validity of paying zakâh through ḥawâlah, as zakâh cannot be compensated for. However, the view that ḥawâlah is a contract of facilitation and is merely a means of collection aligns with the validity of paying zakâh through ḥawâlah, provided the other objections raised in the evidence for the first opinion are resolved.

Topic 2: Taking from a Deposit with the Intention of Zakâh on Behalf of the Depositor

Problem Statement:

If a person has a deposit⁽²⁾ with a zakâh recipient and instructs them to take from it an amount equivalent to their zakâh, intending for it to count as the zakâh on their wealth, does this suffice and discharge the zakâh obligation?

Opinions on the Issue: After researching, I found no scholars who explicitly addressed this issue except for Shafi'i jurists, so I followed the method of deduction. It became apparent that the jurists differ on this matter with two main opinions:

The first opinion: It is valid and counts as zakâh. This is the prominent view among the Shafi'is⁽³⁾.

(1) See: Rawḍat Al-Ṭâlibîn [4: 230]; Al-Furû' [4: 343].

(2) Al-Wadī'ah linguistically means "to leave" and is derived from wada'a (to set something down or make it stay). See: Al-Nihâyah Fī Gharīb Al-Ḥadīth [5: 166]. In terminology, it refers to property handed over for safekeeping without compensation. See: Ma'ûnat Uli Al-Nuhâ [6: 439]; Kashshâf Al-Qinâ'.

(3) See: Al-Bayân [3: 425]; Al-Majmû' [6: 211]; Ḥāshiyat Al-Bujayrimī 'Alâ Al-Khaṭīb [2: 366].

This can also be deduced from the Ḥanafīs' opinion, which permits the eligible zakâh recipient to be deputized to collect the amount of zakâh from the debtor with the intention of paying zakâh⁽¹⁾, regardless of whether the collection is from funds held by the debtor or others.

Similarly, this view can be extended to the Mālikīs and Ḥanbalīs, based on their opinion that a deposit (*al-wadī'ah*) does not exit the ownership of the depositor and that the depositor's hand over the deposited wealth is akin to his hand over his own property⁽²⁾. Therefore, it is valid for the depositor to instruct the deposit holder to collect the amount equivalent to zakâh for themselves, as if they had set aside the amount of zakâh and instructed the eligible recipient to collect it.

The second opinion: It is not valid and does not count as zakâh. This is one opinion among the Shafi'is⁽³⁾.

Evidence and Discussions:

Evidence for the first opinion: Those who hold the view of validity rely on the following:

First evidence: The condition of transferring ownership to the eligible recipient is fulfilled in this case because they collect tangible assets, and there is no difference between collecting from the deposit in their possession and returning it to its owner before collecting from it⁽⁴⁾.

Second evidence: The intention to pay zakâh coincides with instructing the recipient to collect it, which makes it valid, just as if the intention coincided with instructing an agent to pay zakâh⁽⁵⁾.

Evidence for the second opinion: Those who hold the view of invalidity argue the following:

First evidence: Zakâh is only valid if the eligible recipient collects it, and their self-collection is invalid due to the unity of the person collecting and the one handing it over. The owner's permission for collection does not count as

(1) See: Al-Mabsûṭ [3: 36]; Al-Binâyah [3: 463]; Al-Baḥr Ar-Râ'iq [2: 228].

(2) See: Adh-Dhakhîrah [9: 175]; At-Tawḍîḥ [2: 249]; At-Tâj Wal-Ikhlâl [3: 148]; Al-Mughnî [3: 71]; Sharḥ Az-Zarkashî [4: 138]; Al-Mubdi' [4: 371].

(3) See: Rawḍat Al-Ṭâlibîn [2: 320]; Kifâyat An-Nabîh [6: 129]; Asnâ Al-Maṭâlib [1: 398].

(4) See: Al-Bayân [3: 425].

(5) See: Kifâyat An-Nabîh [6: 129].

transferring possession⁽¹⁾.

Discussion: The argument against rejecting the notion that the owner's permission does not constitute a transfer of possession is based on the fact that the owner deals with the deposit (*al-waḍ'ah*) as if it were their own property. Hence, it is permissible for them to sell it⁽²⁾. Thus, when the owner permits its collection, it is as though they have permitted the collection of property in their possession, which constitutes a valid transfer of possession.

Second evidence: The intention to pay zakâh must coincide with either the actual payment or setting aside the zakâh amount. In this case, the zakâh payer did not have the intention before the eligible recipient collected the zakâh or before setting aside the amount, so it is invalid.

Discussion: The intention was coupled with the act of the payer, which was instructing the eligible recipient to collect the zakâh from the deposit. This serves the same purpose as the intention being paired with the payment or setting aside the amount of zakâh, as the main requirement is the intention accompanying the action.

Preference of Opinion:

The more valid opinion, and Allah knows best, is the first one, which is the validity of the depositor instructing the deposit holder—if they are eligible for zakâh—to take from the deposit with the intention of paying zakâh.

Reasons for the Preference:

- 1- The strength and soundness of the evidence for the first opinion, and the weakness of the evidence for the second opinion.
- 2- The deposit is a tangible asset, not a debt. Thus, when the eligible recipient collects from it, they have acquired the zakâh amount, and there is no difference between collecting from assets held by the recipient or others.
- 3- The intention to pay zakâh in this case is valid because it coincides with an action by the zakâh payer, which is instructing or permitting the recipient to collect from their wealth.



(1) See: *Nihâyat Al-Maṭlab* [5: 188]; *Rawḍat Al-Tâlibîn* [2: 320].

(2) See: *Al-Hâwî Al-Kabîr* [5: 229]; *Al-Bayân* [5: 79].

The Twelfth Treatise

The Effect of Intention on the Obligation of Paying zakāh on a Lost Item

First Topic: The Basis for Zakāh on a Lost Item ⁽¹⁾

The issue: If a zakāh-eligible amount of wealth is lost by someone and is then found by another person, is the zakāh due to the original owner who lost it, or to the one who found it?

Clarification of the dispute:

- 1- The jurists unanimously agree that the one who finds the lost item is not obligated to pay zakāh on it in the first year after finding it, regardless⁽²⁾, nor in the second year or beyond if the finder does not take ownership of it⁽³⁾. The next issue will address the disagreement regarding zakāh on the found item if the finder takes ownership of it, and how ownership is established.
- 2- The jurists also agree that the owner of the lost wealth is not obligated to pay zakāh on it before retrieving it⁽⁴⁾.

(1) Al-Luqṭah linguistically: derived from al-laqaṭ, meaning to take something from the ground and collect it. See: Tahdhīb Al-Lughah (16/9), Lisān Al-‘Arab (13/97), entry: (ل ق ط). In terminology: it refers to what is picked up from lost wealth or property and similar items that do not belong to a belligerent, picked up by someone other than its owner, who does not know who the rightful owner is. See: Asnā Al-Maṭālib (2/487), Al-Iqnā‘ (2/397).

(2) See: Al-Mabsūṭ (2/171), Badā’i‘ As-Ṣanā’i‘ (2/9), ‘Aqd Al-Jawāhir Ath-Thamīnah (1/208), At-Tawḍīḥ (2/251), Baḥr Al-Madhhab (3/171), Rawḍat Aṭ-Ṭalībīn (2/196), Al-Irshād Ilā Sabīl Ar-Rashād (p. 252), Al-Mughnī (3/75).

(3) See: Al-Ikhtiyār (1/99), Ḥāshiyat Ibn ‘Ābidīn (4/279), An-Nawādir Wa Az-Ziyādāt (1382), Sharḥ Az-Zurqānī ‘Alā Khalīl (2/253), Al-Bayān (3/145), Rawḍat Aṭ-Ṭalībīn (2/196), Sharḥ Az-Zarkashī (2/523), Al-Inṣāf (3/24).

(4) See: Badā’i‘ As-Ṣanā’i‘ (2/9), Al-Bināyah (3/305), Al-Jāmi‘ Li Masā’il Al-Mudawwanah=

- 3- The jurists differ regarding the zakāh on the lost item once it is returned to its owner and they have taken possession of it. Is zakāh obligatory or not? If zakāh is obligatory, should it be paid for every year, or only for a single year?

The opinions on the issue: The jurists have differed on this issue into four opinions:

First Opinion: Zakāh on the lost item is not obligatory on its owner at all. This is the view of the Ḥanafīs⁽¹⁾, and one opinion among the Mālikīs⁽²⁾ and Shāfi'īs⁽³⁾, as well as a narration from the Ḥanbalīs⁽⁴⁾, and the opinion of Sheikh 'Abd Al- 'Azīz Ibn Bāz⁽⁵⁾.

Second Opinion: Zakāh on the lost item is obligatory on its owner for only one *ḥawl* (year) upon retrieving it. This is the well-known opinion among the Mālikīs⁽⁶⁾.

Third Opinion: Zakāh on the lost item is obligatory on its owner for every *ḥawl* in which the finder has not taken ownership of it. Once it enters the finder's ownership and responsibility, there is no Zakāh on the original owner. This is one opinion among the Mālikīs⁽⁷⁾, one opinion among the Shāfi'īs⁽⁸⁾, and the dominant opinion among the Ḥanbalīs⁽⁹⁾.

= (4/300), Ash-Sharḥ Al-Kabīr by Ad-Dardīr (1/457), Al-Ḥawī Al-Kabīr (3/315), Nihāyat Al-Maṭlab (3/331), Al-Mughnī (3/75), Ma'ūnat Uli An-Nuhā (3/154).

(1) See: Al-Mabsūt [2:171], Badā'i' As-Ṣanā'i' [2:9], Al-Ikhtiyār [1:101].

(2) See: At-Tabsirah [2:918], Al-Bayān Wa At-Taḥṣīl [2:374], At-Tanbīh 'Alā Mabādi' At-Tawjīh [2:820].

(3) See: Al-Muhadhdhab [1:263], Nihāyat Al-Maṭlab [3:331], Al-Majmū' [5:342].

(4) See: Al-Irshād Ilā Sabīl Ar-Rashād [p. 253], Al-Furū' [3:451], Al-Inṣāf [3:24].

(5) See: Fatāwā Nūr 'Alā Ad-Darb by Ibn Bāz [15/70].

(6) See: An-Nawādir Wa Az-Ziyādāt [2:138], Sharḥ Az-Zurqānī 'Alā Khalīl [2:251], Sharḥ Al-Khurashī 'Alā Khalīl [2:180].

(7) See: Al-Bayān Wa At-Taḥṣīl [2:374], At-Tanbīh 'Alā Mabādi' At-Tawjīh [2:820], At-Tawḍīḥ [2:250].

(8) See: Al-Bayān [3:146], Rawḍat Aṭ-Ṭalībīn [2:196], Asnā Al-Maṭālib [1:356].

(9) They say: The owner must pay zakāh for the first *ḥawl* (year) without exception, because the finder does not own it during that time. After the first *ḥawl*, if the finder announces it and takes ownership, there is no zakāh on the owner; otherwise, the owner must pay zakāh for each *ḥawl*. See: At-Tadhkirah Fī Al-Fiqh [p. 169], Ma'ūnat Uli An-Nuhā [3:154], Kashshāf Al-Qinā' [2:173].

Fourth Opinion: Zakāh on the lost item is obligatory on its owner for every *ḥawl*, without exception. This is one opinion among the Shāfi'is⁽¹⁾ and Ḥanbalis⁽²⁾.

Evidence for the Opinions and Their Discussions:

Evidence for the First Opinion: Those who hold that zakāh is not obligatory on the owner of the lost item at all use the following evidence:

First Evidence: It was related from 'Alī (may Allah be pleased with him) that he said, «There is no zakāh on wealth that is inaccessible» ⁽³⁾.

The basis for the evidence: Wealth that is classified as *māl ḍimār* is any wealth that cannot be benefited from, despite the owner's continued ownership of it. This includes lost wealth, whether someone finds it or not⁽⁴⁾.

This is disputed: The *athar* attributed to 'Alī (may Allah be pleased with him) is not proven, and it has no chain of transmission⁽⁵⁾.

Second Evidence: Zakāh is obligatory in return for benefiting from wealth through its growth or the ability to make it grow. Since the owner of the lost item is unable to do so before it returns to them, zakāh is not obligatory on them for the past period⁽⁶⁾.

Third Evidence: The owner of the lost item cannot benefit from it before it is returned, so they are not considered wealthy due to it. zakāh is only obligatory on someone who is wealthy⁽⁷⁾.

Fourth Evidence: The owner of lost or missing wealth has weakened ownership and limited control over it, so they should not be obligated to pay zakāh. This is analogous to the case of a *mukātab*, who is not obligated to pay zakāh

(1) They say: zakāh on the lost item itself is obligatory for the first year, and zakāh on its value for the subsequent years if the finder takes ownership; otherwise, zakāh on the item itself remains obligatory. See: Rawḍat Aṭ-Ṭālibīn [2:196], Kifāyat An-Nabih [5:200].

(2) See: Al-Furū' [3:451], Al-Inṣāf [3:24].

(3) I did not find a chain of narration for this *athar*, and Ibn Ḥajar said about it: "I did not find it," in Ad-Dirāyah [1:249], and Az-Zayla'i said, "It is strange," in Naṣb Ar-Rāyah [2:334].

(4) See: Badā'i' As-Ṣanā'i' [2:9].

(5) See: Naṣb Ar-Rāyah [2:334], Ad-Dirāyah [1:249].

(6) See: Al-Mabsūṭ [2:171], Al-Mumti' Fī Sharḥ Al-Muqni' [1:671].

(7) See: Badā'i' As-Ṣanā'i' [2:9].

due to their weakened ownership and limited control⁽¹⁾.

This is disputed: The analogy with a *mukātab* is invalid, as the *mukātab* is not obligated to pay zakāh due to the deficiency in their ownership, not in their control⁽²⁾.

Evidence for the Second Opinion: Those who hold that zakāh on the lost item is obligatory on its owner for only one ḥawl upon retrieval present the following evidence:

First Evidence: It is narrated that ‘Umar ibn ‘Abd Al-‘Azīz wrote concerning wealth that some governors had unjustly seized, instructing that it be returned to its rightful owners, and that zakāh should be taken for the previous years. He later followed this with a letter stating that only one year’s zakāh should be taken, as the wealth had been *ḍimār*⁽³⁾.

The basis for the evidence: ‘Umar ibn ‘Abd Al-‘Azīz ruled that *māl ḍimār* should only be subject to zakāh for one year, and it is apparent that this ruling does not contradict the practice during the time of the Prophet (peace and blessings of Allah upon him) and the Rightly Guided Caliphs. The lost item is akin to *māl ḍimār* in relation to its owner⁽⁴⁾.

It was argued: If this report is proven authentic, it is merely an *ijtihād* (juridical reasoning) of ‘Umar ibn ‘Abd al-‘Azīz, and his statement or *ijtihād* is not a binding proof.

Second Evidence: The wealth of the lost item has ripened (become permissible to give zakāh) in the owner’s hand twice; first before its loss, and second after its recovery. The period between these two instances is considered as one year to give zakāh (*ḥawl*), even if it extends over several years, due to the inability to increase the wealth before recovering it. If the wealth has ripened at both ends of the year, then only the zakāh for that year is due⁽⁵⁾.

(1) See: Al-Ḥāwī Al-Kabīr [3:130], Kifāyat An-Nabīh [5:217]

(2) See: Al-Ḥāwī Al-Kabīr [3:130].

(3) Related by Mālik in Al-Muwatta’a, Book of zakāh, Chapter: zakāh on Debt, no. (874), [2:355]; a similar report is narrated by ‘Abd Ar-Razzāq in his Muṣannaf, Book of zakāh, Chapter: No zakāh Except on Liquid Wealth, no. (127), [4:103]. The narration reported by Imām Mālik has an incomplete chain of transmission. See: Naṣb Ar-Rāyah [2:334].

(4) See: Al-Muqaddimāt Al-Mumahhidāt [1:304].

(5) See: Al-Ishrāf ‘Alā Nukat Masā’il Al-Khilāf [1: 384], Al-Muntaqā Sharḥ Al-Muwatta’a [2: 113].

It was countered: The ripening of wealth is not a condition for the obligation of zakâh, as it may be obligatory even if the wealth is in another person's possession. Therefore, the obligation of zakâh for only one year while excluding the remaining years is baseless. Either zakâh is due for all the past years—if the wealth could have been collected and grown—or it must be said that the *ḥawl* is interrupted and resumes after the recovery of the wealth.

The Evidence for the Third Opinion: The proponents of the third view, which holds that zakâh on a lost item is obligatory on its owner for each *ḥawl* during which the finder did not take ownership, provided the following evidence:

First Evidence: The general texts mandating zakâh, such as Allah's statement: {«**And establish prayer and give zakâh**»} ⁽¹⁾, and the Prophet's (peace and blessings of Allah upon him) statement: «*For silver, one-quarter of a tenth*» ⁽²⁾.

The Inference: The address in these texts is general, encompassing everyone who possesses a *niṣâb* (the minimum amount liable for zakâh). This includes the owner of lost wealth if it is returned to him and he retrieves it⁽³⁾.

It was countered: These general texts are specific to wealth that can be utilized and that brings about sufficiency, as indicated by the Prophet's (peace and blessings of Allah upon him) statement: «*It is taken from their wealthy and returned to their poor*» ⁽⁴⁾.

Second Evidence: The inability to utilize wealth does not negate the obligation of zakâh, as a traveler away from his wealth is still obligated to pay zakâh despite being unable to manage it⁽⁵⁾.

It was countered: The traveler can manage his wealth through a deputy, unlike the owner of lost wealth⁽⁶⁾.

Third Evidence: Zakâh is obligatory on wealth that has the potential for growth, even if it does not increase. Lost or missing zakâh-eligible wealth re-

(1) [Sûrah Al-Baqarah (The Cow): 43]. (2) Previously cited; see p. 160 of this book.

(3) See: Al-Ḥawî Al-Kabîr [3: 130], Al-Mumti' Fî Sharḥ Al-Muqni' [1: 671].

(4) Previously cited; see p. 57 of this book.

(5) See: Badâ'i' Al-Ṣanâ'i' [2: 9], Al-Mumti' Fî Sharḥ Al-Muqni' [1: 671].

(6) See: Badâ'i' Al-Ṣanâ'i' [2: 9], Tabyîn Al-Ḥaqâ'iq [1: 256].

mains capable of growth, and thus zakâh is due on it⁽¹⁾.

It was countered: While we concede that the lost wealth has not lost its potential for growth, the owner is unable to develop it. There is a difference between wealth that does not grow on its own but can be developed by its owner, and wealth that its owner is entirely unable to develop.

The proponents of the third opinion, which holds that zakâh is not obligatory on the owner of the found item once it has entered the possession and guarantee of the finder, provided the following evidence:

First Evidence: The found item has left the ownership of its original owner and entered the possession of the finder, so zakâh is not due on it because the owner no longer possesses it⁽²⁾.

Second Evidence: If we obligate the owner of lost wealth to pay zakâh while it is in the possession of the finder, this would result in both the owner and the finder being liable for zakâh, and it is not permissible to impose two zakâhs in one *ḥawl* for the same wealth⁽³⁾.

Evidence for the Fourth Opinion: The proponents of the fourth view, who argue that zakâh is obligatory on the owner of the found item for each *ḥawl* in which the finder did not take ownership, base their argument on the same evidence provided by the proponents of the third opinion. They further argue that zakâh is due on the wealth even if the finder takes ownership, because after the finder takes possession, the item becomes a debt in their liability toward the original owner, and zakâh on debts is obligatory⁽⁴⁾.

It was countered: The owner was unaware that their wealth was in the liability of the finder, so it cannot be considered a debt⁽⁵⁾.

Preponderant Opinion: The most likely correct view, and Allah knows best, is the first opinion, which states that zakâh is not obligatory on the owner of the found item under any circumstances. The *ḥawl* begins anew from the day the item is recovered.

(1) See: Al-Ḥâwî Al-Kabîr [3: 130].

(2) See: Al-Majmû' [5: 342], Ma'ûnat Uli An-Nuhâ [3: 154].

(3) See: Al-Bayân [3: 146].

(4) See: Rawdat At-Tâlibîn [2: 196], Kifâyat An-Nabîh [5: 200].

(5) See: Nihâyat Al-Maṭlab [3: 332].

Reasons for Preference:

- 1- The strength and soundness of some of the evidence supporting the first opinion, and the weakness of the evidence supporting the other opinions, as well as their susceptibility to counterarguments.
- 2- Zakâh is intended as an act of support, not as harm. Imposing zakâh on wealth that the owner cannot retrieve, use, or grow would be harmful to the owner. In cases where wealth is lost for many years, zakâh could consume a significant portion of it.

Second Topic: The Finder's Payment of Zakâh on the Found Item if They Intend to Keep It

In this topic, I will address the ruling regarding zakâh on the found item (*luqṭah*) when the finder intends to take ownership of it. Is zakâh obligatory on the finder? If it is obligatory, when does the *ḥawl* (zakâh year) start? This will be discussed in two issues as follows:

First Issue: The Ruling of Zakâh on the Finder of the Lost Item

If someone finds a zakâh-eligible item and intends to take ownership of it, is zakâh due on it or not?

Clarification of the Disputed Matter:

- 1- The jurists agree that the finder is not obligated to pay zakâh on the found item if they have not announced it, as it does not enter their ownership before the announcement⁽¹⁾.
- 2- The jurists also agree that the finder is not obligated to pay zakâh on the found item during the period of announcement (*ḥawl at-ta'rif*)⁽²⁾.
- 3- However, they differed on whether zakâh is obligatory on the finder if they announce it and then take ownership of it.

(1) See: Badâ'i' Al-Şanâ'i' [6: 202], Al-Hidâyah [2: 420], Al-Bayân Wa At-Taḥṣîl [2: 374], At-Tawḍîḥ [2: 251], Baḥr Al-Madhhab [3: 171], Rawdat At-Tâlibîn [2: 196], Al-Mughnî [3: 75], Sharḥ Az-Zarkashî [4: 333].

(2) See: Al-Mabsûṭ [2: 171], Badâ'i' Al-Şanâ'i' [2: 9], 'Uqd Al-Jawâhir Ath-Thamînah [1: 208], At-Tawḍîḥ [2: 251], Baḥr Al-Madhhab [3: 171], Rawdat At-Tâlibîn [2: 196], Al-Ir-shâd Ilâ Sabîl Ar-Rashâd [p. 252], Al-Mughnî [3: 75].

The Opinions on the Issue:

The jurists have differed on this matter into three opinions:

First Opinion: Zakâh is not obligatory on the finder for the found item, under any circumstance. This is the view of the Ḥanafis⁽¹⁾, one opinion among the Shâfi'is⁽²⁾, and a view among the Ḥanbalis, as mentioned by Ibn 'Aqîl⁽³⁾.

Second Opinion: Zakâh is obligatory on the finder if they take ownership of the found item, provided they possess wealth equivalent to its compensation. This is the view of the Mâlikis⁽⁴⁾, one opinion among the Shâfi'is⁽⁵⁾, and one view among the Ḥanbalis, as narrated by Qâḍî Abû Ya'î⁽⁶⁾.

Third Opinion: Zakâh is obligatory on the finder of a lost item (*luqṭah*) once they take ownership of it, in all cases. This opinion is well-known among the Shâfi'is⁽⁷⁾ and is the established view among the Ḥanbalis⁽⁸⁾.

Evidence and Discussions:

Evidence for the First Opinion:

Those who argue that zakâh is not obligatory on the finder of the lost item, under any circumstances, provide the following evidence:

First: The Ḥanafî Evidence: The Ḥanafis base their opinion that zakâh is not obligatory on the finder of a lost item on the fact that the finder does not have the right to take ownership of the item. Instead, they are permitted to give it away in charity if the owner does not come forward after the announcement period, as related by Abû Hurayrah. The Prophet (peace and blessings of Allah

(1) This is based on their view that the finder is not permitted to take ownership of the found item under any circumstances, nor to use it for personal benefit unless they are poor and in need. In such a case, they may take what suffices for their need, provided they do not covet it or sell it. See: Al-Mabsûṭ [11: 7], Badâ'i' Al-Ṣanâ'i' [6: 202], Al-Ikhtiyâr [1: 99], Ḥâshiyat Ibn 'Âbidîn [4: 279].

(2) See: Al-Majmû' [5: 342], Kifâyat An-Nabîh [5: 200].

(3) See: Al-Kâfi [1: 380], Sharḥ Az-Zarkashî [2: 523], Al-Inṣâf [3: 24].

(4) See: Al-Jâmi' Li-Masâ'il Al-Mudawwanah [4: 299], At-Tanbîh 'Alâ Mabâdi' At-Tawjîh [2: 820], Sharḥ Az-Zurqânî 'Alâ Mukhtaṣar Khalîl Wa Ḥâshiyat Al-Bannânî [2: 253].

(5) See: Baḥr Al-Madḥḥab [3: 171], Al-Bayân [3: 146], Rawdat At-Tâlibîn [2: 196].

(6) See: Al-Mughnî [3: 75], Al-Furû' [3: 451], Al-Inṣâf [3: 24].

(7) See: Baḥr Al-Madḥḥab [3: 171]; Al-Bayân [3: 146]; Asnâ Al-Matâlib [1: 356].

(8) See: Al-Mubdi' [2: 299]; Sharḥ Muntahâ Al-Îrâdât [1: 389]; Kashshâf Al-Qinâ' [2: 173].

upon him) said: *«A found item is not lawful; whoever finds something should announce it. If its owner comes forward, they should return it to them. If they do not come, then the finder should give it in charity. If the owner comes later, they may choose between the reward or reclaiming their item.»*⁽¹⁾ Since the finder does not own the item, zakâh is not obligatory on them, as ownership is a condition for zakâh⁽²⁾.

Counter-argument: This claim is disputed, as we do not accept that the finder cannot take ownership of the item after the announcement period. The Prophet (peace and blessings of Allah upon him), when asked about a found item, said: *«Announce it for a year, then check its container⁽³⁾ and its tie⁽⁴⁾, then use it. If its owner comes, return it to them.»*⁽⁵⁾ As for the ḥadīth of Abū Hurayrah that is cited, it is weak⁽⁶⁾.

Second: The Shāfi‘is and Ḥanbalis Evidence: Those among the Shāfi‘is and Ḥanbalis who argue that zakâh is not obligatory on the finder of the lost item under any circumstances, argue that the finder’s ownership of the item is weak and unstable. The original owner can reclaim it whenever they find it, and zakâh is only obligatory on stable ownership.⁽⁷⁾

It was argued that the lack of stability in ownership does not prevent the obligation of zakâh because zakâh is obligatory on the marriage dower before consummation, despite the possibility of its forfeiture, and it is also obligatory

(1) Related by At-Tabarānī in Al-Mu‘jam Al-Awsat no. (2228), [2: 353]; and Ad-Dāraquṭ-nī in his Sunan, Book of Nursing, no. (4389), [5: 322]. The ḥadīth is weak; in its chain of transmission is Yūsuf Ibn Khālid As-Samṭī, who is considered a rejected narrator. See: Al-Ahkām Al-Wustā by ‘Abd Al-Haqq Al-Ishbīlī [4: 9]; Majma‘ Az-Zawā‘id [4: 168].

(2) See: Badā‘i‘ As-Sanā‘i‘ [6: 202].

(3) Al-Wikā’: The string used to tie a water-skin. See: Gharīb Al-Ḥadīth by Ibn Al-Jawzī [2: 482].

(4) Al-‘Ifās: The container, whether made of leather or cloth, in which money is stored. See: An-Nihāyah Fī Gharīb Al-Ḥadīth [3: 263].

(5) Related by Al-Bukhārī in his Ṣaḥīḥ, Book of Lost and Found Items, Chapter: If the owner of the lost property comes after a year, it is returned to him as it is held in trust, no. (2436), [3: 126]; and by Muslim in his Ṣaḥīḥ, Book of Lost and Found Items, no. (2436), [3: 1722].

(6) See: Al-Ahkām Al-Wustā [4: 9]; Majma‘ Az-Zawā‘id [4: 168].

(7) See: Al-Mughnī [3: 75]; Al-Majmū‘ [5: 343].

on the gift from a parent, despite the possibility of revoking it⁽¹⁾.

Evidence for the second opinion: Those who argue that zakâh is not obligatory on the finder of lost property if they claim ownership, unless they possess wealth equivalent to its compensation, base their argument on the following: If the finder claims ownership of the lost property, an equivalent of it must be owed in kind if it is fungible, or its value if it is non-fungible. This constitutes a debt that prevents the obligation of zakâh, like all other debts. Thus, zakâh is not obligatory on it unless the finder has wealth equivalent to that debt⁽²⁾.

This was countered by rejecting the idea that the lost property constitutes a debt in the finder's liability before the owner comes forward, as if the finder were to die, its equivalent would not be set aside from the inheritance, nor is the finder entitled to receive from zakâh due to its liability, nor is there an obligation to make a will regarding it, and none of the legal rulings of debt apply to the finder in this case⁽³⁾.

Evidence for the third opinion: Those who argue that zakâh is obligatory on the finder if they claim ownership of the lost property provide the following arguments:

- First evidence: If the lost property enters the finder's ownership, they possess it fully, and it becomes like all their other wealth, thus zakâh becomes obligatory on it⁽⁴⁾.
- Second evidence: The finder claims ownership of the lost property without any compensation owed to its owner; compensation only becomes obligatory when the owner comes forward, so zakâh is obligatory on it⁽⁵⁾.

The preferred view and its rationale: The preferred opinion—Allah knows best—is the third opinion, which is that zakâh is obligatory on the finder of lost property if they claim ownership, whether or not they possess wealth equivalent to its compensation. This is because the Sunnah indicates that the

(1) See: Al-Kâfi Fî Fiqh Al-Imâm Ahmad [1: 380].

(2) See: Sharh Az-Zurqânî 'Alâ Mukhtasar Khalîl [2: 253]; Bahr Al-Madhhab [3: 171]; Al-Mughnî [3: 75].

(3) See: Al-Mughnî [6: 80].

(4) See: Al-Majmû' [5: 343]; Ma'ûnat Ulî An-Nuhâ [3: 154].

(5) See: Al-Mughnî [6: 80].

finder may claim ownership of the lost property, and it becomes like the rest of their wealth, for which the zakâh cycle begins from the day it enters their ownership, and compensation is only owed when the owner comes forward.

Second Issue: The Start of the Zakâh Cycle for the Finder

The issue: According to the opinion that zakâh is obligatory on the finder of lost property, when does the zakâh cycle begin?

Clarification of the point of contention:

- 1- The scholars who agree that zakâh is obligatory on the finder also agree that the zakâh cycle begins from the moment the lost property enters the finder's ownership⁽¹⁾.
- 2- However, they differ regarding the exact point at which the lost property enters the finder's ownership after its public announcement: Does it enter ownership with intention? Or verbal declaration? Or through its use? Or after the completion of the announcement period?

Opinions on the issue:

The jurists have four opinions on this matter:

- First opinion: The lost property enters the finder's ownership, and the zakâh cycle begins from the intention to claim ownership after the public announcement. This is the well-known view among the Mâlikîs⁽²⁾, a valid view among the Shâfi'îs⁽³⁾, and one opinion among the Hanbalîs⁽⁴⁾.
- Second opinion: The lost property enters the finder's ownership, and the zakâh cycle begins when it is used after the public announcement. This is the view of Ibn Al-Qâsim among the Mâlikîs⁽⁵⁾, and a valid view among the Shâfi'îs⁽⁶⁾.

(1) See: An-Nawâdir Wa Az-Ziyâdât [1368]; 'Aqd Al-Jawâhir [1: 18]; Nihâyat Al-Matlab [3: 332]; Al-Majmû' [5: 342]; Al-Kâfi Fî Fiqh Al-Imâm Ahmad [1: 380]; Al-Furû' [3: 451].

(2) See: Al-Jâmi' Li-Masâ'il Al-Mudawwanah [4: 299]; Al-Bayân Wa At-Taḥṣîl [2: 374]; Jawâhir Ad-Durar [3: 82].

(3) See: Al-Bayân [3: 145]; Kifâyat An-Nabîh [5: 199]; Tuḥfat Al-Muḥtâj [6: 337].

(4) See: Al-Mughnî [3: 75]; Sharḥ Az-Zarkashî [4: 333]; Al-Inṣâf [6: 413].

(5) See: Al-Jâmi' Li-Masâ'il Al-Mudawwanah [4: 300]; Al-Bayân Wa At-Taḥṣîl [2: 374]; 'Aqd Al-Jawâhir Ath-Thamînah [1: 208].

(6) See: Baḥr Al-Madḥhab [3: 171]; Al-Bayân [7: 531]; Rawdat At-Tâlibîn [2: 196].

- Third opinion: The lost property enters the finder's ownership, and the zakâh cycle begins when the finder verbally declares their intention to claim ownership after the public announcement. This is considered the more correct view among the Shâfi'is⁽¹⁾.
- Fourth opinion: The lost property enters the finder's ownership, and the zakâh cycle begins upon the mere completion of the public announcement period. This is a valid view among the Shâfi'is⁽²⁾, and the official stance of the Hanbalîs.⁽³⁾

Evidence and Discussions for the Opinions:

Evidence for the first opinion:

Those who hold the opinion that the lost property enters the finder's ownership and the zakâh cycle begins from the intention to claim ownership after the public announcement base their argument on the following:

First evidence:

It is narrated that Zayd Ibn Khâlid Al-Juhanî⁽⁴⁾, may Allah be pleased with him, said: A man came to the Messenger of Allah (peace and blessings of Allah upon him) and asked him about lost property. The Messenger of Allah (peace and blessings of Allah upon him) said:

"Recognize its container and its strap, then make it known for a year. If its owner comes, [give it to him]; otherwise, you may take possession of it..."⁽⁵⁾.

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- (1) **They said: The lost property does not enter the finder's ownership, nor does the zakâh cycle begin, unless the finder verbally declares their intention to claim ownership after the public announcement by saying: "I claim ownership" or "I choose to claim ownership," or similar phrases.** See: Kifâyat An-Nabîh [11: 434]; Asnâ Al-Maţâlib [2: 494]; Mughnî Al-Muhtâj [3: 592].
 - (2) See: Baḥr Al-Madḥḥab [3: 171]; Al-Bayân [7: 530]; Rawdat At-Tâlibîn [2: 196].
 - (3) See: Al-Insâf [6: 413]; Ma'ûnat Ulî An-Nuhâ [3: 154]; Kashshâf Al-Qinâ' [2: 173].
 - (4) **He is Zayd Ibn Khâlid Al-Juhanî, Abû 'Abd Ar-Raḥmân, also said to be Abû Ṭalḥah.** He was a notable Companion who witnessed the Treaty of ḥudaybiyah with the Messenger of Allah (peace and blessings of Allah upon him) and carried the banner of Juḥaynah on the day of the Conquest of Makkah. He died in 78 AH in Madînah, though some say he died in Kûfah at the end of the caliphate of Mu'âwiyah. For his biography, see: Ma'rifat As-Şaḥâbah by Abû Nu'aym [3: 1189]; Al-Istî'âb [2: 549].
 - (5) **Related by Al-Bukḥârî in his Şaḥîḥ, Book of Drinking and Irrigation, Chapter: Drinking of People and Animals from Rivers, no. (2372), [3: 113]; and by Muslim in his =**

Reasoning from this:

The Prophet (peace and blessings of Allah upon him) referred the matter of claiming ownership of the lost property after the public announcement to the finder's choice. This choice is based on intention, so ownership and the zakâh cycle depend on the intention to claim ownership⁽¹⁾.

Counterargument:

The Prophet's (peace and blessings of Allah upon him) statement: "*you may take possession of it*" is not a choice between claiming ownership or not, but rather it indicates ownership and gives the finder the freedom to dispose of the item as they wish. This is supported by another narration: "*Announce it for a year, then recognize its strap and container, and then spend it*" ⁽²⁾. Another narration states: "*If someone comes who recognizes it, [give it to them]; otherwise, mix it with your wealth*" ⁽³⁾, and another narration says: "*If it is not recognized, then recognize its strap and container, and then eat it*" ⁽⁴⁾. Had ownership been dependent on the intention to claim ownership, the Prophet (peace and blessings of Allah upon him) would have clarified it⁽⁵⁾.

Second evidence:

The finder is permitted to claim ownership of the lost property after having been entrusted with it during the announcement period. Therefore, transitioning from being entrusted with it to claiming ownership should only occur by the finder's choice, and this choice is through intention⁽⁶⁾.

Counterargument:

This is challenged by not accepting that transitioning to ownership requires choice, as ownership can sometimes be obligatory, such as in inheritance.

Third evidence:

The finder claims ownership of the lost property with compensation owed

= Şaḥīḥ, **Book of Lost and Found Items**, no. (1722), [3: 1346].

(1) See: Al-Ḥawī Al-Kabīr [8: 15].

(2) Previously cited, see (p. 363) of this book.

(3) Related by Al-Bukhārī in his Şaḥīḥ, **Book of Divorce**, Chapter: **The Ruling Regarding One Who is Lost in His Family and Wealth**, no. (5292), [7: 50].

(4) Related by Muslim in his Şaḥīḥ, **Book of Lost and Found Items**, no. (1722), [3: 1349].

(5) See: Al-Mughnī [6: 89].

(6) See: Al-Ḥawī Al-Kabīr [8: 15].

to its owner, so ownership depends on the finder's consent, similar to a purchase, and intention is sufficient as there is no need for an offer⁽¹⁾.

Counterargument:

This is challenged by not accepting that the finder claims ownership of the lost property with compensation. Compensation is only required when the owner comes forward, so consent to claim ownership is not necessary.

Evidence for the Second Opinion:

Those who argue that the lost property enters the finder's ownership and the zakâh cycle begins when they dispose of it after the public announcement base their argument on the following:

First evidence:

Lost property cannot be claimed as ownership except by taking possession of it, like a gift, and the finder's disposal of it is akin to possession. Therefore, the lost property does not enter the finder's ownership, and the zakâh cycle does not begin until they dispose of it⁽²⁾.

Counterargument:

The lost property is already in the finder's possession, so there is no need to take possession of it or dispose of it. If ownership depended on disposal, then disposal would not be valid in the first place⁽³⁾.

Second evidence:

The transfer of the lost property from the original owner's possession to the finder's does not occur through mere intention; it requires an act, which is disposing of it.

Counterargument:

The act that establishes ownership is the act of finding and announcing the property, not disposing of it after the announcement.

Evidence for the Third Opinion:

Those who argue that the lost property enters the finder's ownership and the zakâh cycle begins when the finder verbally declares their intention to claim

(1) See: *Kifāyat An-Nabīh* [11: 434]; *Al-Inṣāf* [6: 413].

(2) See: *Al-Ḥāwī Al-Kabīr* [8:15].

(3) See: *Al-Bayān* [7:531]

ownership after the announcement base their argument on the following:

The finder claims ownership of the lost property with compensation owed to its owner, so the ownership depends on verbal declaration, similar to a purchase.

This is refuted in two ways:

- First: There is no acceptance of the idea that the finder claims ownership with compensation; rather, compensation is only required when the owner comes forward.
- Second: The analogy to a purchase is flawed. A purchase involves an offer and acceptance, thus requiring a verbal declaration, whereas claiming lost property does not involve an offer.

Evidence for the Fourth Opinion:

Those who argue that the lost property enters the finder's ownership and the zakâh cycle begins upon the mere completion of the public announcement period base their argument on the following:

First evidence:

In a narration of the ḥadīth of Zayd Ibn Khâlid Al-Juhanî, may Allah be pleased with him, the Prophet (peace and blessings of Allah upon him) said about lost property: *"If its owner comes and recognizes its container, number, and strap, then give it to them; otherwise, it is yours"*⁽¹⁾.

Reasoning from this:

The Prophet (peace and blessings of Allah upon him) granted the ownership of the lost property to the finder once the announcement period had passed and the owner had not come forward. Had ownership depended on the finder's choice, verbal declaration, or disposal, the Prophet (peace and blessings of Allah upon him) would have clarified it⁽²⁾.

Second Evidence: The reason for acquiring ownership of the lost item (*luqṭah*) is the act of finding it and publicly announcing it. Once this reason is fulfilled, ownership is established, similar to hunting, gathering, or reviving dead land⁽³⁾.

(1) Related by Muslim in his Ṣaḥīḥ, Book of Lost Items, no. (1722), [3:1349].

(2) See: Al-Mughnī [6:79].

(3) See: Al-Ḥawī Al-Kabīr [8:15], Al-Bayān [7:530], Al-Mughnī [6:79].

Preferred Opinion: The preferred view, and Allah knows best, is the fourth opinion: the lost item enters into the finder's ownership, and the Zakāh year begins as soon as the year of public announcement passes. There is no need for an intention of ownership, verbal declaration, or any action involving the found wealth.

Reasons for Preference:

- 1- The strength of the evidence supporting the fourth opinion, which remains uncontested, whereas the evidence for the other opinions is subject to dispute.
- 2- Most narrations of the ḥadīth of Zayd ibn Khālīd Al-Juhānī regarding the lost item indicate that it enters into the finder's ownership directly after the year of public announcement.
- 3- Acquiring ownership of the lost item does not involve a transaction, according to the correct view, so it does not require any verbal declaration or intention.



Chapter Three
The intention of paying the *Zakâh*
in advance and the intention of evading it

It is subdivided into two chapters:

First Treatise: The intention of paying *Zakâh* in advance.

Second Treatise: The intention of evading *Zakâh*.

First Treatise

Intention in the Issues Relating to Paying Zakâh in Advance

Topic (1): The effect of intention on the ruling on paying *Zakâh* in advance before the passage of the *Hawl*.

Issue Explanation:

Is it permissible to pay in advance *Zakâh* that is due on a property for the obligation of which the passage of *Hawl*⁽¹⁾ is a condition, i.e. by paying its *Zakâh* before the passage of it? What is the effect of intention in this regard?

Opinions on the Issue: Scholars expressed three different opinions regarding this issue:

The First Opinion: It is permissible to pay *Zakâh* in advance before the passage of the *Hawl*. This view is held by the majority of scholars. To clarify, it was held by Sa'id ibn Jubayr⁽²⁾, 'Atâ' ibn Abu Rabâh, Al-Awza'iy, and Al-Thawriy.⁽³⁾ It is also the position adopted by the *Hanafi*⁽⁴⁾, ...

(1) These are: Livestock, gold and silver, and commercial commodity.

(2) He is: Sa'id Ibn Jubayr ibn Hishâm affiliated to Asad tribe. He is the freed slave of Banu Wâlibah ibn Al-Hârith, surnamed Abu 'Abdullâh. He is one of the prominent Tabi'un (second generation). He attained knowledge from 'Abdullah ibn 'Abbâs and 'Abdullâh ibn 'Umar (may Allah be pleased with them). Khusayf said: Sa'id ibn Al-Musayyib was one of the most knowledgeable from among Tabi'un about divorce, the most knowledgeable about Hajj was 'Atâ', the most knowledgeable about what is lawful and what is unlawful was Tâwûs, the most knowledgeable about Tafsir was Mujâhid, and the most knowledgeable in all these field was Sa'id Ibn Jubayr. He lived in Kufa and served as a judge there. He was killed by Al-Hajjâj in 95 AH. For more about his biography, see: *Tabaqât Al-Fuqahâ'* (p. 82), *Wafiyât al-A'yân* (373/2).

(3) See: *Ikhtilâf Al-'Ulamâ'*, by At-Taḥawiy – abbreviated by Al-Jassâs (1/455), *Al-Tamhîd* (3/165), *Al-Mughnî* (2/470).

(4) See: *Al-Mabsûṭ* (2/177), *Badâ'i 'Al-ṣanâ'i'* (2/51), *Al-Ibnâyah Sharḥ Al-Hidâyah* (3/363).

Shāfi'ī⁽¹⁾, and Hanbalī⁽²⁾ schools of thought.

The Second Opinion: It is not permissible to pay *Zakāh* in advance before the passage of the *Hawl* under any circumstances. This is the view held by Rabi'at Al-Ra'y, Al-Layth ibn Sa'd, and Ibn Al-Mundhir⁽³⁾. It is also a reported opinion within the Malikī school of thought.⁽⁴⁾ Furthermore, it is the opinion adopted by the Shafi'i scholars⁽⁵⁾ Abu 'Ubayd ibn Harbawayh⁽⁶⁾ and Ibn Hazm Al-Zāhiriyy.⁽⁷⁾

The third opinion: It is permissible to pay *Zakāh* in advance only shortly before the passage of the *Hawl*. Actually, this is the widely-accepted opinion among the Malikis.⁽⁸⁾

Evidence supporting the opinions and counter arguments:

Evidence cited by the proponents of the first opinion: Those who view it is permissible to pay *Zakāh* in advance before the passage of the *Hawl* support their view by the following evidence:

The first evidence: 'Aliy ibn Abu Tālib (may Allah be pleased with him) reported that Al-'Abbās asked the Prophet (peace be upon him) to allow him to pay his *Zakāh* before its due date, and he gave him permission to do so.⁽⁹⁾

(1) See: Al-Muhadhdhab (1/305), Al-Bayān (3/378), Asna Al-Maḡalib (1/361).

(2) See: Al-Mughnī (2/470), Al-Inṣāf (3/204), Kashshāf Al-Qinā' (2/265).

(3) See: Al-Muḥalla (4/212), Al-Ḥawī Al-Kabīr (3/159), Al-Mughnī (2/470), Al-Ibnāyah (3/363).

(4) See: Al-Nawādir wal-Ziyādāt (2/191), Al-Tabaṣirah (3/942), Aqd Al-Jawāhir Al-Thaminah (1/215).

(5) See: Al-Ḥawī Al-Kabīr (3/159), Rawḍat Al-Talibīn (2/212).

(6) He is 'Aliy ibn Al-Husayn ibn Harb ibn 'Isa Al-Baghdadiy, surnamed Abu 'Ubaid. He was the judge of Egypt and one of the pillars of the Shafi'i school of thought. He was a student of Abu Thawr. He was knowledgeable in the Qur'an, Fiqh, Hadith, disagreement management and debates. He asked to be exempted from the position of judge and resided in Baghdad where he taught Hadith. He died in 319 AH, See for his biography: *Ṭabaqat Al-Shafi'iyyah* Al-Kubrā (3/446), *Ṭabaqat Al-Shafi'iyyin*, by Ibn Kathīr (p. 214).

(7) See: Al-Muḥalla (4/211).

(8) See: Al-Mudawwanah (1/335), Jawāhir Al-Durar (3/132), Mawāhib Al-Jalīl (2/360).

They differed on the definition of a short period of time, expressing four opinions: One or two days, Ten days or so, A month or so, Two months or less. See: Al-Nawādir wal-Ziyādāt (2/190), At-Tabaṣirah (3/943), Al-Muqaddimāt Al-Mumahhidāt (1/310).

(9) Related by Imam Ahmad in his *Musnad*, No. (822), (2/192), Ibn Mājah in his *Sunan*, Book Pertaining to: *Zakāh*, Chapter: Paying *Zakāh* in advance before its due time, No. (1795), =

Evidential aspect: The Prophet (peace be upon him) allowed Al-‘Abbâs (may Allah be pleased with him) to pay *Zakâh* in advance, which supports the permissibility of doing so.⁽¹⁾

Two counter arguments:

The first argument: The Hadith is not authentic, as it is classified by Imam Ahmad and others as *Da‘if* (weak).⁽²⁾

Refutation of this argument: The Hadith is classified as *Hasan* (a Hadith whose chain of narration contains a narrator with weak exactitude, but is free from eccentricity or blemish) by a group of scholars. Moreover, Imam Ahmad is reported to have used it as evidence, which indicates that weakness is too slight to affect its authenticity.⁽³⁾

The second argument: The Hadith could likely indicate the permissibility of paying *Zakâh* shortly, e.g. one or two days, before the passage of the *Hawl*.⁽⁴⁾

Refutation of this argument: There are other narrations of the Hadith that indicated the Al-‘Abbâs (may Allah be pleased with him) paid *Zakâh* in advance, one year or more before the passage of the *Hawl*. One narration Al-Tirmidhiy narrated on the authority of ‘Aliy ibn Abu Tâlib that the Prophet (peace be upon him) said to ‘Umar ibn Al-Khattâb (may Allah be pleased with him): “We have taken this year’s *Zakâh* from Al-Abbas in the previous year.”⁽⁵⁾

= (1/572), Abu Dâwûd in his *Sunan*, Book Pertaining to: *Zakâh*, Chapter: Paying *Zakâh* in advance, No. (1624), (3/66), Al-Tirmidhiy in his *Sunan*, Book Pertaining to: *Zakâh*, Chapter: narrations about paying *Zakâh* in advance, No. (678), (3/54). Scholars differed on the degree of authenticity of this Hadith: Imam Ahmad judged it as weak, as reported by Al-Athram, See: *Al-Furusiyyah*, by Ibn Al-Qayyim (p. 260). However, Al-Hakim judged it as authentic, which was agreed upon by Al-Dhahabiy. (See: *Al-Mustadrak* 3/375), Al-Nawawiy considered it as good (*hasan*). (See: *Al-Majmû’* 6/145). Moreover, Ibn Hajar judged it as reliable considering its chains of narration in aggregate. (See: *Fath Al-Bârî* 3/334).

(1) See: *Badâ’i’ Al-Sanâ’i’* (2/51), *Al-Hâwî Al-Kabîr* (3/160), *Al-Mughnî* (2/471).

(2) See: *Al-Muḥalla* (4/212).

(3) See: Al-Zarkashi's explanation of Mukhtaṣar Al-Kharqiy (2/422).

(4) See: *Adh-Dhakhirah* (3/137).

(5) Related by Al-Tirmidhiy in his *Sunan*, Book Pertaining to: *Zakâh*, Chapter: Narrations About paying *Zakâh* in Advance, No. (679), (3/54), on the authority of Hajar Al-‘Adawiy. Ibn ‘Abdul-Hadî said: “Hajar is of unknown status and Al-Tirmidhiy did not narrate from him except this Hadith.” *Tanqîḥ Al-Taḥqîq* (3/145). Al-Albâniy classified it as *Hasan* through the aggregate of its multiple chains of narration. See: *Irwâ’ Al-Ghalîl* (3/349).

The second evidence: Abu Hurayrah (may Allah be pleased with him) is reported as saying: "When Allah's messenger sent 'Umar to collect *Zakâh*, people said that Ibn Jamîl, Khalid ibn Al-Walîd and Al-'Abbâs (the Prophet's uncle) refused (to pay it). Upon this the Messenger of Allah (peace be upon him) said: *"Ibn Jamîl is taking revenge but for this that he was destitute and Allah made him rich. As regards Khâlîd, you are unjust to Khâlîd, for he reserved his armours and weapons for the sake of Allah, and as for Al-'Abbâs, I shall be responsible for it and an equal amount along with it. And he again said: 'Umar, bear this in mind, the uncle of a person is like his father."*⁽¹⁾

Evidential aspect: The Prophet (peace be upon him) permitted Al-'Abbâs (may Allah be pleased with him) to pay *Zakâh* two years in advance. This is because the Prophet's phrase: *"I shall be responsible for it and an equal amount along with it,"* means: the *Zakâh* due this year and one year before it.⁽²⁾

Two counter arguments:

The first argument: The Prophet (peace be upon him) permitted Al-'Abbâs (may Allah be pleased with him) to rather delay *Zakâh* than to pay it in advance because Al-'Abbâs was in need of his property. In fact, the government is entitled to delay collecting *Zakâh* if doing so involves a public interest.⁽³⁾

Refutation of this argument: This is merely an unsubstantiated possibility. Actually, interpreting the Hadith to permit paying in advance is supported by other narrations of the Hadith although through unreliable chains of narrators. An example is the narration reported by Al-Dâraqutniy, in which the Prophet (peace be upon him) said: *"'Umar, bear this in mind, the uncle of a person is like his father. We needed money, so we made Al-'Abbâs pay Zakâh two years in advance."*⁽⁴⁾

(1) Related by Al-Bukhâriy in his *Ṣaḥîḥ*, Book Pertaining to: *Zakâh*, Chapter: Allah's saying: *{ "...for freeing captives [or slaves], and for the cause of Allâh" }*, NO. (1568), (2/122). Also related by Muslim in his *Ṣaḥîḥ*, the wording here belongs to his narration, Book Pertaining to: *Zakâh*, Chapter: Advancing *Zakâh* and Withholding It, (2/676), No. (983).

(2) *Ṣaḥîḥ* Ibn Khuzaymah (4/48), *Kifâyat Al-Nabîh* (6/73), *Sharḥ* Al-Zarkashiy (2/423).

(3) See: *Al-Amwâl*, by Abu 'Ubayd (p. 507), *Al-Mu'lim bi Fawâ'id Muslim* (2/10).

(4) Related by Al-Dâraqutniy in his *Sunan*, Book Pertaining to: *Zakâh*, Chapter: Paying *Zakâh* in advance, No. (2011), (3/32). The Hadith is narrated through unreliable chain of narrators that includes Al-Ḥasan ibn Ziyad, who is judged as a liar and Al-Ḥasan ibn 'Imarah, who is judged as disregarded. See: *Al-Taḥqîq fî Aḥadith Al-Khilaf*, (2/59), =

The second argument: The Hadith means that the Prophet (peace be upon him) guaranteed Al-`Abbâs's *Zakâh* through paying voluntarily double the amount of *Zakâh* out of the Prophet's own property.⁽¹⁾ This is indicated by Prophet's phrase: "*Umar, bear this in mind, the uncle of a person is like his father.*"

Refutation of this argument: Paying *Zakâh* on behalf of others requires seeking their permission first. In fact, the Prophet (peace be upon him) is not reported to have sought Al-`Abbâs's to do so.⁽²⁾

The third evidence: Nâfi⁽³⁾, the freed slave of Ibn `Umar (may Allah be pleased with him) is authentically reported to have said regarding *Zâkatul-Fiṭr*: "*Ibn `Umar (may Allah be pleased with him) used to give Zâkatul-Fiṭr to those who had been officially appointed for its collection. People used to give Zâkatul-Fiṭr (even) a day or two before the feast ('id).*"⁽⁴⁾

Evidential Aspect: This narration indicates that the Companions of the Prophet (peace be upon him) unanimously agreed on the permissibility of paying *Zâkatul-Fiṭr* in advance before the *'id*. Actually, there are two reasons for the obligation of *Zâkatul-Fiṭr*, i.e. fasting and breaking the fast. Since it is permissible to pay it in advance before one of these reasons, it is, with greater reason, permissible to pay the *Zakâh* due on property in advance before the passage of the *Hawl* since both are types of obligatory *Zakâh*.⁽⁵⁾

The fourth evidence: The reason for the obligation of *Zakâh*, which is the possession of the *Nisâb*, was materialized in this case. However, it is permissible to pay *Zakâh* after the materialization of the reason for obligation and

= Al-Badr Al-Munir, (5/501).

(1) See: Ikmal Al-Mu'lim bi Fawâ'id Muslim, by Judge 'Iyâd (3/475).

(2) Referenced above. See p. (374) of this book.

(3) This refers to Nâfi', the freed slave of `Abdullah ibn `Umar ibn Al-Khattâb, surnamed Abu `Abdullah Al-Madaniy. Scholars differed as to origins, whether they go back to Maghrib, Nisâpur, or Kabul. `Abdullah ibn `Umar acquired him as a slave during one of his military expeditions. He was among the senior Tabi'un and one of the Imams of Hadith from whom Al-Zuhariy, Ayyub, and Malik learned. He died in 117 AH. For his biography, see: "Wafiiyyât Al-A'yân" (5/368), "Al-Takmil fi Al-Jarh wal-Ta'dîl" (1/327).

(4) Related by Al-Bukhâriy in his *Ṣaḥîḥ*, Book Pertaining to: *Zakâh*, Chapter: *Zakâtul-Fiṭr* on the free and the slave, No. (1511), (2/131).

(5) See: "*Tanqîḥ Al-Taḥqîq*" (3/102), "Al-Majmû'" (6/145).

before the condition for obligation is fulfilled. An example of this is the case of a person on a journey, who is allowed to observe the fast of Ramadan because the reason for obligation is materialized although the condition for obligation, which is staying at one's country, is not fulfilled.⁽¹⁾

The fifth evidence: An analogy should be drawn between the permissibility of paying *Zakâh* in advance before the passage of *Hawl* and the permissibility of paying off a deferred debt before its due date on the basis that both are financial liabilities paying which was permitted to be delayed by way of sympathizing with the liable person.⁽²⁾

Counter argument: This is a case of comparison of incommensurables. To clarify, *Zakâh* is an act of worship since intention is stipulated when paying it, unlike debts and other financial liabilities deserved by humans. Accordingly, it is not valid to draw an analogy between acts of worship and other matters.⁽³⁾

The sixth evidence: An analogy should be drawn between the permissibility of paying *Zakâh* in advance after possessing the *Nisâb* and before the passage of *Hawl* and the permissibility of paying the expiation for an oath in advance after taking the oath and before breaking it, since both of them represent the case of advancing the performance of an obligation after its reason is materialized but before its condition is fulfilled.⁽⁴⁾

Counter argument: The intention to break the oath takes the place of actually breaking it. So, paying the expiation after intending to break the oath is not tantamount to paying it before its condition is fulfilled.⁽⁵⁾

Evidence cited by the proponents of the second opinion: Those who view it is not permissible to pay *Zakâh* in advance before the passage of the *Hawl* support their view by the following evidence:

The first evidence: It is reported that the Prophet (peace be upon him) said: "*There is no Zakâh on wealth until the Hawl has passed.*"⁽⁶⁾

Evidential aspect: The Prophet (peace be upon him) used the negative form

(1) See: "*Sharḥ Mukhtaṣar Al-Taḥâwiy*" (2/267), "*Al-Mabsûṭ*" (2/177).

(2) See: *Al-Ḥâwî* Al-Kabîr (161/3), *Al-Mughnî* (471/2).

(3) See: *Al-Dhakhirah* (138/3).

(4) See *Al-Bayân* (379/3), *Al-Mughnî* (470/2).

(5) See *Al-Dhakhirah* (38-1/3).

(6) Referenced above, see p. 60 of this book.

“no *Zakâh*”, a decisive form that makes any procedure to the contrary ineffective as to fulfilling the obligation.⁽¹⁾

Refutation of this argument: This negative form can affect rather the obligation than fulfilling the obligation through payment. This is based on the evidence cited above indicating that paying *Zakâh* in this way fulfils the obligation.⁽²⁾

The second evidence: *Zakâh* is an act of worship that requires intention. So, it is not permissible to pay it before its due time, in comparison with *Salâh* and fasting.⁽³⁾

Counter argument: Comparing this case with *Salâh* and fasting stands for comparison of incommensurables. To explain, *Zakâh* is a financial act of worship whose timing is reason-based, while *Salâh* and fasting are physical acts of worship whose timing is Shari'ah-based, i.e. the wisdom behind it cannot be rationalized.⁽⁴⁾

The third evidence: Since it is not permissible to pay *Zakâh* before the condition of reaching the *Nisâb* is met, it is not permissible, likewise, to pay it before the condition of the passage of *Hawl* is met, taking into account that each of them is a condition for the obligation of *Zakâh*.⁽⁵⁾

Counter argument: Drawing an analogy with paying *Zakâh* in advance before reaching the *Nisâb* involves comparison of incommensurables. To clarify, paying *Zakâh* in advance before reaching the *Nisâb* involves paying it before the reason for obligation is materialized or before neither of the two conditions for obligation are met (supposing that reaching the *Nisâb* is a condition for obligation). In the case at hand, however, the reason for obligation, or one of the two conditions for obligation, is materialized.⁽⁶⁾

The fourth evidence: It is not permissible to pay *Zakâh* to beneficiaries before the full qualities of being deserving beneficiaries are materialized. Likewise, it is not permissible to pay it in advance before it becomes obligatory on

(1) See: Al-Ma'ûnah (p. 366), Al-*Hâwî* Al-Kabîr (159/3).

(2) See: Al-*Hâwî* Al-Kabîr (161/3).

(3) See: Al-Tahmîd (166/3), Al-Dhakhîrah (138/3).

(4) See: Al-*Hâwî* Al-Kabîr (162/3), Al-Mughnî (471/2).

(5) See: Al-Ma'ûnah (p. 366).

(6) See: Al-*Hâwî* Al-Kabîr (3/162).

the one on whom it is due, i.e. by the passage of *Hawl*. Actually, both the beneficiaries and the one on whom it is due are pillars of the obligation.⁽¹⁾

Counter argument: This involves comparison of incommensurables because the non-materialization of the full qualities of being deserving beneficiaries has the effect of the absence of one of the pillars of *Zakâh*, which is the beneficiaries or the deserving recipients. As for the passage of *Hawl*, it is a condition that relates rather to the property than to the one on whom it is due. Also, its absence does not have the effects of the absence the pillar of the property on which *Zakâh* is due since the condition, reaching the *Nisâb*, is met.

Evidence cited by the proponents of the third opinion: Proponents of the third opinion cited, for the impermissibility of paying *Zakâh* in advance before the passage of *Hawl*, the evidence cited by the proponents of the second opinion, and cited, for the exception that it is permissible to pay it only shortly before the passage of *Hawl*, the following evidence:

The first evidence: Stipulating the passage of *Hawl* for the obligation of payment is meant as a facilitation for Muslims. In fact, this case is unequal to the timing for acts of worship, such as *Ṣalâh*, which cannot be performed prior to its time. Were *Zakâh* like *Ṣalâh*, a Mukallaf would have to know the exact hour in which he owned the *Nisâb* to pay *Zakâh* at that time. No doubt, this would cause hardship and difficulty.⁽²⁾

Counter argument: This entails considering paying *Zakâh* in advance as absolutely permissible. So, this supposition does not substantiate in any way restricting permissibility to a short time.

The second evidence: Rulings applicable to a given case apply also to closer cases. To clarify, the ruling applicable to paying *Zakâh* after the passage of *Hawl* applies also to paying it shortly before its passage.⁽³⁾

Counter argument: Putting the rule "rulings applicable to a given case apply also to closer cases" "into force is only appropriate if it is impossible to apply a specific ruling to the latter case. However, textual evidence supports the permissibility of paying *Zakâh* in advance. Therefore, there is no need to apply to the case of paying in advance the ruling applicable to closer cases. In other

(1) See: Al-Ishrâf 'alâ Nukat Masâ'il Al-Khilâf (1/387).

(2) See: Al-Bayân wal-Taḥsîl (367/2).

(3) See: Al-Tanbîh 'alâ Mabâdi' Al-Tawjîh (840/2).

words, it will be inappropriate to judge it as permissible if it is done shortly before the passage of *Hawl* and as impermissible if it is done so long before it.

Weighing Opinions:

The preponderant view - Allah knows best - is the first opinion, which is the view of the majority of scholars who permit paying *Zakâh* in advance before the passage of *Hawl*.

Reasons for preferring this opinion:

- 1- The first opinion is substantiated by strong evidence, most of which could not be refuted by counter arguments. Moreover, the evidence cited by the proponents of the other two opinions proved to be weak and easily refutable by counter arguments.
- 2- The opinion permitting paying *Zakâh* in advance is in the interest of the *Zakâh* payer as it makes it easier for them and averts hardship and difficulty that may arise when identifying the type of property. This is especially relevant in such cases as *Zakâh* on salaries and wages, where one can combine them and pay the *Zakâh* due on them throughout the year, intending to pay *Zakâh* in advance before the passage of *Hawl*. Undoubtedly, were it stipulated to pay *Zakâh* on each amount of newly-acquired property after the passage of *Hawl*, it would cause difficulty.
- 3- The opinion permitting paying *Zakâh* in advance is in the interest of beneficiaries as it fulfills their urgent needs throughout the year.

The effect of intention on this issue:

The effect of intention on this issue manifests in the aspect that those who view it is not permissible to pay *Zakâh* in advance based their opinion on considering *Zakâh* purely an act of worship equaling *Salâh* and fasting. The common cause both the cases share is stipulating intention at the time of performance. Moreover, they considered stipulating intention at the time of performance excluding the possibility of drawing analogy between *Zakâh* and debts. By doing so, they refuted the opinion of those who permit paying *Zakâh* in advance based on drawing analogy between this case and debts. Based on the above-mentioned facts, it becomes clear that considering *Zakâh* an act of worship does not exclude the possibility of permitting paying *Zakâh* in advance before the passage of *Hawl*. In such a case, permitting paying *Zakâh* in advance is not based on drawing analogy between *Zakâh* and debts.

Second Treatise: The Intention of Paying *Zakâh* Before Reaching the *Nisâb*:

Describing the Issue:

If someone possesses a *Zakatable* property that has not reached the *Nisâb*, and pays an amount of money intending it as the *Zakâh* due on the property upon reaching the *Nisâb*, is this valid and does it fulfil the obligation of *Zakâh* when the property later reaches the *Nisâb* and the *Hawl* passes?

For example: A person has thirty sheep and gives out one sheep, intending it as *Zakâh* that will be due on those sheep when they reach the *Nisâb*.

Another example: A person has commercial commodity which he bought for an amount that is less than the *Nisâb*. Moreover, their current value does not equal a *Nisâb*. However, he pays out an amount of money intending it as *Zakâh* that will be due on the commercial commodity when its value reaches the *Nisâb*.

Determining the object of dispute:

- 1- Scholars are unanimous that *Zakâh* due on a *Zakatable* property, with the exception of commercial commodity, cannot be paid in advance before reaching the *Nisâb*.⁽¹⁾ They cited the following evidence to support their view:

The first evidence: Possessing the *Nisâb* is the cause for the obligation of *Zakâh*, taking into account that effect cannot precede cause. For example, expiation for breaking an oath cannot be paid before the oath.⁽²⁾

The second evidence: The *Hawl* can be integrated only after possessing the *Nisâb*. Therefore, paying *Zakâh* in advance before possessing the *Nisâb* stands for paying it before the *Hawl* is integrated. As such, doing so is invalid since one of the reasons for the obligation of *Zakâh* will

(1) The consensus was reported by Al-Jassâs, Al-Qirâfi, Al-Nawawiy, and Ibn Qudâmah. See: *Sharh Mukhtasar Al-Tahâwiy* (7/411), *Al-Dhakhirah* (3/137), *Al-Majmû'* (6/146), *Al-Mughni* (2/471).

And see: *Al-Mabsûṭ* (3/32), *Al-Muḥiṭ* Al-Burhâniy (2/387), *Al-Muhadhdhab* (1/267), *Al-Ma'unah* (p. 366), *Al-Ishrâf* (3/305), *Tuhfat Al-Muhtâj* (3/353), *Al-Tadhkirah fi Al-Fiqh* (p. 78), *Al-Furû'* (4/277).

(2) See: *Al-Hâwî* Al-Kabîr (3/174), *Al-Tadhkirah fi Al-Fiqh* (p. 78).

not be materialized. In fact, this will be like performing *Salâh* before its time or fasting before the beginning of Ramadan.⁽¹⁾

- 2- Scholars differed regarding whether it is permissible to pay in advance the *Zakâh* due on commercial commodity before their value reaches the *Nisâb* - as in the second example mentioned in the description of the issue.

Scholarly opinions regarding the issue: Scholars expressed two different opinions regarding this issue:

The first opinion: It is not permissible to pay in advance the *Zakâh* due on commercial commodity before their value reaches the *Nisâb*. This view is held by the majority of scholars, including Hanafîs,⁽²⁾ Mâlikîs,⁽³⁾ and Hanâbilîs,⁽⁴⁾ as well as one of two opinions expressed by Shâfi'îs.⁽⁵⁾

The second opinion: It is permissible to pay in advance the *Zakâh* due on commercial commodity before their value reaches the *Nisâb*. This is the official position held by the Shâfi'îs.⁽⁶⁾

Evidence supporting the opinions and counter arguments:

Evidence cited by the proponents of the first opinion: The majority of scholars supported their view to the effect of not permitting paying in advance the *Zakâh* due on commercial commodity before reaching the *Nisâb* by the following evidence:

The first evidence: Paying *Zakâh* in advance before reaching the *Nisâb* stands for paying it before its cause exists. Accordingly, it is not permissible. Actually, doing so is equal to paying the expiation for breaking an oath in advance before taking the oath. To this effect, there is no difference between commercial commodity and other things.⁽⁷⁾

(1) See: *Al-Mabsûṭ* (3/32).

(2) See: *Al-Mabsûṭ* (3/32), *Fath* Al-Qadîr (2/204), *Majma' Al-Anhur* (1/208).

(3) See: *Al-Ma'unah* (p. 366), *Al-Ishrâf* (1/387), *Al-Dhakhirah* (3/137).

(4) See: *Al-Muḥarrar* (1/225), *Ma'ûnat ulî Al-Nuha* (3/307), *Kashshâf Al-Qinâ'* (2/265).

(5) Based on Ibn Surayj's statement that the *Hawl* for commercial commodity does not start before their value reaches the *Nisâb*. See: *Baḥr* Al-Madḥhab (3/73), *Al-Majmû'* (6/146), *Kifâyat Al-Nabîh* (6/75).

(6) See: *Rawḍat Al-Ṭalibîn* (2/212), *Asna Al-Maṭâlib* (1/361), *Tuḥfat Al-Muḥtâj* (3/353).

(7) See: *Al-Mabsûṭ* (3/32), *Al-Mughnî* (2/471).

The second evidence: Paying *Zakâh* in advance before reaching the *Nisâb* can only take place with an indecisive intention, since the *Zakâh* payer in such a case is not sure whether the property will reach the *Nisâb* or not. Certainty, decisiveness is a condition for the validity of intention.⁽¹⁾

Counter argument: Indecisive intention in this case is pardonable because it is necessary for permitting paying *Zakâh* in advance. Were decisiveness stipulated, paying *Zakâh* in advance after possessing the *Nisâb* and before the passage of *Hawl* would not be permissible. This is because the *Zakâh* payer in such a case does not know for certain what will happen to the property by the time the *Hawl* will have passed.⁽²⁾

Evidence cited by the proponents of the second opinion: Shafi'is supported their view to the effect of permitting paying in advance the *Zakâh* due on commercial commodity before reaching the *Nisâb* by the following evidence: Counting the *Hawl* for commercial commodity begins from rather the time of possessing than when their value reaches the *Nisâb*; Taking into account that *Nisâb* is taken into consideration upon the completion of the *Hawl*, paying *Zakâh* in advance after the integration of the *Hawl* is permissible. This is because one of the two reasons for the obligation of *Zakâh* is materialized. This is based on the rule that states: If a financial obligation is based on two reasons, and one of those two reason is materialized, it will be permissible to pay the financial obligation in advance before the other reason is materialized. An example of this rule is paying the expiation in advance after taking an oath and before breaking it.⁽³⁾

Three counter arguments:

First counter argument: We cannot give that counting the *Hawl* for commercial commodity begins from the time of possessing; rather, it begins when their value reaches the *Nisâb* like other *Zakâtable* property, whose *Hawl* begins after reaching the *Nisâb*.

Second counter argument: Given that the *Hawl* for commercial commodity begins from the time of possessing, its integration does not mean that a reason for the obligation of *Zakâh* is materialized. This is because the *Hawl* is a

(1) See: *Tuhfat Al-Muhtâj* (3/353).

(2) See: *Ibid*.

(3) See: *Nihâyat Al-Maṭlab* (3/174), *Al-Bayân* (3/380), *Asna Al-Maṭâlib* (1/361).

condition for obligation while possessing the *Nisâb* is a reason for obligation. Taking into account that the existence of a condition does not guarantee the existence of the ruling at hand, so paying *Zakâh* in advance is not permissible unless the reason for obligation, which is possessing the *Nisâb*, is materialized.

Third counter argument: Drawing an analogy with paying the expiation in advance after taking an oath and before breaking it stands for comparison of incommensurables because in the example at hand paying in advance takes place after the reason is materialized, which is not the case with this issue.

Weighing opinions:

The preponderant view - Allah knows best - is the first opinion, which is the impermissibility of paying an amount of money as *Zakâh* for commercial commodity that have not reached the *Nisâb* with while intending it to be the would-be *Zakâh* when the *Nisâb* is reached.

Reasons for preferring this opinion:

- 1- The first opinion is substantiated by strong evidence that could not be refuted by counter arguments. Moreover, the evidence cited by the proponents of the other opinion proved to be weak.
- 2- Shafi' is based their opinion to the effect of permitting paying in advance the *Zakâh* due on commercial commodity before reaching the *Nisâb* on the premise that the *Hawl* for commercial commodity begins from the time of possessing unlike other types of property. In fact, they draw distinction between commercial commodity and other types of property. Since *Zakâh*, they argue, is due on the value of commercial commodity, it should be noted that evaluating them on a daily basis is difficult. So, the *Nisâb* is calculated only at the end of the *Hawl*.⁽¹⁾ However, the sound view is that there is no difference between commercial commodity and other *Zakâtable* property as to the time of the beginning of *Hawl*. Actually, it begins by the possession of *Nisâb*. As for their argument that evaluating commercial commodity is difficult, it is not groundless. To clarify, if the amount is too little to reach the *Nisâb*, so there is no need of evaluation. On the other hand, if the amount is approximate to the the *Nisâb*, it can be easily evaluated if possible or otherwise be precautionarily considered as *Nisâb*. As such, they will be

(1) See: Al-Bayân (3/313), Al- Majmû' (6/55)

tantamount to the case of profits acquired during the *Hawl* if it is easy to track the exact time of acquisition; otherwise, it will be permissible to pay their *Zakâh* in advance.⁽¹⁾

Third Treatise: The intention of paying in advance the *Zakâh* due on the possessed *Nisâb* plus the amount expected to be acquired before the passage of the *Hawl*

Description of the Issue:

Someone possesses a *Nisâb* and pays in advance the *Zakâh* due on it plus the *Zakâh* due on an amount belonging to the same type of property that is expected to be acquired before the completion of *Hawl*. Is this permissible, and does it fulfil the obligation of *Zakâh* due on the extra amount if still possessed by the time the *Hawl* passes?

Example: A person has five camels and expects to acquire five more before the *Hawl* passes. So, he gives two sheep with the intention of *Zakâh* that will be due on the camels he actually possesses plus the *Zakâh* that will be due on the camels expected to be acquired. Then, by the time the *Hawl* passes, he possesses ten camels.

Another example: A person has commercial commodity worth forty thousand, and expects their value to reach sixty thousand by the end of the *Hawl*. So, he gives one thousand five hundred with the intention of *Zakâh* that will be due on them when they reach that value. Then, when the *Hawl* passed, their value reached sixty thousand.

Opinions on the Issue: Scholars expressed six different opinions regarding this issue:

The first opinion: The amount paid in advance as *Zakâh* for the expected increase fulfills the obligation unconditionally. This is the view adopted by Hanafis⁽²⁾ and one of two views adopted by Hanbalis.⁽³⁾

The second opinion: The amount paid in advance as *Zakâh* for the expected increase does not fulfill the obligation absolutely. This is the view adopted

(1) See: Al-Mughnî (3/60).

(2) See: *Al-Mabsûṭ* (2/177), *Badâi' Al-Ṣanâi'* (2/51), *Al-Binâyah* (3/365).

(3) See: *Al-Furû'* (4/278), *Al-Mubdî'* (2/399), *Al-Inṣâf* (23/07).

by the Hanafi scholar Zufar,⁽¹⁾ one of the views held by Shafi'îs,⁽²⁾ and the official position of Hanbalîs.⁽³⁾

As for Malikîs, although they adopt generally the opinion to the effect of the permissibility of paying *Zakâh* in advance shortly before the passage of *Hawl*, I could not, as regards the issue at hand, come across any expression of opinions from them. However, it is possible to derive it through *Takhrîj* (referring the legal rulings to their foundations in the respective school of thought). Accordingly, their opinion can be invalidating paying in advance the *Zakâh* due on the expected increase. This is based on their principle of not permitting paying *Zakâh* in advance before possessing the *Nisâb*.⁽⁴⁾

The third opinion: The amount paid in advance as *Zakâh* for the expected increase does not fulfill the obligation except in the case of commercial commodity. This is the official position of Shafi'îs.⁽⁵⁾

The fourth opinion: The amount paid in advance as *Zakâh* for the expected increase does not fulfill the obligation unless it is a profit yielded by the *Nisâb* such as the offspring of livestock or the revenue of trading. This is one of the views held by Shafi'îs⁽⁶⁾ and Hanbalîs.⁽⁷⁾

The fifth opinion: The amount paid in advance as *Zakâh* for the expected increase does not fulfill the obligation unless it is a profit yielded by the *Nisâb* such as the offspring of livestock or the revenue of trading, and if the increase does not reach the *Nisâb*. This is one of the views held by Hanbalîs.⁽⁸⁾

The sixth opinion: The amount paid in advance as *Zakâh* for the expected increase does not fulfill the obligation unless it is the offspring of livestock. This is one of the views held by Hanbalîs.⁽⁹⁾

(1) See: *Al-Mabsûṭ* (2/177), *Al-Muḥīṭ* Al-Burhāniy (267/2), *Fath* Al-Qadīr (206/2).

(2) See: Bahr Al-Madhhab (3/73), Al-Tahdhīb (3/56), Kifāyat Al-Nabīh (6/77).

(3) See: Al-Mughnī (2/471), Al-Insāf (3/207), Kashshshāf Al-Qinā' (2/266).

(4) See: Al-Ma'ūnah (p. 366), 'Aqd Al-Jawāhir (1/215), Al-Dhakhīrah (3/137).

(5) See: Al-Bayān (3/380), Asnā Al-Matālib (1/362), Mughnī Al-Muhtāj (2/132).

(6) See: Al-Hāwī Al-Kabīr (3/175), Rawdat Al-Tālibīn (2/213), Bidāyat Al-Muhtāj (1/544).

(7) See: Al-Furū' (4/278), Qawā'id Ibn Rajab (1/164), Al-Insāf (3/207).

(8) See: Al-Mughnī (2/472), Al-Furū' (4/279), Qawā'id Ibn Rajab (1/164).

(9) See: Qawā'id Ibn Rajab (1/164), Al-Insāf (3/207).

Evidence supporting the opinions and counter arguments:

Evidence cited by the proponents of the first opinion: Those who view that the amount paid in advance as *Zakâh* for the expected increase unconditionally fulfills the obligation argue that the first *Nisâb* is the reason for obligation and the increase that is of the same type of property is subordinate to it. Therefore, both will be subject to the same ruling, since the *Hawl* of the former applies equally to the latter.⁽¹⁾

Counter argument: Granted that the *Hawl* of the original property applies equally to the increase, we cannot grant that both are subject to the same ruling, i.e. the obligation of *Zakâh*. This is because possessing rather the increase than the original property is the reason for the obligation of *Zakâh*.⁽²⁾

Evidence cited by the proponents of the second opinion: Those who view Those who view that the amount paid in advance as *Zakâh* for the expected increase does not fulfill the obligation at all supported their view with the following evidence:

The first evidence: Paying *Zakâh* in advance for an increase before possessing it is tantamount to paying it before the reason for obligation is materialized, which is possessing the *Nisâb*. Therefore, it is as impermissible as paying *Zakâh* before possessing the original amount.⁽³⁾

The second evidence: A property will be subject to liabilities only after it exists and being possessed. Before that, it will be liable to no *Zakâh*.⁽⁴⁾

Evidence cited by the proponents of the third opinion: Shâfi`is use the evidence cited by the proponents of the second opinion to support their view to the effect that the amount paid in advance as *Zakâh* for the expected increase does not fulfill the obligation except in the case of commercial commodity. For the exception of commercial commodity, they support their view with the following: Commercial commodity can be liable for *Zakâh* only at the end of the *Hawl*, which starts from the time of possession, even if their amount does not reach the *Nisâb*. Therefore, it is permissible to pay in advance *Zakâh* due on the original amount even if it does not reach the *Nisâb*. Accordingly, it is, with

(1) See: Badâ'i' Al-Sanâ'i' (2/51), Al-Binâyah (3/365), Al-Furû' (4/278).

(2) See: Fath Al-Qadîr (2/207), Al-Mughnî (2/471).

(3) See: Badâ'i' Al-Sanâ'i' (2/51), Asnâ Al-Matâlib (1/362).

(4) See: Al-Mughnî (2/471).

greater reason, permissible to pay in advance the *Zakâh* due on the expected increase.⁽¹⁾

Two counter arguments:

First counter argument: We cannot grant that the *Hawl* for commercial commodity starts from the time of possession. Rather, it starts when their value reaches the *Nisâb*, like all other types of *Zakatable* property.

Second counter argument: Granted that the *Hawl* for commercial commodity starts by the time they are possessed, the amount that exceeds the *Nisâb* will not be possessed by the time of the advance payment. So, it is the case of paying in advance the *Zakâh* due on a property whose *Hawl* has not started, which is not permissible.

Evidence cited by the proponents of the fourth opinion: Those who hold the fourth opinion use the evidence cited by the proponents of the second opinion to support their view to the effect that the amount paid in advance as *Zakâh* for the expected increase does not fulfill the obligation unless it is a profit yielded by the *Nisâb*. To prove that the amount paid in advance as *Zakâh* for the expected increase fulfils the obligation if it is a profit yielded by the *Nisâb*, they argue that the *Hawl* for the profit yielded by the possessed *Nisâb* is the same as that of the *Nisâb*. So, it is permissible to pay in advance the *Zakâh* due on it before possessing it.⁽²⁾

Counter argument: Having the same *Hawl* does not necessitate the permissibility of paying in advance the *Zakâh* due on it before possessing it. This is because the condition for the permissibility of paying in advance is possessing the *Nisâb*, while yield that have the same *Hawl* in this case will not be not possessed by the time of paying in advance.⁽³⁾

Evidence cited by the proponents of the fifth opinion: Those who view that the amount paid in advance as *Zakâh* for the expected increase does not fulfill the obligation unless it is a profit yielded by the *Nisâb*, such as the offspring of livestock or the revenue of trading, and if the increase does not reach the *Nisâb* argue: If the expected increase reaches the *Nisâb*, it will be independently liable for *Zakâh*. In such a case, it is not permissible to pay *Zakâh* in

(1) See: Al-Bayân (3/380), Asnâ Al-Matâlib (1/362).

(2) See: Al-Hâwî Al-Kabîr (3/174), Al-Furû‘ (4/278).

(3) See: Al-Mughnî (2/471).

advance before it exists. If, however, the expected increase is below the *Niṣāb*, it should be added to the original property (the capital) to integrate the *Niṣāb*. As such, together they will have the same *Hawl* and will be subject to the same liability. Thus, the expected increase will be as if existent.⁽¹⁾

Counter argument: The supposition that the expected increase and the original property share the same liability for *Zakāh* and the same *Hawl* does not mean judging it as existent while it is non-existent. In fact, paying *Zakāh* in advance is only permissible if the property rather exists than does not exist.

Evidence cited by the proponents of the sixth opinion: They supported their view that the amount paid in advance as *Zakāh* for the expected increase does not fulfill the obligation unless it is the offspring of livestock by the evidence cited by the proponents of the second opinion. As for the exception of livestock offspring, they argued that livestock offspring is yield generated by the property on its own. So, it will be subject to the same ruling as that applicable to the original property, unlike the yield generated through trading. Since the ruling applicable to the original property applies equally to it, it is permissible to pay in advance the *Zakāh* due on it before its existence, as it is permissible to do so with the original property.

Counter argument: The yield generated by the property on its own should be subject to the same ruling as that of the original property only when it comes to existence. Before this, however, the rulings applicable to the original property will not apply to it. In the case at hand, paying in advance takes place before such a yield comes to existence.

Weighing opinions:

The preponderant opinion - Allah knows best - is the second opinion, which states that it is not permissible absolutely to pay in advance the *Zakāh* for the expected increase.

Reasons for preferring this opinion:

- 1- The second opinion is substantiated by strong evidence that could not be refuted by counter arguments. Moreover, the evidence cited by the proponents of the other opinion proved to be weak.
- 2- We previously preferred the opinion to the effect of the impermissibili-

(1) See: Al-Mughnī (2/471), Qawā'id Ibn Rajab (1/164).

ty of paying in advance the *Zakâh* due on a possessed property before it reaches the *Nisâb*.⁽¹⁾ So, it is, with greater reason, impermissible to pay in advance the *Zakâh* due on an unpossessed property.

Reason for dispute:

It becomes clear that the reason for scholarly dispute on this issue is difference regarding the issue whether any amount that exceeds the *Nisâb* that is of the same kind has the same *Hawl* as that of the original property. Also, according to the opinion that they do not have the same *Hawl*, scholars differed whether having the same *Hawl* necessitates the permissibility of paying in advance the *Zakâh* due on it before possession or not?

Hanafis view that any amount that exceeds the *Nisâb* that is of the same kind has the same *Hawl* as that of the original property. Accordingly, they permitted paying in advance the *Zakâh* due on it before possession. As for Shafi'is and Hanbalis, view that the expected increase will have the same *Hawl* as that of the original property only if it is a natural yield. However, they differed whether having the same *Hawl* necessitates the permissibility of paying in advance the *Zakâh* due on it before possession or not?

Fourth Treatise: The intention to count the extra amount given when paying *Zakâh* as *Zakâh* for the next year:

Description of the issue:

If someone pays more than the due amount of *Zakâh* due to error or ignorance, then, upon discovering the increase after payment, intends to count it as paying in advance the *Zakâh* that will be due the next year, is this permissible and does it fulfil the obligation of *Zakâh* for the next year?

Example: A person who owns twenty thousand pays one thousand thinking it to be the due amount of *Zakâh*. Upon discovering the increase, he intends it as paying in advance the *Zakâh* that will be due the next year on the same *Nisâb*.

Opinions on the Issue: Scholars expressed three different opinions regarding this issue:

The first opinion: It is permissible to count the extra amount as *Zakâh* for

(1) See: Page No. (379) of this book.

the next year. This is the view held by Hanafis,⁽¹⁾ and one of two views expressed by Hanbalis regarding the specific case when the extra amount is taken by the *Zakâh* collector.⁽²⁾

The second Opinion: It is not permissible to count the extra amount as *Zakâh* for the next year under any circumstances. The same can, by way of *Takhrîj*, the view of Malikis based on their stance that paying *Zakâh* in advance is not permissible except shortly before the passage of the *Hawl*.⁽³⁾ In fact, counting the extra amount as the *Zakâh* for the next year stands for paying *Zakâh* in advance so long before the passage of the *Hawl*.

Actually, I could not come across an opinion expressed by Shafi'is on this issue. However, they can, by way of *Takhrîj*, be assumed to hold the same view based on their view that any paid amount that exceeds the amount due for *Zakâh* is considered voluntary charity,⁽⁴⁾ as well as their opinion that the intention cannot be expressed after the payment.⁽⁵⁾

The same opinion was adopted by the Permanent Committee for Scholarly Research and Iftâ' in the Kingdom of Saudi Arabia.⁽⁶⁾

The third opinion: It is not permissible to count the extra amount as *Zakâh* for the next year unless the payment was basically intended as paying *Zakâh* in advance. This is the view adopted by Hanbalî⁽⁷⁾ and the purport of a *Fatwa* issued by the *Shari'ah* Board of *Zakâh* House in Kuwait.⁽⁸⁾

(1) See: *Al-Muhtâj* Al-Burhâniy (2/293), *Al-Nahr Al-fa'iq* (1/293), *Hâshiyyat* Ibn 'Abidîn (2/435).

(2) See: *Al-Mughnî* (3/16), *Al-Inṣâf* (3/211), *Kashshaf Al-Qinâ'* (2/266).

(3) See: *Al-Mudawwanah* (1/335), *Jawâhir Al-Durar* (2/132), *Mawâhib Al-Jalîl* (3/360).

(4) See: *Asna Al-Maṭâlib* (1/377), *Tuhfat Al-Muhtâj* (3/348), *Sharh Al-Mahalliyy* 'alâ *Al-Min-hâj* (2/57).

(5) See: *Al-Umm* (2/24), *Al-Hâwî* Al-Kabîr (3/246), *Fath* Al-Mu'in (p. 179).

(6) See: *Fatâwa* of The Permanent Committee, Second Group (8/333).

(7) They stated that if someone pays their *Zakâh* in advance, then it turned out to be less than the due amount, then the excess will be considered as *Zakâh* for the second year. They did not require the intention of considering the excess as the *Zakâh* for the second year; rather, they stated that it is enough to have the intention of paying *Zakâh* in advance. See: *Al-R'âyah Al-Sughra fî Al-Fiqh* (1/430), *Kashshâf Al-Qinâ'* (1/266), *Sharh* Muntaha *Al-Îrâdât* (1/452).

(8) See: *Ahkâm* wa *Fatâwâ* Al-*Zakâh* wal-*Ṣadaqât* wal-Nudhur wal-Kaffâ rât (p. 149).

Evidence supporting the opinions and counter arguments:

Evidence cited by the proponents of the first opinion: The proponents of the first opinion supported their view that it is permissible to count the extra amount as *Zakâh* for the next year by arguing: *Zakâh* payer in this case intends to count the extra amount as *Zakâh* paid in advance for the next year. In this regard, paying *Zakâh* in advance is permissible.⁽¹⁾

Counter argument: The intention to pay *Zakâh* in advance occurred after the *Zakâh* was paid off. Here, it should be taken into account that it is not permissible to express the intention after doing the act.

Evidence cited by the proponents of the second opinion: Mâlikîs supported their view that it is impermissible to count the extra amount as *Zakâh* for the next year by the evidence they cited to support the impermissibility of paying *Zakâh* in advance in general. We have already quoted these evidence and counter arguments in the first treatise of this chapter.⁽²⁾

As for Shafi`îs, we can support their deduced view by the Hadith that reads: *"Deeds are to be judged only by intentions, and a man will have only what he intended..."*⁽³⁾

Evidential aspect: The *Zakâh* payer in this case does not intend to count the extra amount as *Zakâh* paid in advance for the coming year at the time of payment. In fact, expressing intention after payment is not valid because it is a conditions for the validity of acts of worship not to delay expressing the intention till after doing the act.

Evidence cited by the proponents of the third opinion: Hanbalîs supported their view that it is impermissible to count the extra amount as *Zakâh* for the next year by the evidence they cited by Shafi`îs to support the second opinion.⁽⁴⁾ As for the exception of stipulating that the payment be basically intended as paying *Zakâh* in advance, they argued that in this case the *Zakâh* payer intends to pay it in advance but paid more than the due amount. Therefore, it is permissible to count the extra amount as *Zakâh* for the next year

(1) See: *Al-Muḥīṭ* Al-Burhâniy (2/293), *Al-Nahr Al-Fâ'iḳ* (1/435), *Hâshiyyat* ibn 'Abidîn (2/293).

(2) See: Page No. (375) of this book.

(3) Refernced above. See: page No. (7) of this book.

(4) See: *Al-Mughnî* (3/16).

because the intention to pay in advance already exists. Here, it should be taken into account that it is permissible to pay *Zakâh* two years in advance.⁽¹⁾

Counter argument: In this case, the *Zakâh* payer intends to pay *Zakâh* only one year in advance at the time of payment and does not intend to count the extra amount as advanced payment of the *Zakâh* for the next year. This is because he is not certain whether there would be an extra amount. So, the extra amount is considered a voluntary charity, because the *Zakâh* payer does not intend it as *Zakâh* for the next year. Here, it should be taken into account that intention is a condition for the validity of payment.

Weighing opinions:

The preponderant view - Allah knows best - is the second opinion to the effect that it is not permissible to count the extra amount as *Zakâh* for the next year under any circumstances.

Reasons for preferring this opinion:

- 1- The second opinion is substantiated by strong evidence. Moreover, the evidence cited by the proponents of the first and third opinions proved to be weak .
- 2- It is a prerequisite of the intention for acts of worship that it should not be expressed after the intended act is done.⁽²⁾ In the case at hand, counting the extra amount paid out as *Zakâh* for the coming year involves delaying the intention till after the act is done; so it is not valid.

Fifth Treatise: The intention to replace the original *Nisâb* with another *Nisâb* if the former damages after paying *Zakâh* in advance:

Description of the issue:

If someone pays in advance the *Zakâh* due on a given *Nisâb*, which damages before the passage of *Hawl*, can he intend turning the amount paid in advance to be the *Zakâh* due another *Nisâb* (property)?

(1) See: Kashshâf Al-Qinâ' (2/266), *Sharh* Muntaha Al-Îrâdât (1/452).

(2) See: Badâ'i' Al-*Sanâ'i'* (1/129), Al-Ishrâf 'alâ Nukat Masâ'il Al-Khilâf (1/424), Mawâhib Al-Jalîl (1/235), Nihâyat Al-Maṭlab (1/85), Al-Ashbâh wal-Nazâ'ir, by Al-Suyûṭiy (p. 24), Al-Mughnî (1/339), Al-Furû' (4/252).

Example: A person pays 1000 as an advance payment of *Zakâh* due on a given 40,000 *Nisâb*. If the 40,000 damages before the passage of *Hawl*, can he intend to turn the advance payment of 1000 to be the *Zakâh* due on another 40,000 *Nisâb*?

Another example: A person gives a sheep as an advance payment of *Zakâh* due on five camels. If the camels perish before the passage of *Hawl*, can he intend to turn the sheep paid in advance to be the *Zakâh* due on forty sheep he possesses?

Opinions on the Issue: Scholars expressed three different opinions regarding this issue:

The first opinion: Doing so is permissible provided the property constituting the damaged *Nisâb* and the one constituting the new *Nisâb* intended as the object of *Zakâh* are of the same type. If they differ in type, however, doing so will not be permissible. This is the view adopted by the Hanafis⁽¹⁾ and one of two opinions expressed by the Hanbalis, as related by Judge Abu Ya`lâ.⁽²⁾

However, proponents of this view differ on whether gold, silver and commercial commodity should be treated as a single type of property or not?

To explain, the famous view among the Hanafis and the view adopted by Hanbalis is that gold, silver and commercial commodity should be treated as a single type of property because they are added together to complete the *Nisâb*.⁽³⁾ Judge Abu Yusuf held the opinion that they are different categories and should not be treated as a single type of property.⁽⁴⁾

The second opinion: Doing so is not permissible at all. This is famous view among Shâfi`is,⁽⁵⁾ and the official position of Hanbalis.⁽⁶⁾

Actually, I could not come across an opinion expressed by Mâlikis on this issue. However, the issue can be envisaged from their famous position as to the permissibility of paying *Zakâh* in advance shortly before the passage of

(1) See: *Al-Mabsûṭ* (2/23), *Badâ'i' Al-Ṣanâ'i'* (2/52), *Fath* Al-Qadîr (2/207).

(2) See: *Al-Furū'* (4/281), *Al-Insâf* (3/209), *Ma'ûnat ulî Al-Nuhâ* (3/311).

(3) See: *Badâ'i' Al-Ṣanâ'i'* (2/52), *Al-Binâyah* (3/365), *Al-Furū'* (4/281), *Al-Insâf* (3/209).

(4) See: *Al-Muḥîṭ* Al-Burhâniy (2/275).

(5) See: *Al-Umm* (2/24), *Al-Majmû'* (6/148), *Al-Ghurar Al-Bahiyyah* (2/188).

(6) See: *Al-Insâf* (3/209), *Ma'ûnat ulî Al-Nuhâ* (3/311), *Kashshâf Al-Qinâ'* (2/267).

Hawl.⁽¹⁾ Thus, they can, by way of *Takhrîj*, be assumed to hold the same view that doing so is impermissible. This is based on their view, when substantiating the impermissibility of paying *Zakâh* in advance long before the passage of *Hawl*, that the *Nisâb* might damage before the passage of *Hawl*, which renders the advance payment a voluntary charity.⁽²⁾ It is also based on their view that it is not valid for one who is liable for multiple expiations, and frees a slave as a specific expiation, to intend it as another expiation.⁽³⁾

The third opinion: Doing so is absolutely permissible. This is one of the views held by Shafi'îs.⁽⁴⁾

Evidence supporting the opinions and counter arguments:

Evidence cited by the proponents of the first opinion: The proponents of the first opinion supported their view that doing so is permissible provided the two *Nisâbs* are of the same type by the following evidence:

The first evidence: The specifying intention is considerable only if it is expressed to specify one of variant types. Consequently, it will be inconsiderable if there is only one type of property. If the original property damages, in such a case, it is permissible to intend that the payment is for another *Nisâb* consisting of the same type of property.⁽⁵⁾

Counter argument: Granted that the specifying intention is useless if there is only one type of property, this does not cancel the validity of the intention. Since the intention is valid, changing what is intended after payment is not permissible.

The second evidence: Analogy should be drawn between the intention that specifies one of variant types of property to specifying the day on which missed fasting is made up for. To explain, if someone, who has to make up for the missed fasting days during Ramadan, fasts the same number of days intending making up, it will fulfil the obligation even if he does not specify by his

(1) See: page No. (371) of this book.

(2) See: This means that it cannot be turned to another *Nisâb*. Al-Kâfi fî Fiqh Ahl Al-Madînah (1/303), Al-Dhakhîrah (3/138).

(3) See: Al-Tanbîh 'alâ Mabâdî' Al-Tawjîh (2/836), Jâmi' Al-'Ummahât (p. 166), *Sharh* Al-Manhaj Al-Muntakhab (1/213).

(4) See: *Hîyat* Al-'Ulamâ' (3/114), Al-Bayân (3/383), Al-Majmû' (6/148).

(5) See: Badâ'i' Al-*Sanâ'i'* (2/52).

intention which day should replace the first or second day, Thursday or Friday. Moreover, if he specifies the wrong day, it will still fulfil the obligation of one fasting day. The same applies to the *Zakâh*'s specifying intention if there is only one type of property.⁽¹⁾

Counter argument: We cannot grant the authenticity of the other side of comparison. To clarify, if someone intends to make up for a specific missed day of fasting, they cannot turn the intention to another day.⁽²⁾

Evidence cited by the proponents of the second opinion: Those who view doing so is not permissible at all cite the following evidence to support their view:

The first evidence: The Prophet (peace be upon him) said: *"Deeds are to be judged only by intentions, and a man will have only what he intended..."*⁽³⁾

Evidential aspect: The Prophet (peace be upon him) stated that a person only gets what they intended. So, whoever intends to pay *Zakâh* for a specific type of property cannot turn it to another type after paying it because their intention did not specify that other type.⁽⁴⁾

The second evidence: An analogy should be drawn between *Zakâh* and expiation in terms of the invalidity of turning the intention to something other than what is specified. For example, it is not valid for one who is liable for multiple expiations, and frees a slave as a specific expiation then remembers having previously paid such an expiation, to intend it as another expiation. The same applies to *Zakâh*, as both are financial acts of worship.⁽⁵⁾

Evidence cited by proponents of the third opinion: Those who view doing so is absolutely permissible argue that: The amount paid in advance does not so far count as *Zakâh*. Rather, its status is pending till the passage of *Hawl*. So, it is permissible for the *Zakâh* payer in case the specified *Nisâb* damages to turn it to another *Nisâb*.⁽⁶⁾

Counter argument: We cannot grant that the amount paid in advance does

(1) See: *Al-Mabsûṭ* (3/23).

(2) See: *Hilyat Al-'Ulamâ'* (3/158), *Al-Majmû'* (6/365).

(3) Referenced above; see p. 7 of this book.

(4) See: *Al-Umm* (2/24), *Kashshâf Al-Qinâ'* (2/268).

(5) See: *Al-Bayân* (3/383), *Al-Mughnî* (2/477).

(6) See: *Al-Bayân* (3/383).

not count as *Zakâh* till the *Hawl* passes. This is supported by the fact that it cannot be refunded. However, if the beneficiary dies or becomes no more deserving before the passage of *Hawl*, it will be valid in such a case.⁽¹⁾

Weighing opinions:

The preponderant view - Allah knows best - is the second opinion to the effect that the intention to replace the original *Nisâb* with another *Nisâb*, if the former damages after paying *Zakâh* in advance and before the passage of *Hawl*, is invalid.

Reasons for preferring this opinion:

- 1- The second opinion is substantiated by strong evidence that could not be refuted by counter arguments. Moreover, the evidence cited by the proponents of the first and third opinions proved to be weak.
- 2- The *Nisâb* can be specified by intention when there are variant types of property. Likewise, it can also be specified by intention when there is only one type of property since there is no difference between the two cases.
- 3- Paying in advance the *Zakâh* due on a specific *Nisâb* is considered a performance of an act of worship. Here, it should be taken into consideration that changing what is intended is not valid after performing the act of worship, whether such performance fulfils the obligation or not.

Sixth Treatise: The intention of heirs to count the amount of *Zakâh* the deceased had paid in advance as their *Zakâh*:

Describing the Issue:

If someone paid their *Zakâh* in advance and then dies before the passage of *Hawl*, is it valid for their heirs to intend to count what the dead person paid in advance as the *Zakâh* due on them? Does this fulfill the obligation?

Opinions on the Issue: Scholars expressed three different opinions regarding this issue:

The first opinion: Doing so is not valid and the amount paid in advance by the dead person does not fulfil the obligation due on the heir. This is the most

(1) See: Al-Muqni' (P.97), Al-Furû' (4/281).

accepted view among Shaf'`is⁽¹⁾ and the official view of the Hanbalis.⁽²⁾

Actually, I could not come across an opinion expressed by Hanafis and Malikis on this issue.⁽³⁾ However, they can, by way of *Takhrîj*, be assumed to hold this view based on their view that if a person dies during the *Hawl*, their *Hawl* is interrupted and the heirs should not continue the *Hawl* of the dead person.⁽⁴⁾ Rather, they should start a new *Hawl*. Thus, even with greater reason, the amount paid in advance as *Zakâh* due on the dead person does not fulfil the obligation due on the heirs.

The second opinion: Doing so is valid and the amount paid in advance by the dead person fulfils the obligation due on the heir. This is another view held by Shafi'is and Imam Shafi'iy quoted view.⁽⁵⁾ It is also one of the views held by Hanbalis.⁽⁶⁾

Evidence supporting the opinions and counter arguments:

Evidence cited by the proponents of the first opinion: The proponents of invalidity support their view with the following evidence:

The first evidence: The reason for the obligation of *Zakâh* is possessing the *Nisâb* taking into account that the property came into the heir's possession after paying *Zakâh* in advance. If heirs want to count the amount paid in advance as their *Zakâh*, it would be tantamount to paying *Zakâh* in advance before the reason for its obligation is materialized, which is not valid. For example, doing so will be similar to the case when someone who pays in advance the *Zakâh* due on a *Nisâb* and then buys it.⁽⁷⁾

The second evidence: The *Zakâh* paid in advance was paid by the inherited person on behalf of rather himself than of heirs. So, it does not fulfil the obli-

(1) See: Al-Tahdhîb (3/72), *Rawdat Al-Tâlibîn* (2/214), *Asnâ Al-Maţâlib* (1/363).

(2) See: Al-Mughnî (2/474), *Al-Insâf* (3/213), *Kashshâf Al-Qinâ'* (2/268).

(3) The issue is considered by Malikis, according to their prevailing opinion regarding the permissibility of paying *Zakâh* in advance shortly before the passage of *Hawl*. See: Al-Mudawwanah (1/335), *Jawâhir Al-Durar* (3/132), *Mawâhib Al-Jalîl* (2/360).

(4) See: Al-Tajrîd (3/1242), *Al-Mabsûţ* (2/186), *Badâi' Al-Sanâ'i'* (2/53), *Al-Tabşirah* (2/916), *Al-Dhakhirah* (3/108), *Sharh Al-Zurqâniy 'alâ Mukhtasar Khalîl* (2/255).

(5) See: Al-Umm (2/23), *Bahr Al-Madhab* (3/80), *Al-Bayân* (3/387).

(6) See: Al-Mughnî (2/474), *Al-Ri'âyah Al-Sughrâ fî Al-Fiqh* (1/431), *Al-Furû'* (4/ 287).

(7) See: Al-Hâwî Al-Kabîr (3/173), *Al-Bayân* (3/387), *Al-Mughnî* (2/474).

gation due on heirs.⁽¹⁾

The third evidence: Paying *Zakâh* on behalf of a person without being a guardian or representative does not fulfil the obligation even if the payer intended doing so on behalf of them. In fact, inherited person is neither the guardian nor the representative of heirs and, moreover, did not intend paying on behalf of them. Therefore, doing so does not fulfil the obligation.⁽²⁾

Evidence cited by the proponents of the second opinion: Those who view that doing so is valid support their view with the following evidence:

The first evidence: Heirs should continue the *Hawl* of the inherited person because they possess the property along with its liabilities taking into account that *Hawl* is one of its liabilities. Since they should continue the *Hawl* of the inherited person, they will be discharged of the liabilities due on that *Hawl* that were paid by the inherited person. Accordingly, the case of duplication, i.e. paying *Zakâh* twice for the same *Hawl* will not take place.⁽³⁾

Counter argument: We cannot grant that heirs should continue the *Hawl* of the inherited person. This is because *Hawl* is a right related to an act of worship. So, it remains effective so long as ownership is continuing and is interrupted once ownership is transferred exactly as if the *Nisâb* was sold or gifted.⁽⁴⁾

The second evidence: Paying *Zakâh* two years in advance is valid, in which a case *Zakâh* due on the second year will be discharged although its *Hawl* will not have started by the time of paying in advance. Similarly, if the *Zakâh* paid in advance will discharge heirs from liability even if suppose that their *Hawl* was had not started by the time of paying.⁽⁵⁾

Counter argument: Paying *Zakâh* two years in advance is valid on condition that such payment occurs after possessing the *Nisâb* and that the payment be on behalf of the *Nisâb*'s owner at the time of payment. In the case at hand, however, paying in advance occurred before the heir's possession and the payment was made on behalf of rather the inherited person than the heir. So, it

(1) See: Al-Mughnî (2/474).

(2) See: Ibid.

(3) See: Al-Hâwî Al-Kabîr (3/172), Al-Bayân (3/386).

(4) See: Badâ'i' Al-Sanâ'i' (2/53), Al-Hâwî Al-Kabîr (3/173).

(5) See: Nihâyat Al-Maṭlab (3/188), Al-Furû' (4/287).

does not fulfil the obligation.⁽¹⁾

The third evidence: An heir is eligible to refund amount paid in advance by the inherited person who died before the passage of *Hawl*. Since he is eligible to refund it, it becomes like a debt owed by the beneficiary. So, the heir can count it as the *Zakâh* due on him.⁽²⁾

Counter argument: We cannot grant that the heir can refund the amount paid in advance by the inherited person. Granted that, we cannot grant that he has the right to absolve the beneficiary of the debt and count it as *Zakâh*.⁽³⁾

The fourth evidence: Since the heir is required to pay off the debts owed by the dead person and collect debts he lent, the former likewise takes responsibility of the amount of *Zakâh* paid in advance by the latter.⁽⁴⁾

Two counter arguments:

First counter argument: A debt is one of the established financial liabilities of the dead person and is due on the property before his death. Therefore, the heir is required to pay it off on behalf of the dead person. On the contrary, *Zakâh* will not be an established liability for the heir until after paying in advance and death of the inherited person. So, neither of the two parties should take the responsibility of the other.

Second counter argument: Drawing an analogy between debt and *Zakâh* is a comparison of incommensurables. This is because debt is a right to a human being, while *Zakâh* is an act of worship that requires intention at the time of payment, which was not done by the heir.

Weighing opinions:

The preponderant view - Allah knows best - is the first opinion to the effect that it is not valid for heirs to count the amount of *Zakâh* the deceased had paid in advance as their *Zakâh*.

Reasons for preferring this opinion:

1- The first opinion is substantiated by strong evidence that could not be

(1) See: Nihâyat Al- Matlab (3/189), Al-Mughnî (2/474).

(2) See: Al-Mughnî (2/475).

(3) See: Ibid.

(4) See: Al-Hâwî Al-Kabîr (3/173).

refuted by counter arguments. Moreover, the evidence cited by the proponents of the second opinion proved to be weak.

- 2- We previously gave preference for the view that it is not valid to pay *Zakâh* in advance before possessing the *Nisâb*. In fact, if the heir counts the amount of *Zakâh* the deceased had paid in advance as their *Zakâh*, this will be tantamount to paying *Zakâh* in advance before possessing the *Nisâb*.
- 3- The sound view held by the majority of scholars is that the dead person's *Hawl* is interrupted by his death.⁽¹⁾ Since the heir should start a new *Hawl*, he cannot count the amount paid by the dead person as the amount due on his own *Hawl*.

Reasons for scholarly dispute:

It becomes clear that the reason for scholarly dispute on this issue is difference regarding two issues:

The first issue: Should the heir continue the *Hawl* of the dead person or start a new *Hawl*?

So, the view that the heir should not continue the *Hawl* of the dead person and should start a new *Hawl* is consistent with the view that the amount paid by the inherited person in advance as the *Zakâh* due on the *Hawl* does not fulfil the heir's obligation. This is because the heir should start a new *Hawl* and has nothing to do with the dead person's *Hawl*. As for the view that the heir should continue the *Hawl* of the dead person - which is the view of the earlier school of thought of Shafi'is,⁽²⁾ it is consistent with the view that the amount paid in advance fulfils the heir's *Zakâh* obligation because it is one *Hawl*.

The second issue: Is it valid to pay *Zakâh* two years in advance?

Those who view that it is valid for heirs to count the amount of *Zakâh* the deceased had paid in advance as their *Zakâh*, although they also view that the heir should start a new *Hawl*, base their opinion on the permissibility of paying *Zakâh* two years in advance and the validity of paying it in advance for a *Hawl* that has not begun yet. As for those who view that it is not valid to pay

(1) See: *Al-Mabsûṭ* (2/186), *Badâi' Al-Şanâi'* (2/53), *Al-Tabṣirah* (2/916), *Al-Dhakhîrah* (3/108), *Nihâyat Al-Maṭlab* (3/188), *Al-Bayân* (3/387), *Al-Mughnî* (2/474), *Al-mubdî* (4/401).

(2) See: *Al-Hâwî* Al-Kâbir (3/172), *Nihâyat Al-Maṭlab* (3/188), *Al-Bayân* (3/386).

Zakâh two years in advance, this view of them is not consistent with their view that the dead person's *Zakâh* fulfils the heir's *Zakâh* obligation although they also view that the dead person's *Hawl* is interrupted by his death.



Chapter Two

The intention of evading *Zakâh*

First Treatise: Disposing of property with the intention of evading *Zakâh*.

Describing the Issue:

If someone owns a *Zakâtable* property that reached the *Niṣâb*, then disposes of it wholly or partially before the passage of *Hawl* or at the time when *Zakâh* becomes due by exchanging it for another type of property, selling, gifting, or the like with the intention of evading *Zakâh*, does doing so waive the *Zakâh* obligation?

Example: A person owns five camels and sells one of them with the intention of evading *Zakâh*. Does doing so waive the *Zakâh* obligation?

Opinions on the Issue: Scholars expressed three different opinions regarding this issue:

The first opinion: *Zakâh* is absolutely waived. This is the position held by Hanafis,⁽¹⁾ the official position of Shafi'is,⁽²⁾ and is reported to be the view of some Hanbalis.⁽³⁾

Proponents of this view differ on the defining law regarding disposing of wealth with the intention of evading *Zakâh* - whether it is permissible, disliked, or forbidden?

The accredited opinion among the Hanafis⁽⁴⁾ and Shafi'is⁽⁵⁾ is that it is disliked (*makrûh*). Abu Yusuf is reported to have considered it forbidden, a position that

(1) See: *Al-Mabsûṭ* (2/166), *Fath* Al-Qadîr (2/162), *Al-Baḥr* Al-Râ'iq (2/237).

(2) See: *Al-Umm* (2/26), *Al-Ḥawî* Al-Kabîr (3/196), *Rawḍat* Al-Tâlibîn (2/190).

(3) This was reported by Abu Ya'la Al-Saghîr from some scholars, as stated by Al-Mardawiy: "The principles and foundations of the school of thought reject this". Also see: *Al-Insâf* (3/329), *Al-Furû'* (3/477).

(4) See: *Badâi'* Al-Sanâi' (2/15), *Al-Muḥîṭ* Al-Burhâniy (2/159), *Majma'* Al-Anhur (1/196).

(5) See: *Al-Umm* (2/26), *Sharḥ* Mushshkil *Al-Wasīṭ* (3/71), *Taḥrîr* Al-Fatâwî (1/466).

can be implicitly deduced in his book *Kitâb Al-Kharâj*.⁽¹⁾ The view of prohibition is also attributed to Muhammad Ibn Al-Hasan,⁽²⁾ as well as some Shafi'i scholars.⁽³⁾ As for the opinion that it is permissible to do so, many Hanafis attributed it to Abu Yusuf,⁽⁴⁾ which contradicts what he stated in the book: *Kitâb Al-Kharâj*. Therefore, Ibn Abul-'Izz Al-Hanafi⁽⁵⁾ concluded that Abu Yusuf changed his view to prohibition at the end of his life.⁽⁶⁾

The second opinion: Doing so is prohibited, and *Zakâh* is not waived under any circumstances. This is the opinion of Al-Awza'iy and Ishâq,⁽⁷⁾ and the position adopted by Malikis⁽⁸⁾ and Hanbalis.⁽⁹⁾

The third opinion: Doing so is prohibited, but *Zakâh* is waived as to accountability rather before the society than before Allah.⁽¹⁰⁾ This is one of the

(1) See: *Al-Kharâj*, by Abu Yusuf (p. 93).

(2) See: *Al-Tanbîh 'alâ Mushkilât Al-Hidâyah* (5/697).

(3) See: *Nihâyat Al-Maṭlab* (3/211), *Sharḥ Mushshkil Al-Wasīṭ* (3/71), *Rawḍat Al-Tālibîn* (2/190).

(4) See: *Al-Mabsûṭ* (2/166), *Badâ'i' Al-Ṣanâ'i'* (2/15), *Al-Nahr Al-Fâ'iḳ* (1/430).

(5) He is: 'Aliy ibn 'Aliy ibn Muhammad Al-Dimashqiyy Al-Salihiy Al-Hanafiyy, surnamed *Sadr Al-Dîn* ibn Abu Al-'Izz. He was a prominent scholar and the Chief Judge of Damascus, then of the Egyptian lands. He was faced hardship due to his objection to the poem of Ibn Aybak Al-Dimashqî. He has notable works, including (*Sharḥ* Al-'Aqidah Al-Tahâwîyah), and (*Al-Tanbîh 'alâ Mushkilât Al-Hidâyah*). He died in 792 AH. For his biography, see: *Al-Durar Al-Kâminah fî A'yân Al-Mi'ah Al-Thâminah* (4/103), *Sullam Al-Wuṣûl* (2/375).

(6) See: *Al-Tanbîh 'alâ Mushkilât Al-Hidâyah* (5/699).

(7) See: *Al-Ishrâf 'alâ Madhâhib Al-'Ulamâ'* (3/21), *Al-Mughnî* (2/504).

(8) See: *Al-Mudawwanah* (1/362), *Al-Dhakhîrah* (3/103), *Al-Tâj wal-Iklîl* (3/95).

And they made the exception that when one buys goods in return for a currency with the intention of evading *Zakâh*, saying: it is waived for him. The details of this will come in the next treatise. See: *Al-Bayân wal-Taḥsîl* (2/411), *Mawâhib Al-Jalîl* (2/315), *Sharḥ* Al-Zurqâniyy 'alâ *Mukhtaṣar Khalîl* (2/278).

(9) See: *Al-Ta'liqah Al-Kabîrah* (3/336), *Al-Muḥarar* (1/219), *Kashshâf Al-Qinâ'* (2/336).

Then, they differed on whether not waiving *Zakâh* for the evader is conditional on the case when his disposal is shortly before the *Hawl* or limited by no time? The predominant opinion is that it is absolute. Some scholars made it conditional on the case when his disposal is after the passage of most of the *Hawl*. However, other scholars limited the period to two months before the *Hawl*, while others limited it to two days. They justified this by saying that disposing of the property at the beginning of the *Hawl* negates the purpose, which is enjoying the *Nisâb* for most of the *Hawl*. So, the intention to evade does not have an effect. See: *Al-Furû'* (3/476), *Al-Mubdî'* (2/305), *Kashshâf Al-Qinâ'* (2/180).

(10) Meaning: The Imam or his deputy does not demand it from him, but it remains as =

opinions held by Shafi'is⁽¹⁾ that is supported by Al-Ghazâli.⁽²⁾

Evidence supporting the opinions and counter arguments:

Evidence cited by the proponents of the first opinion: Those who view that *Zakâh* is waived absolutely support their view by the following evidence:

The first Evidence: The general purport of proofs supporting the stipulation of reaching the *Nisâb* and the passage of *Hawl* for *Zakâh* to be due. For example, the Prophet (peace be upon him) said: "*There is no Zakâh on less than five camels, there is no Zakâh on less than five awâq (two hundred dirhams of pure silver) and there is no Zakâh on less than five awsuq (three hundred Sa') [of crops].*"⁽³⁾ The Prophet (peace be upon him) also says: "*Whoever acquired a property, then there is no Zakâh on it until the Hawl has passed while it is in his possession.*"⁽⁴⁾

Evidential aspect: In this case, one of the prerequisites of *Zakâh*, which is either the passage of *Hawl* or reaching the *Nisâb*, is not met here. So, *Zakâh* is waived regardless of whether this is pardonable or not.⁽⁵⁾

Counter argument: Generality of the purport of these proofs is specified by the Prophet's prohibition of intending to dispose of one's property in such a way as to evade, or reduce the amount of, *Zakâh*. In this regard, the Prophet (peace be upon him) said: "*One should neither collect various portions (of the property) nor divide the property into various portions in order to avoid paying Zakâh.*"⁽⁶⁾ It is also specified by the evidence indicating that those who try to circumvent, and contradict the objectives of, *Shari'ah* are punishable.

= a liability due on him.

(1) See: *Iḥyâ' 'Ulûm Al-Dîn* (1/18), *Al-Manthûr fî Al-Qawâ'id Al-Fiqhiyah* (2/67), *Tuhfat Al-Muhtâj* (3/235).

(2) He is: Muhammad ibn Muhammad ibn Ahmad Al-Ghazâlî Al-Tûsiy, surnamed Abu Ḥamid. he was Fiqh scholar, theologian, Sufi, and Ash'arî scholar. There was no one like him among the Shafi'is in his time. He learned from Abu Al-Ma'âlî Al-Juwaynî, and taught at the Nizamiyyah School in Baghdad. Then, he secluded himself and followed the path of Sufism and asceticism. He has notable works, including (*Al-Wasît*) and (*Al-Wajîz*) in Fiqh, (*Al-Mustasfâ*) in *Uṣûl*, and (*Iḥyâ' 'Ulûm Al-Dîn*). He died in 505 AH. For his biography, see: *Tabaqât Al-Fuqahâ' Al-Shâfi'îyah* (1/249), *Wafiyât Al-A'yân* (4/216).

(3) Referenced above. See p. 60 of this book.

(4) Referenced above. See p. 60 of this book.

(5) See: *Al-Hâwî Al-Kabîr* (3/196), *Al-Majmû'* (5/468).

(6) Referenced above. See p. 112 of this book.

The second evidence: Disposing of the property with the intention of evading *Zakâh* is tantamount to refraining from committing to an obligation for fear of not fulfilling it, which is permissible. This is similar to the case when someone refrains from saving up to avoid being enjoined to perform Hajj or pay *Zakâh*. Actually, it is refusing to pay off a liability that is prohibited. However, trying to evade being liable is not blameworthy.⁽¹⁾

Counter argument: In this case, disposal of the property occurs after the reason for obligation is established, which is possessing the *Nisâb*. So, it is inappropriate to draw analogy between this case and refraining from saving up. Also, permitting doing so will lead to taking *Zakâh* gradually out of the scope of obligation and will be paid only by volunteers.

Evidence cited by the proponents of the second opinion: Those who view that *Zakâh* is not waived under any circumstances support their view by the following evidence:

The first evidence: Allah (Exalted be He) says: {*“Indeed, We have tried them as We tried the companions of the garden, when they swore to cut its fruit in the [early] morning”*} [Al-‘Alaq (The Clot): 5].

Evidential aspect: In the *Ayah* above, owners of the garden intended to reap their fruits to avoid giving the poor their right. So, Allah punished them by destroying their fruits for evading from *Zakâh*. This indicates that evading *Zakâh* is prohibited. Moreover, a prohibited act cannot waive an act of worship.⁽²⁾

Two counter arguments:

First counter argument: Allah the Almighty punished them rather for not saying the qualifying phrase: “*In Shâ’ Allah*” (If Allah so wills), than for evading *Zakâh*.⁽³⁾

Reply to this counter argument: Leaving out the above-mentioned qualifying phrase in an oath is pardonable and thus unpunishable.⁽⁴⁾

Second counter argument: They were determined to do the act but did not

(1) See: *Al-Mabsûṭ* (2/167).

(2) *Al-Ishrâf ‘alâ Nukat Masâ’il Al-khilâf* (1/386), *Al-Mughnî* (2/504), *l’lâm Al-Muwaqqi’in* (3/128).

(3) See: *Al-Furû’* (11/93), *Al-Hâwî Al-Kabîr* (3/197)

(4) See: *Al-Furû’* (11/93).

actually do it. In fact, punishment is for rather actions than determination. So, there is no evidential aspect in the *Ayah*.⁽¹⁾

Reply to this counter argument: What they did was more than just determination because they swore and pledged to do it. Consequently, this is a punishable action.

The second evidence: The Prophet (peace be upon him) said: *"One should neither collect various portions (of the property) nor divide the property into various portions in order to avoid paying Zakâh."*⁽²⁾

Evidential aspect: This Hadith explicitly prohibits employing ingenuity to evade, or reduce the amount of, *Zakâh*. However, prohibition implies invalidity, so *Zakâh* is not waived.⁽³⁾

The third evidence: The Prophet (peace be upon him) said: *"Deeds are to be judged only by intentions, and a man will have only what he intended."*⁽⁴⁾

Evidential aspect: The Prophet (peace be upon him) here tells us that actions follow their intentions and objectives. So, if the intention behind an action that is basically permissible is something forbidden, it becomes forbidden. Actually, forbidden acts have no effect, so it does not waive *Zakâh*.⁽⁵⁾

The fourth evidence: The Prophet (peace be upon him) is reported as saying: *"Do not commit what the Jews committed, breaching what Allah has forbidden, by resorting to the lowest types of deceit."*⁽⁶⁾

Evidential aspect: The Prophet (peace be upon him) forbade imitating the Jews in breaching the prohibitions of Allah through manipulation. In fact, employ trickery to evade *Zakâh* is included under the purport of this Hadith.

(1) See: *Al-Hâwî* Al-Kabîr (3/197).

(2) Referenced above. See p. 112 of this book.

(3) See: *Al-Ishrâf 'alâ Nukat Masâ'il Al-khilâf* (1/385), *I'lâm Al-Muwaqqi'in* (3/136).

(4) Referenced above. See p. 7 of this book.

(5) See: *Al-Tanbîh 'alâ Mushkilât Al-Hidâyah* (5/697), *I'lâm Al-Muwaqqi'in* (3/130).

(6) Related by Ibn Battâh through his chain of narrators in his book *"Ibtâl Al-Hiyâl"* (p. 46). Shaykh Al-Islâm Ibn Taymiyyah said: "This is a good chain of narrators, which, according to the criteria of Al-Tirmidhiy and others, can be judged as authentic or as good." *Al-Fatâwâ Al-Kubrâ* (6/33). Ibn Al-Qayyim and Al-Sakhâwî classified its chain of narrators as reliable. See: *Tahdhîb Sunan Abu Dâwûd* (2/463), *Al-Ajwibah Al-Murdiyyah* (1/215).

In general, the Hadith indicates any manipulation to evade an obligation or to commit something forbidden is groundless.⁽¹⁾

The fifth evidence: Disposing of the property with the intention of evading *Zakâh* involves the intention of dropping the share of beneficiaries whose entitlement is established. So, it cannot be dropped. This is supported by drawing analogy to the case of a person divorces his wife during his terminal illness. In such a case, her entitlement to a share of inheritance is not dropped.⁽²⁾

Three counter arguments:

First counter argument: In the case of inheritance, it is a specific person who is entitled to a share thereof. So, their right is protected and cannot be dropped, unlike *Zakâh* in which beneficiaries are not specified in person.⁽³⁾

Reply to this counter argument: Rights of people are protected whether they are specified in person or not.

Second counter argument: Ease and leniency are basic *Zakâh*-related principles. Therefore, it is waived for many reasons, such as the feed of live-stock and property for personal use as well as other things, which is not the case with inheritance.⁽⁴⁾

Reply to this counter argument: We cannot grant that *Zakâh* is based on leniency and ease. In fact, waiving it in some cases does not mean so because it is a duty related to both the rights of Allah the Almighty and the rights of people.

Third counter argument: Heirs are entitled to a share of the property during terminal illness. this is supported by the fact that such a sick person may not voluntarily donate more than one-third of the property. Therefore, divorcing the wife during it does not drop her entitlement. As for the poor's entitlement to the property is conditional on the passage of *Hawl*. So, disposing of it before the passage of *Hawl* is analogous to the case of a healthy person divorcing his wife, which can drop her entitlement to inheritance.⁽⁵⁾

(1) See: Al-Tanbîh 'alâ Mushkilât Al-Hidâyah (5/697), *Sharh* Al-Zarkashiy 'alâ *Mukhtasar* Al-Kharqî (2/459).

(2) See: Al-Mughnî (2/504), *Kashshâf* Al-Qinâ' (2/179).

(3) See: Al-Majmû' (5/468).

(4) See: Ibid.

(5) See: *Kifâyat* Al-Nabîh (5/261).

The sixth evidence: The punishment for one who has a corrupt intention is the opposite of his intention. For example, an heir who kills the would-be inherited person to hasten his inheritance is punished by Shari'ah by being deprived of inheritance. Similarly, one who disposes of his property with the intention of evading *Zakâh* has a corrupt intention. So, he is punished by the opposite of his intention and thus *Zakâh* will not be waived.⁽¹⁾

The seventh evidence: Viewing that *Zakâh* is waived will lead to taking *Zakâh* gradually out of the scope of obligation. Thus, all that a person who wants to evade *Zakâh* has to do is disposing of his property before the *Hawl* in such a manner as may have the effect of starting the *Hawl* anew. So, it is necessary to put an end to this issue through judging such manipulation as prohibited.⁽²⁾

Evidence cited by the proponents of the third opinion: I could not come across evidence cited by those who view that *Zakâh* is waived as to accountability rather before the society than before Allah. However, we can cite, in their place, the evidence supporting the first opinion to support that *Zakâh* is waived as to accountability before the society. As for the part *Zakâh* is not waived as to accountability before Allah, we can cite the evidence supporting the second opinion. In other words, their view is supported by a combination of the evidence supporting both the two other opinions.

Counter argument: Drawing distinction between accountability before the society and before Allah is groundless. This is because if a person is proven by circumstantial evidence to be intending to evade *Zakâh*, accountability before the society should not be waived either. This is because since such a person is accountable before Allah, liability can be waived only by paying it.

Weighing opinions:

The preponderant view - Allah knows best - is the second opinion, which is the prohibition of disposing of property with the intention of evading *Zakâh*, and that *Zakâh* is not waived by doing so.

Reasons for preferring this opinion:

- 1- The second opinion is substantiated by strong evidence, most of which

(1) See: Al-Ishrâf 'alâ Nukat Masâ'il Al-Khilâf (1/386), Al-Dhakhîrah, by Al-Qirâfiy (3/103), Al-Mughnî (2/504).

(2) See: Al-Ishrâf 'alâ Nukat Masâ'il Al-Khilâf (1/386).

could not be refuted by counter arguments. Moreover, the evidence cited by the proponents of the two other opinions proved to be weak.

- 2- The view that *Zakâh* is not waived aligns with the objectives of *Shari'ah* to the effect of achieving the interests of the poor and beneficiaries and prohibition of manipulation to evade their rights.
- 3- It is an objectives of *Shari'ah* not to give manipulators the chance to achieve his aims. An example of this is the issue of *Muḥallil* (a man who marries an irrevocably divorced woman for the sole purpose of making her lawful for her ex-husband to remarry). Undoubtedly, disposing of property with the intention of evading *Zakâh* is considered manipulation and circumvention of *Shari'ah's* rulings.

Second Treatise: Excessively purchasing real estate and other goods with the intention of evading *Zakâh*:

Describing the Issue:

One who intends to evade *Zakâh* by purchasing real estate and other commercial commodity, such as clothes and the like, which are not liable for *Zakâh* - is *Zakâh* obligation waived or not in such a case?

The expression “excessively” in the title of this treatise is used widely by scholars in this context. In fact, it refers to the majority of cases and is not used as a qualifier taking into account that most of those who evade *Zakâh* involve excessively in purchasing objects that are not liable for *Zakâh*.

Opinions on the Issue: Scholars expressed two different opinions regarding this issue:

The first opinion: *Zakâh* is waived and such a person is not liable to pay *Zakâh* on those commodity as long as he does not intend trading in them. This is the view held by Hanafis,⁽¹⁾ Malikis,⁽²⁾ and Shafi'is⁽³⁾ and is the opinion of most of the early Hanbali⁽⁴⁾ scholars.

(1) See: *Al-Mabsûṭ* (2/167), *Al-Baḥr Al-Râ'iq* (2/237), *Majma' Al-Anhur* (1/196).

(2) See: *Al-Bayân wal-Tahsîl* (2/411), *Mawâhib Al-Jalîl* (2/315), *Sharḥ Al-Zurqâniy 'alâ Mukhtaṣar Khalîl* (2/278).

(3) See: *Al-Umm* (2/26), *Baḥr Al-Madḥhab* (3/91), *Al-Majmû' (5/468)*.

(4) See: *Al-Furû'* (4/206), *Al-Inṣâf* (3/161), *Kashshâf Al-Qinâ'* (2/243).

The second opinion: *Zakâh* is not waived. Thus, the commercial commodity should be evaluated and *Zakâh* will be estimated based on their value. This is the other opinion held by Hanbalis,⁽¹⁾ which is judged as sound by Al-Mirdâwi in *Tashîh Al-Furû`*.<sup>(2)</sup> Moreover, it is the view adopted by Sheikh Muhammad ibn `Uthaymîn.⁽³⁾

Evidence supporting the opinions and counter arguments:

Evidence cited by the proponents of the first opinion: As for Hanafis and Shafi`is they use, to support their view on the issue, the same evidence they used to support their view regarding the ineffectiveness of the intention to evade *Zakâh* on liability, which we mentioned along with counter arguments under the previous treatise.⁽⁴⁾ As for those Maliki and Hanbali scholars who view that *Zakâh* is waived in this case, below is their evidence:

These commercial commodity are not intended for revenue generation. So they are liable for no *Zakâh*, even if the intention behind possessing them was to evade *Zakâh*.⁽⁵⁾

Counter argument: This contradicts the principle that if someone possesses a *Nisâb* of livestock and then exchanges it for durable goods with the intention of evading *Zakâh*, *Zakâh* is not waived.⁽⁶⁾ Therefore, they wonder what the difference between this case and the issue at hand is. In both cases, in fact, the original property that is exchanged is a *Nisâb* liable for *Zakâh*⁽⁷⁾, and the exchange is durable goods not intended for revenue generation.

Evidence cited by proponents of the second opinion: Those who view that *Zakâh* is not waived and that *Zakâh* is due on the value of those commercial commodity support their view by the evidence generally indicating that manipulation to evade obligations is impermissible and that manipulators should

(1) See: Al-Ri`âyah Al-Sughrâ fi Al-Fiqh (1/420), Kashshâf Al-Qinâ' (2/243), *Ma`âlib uli Al-Nuhâ* (2/101).

(2) See: *Tashîh Al-Furû`* (4/206).

(3) See: *Al-Sharh Al-Mumti` 'alâ Zâd Al-Mustaqni`* (6/41).

(4) See: p. (394) of this book.

(5) See: *Hâshiyat Al-'Adawiy 'alâ Sharh Al-Kharashiy* (2/154), *Hâshiyat Al-Rawd Al-Murabba`* (3/268).

(6) See: Al-Tâj wal-Iklîl (3/95), *Sharh Al-Kharashiy 'alâ Khalîl* (2/154), Al-Mughnî (2/504), *Al-Muḥarrar* (1/219).

(7) These evidences have been mentioned in the previous treatise, See p. (395) of this book.

be judged to the opposite of their objective. No doubt, one who intends to evade *Zakâh* by purchasing durable goods actually manipulates to evade an obligation. So, *Zakâh* will be due on the value of those goods, which stands for judging them to the opposite of their objective.⁽¹⁾

Counter argument: The original purpose of these goods is personal use and durability bearing in mind that the intention to evade *Zakâh* does not change this original purpose as long as they are actually being used.

Weighing opinions:

After reflection on the issue, it appears to me that the preponderant view - Allah knows best - is a combination of details: To clarify, if one who intends to evade *Zakâh* purchases these goods out of a *Nisâb*, he must absolutely pay the *Zakâh* due on that *Nisâb* after the passage of *Hawl*. Moreover, the *Hawl* is not interrupted by purchasing these goods with the intention of evading *Zakâh*. Then, in the second *Hawl* and later years, if the sole purpose of possessing these goods is evading *Zakâh*, *Zakâh* will be due on their value. However, if he uses them or rents them out, although his intention is to evade *Zakâh* when possessing them, no *Zakâh* will be due on their value.

Reasons for preferring this opinion:

- 1- One who intends to evade *Zakâh* by selling the *Nisâb*, exchanging it for something else, or reducing it, *Zakâh* will not be waived on that exchanged *Nisâb*, an opinion which we gave preference in the previous treatise. In this regard, there is no difference whether it is exchanged for durable goods or otherwise.
- 2- The basic principle regarding durable goods, including real estate and the like is that they are liable for no *Zakâh*. However, this basic principle becomes less effective when there is no intention of durability and use and there is an intention to evade *Zakâh*. In such a case, the intention to evade *Zakâh* becomes weight than the basic principle and the one evading *Zakâh* will be judged to the opposite of his objective. However, if there the intention to evade is accompanied by the intention to use, then the intention to evade will be of less weight than the basic principle, i.e. no *Zakâh* is due on durable goods.

(1) See: *Tashîh* Al-Furû' (4/206), *Kashshâf* Al-Qinâ' (2/243).

Third Treatise: Keeping the debt in the debtor's liability with the intention of evading *Zakâh*:

Describing the issue:

Does the intention to evade *Zakâh* by keeping a debt in the debtor's liability affect on the *Zakâh* on a debt that is not basically liable for *Zakâh*?

Example: Someone has *Zakatable* property reaching the *Nisâb* owed to him by another person. However, he neither collects nor demands it; rather, he left it as a liability due on the other person with the intention of evading its *Zakâh*. According to the view that such a debt is not basically liable for *Zakâh* or that it will be liable for *Zakâh* one year after receiving it, does keeping it as a liability with the intention of evading *Zakâh* affect the obligation of *Zakâh* on it for every *Hawl*?

Opinions on the Issue: Scholars expressed two different opinions regarding this issue:

The first opinion: The intention to evade *Zakâh* has no effect on the obligation of *Zakâh* on the debt. This is the position held by Hanafîs and Shafi'is. Actually, I could not, as regards the issue at hand, come across any expression of opinions from them. However, it is possible to derive it through *Takhrîj* from their basic principle that the intention to evade *Zakâh* does not affect its obligation.⁽¹⁾ It is also the position held by Malikîs regarding debt owed for a non-monetary return⁽²⁾ and debt owed from selling goods possessed for a non-monetary return. Actually, this is the official position of this school of thought.⁽³⁾

(1) See: *Al-Mabsûṭ*, by Al-Sarkhasiy (2/166), *Majma' Al-Anhur* (1/196), *Al-Muḥîṭ* Al-Burhâniy (2/259), *Al-Umm* (2/26), *Baḥr* Al-Madḥḥab (3/91), *Kifâyat Al-Nabîh* (5/261).

(2) Such as gifts, inheritance, dowry, compensation for *Khul'* (divorce initiated by the wife), blood money for crimes, and similar cases. See: *Al-Muqaddimât Al-Mumahhidât* (1/303), *Al-Taḥj wal-Iklîl* (3/168).

(3) The first case is uncontroversial among them. As to the second, which is debt owed from selling owned goods for non-monetary return, their preferred opinion is that the intention to evade [*Zakâh*] does not affect the obligation of its *Zakâh*. The other opinion is that it does have an effect, so *Zakâh* should be paid after receiving it for each *Hawl* if he/she intends keeping it with the intention of evading *Zakâh*. See: *Al-Muqaddimât Al-Mumahhidât* (1/303), *Manâhij Al-Taḥsîl* (2/227), *Al-Sharḥ* Al-Kabîr, by Al-Dardîr (1/463).

The second opinion: The intention to evade *Zakâh* affects the obligation of *Zakâh* on the debt. Thus, *Zakâh* will be due on it for every *Hawl*. This is the position held by Malikîs regarding all types of debts other than the one mentioned in the first opinion.⁽¹⁾

Actually, I could not, as regards the issue at hand, come across any expression of opinions from Hanbalis. However, it is possible to derive it through *Takhrij* from their basic principle that manipulation to evade *Zakâh* is impermissible and that one who manipulates to evade it should be judged to the opposite of his objective.⁽²⁾

The prevailing view among Hanbalîs school is that *Zakâh* will be due on a debt until after it is received. They stated that *Zakâh* on a debt that is liable for *Zakâh* should be paid for every *Hawl* after it is received and that the intention to evade *Zakâh* by keeping it as a liability with the debtor does not make it liable for *Zakâh* while still in the debtor's possession.⁽³⁾ However, there is another opinion among Hanbalîs to the effect that *Zakâh* on a debt that is liable for *Zakâh* should be paid for every *Hawl* even if not received.⁽⁴⁾

Evidence supporting the opinions and counter arguments:

Evidence cited by the proponents of the first opinion: Hanafis and Shafi'îs, to support their opinions on this issue, used the same evidence they used to support their basic principle that the intention to evade *Zakâh* does not affect its obligation, which we mentioned along with counter arguments under the first treatise of this chapter.⁽⁵⁾ As for Malikis, they supported their view that the intention to evade *Zakâh* does not affect the obligation of *Zakâh* on regarding debts owed for a non-monetary return and debts owed from selling goods possessed for a non-monetary return by stating: It is not conceivable that a person of sound mind refrains from collecting his debt to evade *Zakâh*. This is because if he collects it and buys any commodity with its price, he would gain more profits than the amount of *Zakâh*.⁽⁶⁾

(1) See: Al-Nawâdir wal-Ziyyâdât (2/169), Al-Dhakhîrah (3/29), Al-Tawdîh (2/224).

(2) See: Al-Ta'liqah Al-Kabîrah (3/336), Al-Tadhkirah fî Al-Fiqh (p. 79), Sharh Al-Zarkashiy 'alâ Mukhtaṣar Al-Kharqiy (2/459).

(3) See: Al-Mubdi' (2/298), Al-Insâf (3/18), Kashshâf Al-Qinâ' (2/172).

(4) See: Al-Ri'âyah Al-Sughrâ fî Al-Fiqh (1/377), Al-Furû' (3/450), Al-Mubdi' (2/298).

(5) See: p. (394) of this book.

(6) See: Al-Tawdîh (2/201), Tahbîr Al-Mukhtaṣar (2/74).

Two counter arguments:

First counter argument: This issue supposes someone who does so with the intention of evading *Zakâh*, which is conceivably expected from a person of sound mind who does not have trading skills and is confident that he can collect his debt whenever he wants.

Second counter argument: Proponents of this view state that debt owed for monetary return is liable for *Zakâh* for every *Hawl* if the creditor refrains from collecting it with the intention of evading *Zakâh*. So, what is the difference – according to their argument – between a debt owed for a monetary return and that owed for a non-monetary return?

Evidence cited by proponents of the second opinion: Those who view that the intention to evade *Zakâh* by keeping the debt in the debtor's liability affects the *Zakâh* due on that debt support their view by the evidence generally indicating that manipulation to evade obligations is impermissible and that manipulators should be judged to the opposite of their objective.⁽¹⁾ No doubt, one who intends to evade *Zakâh* by keeping debt in the liability of the debtor actually manipulates to evade an obligation. So, *Zakâh* will be due on the debt, which stands for judging them to the opposite of their objective.⁽²⁾

Weighing opinions:

The preponderant opinion – Allah knows best – is the second opinion, which states that one intends to evade *Zakâh* by keeping their property as a debt owed by the debtor, *Zakâh* becomes due on that debt absolutely – regardless of its type – for every *Hawl*, even if it is not received.

Reasons for preferring this opinion:

- 1- The evidence cited by the proponents of the first opinion proved to be weak. Moreover, there is no evidence supporting the distinction Malikîs drew between debts owed for a non-monetary return and other types of debts.
- 2- We preferred above the opinion that disposing of a property with the intention to evade *Zakâh* by selling the *Nisâb*, exchanging it for something else, or reducing it does not waive *Zakâh*. Similarly, keeping the

(1) These evidences have been mentioned in the previous treatise. See: p. (395) of this book.

(2) See: Al-Ishrâf 'alâ Nukat Masâ'il Al-khilâf (2/386), Al-Dhakhîrah (3/103).

property as a debt owed by the debtor with the intention of evading *Zakâh* does not waive the obligation.



Section (IV)
The effect of intention on
Zakâh beneficiaries and Zakâtul-Fitr

It is subdivided into two chapters:

Chapter One: The effect of intention on Zakâh beneficiaries and related issues.

Chapter Two: The effect of intention on Zakâtul-Fitr.

First Treatise

The Effect of Intention on the Distribution of Zakâh and Related Matters:

Topic (1): Whether the Zakâh Collector May Receive a Wage If He Intended to Volunteer

Issue description:

If a person working as a collector for Zakâh intended not to take any remuneration for his work and instead volunteered his services, can he accept payment from the Zakâh fund later on?

Opinions on the issue:

Scholars are divided on this issue into two main opinions:

First opinion: It is not permissible for him to take payment.

This is the view held by some Shafi'ite, as stated by Ibn al-Rif'ah.⁽¹⁾ There is no clear text from the Hanafite scholars on this matter. However, this opinion can be inferred from their view that the collector receives payment from the Zakâh as compensation for his work. They liken it to a partnership, stating that if the funds collected are lost, the collector does not deserve anything, similar to a *mudarib* (a person managing an investment) who does not receive compensation if the investment is lost.⁽²⁾ They also argue that a *mudarib* who volunteers his work does not deserve a fee,⁽³⁾ so a Zakâh collector who volunteers his work would similarly be disqualified from receiving payment.

There is also no clear text from the Malikites on this issue. However, this opinion can be inferred from their view that what the collector receives from

(1) See: *An-Najm al-Wahhaj* (462/6), *Asna al-Matalib* (401/1), *Mughni al-Muhtaj* (188/4).

(2) See: *Badai' al-Sana'i* (44/2), *Tajri' al-Haqa'iq* (297/1), *Al-Jawhara al-Nayira* (128/1).

(3) See: *Al-Mabsut* (63/22), *Badai' al-Sana'i* (106/6), *Majma' al-Anhur* (322/2).

Zakâh is a wage for his work⁽¹⁾ and their principle that anyone who performs work for another with the intention of volunteering does not deserve a wage.⁽²⁾

Second opinion: It is permissible for him to take payment. This is the prevailing opinion among the Shafi'ite⁽³⁾ and the view of the Hanbalites.⁽⁴⁾

Evidence and counterarguments:

Evidence for the first opinion:

The proponents of the first opinion argue that:

- Anyone who performs work for others with the intention of volunteering does not deserve a wage. This applies to the worker of Zakâh if he intended to volunteer, as there is no difference. Since he does not deserve anything, he should not take from Zakâh if given, due to the Zakâh being a right of others.⁽⁵⁾

Counterargument:

- The principle that someone working voluntarily does not deserve a wage applies to work requiring conditions from the creation. However, giving the worker from Zakâh is an obligation from Allah, and it does not require any desire or condition from the worker, similar to how a fighter is entitled to war booty even if he only intended to elevate the word of Allah.⁽⁶⁾

Evidence for the second opinion:

The proponents of the second opinion argue that it is permissible with the following evidence:

First evidence:

- Ibn al-Saadi al-Maliki⁽⁷⁾ narrated that Umar ibn al-Khattab (may Allah

(1) See: *At-Tabsira* (970/3), *Sharh az-Zurqani 'ala Mukhtasar Khaleel* (314/2), *Ash-Sharh al-Kabir li ad-Dardir* (495/1).

(2) See: *Al-Bayan wa at-Tahsil* (23/11), *Aqd al-Jawahir* (938/3), *Mawhib al-Jalil* (392/5).

(3) See: *Asna al-Matalib* (401/1), *Tuhfat al-Muhtaj* (169/7), *Mughni al-Muhtaj* (188/4).

(4) See: *Al-Furu'* (325/4), *Ghayat al-Muntaha* (334/1), *Kashaf al-Qina'* (277/2).

(5) See: *al-Najm al-Wahaj* (462/6).

(6) See: *al-Najm al-Wahaj* (463/6), *Asna al-Matalib* (401/1).

(7) He is: Abdullah bin Waqdan bin Abd Shams bin Abd Wad bin Nasr bin Malik al-Saadi =

be pleased with him) appointed him to work on the charity. When he completed the task and presented it, Umar ordered him to take a wage. He replied that he worked for Allah and his reward was with Allah. ‘Umar said: “Take what I have given you; I worked in the time of the Prophet (peace be upon him) and said the same as you, and the Prophet (peace be upon him) told me: ‘If you are given something without asking, then eat and give charity.’”(1)

Evidential aspect:

- ‘Umar (may Allah be pleased with him) commanded the worker who intended to volunteer to take from the Zakâh and mentioned that the Prophet (peace be upon him) commanded him to do so, indicating its permissibility.(2)

Counterargument:

- The gift in the hadith was not from Zakâh but from the state treasury, and the leader can give from the state treasury without work.(3)

Response:

- This is countered by ‘Umar’s statement: “He employed me,” which means he gave me the wage, and the wage is the payment for work, which appears to be related to the Zakâh work. It is also not permissible for the leader to give from the state treasury in this manner.

On the Permissibility of paying the collector of Zakâh from the Zakâh Itself if he Intended to Volunteer.(4)

Second evidence: The entitlement of the collector to receive from the Zakâh

= al-Qurashi, Abu Muhammad. He was called al-Saadi because he was nursed among the Banu Sa’d tribe, and some say he is called Ibn al-Saadi. He was a companion who lived in Jordan, part of Greater Syria. He narrated from the Prophet Muhammad (peace be upon him) and from Umar ibn al-Khattab (may Allah be pleased with him), and he was a zakat collector. He was narrated by al-Bukhari, Muslim, and others. He passed away in 57 AH. For more details, see: Rijal Sahih Muslim (347/1), Tahdhib al-Kamal (25/15).

(1) It was narrated by Muslim in his Sahih, Book of Zakat, Chapter: Permissibility of Taking When Given Without Asking or Seeking, Hadith number (723/2), (1045).

(2) See: al-Najm al-Wahaj (462/6), al-Furu’ (325/4).

(3) See: al-Najm al-Wahaj (462/6)

(4) See: the previous reference.

is a duty imposed by Allah, not merely a wage for his work. Therefore, it does not require his personal intention, similar to inheritance.⁽¹⁾

Preponderance:

The preponderant opinion—Allah knows best—is the second view, which permits the collector of Zakâh to take from the Zakâh even if he intended his work as a volunteer.

Reasons for preponderance:

- 1- The strength of the evidence for the second view and the weakness of the evidence for the first view, which is not free from critique.
- 2- The amount the collector receives from the Zakâh is not purely compensation but a duty imposed by Allah for those who work on Zakâh to ensure they are provided for and their needs are met, without being in awe of the wealth in people's hands. Therefore, the collector may take from it even if he intended to volunteer.

Topic (2): The Effect of Intention in Giving Zakâh to the Debtor (Gharim)

It includes three issues:

First issue: The effect of intention on the legality of giving zakâh to the debtor for reconciliation.

Issue description:

Scholars agree that a debtor for reconciliation⁽²⁾ should be given from the Zakâh if he has borrowed or assumed a debt and it remains unpaid. However, they differ on whether he should receive Zakâh if he is wealthy.⁽³⁾ The dis-

(1) See: *Mughni al-Muhtaj* (188/4).

(2) The debtor for reconciliation (ghârim li-islâh dhât al-bayn) is one who has worked to reconcile a group of Muslims who have conflicts or enmity due to harm to life or property, by bearing the blood money or the debts between them. See: *Kifâyat al-Nabîh* (172/6), *al-Mughni* (480/6).

(3) The Hanafi, Maliki, and Ibn Aqil from the Hanbalis consider the debtor for reconciliation to be like other debtors, and they do not differentiate between a debtor for his own benefit or for the benefit of others. Both types are not given from the zakat unless they are in need, meaning they should not have wealth or should have wealth equal to their debt or slightly more than the nisab. The Shafi'i school holds that the debtor for reconciliation =

agreement centers on whether giving him Zakâh is permissible if he has paid off what he borrowed or covered the debt from his own funds. The scholars are divided into two opinions regarding this matter.

Opinions on the issue:

First opinion: The debtor for reconciliation (ghārim li-islāh dhāt al-bayn) is not given from Zakâh if he has paid off what he owed from his own funds. This is the opinion of the four major Fiqh schools: Hanafite,⁽¹⁾ Malikite,⁽²⁾ Shafi'ite,⁽³⁾ and Hanbalite.⁽⁴⁾

Second opinion: The debtor for reconciliation should be given Zakâh even if he has paid off what he owed from his own funds, provided that he intends to seek reimbursement from the Zakâh recipients. This is the view of Sheikh Muhammad ibn Uthaymeen,⁽⁵⁾ may Allah have mercy on him,⁽⁶⁾ and it has been followed by many contemporary Hanbalites such as Sheikh Abdullah bin Muhammad al-Tayyar,⁽⁷⁾ Sheikh Saad bin Turki al-Khathlan,⁽⁸⁾ and Sheikh Ahmad bin Muhammad al-Khalil.⁽⁹⁾

Evidence and counterarguments:

Evidence for the first opinion: The majority of scholars argue against giving Zakâh to such a debtor based on the Quranic verse: "Zakâh is only for the

= can receive zakat even if he is wealthy, although there is a view that he should not receive zakat if wealthy in cash. Wealth in property and merchandise does not affect this ruling. Hanbalis say he should receive zakat regardless of his wealth. See: *al-Muhīt al-Burhānī* (281/2), *Tibyan al-Haqā'iq* (298/1).

(1) See: *Badā'ī al-Sanā'ī* (45/2), *Tajīyīn al-Haqā'iq* (298/1), *Majma' al-Anhar* (221/1).

(2) See: *Al-Tabsira* (978/3), *Sharḥ al-Talkhīn* (141/3), *Al-Tāj wa al-Iklīl* (232/3).

(3) See: *Al-Bayan* (422/3), *Al-Majmū'* (207/6), *Kifayat al-Nabih* (173/6).

(4) See: *Al-Mubdi'* (414/2), *Al-Tanqīḥ al-Mushabbah* (p. 159), *Mu'naat Awli al-Nuhâ* (323/3).

(5) See: *Sharḥ al-Mumtī'* (233/6).

(6) I have not yet found any earlier scholars who held the same view as Sheikh Muhammad ibn Uthaymeen. It might be derived from the Hanbali view that one who pays a debt on behalf of another without permission, intending to seek reimbursement, is entitled to it. See: *Taṣḥīḥ al-Furū'* (394/6), *Dalīl al-Ṭālib* (p. 141), *Kashāf al-Qinā'* (371/3). The basis of this view is treating the liability for reconciliation as a required performance from zakat funds, similar to a debt owed by zakat recipients.

(7) See: *Wabil al-Ghamama* in *Sharḥ 'Umdat al-Fiqh* (91/2).

(8) See: *Al-Salsabeel* in *Sharḥ al-Dalīl* (421/3).

(9) See: *Sharḥ Zād al-Mustaḥṣin* by Ahmad al-Khalīl (439/2).

poor and the needy, for those who administer it, for those whose hearts are to be reconciled, for freeing captives, for those in debt, for the cause of Allah, and for the wayfarer.”⁽¹⁾

Rationale: If the debtor for reconciliation has paid off his debt from his own funds, he no longer fits the description of being indebted and is thus no longer included among the eight categories eligible for Zakâh.⁽²⁾

Discuss: This reasoning is valid if the debtor (gharem) did not intend to seek compensation from the Zakâh recipients for the expense incurred in reconciling parties. However, if the debtor intended to seek compensation from the Zakâh recipients, his right to receive from Zakâh remains intact.

Evidence for the second opinion:

The proponents of giving him from Zakâh argue as follows:

First evidence: Reconciling parties may require immediate payment. If we say that if he pays from his own money he cannot receive from Zakâh at all, it would narrow the scope of reconciling parties.⁽³⁾

Second evidence: It can be argued that the person reconciling parties might have incurred a burden that should be covered by the Zakâh recipients. If he pays from his own money, he would be fulfilling what was due from the Zakâh recipients, thus he is entitled to seek reimbursement from them, similar to someone who pays off another's debt with the intention of seeking reimbursement.

Preponderance and its rationale:

After considering the issue, it appears that the more likely opinion—God knows best—is the second opinion. That is, if the debtor who has incurred expenses for reconciling parties pays from his own money with the intention of seeking reimbursement from the Zakâh recipients, he should be given from the Zakâh. This is because the debtor who has incurred expenses for reconciliation has performed a significant service that benefits the general Muslim community. It is therefore appropriate to cover his burden from Zakâh and preserve his own money, to avoid hardship on those reconciling and to achieve the benefit of calming disputes and preventing corruption. Thus,

(1) From verse (60) of Surah At-Tawbah.

(2) See: Al-Bayan (422/3), Mu'naat Awli al-Nuhâ (323/3).

(3) See: "Sharh al-Mumti" (6/233).

scholars have determined that he should be given even if he is wealthy,⁽¹⁾ and similarly, he should be given if he paid from his own money with the intention of receiving Zakâh.

The effect of intention on the issue:

The effect of intention is evident in the second opinion. They stipulate that for the debtor who has incurred expenses for reconciliation to be allowed to take from Zakâh after paying from his own money, he must have intended to seek reimbursement from the Zakâh recipients. They say that if he intended to use his money to draw closer to God, he should not take from Zakâh because he is making a voluntary contribution. Likewise, if he had no intention, the default is considered to be a voluntary contribution.⁽²⁾

Second issue: Giving the debtor from Zakâh if the debt was incurred with intent to commit a sin

Issue description:

If someone incurred a debt with the intention of committing a sin, such as drinking alcohol, gambling, or entering into a forbidden financial transaction, and then was unable to repay the debt, should he be given from the category of debtors (*gharmeen*) in Zakâh?

Situations of borrowers with sinful intent:

A borrower with sinful intent may either spend the money on sin, or Allah may protect him and cause him to spend it on permissible things. Each situation has its own ruling:

First situation: The borrower with sinful intent spends the money on sin.

In this case, scholars have differed on whether he should be given from the funds allocated for debtors (al-Gharimeen) in three opinions:

First opinion: He is given the money unconditionally. This is a view held by the Shafi'ite school.⁽³⁾

(1) See: "Al-Muhadhab" (1/316), "Al-Bayan" (3/422), "Asna al-Mataleeb" (1/397), "Al-Kafi" (1/426), "Al-Mubdi" (2/414), "Kashaf al-Qina" (2/281).

(2) See: "Sharh al-Mumti" (6/233), and "Bulugh al-Ghamamah fi Sharh Umdat al-Fiqh" (2/91).

(3) Rafi'i described it as "strange" and Al-Nawawi as "rare." See: *Fath al-Aziz* (7/391), *Al-Majmu' * (6/208).

I did not find a specific text from the Hanafite school on this issue except what Abu Bakr al-Jassas⁽¹⁾ mentioned in “*Ahkam al-Qur’an*,” where he stated that it is permissible to give to someone who has borrowed for corruption from Zakâh funds. He interpreted the opinions of those scholars who said he should not be given as indicating dislike rather than prohibition.⁽²⁾ It can be inferred that the Hanafite school might permit giving to him based on their view that the debtor deserving of Zakâh includes every debtor in general, except the wealthy who possesses a surplus over his debt. They did not exclude those who borrowed with sinful intent.⁽³⁾

Second opinion: He should not be given at all. This is one of the opinions of the Malikite school⁽⁴⁾ and a view held by some Shafi‘ites⁽⁵⁾ and Hanbalites.⁽⁶⁾

Third opinion: He should be given if he repents and there is a strong belief in the sincerity of his repentance. This is the more well-known opinion among the Malikite school,⁽⁷⁾ the more correct view among the Shafi‘ites,⁽⁸⁾ and the adopted position of the Hanbalites.⁽⁹⁾

Evidence for the opinions and counterarguments:

Evidence for the first opinion: Those who support giving him Zakâh unconditionally argue based on the generality of texts that indicate...

Giving a Debtor from Zakâh Without Special Exclusion, Including Debtors

(1) He is Ahmad ibn Ali al-Razi al-Jassas, known as Abu Bakr, the imam, jurist, and commentator. He held the leadership of the Hanafite school in Baghdad. He was invited to take up a judicial position but declined. He studied under al-Karkhi and authored several works, including *Ahkam al-Qur’an*, *Sharh al-Mukhtasara* (1/84), *Tabaqat al-Karkhi*, and *Al-Fusul fi al-Usul*. He died in 370 AH. For his biography, see: *Al-Jawahir al-Sunniya fi Tarajim al-Hanafiya* (p. 122).

(2) See: *Ahkam al-Qur’an* by al-Jassas (3/163).

(3) See: *Sharh Mukhtasar al-Tahawi* (2/375), *Al-Muheet al-Burhani* (2/281), *Al-Ihtiyar li Ta’leel al-Mukhtar* (1/119).

(4) See: *Al-Ma’ouna* (p. 443), *Al-Tabsira* (3/978), *Manahij al-Tahsil* (2/312).

(5) See: *Al-Umm* (2/93), *Al-Hawi al-Kabir* (8/508), *Rawdat al-Talibin* (2/317).

(6) See: *Al-Mughni* (6/480), *Al-Furu’* (4/339), *Al-Insaf* (3/248).

(7) See: *Rawdat al-Mustabsi* (1/493), *Al-Tawdiih* (2/350), *Sharh al-Zarkashi ‘ala Mukhtasar Khalil* (2/318).

(8) See: “*Al-Majmu’*” (6/208), *Kifaayat al-Nabiha* (6/179), *Asna al-Mataliib* (1/397).

(9) See: *Sharh al-Zarkashi* (4/626), *Al-Insaf* (3/248), *Sharh Muntaha al-Iradat* (1/457).

for Sin.⁽¹⁾

Counterargument: This approach is debated due to the existence of specific exclusions, particularly the evidence indicating that aiding wrongdoers is not permissible, such as the verse: “And do not cooperate in sin and aggression.”⁽²⁾

Evidence for the second opinion (not to give the debtor from zakâh at all):

First evidence: The fundamental nature of his debt is sinful and corrupt, so he should not be supported by Zakâh, similar to someone who has not repented.⁽³⁾

Counterargument: This argument is flawed because it incorrectly compares someone who has repented with someone who has not. Repentance erases past sins.

Second evidence: It is impossible to verify the sincerity of repentance, and there is a risk that outward repentance might mask the opposite intention in order to obtain Zakâh.⁽⁴⁾

Counterargument: It is possible to rely on indications that suggest the sincerity of repentance. The likelihood of sincerity in such cases can be treated as certain due to the difficulty of achieving absolute certainty.

Third evidence: If given after repentance, there is no guarantee that the person will not return to borrowing for sinful purposes, believing that his debt will be cleared, so he should not be given to prevent this possibility.⁽⁵⁾

Counterargument: The assumption is that the debtor will not return to borrowing for sins if their repentance is considered sincere. The mere possibility does not justify withholding Zakâh, just as a poor person may receive Zakâh despite the possibility of misusing it.

Fourth evidence: Not giving him at all serves as a deterrent against borrowing for sinful purposes.⁽⁶⁾

Counterargument: Deterrence should be applied to those who have not repented. For those who have repented, the purpose of deterrence is already achieved.

(1) See: “Al-Majmu” (6/208).

(2) From verse 2 of Surah Al-Ma’idah.

(3) See: *Al-Tawdiih* (2/350), *Al-Mughni* (6/480).

(4) See: *Nihayat al-Matlab* (11/553), *Kifaayat al-Nabiha* (6/179).

(5) See: *Al-Aziz* (7/391), *Al-Mughni* (6/480). (6) See: *Nihayat al-Matlab* (11/553).

Evidence for the third opinion (giving the debtor from zakâh if he repents and sincerity is believed):

First evidence: The verse from the Qur'an: "Charity is only for the poor and the needy, and those employed to administer the funds, for those whose hearts have been reconciled, for freeing captives, for those in debt, for the cause of Allah, and for the wayfarer".⁽¹⁾

Evidence for giving the debtor from zakâh if he repents and sincerity is believed:

First evidence:

Reasoning: A debtor who has borrowed for sinful purposes, if he repents, his sin is removed, but his debt remains. He thus falls into the category of debtors and should be given Zakâh.⁽²⁾

Second evidence:

Analogy: Compare to someone who has spent his wealth on sins and has become poor, or someone who traveled for sinful purposes and then became stranded without money. The former is given from the share of the poor, and the latter is given from the share of travelers. The common factor is that the sin was a reason for them needing Zakâh, but this does not imply that the Zakâh supports the sin itself.⁽³⁾

Third evidence:

Principle: The prohibition on giving Zakâh to a debtor for sinful purposes was originally for the sake of Allah. However, repentance can affect this ruling, as the right of Allah can be influenced by sincere repentance.⁽⁴⁾

Preponderant opinion:

The preponderant view—and allah knows best—is the third opinion:

Opinion: A person who borrows with the intention of committing a sin and then spends the borrowed money on that sin should be given from the share of debtors (al-Gharimeen), provided that he repents and his repentance

(1) From verse 60 of Surah At-Tawbah.

(2) See: Al-Tabsira (978/3), Al-Hawi Al-Kabir (508/8), Al-Majmu' (208/6).

(3) See: Kifayat Al-Nabih (179/6), Al-Mughni (480/6).

(4) See: Al-Tawdiih (350/2).

is believed to be sincere.

Reasons for preponderance:

- 1- Strength of Evidence: The evidence supporting the third opinion is strong and free from major objections, whereas the evidence for the first and second opinions is weaker.
- 2- General Principle: The principle is that it is permissible to give Zakâh to debtors in general, as the verse is broad. The prohibition on giving Zakâh to those who have borrowed for sinful purposes was initially due to aiding in the sin. However, once sincere repentance is established, the prohibition is removed, allowing us to return to the original principle of providing Zakâh.

Second description:

Situation: If the borrower had the intention to commit a sin but spent the borrowed money on permissible things.

Ruling in this case:

In this situation, the borrower should still be given Zakâh, and his initial intention does not affect his entitlement to it. This approach is also supported by the Hanafite school⁽¹⁾ and is clear in the Shafi'ite view.⁽²⁾ The Malikites⁽³⁾ and Hanbalites⁽⁴⁾ also generally agree, with the exception of specific restrictions they may have imposed.

Whoever spends what he has borrowed on corruption and sin, it is understood that if he spends it on what is permissible, he will be given (or forgiven), whether he intended to commit a sin when borrowing or not.

Evidence for the issue: The intention only has an effect if it is fulfilled by

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- (1) Since the first situation allowed giving to the debtor if they used the loan for a sinful purpose, it is all the more permissible to give to them if they used it for something permissible. See: page (409) of this book.
 - (2) Imam Al-Haramayn said: "If someone borrowed with the intention of corruption but then used it for a good purpose as guided by Allah, his debt should be settled." Nihayat Al-Matlab (553/11), and see: Kifayat Al-Nabih (180/6), Asna Al-Matalib (397/1).
 - (3) See: Al-Tawdiih (350/2), Sharh Al-Zurqani 'ala Khaleel (318/2), Hashiyat Al-Dasuqi 'ala Al-Sharh Al-Kabeer (497/1).
 - (4) See: Al-Mughni (480/6), Al-Mubta'a (411/2), Kashaf Al-Qana'a (282/2).

the action. If it is contradicted, it becomes clear that the intention has changed and thus has no effect,⁽¹⁾ because one of its conditions is not to engage in what contradicts it.⁽²⁾

The effect of intention on the issue

The effect of intention appears in the first description where proponents of the second opinion believe that borrowing with the intention of sin and spending the money on it prevents the allowance of giving from Zakâh (charity) to that debtor. In contrast, proponents of the first opinion believe that the intention of sin does not prevent this, and there is no effect of the intention of sin in this regard. According to the prevailing view, the intention of sin prevents giving to the debtor unless he repents.

In the second description, where one intends to borrow with the intention of sin but spends the money on what is permissible, the intention has no effect at all, and the debtor is given from Zakâh just like any other debtor.

Third issue: giving to a debtor from zakâh if he borrowed with the intention of receiving from Zakâh

Issue description:

Should someone who borrows with the intention of taking from Zakâh to repay his debt be given from the share allocated for debtors?

Conditions of the borrower intending to receive from Zakâh: After research, I have not found any text on this issue outside of the Malikite school,⁽³⁾ so I approached it through reasoning. The Malikites state that a borrower who intends to receive from Zakâh to repay his debt falls into two cases:

First case: borrowing when not in need but for expanding spending

In this case, scholars differ on whether to give from the share allocated for debtors, and there are three opinions:

First opinion: He is given absolutely. This view is derived from the Hanafite perspective, which holds that any debtor is entitled to Zakâh, except for the

(1) See: *Nihayat al-Matlub* (553/11), *Kifayat al-Nabih* (180/6).

(2) See: *Nihayat al-Ahkam* (p. 10), *Maqasid al-Mukallafin* (p. 238), *Qawa'id al-Umur bi Maqasidiha* (p. 73).

(3) See: *Jawahir al-Durar* (126/3), *Sharh al-Zurqani 'ala Mukhtasar Khalil* (318/2).

rich who possess more than the amount of their debt. They do not exclude those who borrow intending to receive Zakâh.⁽¹⁾

As for the Hanbalites: They consider a debtor to be anyone who has borrowed for a permissible purpose and is unable to repay their debt. They exclude only those who borrowed for a sin,⁽²⁾ and borrowing to expand spending is not considered a sin in their view.⁽³⁾

Second opinion: He is not given absolutely. This is one of the Malikite⁽⁴⁾ views and can also be derived as a viewpoint within the Shafi'ite school, where borrowing to expand spending without hope of repayment is considered a sin and wastefulness.⁽⁵⁾ According to this view, a debtor who has borrowed for a sin is not given from the share allocated for debtors under any circumstances.⁽⁶⁾

Third opinion: He is given only if he repents and it is generally believed that his repentance is sincere. This is another Malikite⁽⁷⁾ opinion and can also be derived as a viewpoint within the Shafi'ite school, where borrowing to expand spending is considered wastefulness and a sin.⁽⁸⁾ According to the more accepted view among them, a debtor who has borrowed for a sin can receive from the share of debtors if he repents and it is believed that his repentance is sincere.⁽⁹⁾

Evidence for the opinions and counterarguments:

Evidence for the first opinion: Those who advocate giving absolutely argue that the general texts indicating that debtors should receive from Zakâh apply universally, including those who borrowed to receive Zakâh.⁽¹⁰⁾

(1) See: *Sharh Mukhtasar al-Tahawi* (375/2), *Al-Muhit al-Burhani* (281/2), *Al-Ikhtiyar li Ta'aleel al-Mukhtar* (119/1).

(2) See: *Al-Mughni* (480/6), *Al-Furu'* (338/4), *Sharh al-Zarkashi* (626/4).

(3) See: *Al-Mughni* (236/4), *Al-Mubdi'* (195/4), *Kashaf al-Qina'* (313/3).

(4) See: *Al-Dhakheera* (148/3), *Al-Tawdih* (350/2), *Sharh al-Kabir li al-Dardir* (497/1).

(5) See: *Tuhfat al-Muhtaj* (157/7), *Mughni al-Muhtaj* (137/3), *Hashiyat al-Sharbini 'ala al-Ghurur al-Bahiyya* (75/4).

(6) See: *Al-Umm* (93/2), *Al-Hawi al-Kabir* (508/8), *Rawdat al-Talibin* (317/2).

(7) See: *Sharh al-Kabir li al-Dardir* (497/1), *Hashiyat al-Sawi 'ala al-Sharh al-Saghir* (663/1), *Manh al-Jalil* (90/2).

(8) See: *Tuhfat al-Muhtaj* (157/7), *Mughni al-Muhtaj* (137/3), *Hashiyat al-Sharbini 'ala al-Ghurur al-Bahiyya* (75/4).

(9) See: *Al-Majmu'* (208/6), *Kifayat al-Nabih* (179/6), *Asna al-Matali* (397/1).

(10) See: *Al-Ikhtiyar li Ta'aleel al-Mukhtar* (119/1).

Counterargument: There is a specific exception, which includes texts prohibiting manipulation to achieve something impermissible. For instance, the Prophet Muhammad (peace be upon him) said: "Do not commit what the Jews did, making lawful the prohibitions of Allah through the slightest of tricks".⁽¹⁾ This prohibition extends to those who borrowed without need, solely to expand their spending, and then sought to receive Zakâh, thus manipulating the system to gain eligibility without genuine need.⁽²⁾

Evidence for the second opinion:

Proponents of the view that a borrower who intends to receive Zakâh should not be given at all argue the following:

First Evidence: If someone borrows with the intention of expanding their spending and receiving Zakâh, they are engaging in a disreputable maneuver and aiming for a condemned goal. Therefore, they should be penalized by being denied Zakâh.⁽³⁾

Second Evidence: Giving Zakâh to such a borrower would only encourage their bad behavior, whereas withholding Zakâh serves as a deterrent to their undesirable actions.⁽⁴⁾

Third Evidence: Their action is not deemed impermissible, and repentance does not affect it; hence, they should not receive Zakâh under any circumstances.⁽⁵⁾

Counterargument: This view is challenged by the argument that their action is indeed impermissible because it involves a reprehensible trick.⁽⁶⁾

Evidence for the third opinion:

Advocates of the third opinion use the first and second pieces of evidence from the second opinion to argue against giving Zakâh if the borrower has not

(1) Previously cited, See: p. 396 of this book.

(2) This differs from those who work for zakat or fight in the cause of Allah with the intention of receiving zakat, because they receive it due to the Muslims' need for them. In contrast, a debtor who borrows for his own needs receives zakat for his personal need, so he should not manipulate the system to receive it if he is not genuinely in need.

(3) See: *Sharh al-Zurqani 'ala Mukhtasar Khalil* (318/2).

(4) See: *Al-Dhakheera* (148/3).

(5) See: *Sharh al-Zurqani 'ala Mukhtasar Khalil* (318/2).

(6) See: *Hashiyat al-Sawi 'ala al-Sharh al-Saghir* (663/1).

repented. They argue that if the borrower repents and it is believed that their repentance is sincere, then their previous misconduct (which involved a reprehensible trick to receive Zakâh and imprudence in borrowing without need) is forgiven through repentance. Thus, their debt remains, and they should be eligible to receive Zakâh.⁽¹⁾

Preponderance and its rationale:

The preponderant opinion, and Allah knows best, is the third view. This view holds that if someone borrows with the intention of expanding their spending and receiving Zakâh, they should not receive from the share allocated to debtors unless they repent and it is sincerely believed that their repentance is genuine. This is because they initially intended to receive Zakâh without genuine need, which is a prohibited maneuver. If they repent and it is believed that their repentance is sincere, their sin is forgiven, and their debt remains, making them eligible for Zakâh.

Second description: Borrowing due to genuine need

In this case, the borrower should receive Zakâh even if they intended to take from it when borrowing. This is in line with the Malikite⁽²⁾ view, and according to the Hanafites, Shafi'ites, and Hanbalites, it follows the general principle of giving Zakâh⁽³⁾ to debtors without exceptions for those who borrowed due to genuine need, regardless of their intention at the time of borrowing. Thus, the general rule applies.

Evidence for the issue:

The evidence is that if someone borrows out of necessity and with the correct intention, i.e., to repay his debt using Zakâh funds, then his intention does not prevent him from being given Zakâh.

The effect of intention on the issue:

In the first description: The second opinion holds that borrowing without

(1) See: *Sharh al-Kabir li al-Dardir* (497/1), *Hashiyat al-Sawi 'ala al-Sharh al-Saghir* (663/1).

(2) See: *Jawahir al-Durar* (126/3), *Sharh al-Zurqani 'ala Mukhtasar Khalil* (318/2), *Manh al-Jalil* (90/2).

(3) See: *Sharh Mukhtasar al-Tahawi* (375/2), *Al-Muhit al-Burhani* (281/2), *Rawdat al-Talibin* (317/2), *Al-Najm al-Wahhaj* (444/6), *Al-Mughni* (480/6), *Al-Furu'* (338/4).

genuine need with the intention of receiving Zakâh prevents the borrower from being given Zakâh. In contrast, the first opinion maintains that the intention of receiving Zakâh does not prevent this, and there is no effect of the intention to take Zakâh in this case. According to the prevailing view, the intention of receiving Zakâh as a means of avoiding debt does prevent the borrower from receiving Zakâh unless he repents.

In the second description: If someone borrows due to genuine need but with the intention of receiving Zakâh, his intention has no effect. He is treated like any other debtor and can receive Zakâh for his debt.

Topic (3): Pardoning⁽¹⁾ a Debtor from Debt and Accounting for It as Zakâh

It includes four issues:

First issue: Pardoning the debtor with the intention of zakâh from present wealth⁽²⁾

Issue description:

If someone has a debt owed to him by a debtor who is eligible to receive Zakâh, can he absolve the debtor from the debt or part of it with the intention of using his present wealth as Zakâh, and will this absolution count as Zakâh?

Opinions on the issue:

The scholars have differing views on this matter:

First opinion: This does not count as Zakâh under any circumstances. This view is held by the Hanafite school,⁽³⁾ Ibn Qasim of the Malikite school,⁽⁴⁾ the more accepted view among the Shafi'ites,⁽⁵⁾ and the prevailing opinion among the Hanbalites.⁽⁶⁾

(1) **Absolution** is defined as: the forgiveness of what is owed or the transfer of ownership. Refer to: *Al-Binaya Sharh al-Hidaya* (3/6), *Asna al-Matali* (156/2).

(2) **The term "present wealth" here refers to:** Any wealth that is zakatable and not a debt owed by someone else.

(3) **See:** *Al-Mabsut* (203/2), *Baday' al-Sanai'* (43/2), *Al-Muhit al-Burhani* (278/2).

(4) **See:** *Al-Mudawwana* (347/1), *Al-Muntqa Sharh al-Muwatta'* (136/2), *Al-Tawdih* (346/2).

(5) **See:** *Nihayat al-Matlub* (331/3), *Asna al-Matali* (398/1), *Tuhfat al-Muhtaj* (336/3).

(6) **See:** *Al-Mughni* (487/2), *Kashaf al-Qina'* (269/2), *Sharh Muntaha al-Iradat* (460/1).

Second opinion: This does count as Zakâh under any circumstances. This opinion is attributed to al-Hasan al-Basri specifically concerning loan debts.⁽¹⁾

This view is attributed to ‘Ataa ibn Abi Rabah,⁽²⁾ Al-Layth ibn Sa’d,⁽³⁾ Ashhab of the Malikite school,⁽⁴⁾ a viewpoint within the Shafi‘ite school,⁽⁵⁾ a possibility among the Hanbalites,⁽⁶⁾ and Ibn Hazm al-Dhahiri.⁽⁷⁾

Third opinion: It counts as Zakâh on the condition that the debt is expected to be repaid. This is the well-known opinion among the Malik scholars.⁽⁸⁾

Evidence for the opinions and counterarguments:

Evidence for the first opinion:

Those who argue that absolving the debt does not count as Zakâh provide the following evidence:

First evidence: The verse from the Quran: “Take from their wealth a charity”⁽⁹⁾ and the Hadith of the Prophet Muhammad (peace be upon him): “It is taken from the rich and given to the poor.”⁽¹⁰⁾

Reasoning: These texts indicate that Zakâh is collected from the wealthy and given to those deserving. Pardoning a debtor with the intention of Zakâh involves neither collection nor distribution.⁽¹¹⁾

(1) See: *Al-Amwal* (533), *Al-Bayan* (425/3).

(2) See: *Al-Amwal* (p. 533), *Al-Muhalla* (224/4).

(3) See: *Al-Hidaya ila Bulugh al-Nihaya* (3045/4).

(4) See: *Al-Tawdih* (346/2), *Mawahi al-Jalil* (345/2), *Sharh al-Zurqani ‘ala Mukhtasar Khalil* (312/2).

(5) See: *Al-Bayan* (425/3), *Al-Majmu’* (210/6), *Al-Muhimmat* (273).

(6) Mentioned by Ibn Muflih in *Al-Furu’*, as a possibility and a theoretical consideration in the school, based on the notion that absolution is considered a transfer of ownership. See: *Al-Furu’* (342/4), *Al-Insaf* (251/3).

(7) See: *Al-Muhalla* (224/4).

(8) An example of a debt that is expected to be repaid includes scenarios where the debtor has assets such as property, servants, or collateral held by the creditor. Refer to: *Al-Tawdih* (346/2), *Sharh al-Zurqani ‘ala Mukhtasar Khalil* (312/2), *Sharh al-Kabir li al-Dardir* (494/1).

(9) From verse 103 of Surah At-Tawbah.

(10) Previously cited, refer to: p. 57 of this book.

(11) Refer to: *Al-Amwal* (p. 533), *Sharh al-Mumti’* (237/6).

Counterargument: It is argued that these texts specifically address the processes of collection and distribution and do not cover the description of absolving a debt. Therefore, they do not provide evidence against the validity of absolving debt as Zakâh.⁽¹⁾

Second evidence: The verse: “And do not give the wicked of it, seeking to spend from it”.⁽²⁾

Reasoning: The verse condemns giving away impure or undesirable items, and treating debt as Zakâh could be considered as giving away something less desirable or of inferior quality.

This argument is debated as it pertains to the quality of the item given in Zakâh rather than the legitimacy of using debt repayment as a form of Zakâh.

The comparison of impure (khabeeth) with pure (tayyib) and deficient with complete; since debt is considered less and deficient compared to Zakâhable property, it is not acceptable.⁽³⁾

Counterargument: This argument is valid for debts that are unrecoverable or not expected to be repaid, as they are considered inferior to Zakâhable property. However, it does not hold for debts that are due and expected to be repaid, as these are equivalent to Zakâhable property.

Third evidence: The obligation in Zakâh requires the complete transfer of ownership to the eligible recipient. Absolution of debt is a cancellation rather than a transfer of ownership. Hence, it cannot replace the transfer of ownership required in Zakâh.⁽⁴⁾

Counterargument: It is debated whether the transfer of ownership from all perspectives is necessary. Absolution of debt involves both cancellation and transfer of ownership, as the debtor gains ownership of the money upon absolution.

Fourth evidence: Debts owed by Zakâh recipients are often considered un-

(1) Refer to: *Hukm Isqat Dayn al-Madin al-Mu'sir wa I'tibaruhi min al-Zakat, Al-Zuqayli* (p. 122).

(2) From verse 267 of Surah Al-Baqarah.

(3) See: *Al-Mabsut* (203/2), *Majmu' al-Fatawa* (84/25).

(4) See: *Al-Muhiit al-Burhani* (278/2), *Asna al-Matalib* (398/1), *Sharh Muntaha al-Iradat* (460/1).

recoverable or unlikely to be repaid. Absolution of such debt with the intention of Zakâh is more about reviving wealth and benefiting the giver,⁽¹⁾ rather than fulfilling a right due to Allah.

Counterargument: This argument is valid only for debts that are unrecoverable or unlikely to be repaid. It does not necessarily apply to debts that are secured by collateral or guarantees, where the debtor is eligible for Zakâh.

Evidence for the second opinion:

First evidence: The verse from the Quran: “And if the debtor is in hardship, then grant him respite until a time of ease, but if you forgive it by way of charity, it is better for you, if you only knew.”⁽²⁾

Reasoning: Allah refers to forgiving debt as charity, indicating its validity as a form of charity, including Zakâh.⁽³⁾

Counterargument: While forgiving debt is referred to as charity, it does not necessarily imply that it fulfills the Zakâh obligation. For instance, Allah also referred to forgiveness of retribution as charity in the verse: “But whoever forgives it, it is an expiation for him”,⁽⁴⁾ and no scholars have considered this as fulfilling Zakâh.⁽⁵⁾

Second evidence: Abu Sa’id al-Khudri reported that a man during the time of the Prophet (peace be upon him) incurred debt from buying fruits. The Prophet (peace be upon him) said, “Give charity to him.” People gave charity, but it was insufficient to cover his debt. The Prophet then said, “Take what you find, and that is all you have”.⁽⁶⁾

Reasoning: The Prophet’s instruction to give charity to the debtor, which included reducing or paying off part of the debt, implies that absolving a debt with the intention of Zakâh⁽⁷⁾ is acceptable.

(1) See: *Al-Amwal* (p. 533), *Al-Muntaqa Sharh al-Muwatta* (136/2), *Al-Mughni* (487/2).

(2) From verse 280 of Surah Al-Baqarah.

(3) See: *Al-Muhalla* (224/4).

(4) From verse 45 of Surah Al-Ma’idah.

(5) See: *Ahkam al-Quran* by Al-Jassas (583/1).

(6) This hadith is recorded in *Sahih Muslim*, specifically in the section on agricultural leasing (*Kitab al-Musaqat*), under the chapter on the recommendation to reduce debt. The hadith is numbered as (1556) in the book and discussed on page (1191/3) of the referenced volume.

(7) See: *al-Muhalla* by Ibn Hazm, (224/4).

Counterargument: The hadith does not explicitly state that the Prophet instructed people to forgive part of the debt. He merely instructed them to assist the debtor.⁽¹⁾ Even if it were accepted, this hadith does not prove that absolving a debt counts as fulfilling Zakâh, but rather indicates that reducing the debt as an act of charity is recommended.

Third evidence: The recipient benefits from having their debt cleared and gains ownership of what was owed to them, which should validate it as Zakâh.⁽²⁾

Counterargument: Benefit or ownership does not necessarily validate it as Zakâh. For example, giving a sheep from a herd of twenty-five does not count as Zakâh, despite the recipient benefiting from it.

Fourth evidence: If the Zakâh payer gives Zakâh to the debtor and then recovers it as repayment for the debt, it is permissible. Thus, if the debt is forgiven without recovery, it should be similarly acceptable.⁽³⁾

Counterargument: In the first case, a direct exchange of property (Zakâh for debt) occurs. In the second case, it's an exchange of debt for Zakâh, which is not equivalent. The permission to recover Zakâh paid for debt does not imply that forgiveness of debt suffices as Zakâh.

Fifth evidence: Comparing a situation where a deposit is given to a deserving person as a gift with the intention of Zakâh, the same should apply to debt, as both result in the recipient receiving what is due.⁽⁴⁾

Counterargument: Comparing debt to a deposit is flawed because a deposit is an asset and not a liability. Discharging a debt differs from giving an asset; thus, the comparison does not hold.

Evidence for the third opinion:

First evidence: Debts that are expected to be paid are not considered lost assets but rather equivalent to Zakâhable property, making it valid to count such debt as Zakâh.

Zakâh, as opposed to non-performing debt that is not expected to be repaid.⁽⁵⁾

(1) See: Ma'alim al-Sunan (126/3).

(2) See: Al-Muntaqa Sharh al-Muwatta (136/2).

(3) See: al-Tawdih,(346/2), and al-Bayan, (425/3).

(4) See: al-Bayan,(425/3), and al-Majmu',(210/6).

(5) See: Mawâhib al-Jalîl (2/345).

Second evidence: The presumption of the intention to revive and protect the money and to benefit the Zakâh payer by accounting for the debt from the Zakâh is absent in cases where the debt is expected to be paid. This is in contrast to non-performing debt or debt that is not expected to be paid.⁽¹⁾

Preponderant opinion:

Upon reflection on the opinions and evidence, it appears that the most accurate position—Allah knows best—is the third opinion, which is that forgiving a debtor from the debt, or part of it, with the intention of using it as Zakâh for one's present wealth is acceptable, provided that the debt is expected to be paid. If the debt is not expected to be paid, it is not acceptable. This is the prevailing view among the Malikites, with the additional condition that the debt must be immediate and not deferred.

Reasons for preponderance:

- 1- The strength of the evidence for the third opinion and the criticisms directed at the evidence for the first and second opinions.
- 2- A debt owed by a Zakâh-eligible debtor may be expected to be paid, such as if the debtor has assets against that debt, or if the debt is secured by collateral or a guarantee. The issue is not confined to debts owed by insolvent individuals.
- 3- There is no sound evidence preventing Zakâh from being discharged through debt forgiveness, other than the argument that debt is less valuable than physical assets. This argument applies to non-performing or deferred debt but not to immediate, expected-to-be-paid debt, which is considered equivalent to physical assets in value and has the ruling of received property. Therefore, its Zakâh is due each year before it is received, according to the views of leading scholars.
- 4- The previous preponderance for the obligation of Zakâh on immediate debt that is expected to be paid each year,⁽²⁾ even if not collected, is based on the principle of mutual support. It would be inconsistent to require a creditor to discharge Zakâh from their own assets and then not accept that discharge as valid for the debt owed.

(1) See: Sharḥ al-Zurqânî 'alâ Mukhtaṣar Khaleel (2/312).

(2) The issue was regarding a loan, and there is no difference between it and other types of debt. See: p. (155) of this book.

Second issue: Forgiving part of the debt with the intention of Zakâh for the same debt

Issue description:

If someone has a debt that is subject to Zakâh and the debtor is eligible for Zakâh due to their debt or another qualification, does it suffice for Zakâh if the creditor forgives part of the debt with the intention of fulfilling Zakâh for that debt?

The opinions on the issue:

The scholars have differed on this matter into three opinions:

First opinion: It is only valid for the amount of the debt that has been forgiven and not for the remainder of the debt.⁽¹⁾ This is the view of the Hanafis.⁽²⁾

Second opinion: It is not valid at all. This is the view of Ibn al-Qasim from the Malikites,⁽³⁾ the most correct view among the Shafi'ites,⁽⁴⁾ and the position of the Hanbalites.⁽⁵⁾

Third opinion: It is valid in all cases. This is the view of some Malikites,⁽⁶⁾ a position among the Shafi'ites,⁽⁷⁾ and the opinion of Ibn Taymiyyah⁽⁸⁾ among the Hanbalites.

Evidence for the opinions and their counterarguments:

Evidence for the first opinion:

The Hanafis argue that the debt forgiven is not considered as an asset, and any remaining part of the debt becomes an asset upon receipt. If forgiveness of part of the debt were accepted as fulfillment, it would mean fulfilling the debt

(1) **Maqdâr al-Dain:** If the debt was forty thousand and the creditor forgives one thousand, intending it as zakat for the entire amount, the discharge would only be valid for the one thousand, leaving thirty-nine thousand still due.

(2) See: *Al-Muhit al-Burhani* (2/279), *Tabyin al-Haq'iq* (1/258), *Fath al-Qadir* (2/171).

(3) See: *Al-Madawana* (1/347), *Al-Muntaqa Sharh al-Muwatta* (2/136), *Al-Tawdih* (2/346).

(4) See: *Nihayat al-Muhtaj* (3/331), *Asna al-Matalib* (1/398), *Tuhfat al-Muhtaj* (3/336).

(5) See: *Al-Furu'* (4/342), *Al-Insaf* (3/251), *Kashaf al-Qina'* (2/269).

(6) See: *Al-Tawdih* (2/346), *Mawahib al-Jalil* (2/345), *Sharh al-Zurqani 'ala Mukhtasar Khalil* (2/312).

(7) See: *Al-Bayan* (3/425), *Al-Majmu'* (6/210), *Al-Muhimmat* (6/273).

(8) See: *Majmu' al-Fatawa* (25/84), *Al-Furu'* (4/342), *Al-Insaf* (3/251).

with an asset, which is not valid since an asset is considered superior to debt.⁽¹⁾

Counterargument:

The argument is that the consideration is based on the state at the time of payment, which is in the form of debt, not as an asset. Thus, the consideration should be the status of the debt at the time of discharge, not the potential outcome.

The Hanafis also argue that the forgiven portion is not an asset and will not convert into an asset before its collection; therefore, discharging it is valid because fulfilling a debt with another debt is permissible.⁽²⁾

Evidence for the second opinion:

The evidence for those who reject all forms of discharging the debt through forgiveness is the same as their arguments in the first issue of this section. These arguments are taken to indicate that accounting for forgiveness of the debt in Zakâh is not valid, whether the Zakâh is on an asset or debt. These arguments have been discussed previously.⁽³⁾

Evidence for the third opinion:

Those who support the view that the forgiveness of debt can count as Zakâh argue as follows: Zakâh is based on the principle of mutual support and assistance. Here, the payer is giving from what they own rather than something lesser, and thus it should be valid. It is not in line with mutual support to require the payer to give more than what they owe; hence, the payer should provide from their own wealth and not something of lesser value. For example, if they have good quality fruits and wheat, they should not give lesser quality items instead. Similarly, if they possess poor-quality fruits, they are not required to give better quality⁽⁴⁾ fruits in Zakâh.

Preponderant opinion:

The preponderant opinion, according to Allah's knowledge, is the third one: If a person has a debt and forgives part of it with the intention of using it for Zakâh on that debt, this can be considered sufficient for Zakâh.

(1) See: *Tabyin al-Haqa'iq* (1/258), *Bahr al-Ra'iq* (2/228).

(2) See: *Tabyin al-Haqa'iq* (1/258), *Hashiya Ibn Abidin* (2/270).

(3) See: Page (417) from this book.

(4) See: *Majmū' al-Fatâwâ* (24/84).

Reasons for preponderance:

- 1- Strength of evidence: The evidence supporting the third opinion is strong, while the arguments against the first and second opinions have been addressed and found lacking.
- 2- Consistency in Zakâh discharge: The validity of forgiving debt with the intention of Zakâh on the same debt, particularly if the debt is due and likely to be paid, is consistent. This is because such debt is treated similarly to actual wealth,⁽¹⁾ making the intention of Zakâh on the debt itself more appropriate.

Third Issue: Forgiving debt or part of it with the intention of Zakâh for another debt

Issue description:

If a person has two debts—one owed by a Zakâh-eligible individual and the other for which Zakâh is required—can they forgive part or all of the debt owed by the Zakâh-eligible individual with the intention of covering the Zakâh for the other debt?

Opinions on the issue:

First opinion: It does not count. This is the view of the Hanafis,⁽²⁾ as well as Ibn al-Qasim from the Malikites,⁽³⁾ the more accurate view among the Shafi'ites,⁽⁴⁾ and the prevailing opinion among the Hanbalites.⁽⁵⁾

Second opinion: It counts universally. This is the view of some Malikites,⁽⁶⁾ a position held by some Shafi'ites,⁽⁷⁾ and a possibility among the Hanbalites.⁽⁸⁾

Third opinion:

It is valid provided that the debt from which one is absolved is equal to or

(1) See: p. (420) of this book.

(2) See: Al-Mabsûṭ (2/203), Badâ'i' al-Ṣanâ'i' (2/43), Al-Muḥīṭ al-Burhânî (2/278).

(3) See: Al-Mudawwana (1/347), Al-Muntaqâ Sharḥ al-Muwatta' (2/136), Al-Tawḍīḥ (2/346).

(4) See: Nihâyat al-Muṭṭalab (3/331), Asnâ al-Maṭâlib (1/398), Tuḥfat al-Muḥtâj (3/336).

(5) See: Al-Furû' (4/342), Al-Insâf (3/251), Kashâf al-Qinâ' (2/269).

(6) See: Al-Tawḍīḥ (2/346), Mawâhib al-Jalîl (2/345), Sharḥ al-Zurqânî 'alâ Mukhtaṣar Khalîl (2/312).

(7) See: Al-Bayân (3/425), Al-Majmû' (6/210), Al-Muhimmât (6/273).

(8) See: Al-Furû' (4/342), Al-Insâf (3/251).

greater than the debt⁽¹⁾ on which Zakâh is due in terms of expected repayment. This opinion reflects the view of the Hanbalites, which was also chosen by Shaykh al-Islam Ibn Taymiyyah. It is based on the principle that the absolution from debt (or part of it) with the intention of Zakâh is valid as long as the value of the debt from which one is absolved is equal to or greater than the value of the wealth⁽²⁾ on which Zakâh is due. In other words, the lower value cannot be substituted for the higher.

Evidence and counterarguments:

Evidence for the first opinion:

First Evidence: The wealth on which Zakâh is due becomes specified upon its receipt, whereas the debt from which one is absolved does not become specified, thus making it inferior in terms of value. It is not valid to substitute a lesser value for a greater one.

Counter-argument: The key consideration is the value at the time of performance. The wealth due for Zakâh, at the time of performance, is considered a debt (or obligation) rather than a physical item, and the possibility of receiving it in the future and its conversion into a physical item does not make it superior in value compared to the debt from which one is absolved.⁽³⁾

Second evidence: Exchange of one debt for another is not permissible with respect to the rights of people; similarly, it should not be permissible regarding the rights of Allah. Absolution from one debt as Zakâh for another debt involves an exchange between the two; since the obligation is a portion of each debt, replacing the due portion of one debt with another is not valid.

Counter-argument: It is not accepted that the obligation from each debt is merely a part of it. It is permissible to use the physical item as Zakâh for a debt, so there is no actual exchange between two debts. Rather, it is simply discharging one debt in place of Zakâh for another.

Evidence for the second opinion:

The evidence provided by those who support the absolute validity of this

(1) It is valid to absolve a debt expected to be repaid as zakat for any other debt, whether the debt is expected to be repaid or not, as long as it is for a debt of the same type.

(2) See: Majmū' al-Fatâwâ (24/84), Al-Furū' (4/342), Al-Insâf (3/251).

(3) See Al-Mabsûṭ (2/203), Badâ'i' al-Şanâ'i' (2/43).

opinion is the same as their evidence in the first issue of this counterargument. It indicates, according to them, that the absolution from debt as Zakâh is valid in all cases, whether the Zakâh is due on physical items or debts. The counterargument of this evidence has already been covered.⁽¹⁾

Evidence for the third opinion:

The third opinion is supported by the argument that it is required of the person to discharge what is equal to or greater in value than what they possess, rather than something lesser. It is not valid to discharge a lesser value (such as a non-recoverable debt) in place of a higher value (such as a debt expected to be repaid). It is valid to discharge a lesser value against a similar value because Zakâh is a form of charity, and it is not necessary for the person to give in Zakâh something better than what he has.⁽²⁾

Preponderance and its rationale:

The preponderant opinion—though Allah knows best—is the third view, which holds that if someone has a debt owed by a recipient of Zakâh and absolves them of that debt or part of it with the intention of it being Zakâh for another debt they have, it is valid provided that the debt from which they are absolved is equal to or greater than the debt on which Zakâh is due in terms of expected repayment. This preponderance is based on the strength of the evidence supporting the third opinion and the previous preponderance in the first and second issues of this topic.

Fourth issue: Absolution of the debtor from the entire debt with the intention of zakâh for that debt

Issue description:

If someone has a debt on which Zakâh is obligatory and the debtor is eligible to receive Zakâh, is it valid for the Zakâh to be fulfilled by absolving the debtor from the entire debt with the intention of performing Zakâh for that debt?

Opinions on the issue:

The scholars differ on this issue into two opinions:

First opinion: It is valid for Zakâh. This view is held by the Hanafite school,

(1) See: p. (418) of this book.

(2) See: Majmū' al-Fatâwâ (24/84).

a position within the Malikite school,⁽¹⁾ a view within the Shafi'ite school,⁽²⁾ and a position among the Hanbalites⁽³⁾ chosen by Shaykh al-Islam Ibn Taymiyyah.⁽⁴⁾

Second opinion: It is not valid for Zakâh. This view is held by Ibn al-Qasim from the Malikite school,⁽⁵⁾ the more accurate view within the Shafi'ite school,⁽⁶⁾ and the established position within the Hanbalite school.⁽⁷⁾

Evidence and counterarguments:

Evidence for the first opinion:

Those who support the validity of this practice argue as follows:

First evidence: The obligatory amount of Zakâh for that debt has reached its rightful recipient through absolution, thus fulfilling the Zakâh requirement. This is analogous to gifting the entire amount of the Zakâh-eligible wealth to the recipient with the intention of Zakâh.⁽⁸⁾

Second evidence: The absolution of the entire debt on which Zakâh is due removes the possibility of it becoming a physical asset upon its receipt. Therefore, it does not fulfill the requirement of paying Zakâh for something that might turn into a physical asset. Thus, it is acceptable to absolve the debt, as there is no substitution of a lesser value for a greater one.⁽⁹⁾

Counter-argument: The potential for the debt to become a physical asset upon its receipt does not make it superior to the debt in question. The key consideration is the value at the time of performance. There is no difference in accounting for Zakâh between absolving the entire debt or part of it with the intention of Zakâh.

Third evidence: Zakâh is based on the principle of equality and fairness. In this case, the person discharges a debt from their own wealth rather than

(1) See: Al-Mabsûṭ (2/203), Badâ'i' al-Ṣanâ'i' (2/43), Tabyîn al-Ḥaqâ'iq (1/258).

(2) See: Al-Tawḍîḥ (2/346), Mawâhib al-Jalîl (2/345), Sharḥ al-Zurqânî 'alâ Mukhtaṣar Khalîl (2/312).

(3) See: Al-Bayân (3/425), Al-Majmû' (6/210), Al-Muhimmât (6/273).

(4) See: Majmû' al-Fatâwâ (24/84), Al-Furû' (4/342), Al-Insâf (3/251).

(5) See: Al-Mudawwana (1/347), Al-Muntaqâ Sharḥ al-Muwattâ' (2/136), Al-Tawḍîḥ (2/346).

(6) See: Nihâyat al-Muṭṭalab (3/331), Asnâ al-Maṭâlib (1/398), Tuḥfat al-Muḥtâj (3/336).

(7) See: Al-Mughni (2/487), Kashâf al-Qinâ' (2/269), Sharḥ Muntahâ al-Îrâdât (1/460).

(8) See: Al-Mabsûṭ (2/203).

(9) See: Badâ'i' al-Ṣanâ'i' (2/43).

from a lesser value. Therefore, it should be acceptable; it is not in line with the principle of fairness to require the person to give physical assets instead of discharging a debt.⁽¹⁾

Evidence for the second opinion:

The evidence presented by those who argue that this practice is not valid for Zakâh is the same as their evidence in the first issue of this topic. According to them, it indicates that absolving a debt as Zakâh is not valid in any case, whether the Zakâh is due on physical assets or on debt. This evidence has been previously discussed.⁽²⁾

Preponderance and its rationale:

The preponderant opinion—though Allah knows best—is the first view, which asserts that if someone has a debt on which Zakâh is obligatory and the debtor is eligible to receive Zakâh, absolving the debtor from the entire debt with the intention of it being Zakâh for that debt is valid. This is based on the strength of the evidence supporting the first opinion and the counter-argument of the evidence for the second opinion. This preponderance is also consistent with the previous preponderance in the second issue of this topic.

Topic (4): Giving Zakâh to the Creditor with the Intention of Settling the Debt

Issue description:

If someone has a debt owed to a creditor who is eligible to receive Zakâh, is it valid to pay Zakâh to the creditor with the intention of settling that debt?

Clarification of the dispute:

Paying Zakâh to the creditor can fall into one of four situations:

First case: The person giving Zakâh conditions that the creditor must repay the Zakâh amount towards the debt.

Second case: The person giving Zakâh and the creditor agree, without a specific condition, that the Zakâh payment will be used to settle the debt.

Third case: The person giving Zakâh intends, without any specific condition or agreement, for the Zakâh payment to be used to settle the debt.

(1) See: Majmū' al-Fatâwâ (24/84).

(2) See: p. (417) of this book.

Fourth case: The person giving Zakâh transfers the Zakâh to the creditor without any condition, agreement, or intention to recover it.

There is disagreement among scholars regarding the first three situations. However, there is no dispute about the validity of the payment in the fourth situation, whether the giver of Zakâh retrieves the amount paid towards the debt or not.⁽¹⁾

Opinions on the issue:

Scholars differ on this issue into four opinions:

First opinion: It is valid to pay Zakâh to the creditor in all cases, even with the condition of recovering it for the debt. This view is held by the Hanafite school⁽²⁾ and by Al-Azji⁽³⁾ from the Hanbalite school.⁽⁴⁾

Second opinion: It is valid to pay Zakâh to the creditor even with mutual agreement to recover it, but it is not valid if there is a specific condition attached. This is a view held by some scholars within the Malikite school,⁽⁵⁾ the Shafi'ite school,⁽⁶⁾ and also by Al-Qâdi Abū Ya'lā and others from the Hanbalite school.⁽⁷⁾

Opinions on the issue:

Third opinion: It is valid to pay Zakâh to the creditor with the intention of recovering it, but it is not valid if there is a specific condition or mutual agree-

(1) See: Al-Mabsūṭ (2/203), Badā'i' al-Ṣanā'i' (2/43), Al-Tawḍīḥ (2/346), Mawāhib al-Jalīl (2/348), Al-Bayān (3/425), Al-Majmū' (6/211), Al-Mughni (2/487), Al-Furū' (4/343).

(2) See: Al-Mabsūṭ (2/203), Badā'i' al-Ṣanā'i' (2/43), Ḥāshiyat Ibn 'Ābidīn (2/271).

(3) He is: Yaḥyā ibn Yaḥyā Al-Azjī Al-Ḥanbalī, a Hanbali scholar who authored a significant book on Hanbali jurisprudence titled *Nihāyat al-Muṭṭalab fī 'Ilm al-Madhhab*. He followed the style of the *Nihāyat al-Muṭṭalab* by Imām al-Ḥaramayn Al-Juwaynī and extensively drew from *Al-Mujarrad* by Al-Qāḍī Abū Ya'lā and *Al-Fuḍūl* by Ibn 'Aqīl. Al-Burhān Ibn Muflīḥ commented, "It contains some omitted matters and lacks thorough verification." He passed away after 600 AH. For details on his biography, refer to: *Dhayl Ṭabaqāt al-Ḥanābilah* (3/248), *Al-Maqṣid al-Arshad* (3/133).

(4) See: Al-Furū' (4/344), Al-Insāf (3/251).

(5) See: Al-Tawḍīḥ (2/346), Mawāhib al-Jalīl (2/348), Ḥāshiyat al-Dusūqī 'ala al-Sharḥ al-Kabīr (1/494).

(6) See: Rawdat al-Ṭalībīn (2/320), Kifāyat al-Nabīḥ (6/215), Asnā al-Maṭālib (1/398).

(7) See: Al-Ra'āyah al-Ṣughhrā (1/442), Al-Furū' (4/343), Al-Mubdi' (2/419).

ment. This is a view held by some within the Malikite school,⁽¹⁾ the Shafi'ite school, and also by Al-Qādi Abū Ya'lā and others from the Hanbalite school.

Fourth opinion: It is valid to pay Zakāh to the creditor if there is neither a condition nor mutual agreement nor intention of recovering it. This is the well-known opinion within the Hanbalite school and is explicitly stated by Imam Ahmad.⁽²⁾

Evidence and counterarguments:

Evidence for the first opinion:

Those who support the absolute validity of paying Zakāh to the creditor, even with a condition, argue that this is a permissible method to treat the debt as Zakāh for the physical asset. This is because, in this description, the Zakāh is paid to the recipient in the form of a physical asset, which the recipient then uses to settle the debt among the permissible legal stratagems.⁽³⁾

Counterarguments on the evidence:

Counterargument of the first opinion:

This is considered an invalid stratagem because the transfer of ownership does not occur when there is a condition for recovering the Zakāh. It is as if nothing was given, and thus, it amounts to substituting a debt for a physical asset.

Evidence for the second opinion:

Proponents argue that mutual agreement or promises do not necessitate fulfillment, hence they have no effect on transferring ownership to the rightful recipient, unlike a condition.⁽⁴⁾

Counterargument: Mutual agreement is a stratagem to achieve something impermissible, i.e., using debt as Zakāh for a physical asset. If they agree that the giver will recover what is paid as Zakāh, it is as if nothing was given, effectively replacing the debt with Zakāh for a physical asset. The invalidity of such

(1) They specified the validity with the condition of no mutual agreement, and it appears even if the giver of zakat intends this privately. Refer to: *Al-Tāj wa al-Iklīl* (3/229), *Mawāhib al-Jalīl* (2/348), *Sharḥ al-Zurqānī 'ala Mukhtaṣar Khalīl* (2/313).

(2) See: *Al-Mughni* (2/487), *Al-Furū'* (4/343), *Al-Iqnā'* (1/299).

(3) See: *Badā'i' al-Ṣanā'i'* (2/43), *Ḥāshiyat Ibn 'Ābidīn* (2/271).

(4) See: *Al-Majmū'* (6/211), *Fatāwā al-Ramlī* (3/141).

a stratagem does not negate the fact that the transaction is flawed.

Evidence for the third opinion:

Supporters argue that if the Zakâh giver agrees with the creditor to return the Zakâh paid for the debt, it is as if nothing was given, mutual agreement with a promise is akin to a condition, unlike mere intention, which does not affect the transfer of ownership to the recipient.⁽¹⁾

Counterargument (two points):

First point: It is not accurate to equate promises with conditions, as promises are not obligatory, unlike conditions.

Second point: Although intention does not affect the transfer of ownership, the intent to benefit from Zakâh and revitalize one's wealth is impermissible.

Evidence for the fourth opinion:

Supporters argue that the default position is that paying Zakâh to a creditor is permissible, just like to anyone else. However, if the giver intends to recover the Zakâh as repayment for a debt, it amounts to using Zakâh to benefit oneself, which is not permissible.⁽²⁾

Counterargument: This reasoning holds if the Zakâh is higher in value than the creditor's debt, such as a physical asset or a debt expected to be paid. In such cases, the giver gains a benefit, which makes the practice invalid.

By disbursing the lesser amount⁽³⁾ for the greater and revitalizing wealth in that manner, if the Zakâh is given from the very debt owed by the recipient or another debt equal to or less than it, the prohibition is removed because it would be disbursing from the same type or a greater value. Zakâh is based on the principle of solidarity.

Preponderance:

Preponderant opinion:

"The preponderant opinion-God knows best-is the fourth opinion, which asserts that it is permissible to give Zakâh to a debtor if there is no condition

(1) See: Al-Tawdîh (2/346), Sharh al-Khurashî (2/215).

(2) See: Al-Mughni (2/487), Al-Mubdi' (2/419).

(3) Because the zakat payer's act of giving and then retrieving it leads to a scenario similar to forgiving a debt and counting it as zakat.

for recovering it, no mutual agreement, and no intention to retrieve it. However, if any of these three elements are present, it is not permissible. It should be noted that if the Zakâh is given from the very debt owed by the recipient or another debt of equal or lesser value, then giving Zakâh to the creditor is permissible in all cases.

Reasons for preponderance:

- 1- The strength of the evidence cited by the proponents of the fourth opinion regarding the effect of the intention to recover Zakâh on the validity of the disbursement. Conditions, agreements, and promises have a more significant effect.
- 2- The previous preponderance established in the last section, which allows forgiving a debt and counting that as Zakâh if the Zakâh is from the same debt or a debt of equal or lesser value. This is because the Zakâh payer has given from the same type or a greater amount, aligning with the principle of equality in Zakâh. The description of giving Zakâh to a creditor and then retrieving it, even with conditions, is equivalent to forgiving the debt and counting it as Zakâh. Hence, what is permissible in one description should be permissible in the other.”

Topic (5): The Effect of Intending to Travel for Sin on Giving Zakâh to a Traveler

Issue description:

“Is it permissible to give Zakâh to a traveler who has journeyed with the intention of committing a sin—such as traveling to commit adultery, drink alcohol, or cause corruption—and who is cut off from their funds?”

Opinions on the issue:

Opinion 1: “The traveler should be given Zakâh unconditionally.” This view is supported by the Hanafis, who maintain that a traveler deserving of Zakâh is anyone who is cut off from their funds, without exception for those traveling for sinful purposes.⁽¹⁾ This is consistent with their view that traveling for sin allows for the use of travel concessions.⁽²⁾

First opinion: He should not be given unless he repents. This is the view of

(1) See: Al-Mabsûṭ (3/10), Badâ'i' al-Şanâ'i' (2/46), Al-Binâyah (3/457).

(2) See: Badâ'i' al-Şanâ'i' (1/93), Al-Muḥiṭ al-Burhânî (2/24), Tabyîn al-Ḥaqâ'iq (1/216).

the Malikites,⁽¹⁾ the well-known opinion among the Shafi'ites,⁽²⁾ and the opinion among the Hanbalites.⁽³⁾ Their apparent view is that repentance must be accompanied by one of two conditions: either cutting off the travel and returning, or changing the intention from committing a sin during travel to pursuing a permissible purpose,⁽⁴⁾ such as trade, knowledge, or medical treatment.

Second opinion: He should be given if he intends to return, even if he does not repent. This is a view among the Shafi'ites⁽⁵⁾ and Hanbalites.⁽⁶⁾

Fourth opinion: He should not be given at all. This is a view among the Hanbalites.⁽⁷⁾

Evidence and counterarguments:

Evidence for the first opinion: Those who support giving Zakâh to such a traveler unconditionally argue from the general statement in the Qur'an: "The wayfarer"⁽⁸⁾ as a category for Zakâh, without distinguishing between those traveling for sin and others.

Counterargument: This is contested by specific evidence indicating that aiding sinners is not permissible, such as the verse: "And do not cooperate in sin and aggression."⁽⁹⁾

Evidence for the second opinion: Those who argue that Zakâh should only be given if the traveler repents, state that giving before repentance aids in sin, which is not permissible.⁽¹⁰⁾ If the traveler repents and their repentance is deemed sincere, their sin is removed, as repentance absolves prior sins. Thus, they should be given Zakâh due to the absence of prohibitive factors.⁽¹¹⁾

(1) See: Al-Tabsira (3/979), Sharh al-Zurqani ala Khalil" (2/319), "Hashiyat al-Adawi ala Sharh al-Khurshe (2/219).

(2) See: Kifayat al-Nabih (6/187), Asna al-Matalib (1/399), Tuhfat al-Muhtaj (7/160).

(3) See: Al-Muharrar (1/224), Al-Insaf (3/248), Mu'auna Uli al-Nuha (3/327).

(4) See: Al-Tabsira (3/979), Al-Majmu** (6/215), **Al-Mubdi (2/417).

(5) See: Al-Majmu' (6/215), Kifayat al-Nabih (6/187), Al-Najm al-Wahaj (6/450).

(6) See: Idrak al-Ghayah fi Ikhtisar al-Hidayah (p. 83), Al-Insaf (3/238).

(7) See: Al-Kafi (1/427), Al-Furu** (4/349), **Al-Mubdi (2/416).

(8) From Surah At-Tawbah (9:60).

(9) From Surah Al-Ma'idah (5:2).

(10) See: Al-Tahdhib (5/196), Al-Mughni (6/485).

(11) See: Kifayat al-Nabih (6/188), Sharh Muntaha al-Iradat (1/458).

Evidence for the third opinion: Those who argue that Zakâh should be given if the traveler intends to return, even without repentance, reason that upon returning to their homeland, they are no longer considered a sinner during travel, as returning is permissible and not sinful.⁽¹⁾

Counterargument: The reason for his return is his travel for sinful purposes. Assisting in his return thus constitutes aiding in sin.

Evidence for the fourth opinion: Those who argue against giving him assistance absolutely provide the following evidence:

First evidence: It is impossible to verify the sincerity of repentance, and there is no guarantee that it is not merely a façade to obtain Zakâh.⁽²⁾

Counterargument: It is possible to rely on circumstantial evidence indicating the sincerity of repentance, and a strong suspicion in such cases can be considered as certain.

Second evidence: If assistance is given after repentance, there is no guarantee that he will not return to sinful travel, relying on the expectation of receiving Zakâh to support his journey. Therefore, it should not be given as a precautionary measure.⁽³⁾

Counterargument: The principle is that he will not return to sinful travel if the sincerity of his repentance is strongly presumed, and the possibility of misuse does not prevent giving him Zakâh, similar to a poor person who is given Zakâh despite the possibility of spending it on sinful activities.

Preponderant opinion: The preponderant opinion—Allah knows best—is the second one, which states that a traveler who intends to commit sins should not be given from the traveler's share (sadaqat) unless he has repented.

Reasons for preponderance:

- 1- The strength and validity of the evidence for the second opinion and the counterarguments against the other opinions.
- 2- The principle is to provide assistance to every traveler who is cut off from his resources from the traveler's share, as the verse is general.

(1) See: Al-Majmu' (6/215).

(2) See: Al-Mubdi' (2/417).

(3) See: Al-Mumt'i fi Sharh al-Muqni' (1/784).

Assistance to a sinful traveler is prohibited until he has repented, as it would otherwise facilitate his sinful journey. Once repentance is confirmed, the prohibition is removed, and we revert to the original principle.

- 3- The previous preponderance that a person in debt due to sinful activities should not receive assistance from the debtors' share unless he has repented,⁽¹⁾ similarly applies to the traveler who commits sins.

The effect of intention on the issue:

The effect of intention in this issue is that the majority of scholars have made the intention of sinful travel a reason to deny Zakâh assistance from the traveler's share. However, those who support the second opinion allow assistance if the traveler has repented, which is the preponderant view as previously mentioned.

Topic (6): The Effect of Intention on Allocating Zakâh to Relatives

Issue description:

When a person has relatives to whom Zakâh can be given, is it permissible for him to allocate Zakâh specifically to them over others who are not relatives?

Opinions on the issue:

The scholars differ on this matter into three opinions:

First opinion: It is recommended for someone who has relatives eligible to receive Zakâh to allocate it specifically to them over others. This is the view of the Hanafite school,⁽²⁾ a position within the Malikite school,⁽³⁾ and a viewpoint among the Shafi'ites.⁽⁴⁾

Second opinion: It is disliked for someone who has relatives eligible to receive Zakâh to allocate it specifically to them over others. This is a narration within the Malikite school, as reported by Ibn al-Qasim and preferred by most

(1) See: *Al-Mumt'i fi Sharh al-Muqni'* (1/784).

(2) See: *Tajziyat al-Haqa'iq* (1/305), *Al-'Inayah* (2/280), *Al-Bahr al-Ra'iq* (2/262).

(3) See: *Tahbir al-Mukhtasar* (2/116), *Al-Taj wa al-Ikleel* (3/237), *Sharh al-Zurqani 'ala Mukhtasar Khalil* (2/320).

(4) See: *Al-Hawi al-Kabir* (3/388), *Al-Muhadhdhab* (1/318), *Al-Majmu'* (6/238).

of them.⁽¹⁾

Third opinion: It is not permissible to give Zakâh exclusively to relatives when there are others who are more in need. Rather, Zakâh should be distributed to everyone, with relatives being given priority if they are equally in need of others. This is the view of the Hanbalite school.⁽²⁾ Their apparent position is also that Zakâh would not be valid if it is given preferentially to relatives over others who are more in need, as they equate the favoring of relatives in Zakâh distribution to giving Zakâh to those undeserving of it. They explicitly state that giving Zakâh⁽³⁾ to those who are undeserving invalidates it,⁽⁴⁾ and the same principle applies here.

Evidence and counterarguments:

Evidence for the first opinion: Proponents of the recommendation base their argument on the following:

Evidence for the first opinion:

First evidence: Allah, the Almighty, says: *"So is it other than the religion of Allah that they desire? And who is better than Allah in judgment for a people who have certainty?"*⁽⁵⁾

Reasoning: This verse illustrates that Allah condemns the cutting of family ties and corruption on earth, and He follows these condemnations with a

(1) See: *Al-Mudawwanah* (1/347), *Al-Kafi fi Fiqh Ahl al-Madina* (1/327), *Tahbir al-Mukhtasar* (2/116), *Al-Taj wa al-Ikleel* (3/237).

(2) Imam Ahmad's position is documented by Abu Dawood: "I heard Ahmad being asked: Can a man give all his zakat to his relatives? He said: If others are more in need than them, and he intends to enrich them and neglect others, then no. He was asked: If my relatives and the poor are equal in poverty? He said: In that case, they are more deserving." See *Masail Imam Ahmad* as narrated by Abu Dawood al-Sijistani (p. 119), and see also *Al-Mughni* (2/513), *Al-Furu'* (4/353), *Kashaf al-Qina'* (2/289).

(3) Imam Ahmad also stated: "It is not permissible for a man to use zakat to favor his relatives or to give zakat to those undeserving. Zakati is the right of Allah over the wealth. If relatives and non-relatives are equal in poverty, then the relatives are more deserving." See *Al-Jami' li 'Ulum al-Imam Ahmad* (7/307), and see also *Al-Mughni* (2/513), *Al-Furu'* (4/361).

(4) See: *Al-Jami' li 'Ulum al-Imam Ahmad* (7/307), *Al-Furu'* (4/361), *Kashaf al-Qina'* (2/289).

(5) The verses 22-23 from Surah Muhammad.

curse to emphasize the severity of the sin. Not giving Zakâh to needy relatives falls under cutting family ties.⁽¹⁾

Counterargument: However, giving charity to needy relatives does not necessarily mean prioritizing them for Zakâh if there are others who are in greater need.

Second evidence: The Prophet Muhammad (peace be upon him) said: “Charity to a poor person is a charity, but to a relative is twofold: charity and maintaining family ties”.⁽²⁾ He also said: “The best charity is to a close relative who is hostile⁽³⁾.”⁽⁴⁾

Reasoning: These hadiths indicate the recommendation to give charity to relatives and family members, which includes Zakâh if they are eligible to receive it.⁽⁵⁾

Counterargument: These texts generally recommend giving charity to relatives, but there is consensus that Zakâh cannot be given to one's dependent children (who are legally obligated to be supported)⁽⁶⁾ and is also subject to the exceptions outlined in the evidence for the third opinion.

(1) See: *Al-Hawi al-Kabir* (3/388).

(2) Narrated by Ibn Majah in his *Sunan*, Book: Zakat, Chapter: The Virtue of Charity, Hadith Number (1844), (1/591); and by Al-Tirmidhi in his *Sunan*, Book: Zakat, Chapter: What Has Been Reported About Charity to Relatives, Hadith Number (658), (3/38); and by Al-Nasa'i in his *Sunan*, Book: Zakat, Chapter: Charity to Relatives, Hadith Number (2582), (5/92). The hadith was graded as حسن (hasan) by Al-Tirmidhi and authenticated by Ibn al-Mulaqqin. See: *Sunan al-Tirmidhi* (3/38), *Al-Badr al-Munir* (7/411).

(3) The term “kashih” refers to an enemy who harbors hostility. See: *Al-Nihaya fi Gharib al-Hadith* (4/175), *Al-Misbah al-Munir* (2/534).

(4) Narrated by Ibn Khuzaymah in his *Sahih*, Book: Zakat, Chapter: The Virtue of Charity to Hostile Relatives, Hadith Number (2386), (4/77); and by Al-Hakim in his *Muṣṭadrak*, Book: Zakat, Hadith Number (1475), (1/564); and by Al-Bayhaqi in his *Sunan al-Kubra*, Book: Zakat, Chapter: The Distribution of Charity to Relatives and Neighbors if They Are Eligible for Both Shares, Hadith Number (13223), (7/43). The hadith was authenticated by Al-Hakim and Al-Albani. See: *Muṣṭadrak* (1/564), *Irwa' al-Ghalil* (3/404).

(5) See: *Al-Bahr al-Ra'iq* (2/262), *Al-Dhakheera* (3/141), *Al-Hawi al-Kabir* (3/388), *Al-Muḥadhdhab* (1/318).

(6) See: *Ijmā'* by Ibn al-Mundhir (p. 48), *Badā'ī al-Ṣanā'i'* (2/49), *Fath al-Qadir* (2/269), *Al-Mudawwanah* (1/344), *Al-Tabsirah* by al-Khamey (3/966), *Al-Umm* (2/87), *Al-Majmu'* (6/229), *Al-Mughni* (2/482), *Al-Insaf* (3/254).

Evidence for the second opinion:

Evidence for the dislike opinion: Those who argue that it is disliked to give Zakâh exclusively to relatives offer the following evidence:

Evidence for the second opinion:

First evidence: Allocating Zakâh specifically to relatives could be done with the intention of seeking their praise and commendation, which is undesirable.⁽¹⁾

Counterargument: The fundamental principle is sincerity, and a person should be commended for doing good deeds.⁽²⁾ The concern about seeking praise does not undermine the intention of the act itself

Second evidence: Allocating Zakâh exclusively to relatives involves favoritism, which is undesirable.⁽³⁾

Counterargument: Favoritism towards relatives occurs when someone more deserving and in greater need is overlooked. However, if relatives and non-relatives are equal in need, relatives should be prioritized due to their kinship.

Evidence for the third opinion:

Proponents of the third opinion argue that relatives are more deserving of Zakâh if they are equally in need to non-relatives, based on the same evidence used for the first opinion. They argue against allocating Zakâh exclusively to relatives if others are more in need.⁽⁴⁾

Evidence: Zakâh is a right due to Allah, and it is not permissible to use it to favor relatives while neglecting those in greater need.

Counterargument: Giving Zakâh to a deserving relative does not contradict the idea that Zakâh is a right owed to Allah, as it is given to those who are legally entitled to it. Favoring a relative over a more needy non-relative is not prohibited but is considered less preferable. There is no specific evidence to prohibit this practice outright.

(1) See: *Al-Mudawwanah* (1/347).

(2) See: *Al-Taj wa al-Ikleel* (3/237).

(3) See: *Tahbir al-Mukhtasar* (2/116).

(4) See: *Al-Jami' li 'Ulum al-Imam Ahmad* (7/307), *Majmu' al-Fatawa* (25/89), *Kashaf al-Qina'* (2/289).

Preponderant opinion:

The preponderant opinion—Allah knows best—is to combine the second and third opinions. It is recommended to avoid allocating Zakâh exclusively to relatives if others are more in need. If relatives and non-relatives are equal in need, then relatives should be given priority.

Reasons for preponderance:

1. Consistency with the recommendation to give to relatives: The dislike of allocating Zakâh exclusively to relatives, even when others are less in need, conflicts with the recommendation to give charity to relatives. Intentional favoritism is not apparent when relatives and non-relatives are equally in need.

2. Lack of evidence for prohibition: Allocating Zakâh to relatives when there are others more in need is not supported by evidence of prohibition but is considered less preferable due to favoritism.

The effect of intention on the issue:

The effect of intention is reflected in the different views on whether to give Zakâh to relatives:

First opinion: Proponents of this view believe that the intention to favor relatives does not affect the validity of Zakâh allocation in this context.

Second opinion: The scholars who hold that it is disliked to specifically allocate Zakâh to relatives argue that this shows an intention to favor them, which is undesirable. They believe that favoritism is evident when there are others who are in greater need than their relatives. However, if relatives and others are equally in need, there is no such favoritism.

Third opinion: Scholars who support this view argue that favoritism is not a concern if relatives and others are equally in need. They believe that it is prohibited to preferentially allocate Zakâh to relatives while neglecting those who are more in need.

The most reasonable position, Allah knows best, is that the intention to favor relatives only becomes an issue when they are given Zakâh while others who are more in need are overlooked. In such cases, favoritism is undesirable but not necessarily forbidden.

Topic (7): Effect of Intention in Giving Zakâh to a Specific Employee

Issue description:

When a person has a specific employee⁽¹⁾ who is eligible to receive Zakâh, is it permissible to give Zakâh to this employee? What is the effect of intention in this context?

Opinions on the issue:

First opinion: It is permissible for an employer to give Zakâh to their specific employee if the employee is eligible to receive it. This is the view of the Hanafite and Shafi'ites.⁽²⁾ There is no explicit text from the Malikite school⁽³⁾ on this issue, but it can be inferred from their view that Zakâh can be given to the eligible categories without excluding a specific employee.⁽⁴⁾ They may also have a view that disapproves of giving Zakâh to an employee if the intention is to benefit oneself or avoid criticism, as they disapprove of giving Zakâh with the intention of seeking praise or personal gain.⁽⁵⁾

Second opinion: It is permissible for an employer to give Zakâh to their specific employee if the employee is eligible, but under certain conditions that have not yet been specified.

He intends thereby to achieve a benefit for himself; if he does so, it is prohibited and will not be valid. This is the opinion of the Hanbalite school⁽⁶⁾ and the Permanent Committee for Scholarly Research and Ifta in the Kingdom of

(1) Private Worker: This is someone who is hired for a specified period, during which the employer is entitled to their benefit throughout the entire period. The worker earns their wage by being present during the period, regardless of whether they work or not. Examples include a shepherd, a domestic worker, and an employee. It is called a private worker because the employer benefits exclusively from their service during that period, unlike others. In contrast, a common worker is someone who works for more than one person and whose benefit is based on their work, such as a tailor or a dyer. See: Sharh al-Zarkashi (4/244), Al-Taarifat (p. 10).

(2) See: *Al-Muheet al-Burhani* (8/319), *Al-Jawhara al-Nayyira* (1/131), *Al-Binaya* (3/314).

(3) See: *Al-Tahdhib* (5/210), *Al-Bayan* (3/444), *Al-Majmu'* (6/192).

(4) See: *Al-Tabsira* (3/965), *'Aqd al-Jawahir* (1/243), *Al-Taj wa al-Ikleel* (3/219).

(5) See: *Al-Mudawwanah* (1/347), *Al-Tanbihat al-Mustanbatah* (1/395), *Al-Tanbih 'ala Mabadi' al-Tawjih* (2/849).

(6) See: The Issues of Imam Ahmad, narrated by his son Salih (3/215); Al-Ri'aya al-Sughra (1/442); Kashaf al-Qina' (2/289).

Saudi Arabia⁽¹⁾ has issued a fatwa accordingly.

Examples of the intention of the person paying Zakâh to achieve a benefit for himself by giving his Zakâh to his private worker include: intending to encourage the worker to improve their performance, to incentivize them to renew their employment contract, or to protect his own wealth by giving Zakâh to the worker so that the worker does not request a higher wage.⁽²⁾

Evidence and counterarguments:

Evidence for the first opinion (that Zakâh payment is always valid) includes:

First evidence: There is no direct connection between the benefits of the employer and the private worker. The wage of the worker is a necessary compensation, so there is no impediment to giving Zakâh to them if they are deserving of it.⁽³⁾

Counterargument: This holds as long as the employer does not intend to benefit from giving Zakâh to the worker. This intention is a concern due to the existing employment relationship, so it is necessary to ensure that such an intention does not exist.

Second evidence: The mere intention of benefiting by giving Zakâh to the worker does not affect its validity, unless the request for benefit or condition is specified when giving the Zakâh, as it would then become a form of compensation.⁽⁴⁾

Counterargument: The intention of the Zakâh payer to achieve a benefit for himself with the Zakâh affects its validity by itself, even if that benefit does not materialize or the compensation does not occur, because such an intention contradicts the proper way of giving Zakâh.

Third evidence: It can be argued that sharing the intention between performing Zakâh and achieving a benefit for work by giving it to a private worker does not invalidate the worship, similar to sharing the intention between

(1) See: Fatwas of the Permanent Committee, First Collection (10/24).

(2) See: Words of Guidance on the Text of Al-Zad (p. 120); Fatwas of Noor 'Ala al-Darb by Ibn Baz (15/337); Fatwas of the Permanent Committee, First Collection (10/24).

(3) See: Al-Muhit al-Burhani (8/319); Al-Majmu' (6/192).

(4) See: Al-Jawhara al-Nayira (1/131); Hashiyat Ibn Abidin (2/356).

acts such as ablution and cooling down, between circumambulation and staying with a debtor, or between pilgrimage and trade.⁽¹⁾

Counterargument: Sharing the intention between performing worship and achieving a personal benefit is valid as long as it does not contradict the legislator's intent for the worship. If it contradicts the legislator's intent, the worship is invalid, and the intention of benefiting from the Zakâh payment affects its validity.

One of the objectives of the Sharia is to purify the souls of the wealthy from the vice of stinginess.⁽²⁾

Evidence for the second opinion: They argued that the payment is valid if the payer did not intend to benefit himself, using the first piece of evidence from the first opinion. They further argued against its validity if he intended such a benefit, stating that Zakâh is a purposeful act of worship and a right owed to Allah Almighty. Therefore, it is not permissible for the payer to intend personal benefit when performing it, as this contradicts sincerity.⁽³⁾

Preponderant opinion and its reason:

The preponderant view—Allah knows best—is the second opinion, which holds that it is valid for the payer to give his Zakâh to his private employee if the employee is deserving of it, provided that he does not intend to achieve personal benefit. If he does intend this, it becomes impermissible and does not fulfill the obligation. This is based on the strength of the evidence supporting the second opinion, as the intention of the payer to benefit himself from the Zakâh contradicts the proper manner of performing this act by delivering it to its rightful recipient sincerely for the sake of Allah Almighty.

The effect of intention on the issue:

The effect of intention is evident in that the proponents of the second opinion—considered the stronger view—conditioned the validity of the payment of Zakâh by the payer to his private employee on not intending to achieve a personal benefit. They considered this intention to be contrary to sincerity and a determining factor in the invalidity of the payment. Meanwhile, those

(1) See: *Al-Hawi al-Kabir* (1/96); *Al-Ashbah wa al-Nazair* by Al-Suyuti (p. 21).

(2) See: *Al-Muwafaqat* (3/121), *Principle of Actions Based on Their Objectives* (p. 70).

(3) See: *Kashaf al-Qina* (2/289), *Matalib Uli al-Nuha* (2/153).

in the first opinion see that this intention does not effect the validity of the payment nor does it contradict sincerity, even if it is disliked or diminishes the reward.

Topic (8): The Effect of Intention in Recovering from the Recipient of Zakâh Found to be Unworthy

Issue description:

If someone pays his Zakâh to a person he believes is deserving, and it later becomes clear that this individual is not deserving—such as giving it to someone he thinks is poor but later discovers is wealthy or a non-believer—can he recover his payment from the recipient?

Opinions on the issue:

Scholars differ on this issue with four opinions:

First opinion: The payer cannot reclaim the payment from the recipient at all, and what he has given is considered a voluntary act. This is the view of the Hanafite school.⁽¹⁾

Second opinion: The payer can reclaim the Zakâh from the recipient and recover it if it remains intact, or take a substitute if it has been lost, provided it was not destroyed by an unavoidable calamity and the recipient did not deceive the payer by pretending to be deserving of it. This is the view of the Malikite school.⁽²⁾

Third opinion: The payer can reclaim the Zakâh from the recipient and recover it if it remains intact or take a substitute if it has been lost, on the condition that he informs the recipient at the time of payment that it was Zakâh; otherwise, he cannot reclaim it at all. This is the view of the Shafi'ite school.⁽³⁾

Fourth opinion: The payer can reclaim the Zakâh from the recipient and

(1) See: Al-Mabsut (3/24), Badayi al-Sanai (2/50), Al-'Inayah Sharh al-Hidayah (2/275). According to the Hanafite school, the payment is not valid if the payer does not ascertain its rightful recipient at the time of payment; otherwise, it is valid. Abu Yusuf stated that it is not valid at all if it is later discovered that the recipient is not deserving of it. See: Sharh Mukhtasar al-Tahawi (2/397), Badayi al-Sanai (2/50), Al-Muhit al-Burhani (5/417).

(2) See: Al-Tabsirah (3/965), Sharh Al-Zarqani on Mukhtasar Khalil (2/325), Sharh Al-Kharshe on Khalil (2/224).

(3) See: Al-Muhadhab (1/320), Al-Bayan (3/445), Asna al-Matalib (1/405).

recover it if it remains intact, regardless of whether the recipient was aware that it was Zakâh or not. If it has been lost, he can take a substitute provided the recipient knew at the time of receiving it that it was Zakâh. This is the view of the Hanbalites.⁽¹⁾

Evidence for the opinions and counterarguments:

Evidence for the first opinion: The Hanafis argue against the permissibility of reclaiming the Zakâh by stating that the payer has transferred ownership of the Zakâh to the recipient as an act of devotion, intending to discharge his obligation and draw closer to Allah Almighty. Since this intention has been fulfilled and the reward is attained—whether the payment was obligatory or voluntary—it is not permissible to undo that devotion. The invalidity of fulfilling an obligatory act does not negate the performance itself.⁽²⁾

Counterargument: It can be argued that the payer did not intend a voluntary act but rather aimed to fulfill an obligation and discharge a duty, which is the primary purpose. The attainment of reward, even in the absence of validity, does not prevent him from reclaiming the Zakâh from the recipient because the intention of receiving the reward is contingent upon the intention to fulfill the obligation.

Evidence for the second opinion:

First evidence: The Malikites support the permissibility of the payer reclaiming the Zakâh from the recipient by asserting that the recipient has no rightful claim to it; therefore, it can be recovered. The recipient is liable if it is lost due to his actions, as he misappropriated funds that do not lawfully belong to him.⁽³⁾

Counterargument: It can be contended that holding the recipient—who is not deserving—liable for compensation if he spends the Zakâh on himself is not valid in all cases.

This is because the recipient may have thought it was a voluntary charity or a gift, making the acceptance valid. He did not commit any wrongdoing or negligence, so he is not liable.

(1) See: *Al-Furu'* (4/294), *Al-Insaf* (3/264), *Matalib Uli al-Nuha* (2/159).

(2) See: *Al-Mabsut* (3/24), *Al-'Inayah* (2/275), *Hashiyat Ibn Abidin* (3/728).

(3) See: *Al-Tabsirah* (3/965), *Masail Abu Walid Ibn Rushd* (1/525).

Second evidence: They argue against the permissibility of reclaiming the Zakâh if it has been lost due to a natural disaster and the recipient did not deceive the payer, stating that the recipient did not spend the Zakâh on himself, nor did he commit any wrongdoing or negligence, thus he is not liable. This is different if he deceived the payer and made him believe he was deserving of the Zakâh, as that would constitute wrongdoing.⁽¹⁾

Evidence for the third opinion:

First evidence: The Shafi'ites argue that the payer can reclaim the Zakâh if he informed the recipient at the time of payment that it was Zakâh, stating that the payer intended to discharge his obligation. If the obligation is not discharged, he has the right to reclaim it because his objective was not achieved.⁽²⁾

Second evidence: They further argue against the permissibility of reclaiming it if the payer did not inform the recipient that it was Zakâh, stating that the payer may be giving obligatory Zakâh or voluntary charity. If he claims it was Zakâh, he could be seen as suspect; therefore, he cannot reclaim it unless he informs the recipient.⁽³⁾

Counterargument: It can be argued that the recipient may deny being informed that it was Zakâh, so there is no difference between informing him or not.

Evidence for the fourth opinion:

First Evidence: The Hanbalites argue that the payer can reclaim the Zakâh if it remains with the recipient, or if it has been lost and the recipient knew it was Zakâh at the time of acceptance, stating that the payer intends to discharge his obligation. If this is not achieved, he has the right to recover it if it remains intact or to take a substitute if the recipient knew it was Zakâh, as he has committed wrongdoing by accepting it under those conditions.⁽⁴⁾

Second evidence: They argue against the permissibility of reclaiming it if it has been lost and the recipient was unaware it was Zakâh,⁽⁵⁾ stating that since the Zakâh is lost, the recipient is not liable because he is neither at fault nor

(1) See: Sharh Al-Zarqani on Mukhtasar Khalil (2/325), Sharh Al-Kharshe on Khalil (2/224).

(2) See: Al-Hawi Al-Kabir (3/168).

(3) See: Al-Muhadhab (1/320), Al-Bayan (3/445).

(4) See: Al-Furu' (4/294), Kashaf al-Qina (2/294).

(5) See: Matalib Uli al-Nuha (2/159).

negligent in accepting it due to his ignorance.

Preponderant opinion and its rationale:

The preponderant view—Allah knows best—is the fourth opinion, which allows the payer to reclaim the Zakâh from the recipient if it becomes clear that he was not deserving of it, whether it remains in his possession or has been lost, provided the recipient was aware that it was Zakâh at the time of acceptance.

Due to this ignorance, there is no reclaiming from him; this is based on the strength of the evidence supporting this opinion, which is free from objection, while the evidence for the other opinions is subject to criticism.

The effect of intention on the issue:

The effect of intention is evident in that the proponents of the second, third, and fourth opinions base their argument for allowing the payer to reclaim the Zakâh from the recipient—if it becomes clear that the recipient is not deserving—on the fact that the payer's intention when performing the Zakâh, which is to discharge his obligation and free himself from liability, was not fulfilled. Therefore, his intention has an effect on his right to reclaim what he paid. Meanwhile, the proponents of the first opinion argue that the intention to discharge the obligation is accompanied by another intention, which is to attain reward; thus, the fulfillment of one of the intended objectives is sufficient to prevent reclaiming.

Topic (9): The Effect of Intention on the Validity of Zakâh When Paid to Someone Thought to Be Undeserving, but Later Found to Be Deserving

Issue description:

If someone pays his Zakâh to a person he believes is not deserving, and later discovers that the person is indeed deserving—such as giving it to someone he thought was wealthy but later finds out is poor—does this payment fulfill his Zakâh obligation?

Opinions on the issue:

Scholars have differing views on this issue, which can be summarized in two opinions:

First opinion: This payment fulfills the Zakâh obligation. This is the view of the Hanafite school⁽¹⁾ and the Malikite school, although the Malikites add that he will not receive a reward for it.⁽²⁾ This opinion is also recognized by the Hanbalites.⁽³⁾

Second opinion: This payment does not fulfill the Zakâh obligation. This view is also recognized by the Hanafites⁽⁴⁾ and is the predominant opinion among the Hanbalites.⁽⁵⁾

I did not find a specific text on this matter from the Shafi'ites, but a similar opinion may be inferred from their stance that if someone hastens to pay Zakâh to a wealthy person and later discovers that the person was actually poor at the time of payment, it would not fulfill his obligation, as giving Zakâh to someone undeserving is invalid. It is a null act; thus it is not considered valid.⁽⁶⁾

Evidence and counterarguments:

Evidence for the first opinion: Proponents of the validity of the Zakâh payment argue as follows:

First Evidence: The Zakâh is valid since it has been given in its rightful place, even if the payer did not intend it as valid Zakâh. This is because he is not less than someone who refused to give Zakâh and had it taken from him by force. The intention is only necessary for worship and the desire for reward.⁽⁷⁾

Counterarguments:

First argument: The analogy between the one who refuses to pay Zakâh and the one who pays Zakâh to someone he believes is undeserving is flawed.

(1) See: Tabyeen al-Haqaiq (1/304), Al-'Inayah (2/277), Al-Bahr al-Ra'iq (2/266).

(2) See: 'Aridat al-Ahwadhi by Ibn al-Arabi (3/155), Mawahib al-Jalil (2/359), Sharh Al-Zarqani on Khalil (2/325).

(3) It has been narrated in the school that if someone prays towards a direction he believes is not the Qibla but actually faces the Qibla, his prayer is valid. This is supported by the view of the author of Al-Furu'. See: Al-Furu' (4/295), Al-Insaf (3/265).

(4) Some have criticized the opinion of Abu Hanifah and Muhammad ibn al-Hasan, stating that if someone prays towards a direction he believes is not the Qibla, his prayer is invalid, even if he faced the Qibla. See: Tabyeen al-Haqaiq (1/304), Al-Binayah (3/476), Fath al-Qadir (2/277).

(5) See: Al-Ri'ayah al-Sughra (1/433), Al-Furu' (4/295), Kashaf al-Qina (2/294).

(6) See: Bahr al-Madhhab (3/77), Al-Bayan (3/385), Al-Majmu' (6/152).

(7) See: 'Aridat al-Ahwadhi (3/155).

In the former case, the intention is absent, and the intention of the ruler takes its place, whereas in the latter, the payer's intention is not absent.

Second argument: It is not accepted that the intention is solely for the attainment of reward; rather, it is a condition for validity.

Second evidence: The objective of paying Zakâh is to provide support, which has been achieved, thus it is valid.⁽¹⁾

Counterargument: Achieving one objective of worship does not suffice for its validity if a pillar or condition is missing. Here, the firm intention to perform the act correctly is absent, and it is a condition for validity.

Third evidence: The Malikites argue that the payer will not receive a reward for this payment because he has sinned by giving Zakâh to someone he believes is undeserving, which shows a lack of respect for the act of worship, resulting in no reward.⁽²⁾

Counterargument: Disrespecting the act of worship and performing it in a way he believes is invalid does imply that it is not valid, not merely that he loses the reward.

Evidence for the second opinion: Those who argue against the validity of the payment present the following:

First evidence: If someone pays his Zakâh to someone he does not believe is deserving, he has not firmly intended to perform the Zakâh correctly, as he believes it was placed in the wrong hands. A firm intention is a condition for validity; thus it does not fulfill the obligation.⁽³⁾

Second evidence: This can be analogized to someone who prays before the time is due—believing he is within the time—or prays towards a direction he thinks is not the Qibla but actually faces it; this does not fulfill the obligation due to the lack of a firm intention to perform the act correctly. This is the case here.⁽⁴⁾

It is argued that there is a distinction; for one who prays an obligatory prayer before its time or towards a direction he believes is not the Qibla, his

(1) See: Hashiyat al-Rawd al-Murabba' by Ibn Qasim (3/336).

(2) See: Mawahib al-Jalil (2/359).

(3) See: Al-Rawd al-Murabba' (p. 223).

(4) See: Tabyin al-Haqâ'iq (1/304), Kashaf al-Qina' (2/294).

prayer is not an act of devotion but rather a sin. However, giving money to someone he believes is undeserving is an act of worship for which he may be rewarded, so if he inadvertently fulfills the obligation, it is valid.⁽¹⁾

Response: It is not accepted that a person giving his Zakâh to someone he believes is undeserving is performing an act of worship for which he will be rewarded. Instead, it is a sin because he intended to fulfill the obligation contrary to the required manner and did not intend it as a voluntary act; thus, he is culpable.

Preponderance and its rationale:

The preponderant view—Allah knows best—is the second opinion, which states that if someone pays his Zakâh to someone he believes is undeserving, and that person is found to be deserving, it does not fulfill his obligation, and he must make it up. This is due to the strength of the evidence supporting the second opinion and its immunity from valid objections, as well as the weakness of the arguments presented by the proponents of the first opinion.

The effect of intention on the issue:

Intention plays a significant role in this issue. The prevailing opinion, which is non-fulfillment, is based on the absence of a firm and correct intention from the payer; this is inconsistent with his belief that he placed the Zakâh in the wrong hands. Meanwhile, proponents of the first opinion argue that this belief does not affect the validity of the Zakâh.

Topic (10): The Ruling on Delaying the Payment of Zakâh with the Intention of Giving It to a More Deserving Recipient

Issue description:

If the time for Zakâh payment arrives and there are deserving recipients present, but more deserving ones—due to greater need or kinship—are absent, is it permissible for him to delay his Zakâh or part of it with the intention of giving it to the more deserving recipient when they arrive?

Opinions on the issue:

Scholars have differing views on this issue, which can be summarized into three opinions:

(1) See: Tabyin al-Haqâ'iq (1/305), Al-'Inayah (2/277).

First opinion: It is permissible to delay absolutely. This is the view of the Hanafite school⁽¹⁾ and the most correct view among the Shafi'ites, provided that the deserving recipient is not harmed by the delay,⁽²⁾ which is the position of the Hanbalites.⁽³⁾

There is no explicit text from the Malikites on this issue, but they might allow for such a delay based on their view that a traveler may postpone Zakâh until their return to their wealth, since the poor in the area where the wealth is located are more deserving of it.⁽⁴⁾

The second opinion is that delaying Zakâh is not permissible under any circumstances. This is the view of some Shafi'ites⁽⁵⁾ and the second position among the Hanbalites.⁽⁶⁾ They argue that if a traveler has reached the time for Zakâh on their wealth located in their homeland, they must pay it from their current funds, even if it means borrowing what they need for their travel. It is not permissible to postpone it until their return.⁽⁷⁾

The third opinion is that a short delay is acceptable. This is the third view among the Hanbalites.⁽⁸⁾

Evidence and counterarguments:

Evidence for the first opinion: Proponents of this view argue that the delay

(1) This is evident in one of their opinions regarding the obligation of zakat on a deferred basis. See: Al-Muhit al-Burhani (2/239), Fath al-Qadir (2/155) Majma' al-Anhar (1/192), As for their other opinion, which holds that zakat is obligatory immediately, it allows for the opinion of permitting its delay to give it to a more deserving recipient based on their allowance for delaying zakat for valid reasons. They also state that it is discouraged to transfer zakat except for a beneficial purpose, such as giving it to a relative or someone in greater need. See: Al-Mabsut (3/37), Al-Hidayah (1/112), Al-Jawharah al-Nayyirah (1/114), Fath al-Qadir (2/156).

(2) Refer to: *Rawdat al-Talibin* (225/2), *Asna al-Matlab* (366/1), *Mughni al-Muhtaj* (129/2).

(3) Refer to: *Al-Insaf* (187/3), *Al-Tanqih Al-Mushbi* ' (p. 155), *Mu'inah Awli al-Nahâ* (289/3).

(4) Refer to: *Al-Tabsirah* (946/3), *Al-Taj wa al-Ikleel* (254/3), *Hashiyat al-Dusuqi 'ala al-Sharh al-Kabir* (504/1).

(5) Refer to: *Nihayat al-Maqsad* (105/3), *Al-Wasit* (453/2), *Al-Majmu* ' (333/5).

(6) Refer to: *Al-Furu* ' (244/4), *Al-Insaf* (187/3), *Kashaf al-Qina* ' (256/2).

(7) Refer to: *Al-Tabsirah* (946/3), *Al-Tawdiḥ* (361/2), *Sharh al-Kharashi 'ala Mukhtasar Khalil* (227/2).

(8) Some have defined it as one or two days, while most have left it general. Refer to: *Al-Mughni* (510/2), *Al-Furu* ' (244/4), *Kashaf al-Qina* ' (256/2).

serves a clear purpose, which is to achieve greater virtue, thus it is permissible.⁽¹⁾

Counterargument: Achieving virtue should be proportionate and not allow for excessively long delays that may detract from the essence of Zakâh.

Evidence for the second opinion: Advocates of the view against any delay argue that paying Zakâh immediately is obligatory and cannot be neglected for the sake of a recommended act.⁽²⁾

Counterargument: While paying Zakâh immediately is obligatory when no benefit exists in delaying it, fulfilling the benefit of giving to closer or more needy recipients is a valid reason to defer the obligation.

Evidence for the third opinion: Those who advocate for the allowance of a brief delay argue that delaying the payment of Zakâh—intending to distribute it to a more deserving recipient—serves a beneficial purpose and does not negate the primary goal of promptly disbursing Zakâh, which is to alleviate immediate need.⁽³⁾

Preponderant opinion: The preponderant view-God knows best-is the third opinion, which permits the delay of Zakâh payment with the intention of directing it to someone in greater need, such as a relative or neighbor, provided that the delay is for a brief period. A “brief period” can be defined as not exceeding one month, as this is considered a short duration relative to the absolute timeframe. Furthermore, this allowance should be conditioned on ensuring that the delay does not cause harm to the present recipient; the principle of mitigating harm must be upheld.

Reasons for preponderance:

- 1- The payer of Zakâh intends to achieve a beneficial and virtuous outcome by delaying the payment, which allows for an exception to the general rule of immediate performance.
- 2- Allowing a delay without limit-even if for an extended period-could undermine one of the primary objectives of Zakâh, which is to address urgent needs.

(1) Refer to: *Fath al-Aziz* (550/5), *Asna al-Matlab* (366/1).

(2) Refer to: *Nihayat al-Maqsad* (105/3), *Al-Furu'* (244/4).

(3) Refer to: *Al-Furu'* (244/4), *Al-Ensef* (187/3).

Second Treatise

The Effect of Intention on Zakâh al-Fitr

Topic (1): Paying Zakâtul-Fitr for Another Person Without Their Intention

Issue description:

Is it valid to pay Zakâtul-Fitr for a person who is obligated to pay it without their intention?

Clarifying the points of disagreement:

1- Agreement among scholars:

- Scholars agree that it is valid to pay Zakâtul-Fitr for someone who is obligated to pay it without their intention. For instance, if a man pays the Zakâtul-Fitr for his indigent son without the son's intention, it is valid and sufficient because the intention is required only from the one who is obligated to pay.⁽¹⁾

2- Disagreement on other cases:

- Scholars differ regarding the validity of paying Zakâtul-Fitr for someone who is not obligated to pay it without their intention.

Opinions on the issue:

Scholars have expressed five differing opinions:

First opinion: It is not valid to pay it for another person without their intention at all. This view is held by the Hanafite school⁽²⁾, the Shafi'ite school,⁽³⁾

(1) See: Badâ'i al-Şanâ'i' (70/2), Tabyîn al-Ḥaqâ'iq (306/1), Al-Nawâdir wa al-Ziyâdât (305/2), 'Uyûn al-Masâ'il (p. 196), Nihâyat al-Maṭlab (379/3), Al-Wasîṭ (500/2), Al-Kâfi fi Fiqh al-Imâm Aḥmad (415/1), Al-Mumtî' fi Sharḥ al-Muqni' (755/1).

(2) See: Al-Mabsûṭ (105/3), Al-Ikhtiyâr (123/1), Al-'Inâyah (286/2).

(3) See: Al-Taḥdhīb (124/3), Al-Majmû' (136/6), Al-Mughnî al-Muḥtâj (119/2).

and is also the prevailing opinion among the Hanbalites.⁽¹⁾

Second opinion: It is not valid to pay it for another person without their intention, except if the individual is among the payers. This is the well-known view among the Hanafis⁽²⁾ and is also a position within the Malikite school.⁽³⁾

Third opinion: It is not valid to pay it for another person without their intention, except if the individual is among the payers and it is customary for them to have it paid for them. This is a position among the Malikites⁽⁴⁾ and was the ruling issued by the Sixth Symposium on Zakâh contemporary issues.⁽⁵⁾

Fourth opinion: The validity of paying Zakâtul-Fitr on behalf of another person without their intention is accepted. This view is held by the Malikites.⁽⁶⁾

Fifth opinion: The validity of paying Zakâtul-Fitr on behalf of another person without their intention is permissible if the payment comes from the person doing the giving and they approve it. This view is adopted by the Hanbalites⁽⁷⁾ and preferred by Sheikh Muhammad ibn ‘Uthaymîn.⁽⁸⁾

Evidence for the opinions and counterarguments:

Evidence for the first opinion: Those who argue against the validity of payment without intention provide the following:

First evidence: Allah’s statement: “And that man will not have anything except what he strives for.”⁽⁹⁾

Interpretation: The payment of Zakâtul-Fitr occurred without any effort from the obligated person, as they did not authorize or allow the payment to be made on their behalf, thus it does not fulfill the obligation.⁽¹⁰⁾

(1) See: Al-Mughnī (96/3), Al-Furū’ (225/4), Sharḥ Muntahâ al-Îrâdât (280/3).

(2) See: Al-Hidâyah (113/1), Tabyîn al-Ḥaqâ’iq (307/1), Ḥâshiyat Ibn ‘Abdîn (363/2).

(3) See: Al-Tawḍîḥ (372/2), Mawâhib al-Jalîl (374/2), Sharḥ al-Zurqânî ‘ala Mukhtaṣar Khâlîl (336/2).

(4) See: Al-Dhakîrah (158/3), Sharḥ al-Kharshî ‘ala Mukhtaṣar Khâlîl (232/2), Al-Sharḥ al-Kabîr li al-Dardîr (508/1).

(5) See: Researches and Proceedings of the Sixth Seminar on Contemporary Zakat Issues (p. 350).

(6) See: Al-Furuq (187/3), Mawâhib al-Jalîl (375/2), Sharḥ Ibn Najî al-Tanukhi (303/1).

(7) See: Al-Ri’aya al-Sughra (430/1), Al-Furu’ (254/4), Al-Insaf (199/3).

(8) See: Al-Sharḥ Al-Mumt’i (164/6). (9) Verse 39 from Surah Al-Najm.

(10) See: Al-Hawwi al-Kabîr (481/10), Al-Majmu’ (136/6).

Second evidence: Zakâtul-Fitr is an act of worship that requires intention from the one upon whom it is obligatory. If the intention is absent, the condition is unmet, and the payment is not valid.⁽¹⁾

Evidence for the second opinion: Proponents of this view cite the first opinion's evidence against the validity of paying for a non-relative without their intention but support the validity of paying for a family member without their intention with the following:

First evidence: It is customary for a man to pay Zakâtul-Fitr on behalf of his family, regardless of whether he is obligated to do so. Established custom is as binding as textual evidence in matters like Zakâh al-Fitr, making it valid to pay on behalf of a family member without their permission or intention due to this custom.⁽²⁾

Counterargument: The notion of customary practice does not negate the worship aspect present in Zakâh al-Fitr; rather, it is primarily an act of worship that requires intention from the obligated person.⁽³⁾

Second evidence: When a person pays Zakâtul-Fitr on behalf of a family member, it implicitly includes the intention of the person being paid for, even if this intention is not explicitly stated. This is because the customary practice involves their approval, and approval is associated with intention.⁽⁴⁾

Counterargument: If we concede that the custom is to allow proxy representation in the distribution of Zakâtul-Fitr among family members, we do not accept that this custom suffices in place of intention. Intention follows knowledge; if the one on whose behalf Zakâh is being paid is unaware of its distribution, then his intention is effectively absent, both in reality and in legal terms.

Evidence for the third opinion: Proponents of the second opinion support the non-acceptability of Zakâh being paid on behalf of a foreigner without their intention, using the arguments from the first opinion. They argue that it is permissible to pay on behalf of a family member without their intention if it is customary to do so, stating: "Proxy representation can be based on both

(1) See: Mughni al-Muhtaj (119/2).

(2) See: Al-Mabsut (105/3), Al-'Inayah (286/2).

(3) See: Fath al-Qadir (286/2).

(4) See: Fath al-Qadir (286/2), Hashiyat Ibn Abidin (363/2).

verbal consent and established customs.” If it is customary for the payer to distribute Zakâtul-Fitr on behalf of the beneficiary, we can infer their approval, and such approval is equivalent to intention.⁽¹⁾

Counterargument: We do not concede that the beneficiary’s approval is established; even if we were to accept it, we would not agree that approval equates to intention, as it does not necessarily imply knowledge, unlike explicit consent.

Evidence for the fourth opinion: Those who advocate for the unconditional validity of Zakâtul-Fitr argue that intention is not a condition for its distribution, allowing actions by others to suffice, similar to the payment of debts.⁽²⁾

Counterargument: We do not accept that intention is not a condition for the payment of Zakâh al-Fitr. Zakâtul-Fitr is a specific act of worship that requires intention for its fulfillment, just like other forms of worship, unlike the payment of debts.⁽³⁾

Evidence for the fifth opinion: Proponents of this opinion, who assert that it is valid if paid from the assets of the one obligated and with their consent, present the following evidence:

First evidence: Abu Huraira (may Allah be pleased with him) reported: “The Messenger of Allah (peace be upon him) entrusted me with the collection of Zakâh of Ramadan. A man came to me, scooping food, and I took hold of him, saying, ‘By Allah, I will bring you to the Messenger of Allah (peace be upon him).’ He said, ‘I am in need and have a family to support.’ I felt compassion for him and let him go. The next morning, the Prophet (peace be upon him) asked me, ‘What happened to your captive last night?’ I replied, ‘O Messenger of Allah, he complained of great need, and I felt compassion for him, so I released him.’ The Prophet (peace be upon him) said, ‘Indeed, he has lied to you and will return.’⁽⁴⁾

Reasoning: Abu Huraira (may Allah be pleased with him) distributed Zakâtul-Fitr to someone who claimed to be in need, even though he was only appointed as a custodian and had not been authorized to distribute it. The Prophet (peace be upon him) confirmed and validated his action.⁽⁵⁾

(1) See: *Mawhib al-Jalil* (374/2).

(2) See: *Al-Furuq* (187/3), *Mawhib al-Jalil* (375/2).

(3) See: *Sharh Muntaha al-Iradat* (520/1). (4) Previously cited, see: p. (338) of this book.

(5) See: *Al-Sharh Al-Mumt’i* (204/6).

Counterargument: Abu Huraira (may Allah be pleased with him) acted as a proxy for the leader in distributing Zakâtul-Fitr to the deserving, and this action does not require intention from the leader, unlike the obligation of distributing Zakâh from his wealth without his permission; due to the condition of intention from the owner of the wealth, it is not appropriate to use this hadith as evidence for this issue.

Second evidence: that permission after the act is equivalent to permission before it, and the intention of the one disbursing acts in place of the intention of the one for whom it is disbursed.⁽¹⁾

However, this can be disputed, as representation in the intention of paying Zakâh is valid only when the intention of the one being given Zakâh is impossible; here, his intention has not become impossible. Furthermore, we do not concede that his permission after disbursement is the same as his permission before it, since intention does not hold validity after performing an act of worship.

The preponderance: The most likely position- and Allah knows best- is the first opinion, which asserts that it is not valid to disburse Zakâtul-Fitr on behalf of another person without his intention at all.

Reasons for preponderance:

- 1- The strength of the evidence supporting the first opinion and its immunity from dispute, and the weakness of the evidence for the other opinions.
- 2- What has been previously established regarding the invalidity of disbursing Zakâh on behalf of another person without his permission and intention;⁽²⁾ there is no difference between Zakâh on wealth and Zakâtul-Fitr in this regard.

Topic (2): The Intention of A Non-Muslim to Disburse Zakâtul-Fitr for A Muslim for Whom He Is Obligated to Provide Support

Issue description:

Is it obligatory for a non-Muslim to disburse Zakâtul-Fitr on behalf of a Muslim for whom he is responsible, such as his small Muslim child or his Muslim parent for whom he has a duty of support? What is the effect of intention in this case?

(1) See: Al-Ri'aya Al-Sughra in Jurisprudence (430/1), Al-Sharh Al-Mumt'i (204/6).

(2) See: p. (340) of this book.

Opinions on the issue:

The scholars have differed on this issue, presenting two opinions: The first opinion: It is not obligatory for a non-Muslim to disburse Zakâtul-Fitr on behalf of a Muslim for whom he is responsible. This is the position of the Hanafite school,⁽¹⁾ the prevailing view among the Malikites,⁽²⁾ a position among the Shafi'ites⁽³⁾, and the view of the Hanbalites.⁽⁴⁾

The second opinion: It is obligatory for a non-Muslim to disburse Zakâtul-Fitr on behalf of a Muslim⁽⁵⁾ for whom he is responsible. This view is held by some Malikites,⁽⁶⁾ the stronger position among the Shafi'ites,⁽⁷⁾ and a narration among the Hanbalites.⁽⁸⁾

Evidence and counterarguments:

Evidence for the first opinion: Those who argue against the obligation cite the following:

First evidence: From Ibn Umar, may Allah be pleased with him: "The Messenger of Allah, peace be upon him, prescribed Zakâtul-Fitr as one sa' of dates or one sa' of barley, upon every free or slave, male or female among the Muslims."⁽⁹⁾

Reasoning: The implication of his statement "from the Muslims" is that it is

(1) See: Al-Mabsut (104/3), Al-Jawhara Al-Naira (134/1), Al-Bahr Al-Raiq (271/2).

(2) See: Al-Dhakheera (163/3), Mawahib Al-Jalil (372/2), Sharh Al-Kharshi (230/2).

(3) See: Al-Hawi Al-Kabir (359/3), Al-Muhadhdhab (302/1), Nihayat Al-Matlub (409/3).

(4) See: Al-Kafi in the Jurisprudence of Imam Ahmad (413/1), Al-Insaf (164/3), Kashaf Al-Qina' (247/2).

(5) The practical implication of the obligation for a non-Muslim to disburse zakat al-fitr is that the ruler can compel him to do so, either upon the request of the one on whose behalf it is given or without such a request. This follows the view that non-Muslims are addressed by the branches of Islamic law. For further details, see Sharh Al-Zarqani (2/333), and the annotations of Al-Adawi (1/513), and Lawa'im Al-Durar (3/607).

(6) See: Al-Majmu' (6/106), Asna Al-Matalib (1/390), and Mughni Al-Muhtaj (2/112).

(7) Additional references can be found in Al-Mughni (3/80), Al-Furu' (4/217), and Sharh Al-Zarkashi (2/527).

(8) See: Al-Mughni (3/80) and Al-Furu' (4/217).

(9) This hadith was narrated by Al-Bukhari in his Sahih with the wording attributed to him, in the Book of Zakat, chapter on zakat al-fitr for the slave and others among the Muslims, under number (1504), (2/130), and by Muslim in his Sahih, in the Book of Zakat, chapter on zakat al-fitr for Muslims from dates and barley, under number (984), (2/677).

not obligatory for a non-Muslim at all.⁽¹⁾

Counterargument: It can be argued that the term “from the Muslims” refers to the one on whose behalf it is given, not the giver, as evidenced by the mention of the slave, who cannot be a giver.⁽²⁾

Response: It is possible for the term to encompass both the giver and the one on whose behalf it is given, and there is no evidence to limit it to just the one on whose behalf it is given.

Second evidence: Zakâtul-Fitr is a form of worship, and thus the non-Muslim is not addressed by it, nor can it be validly performed by him, similar to prayer and Zakâh on wealth.⁽³⁾

Third evidence: Zakâtul-Fitr is an act of worship that requires intention for its performance, and the non-Muslim cannot have a valid intention. One cannot claim that he intends for the one on whose behalf it is given, as that person may be a minor; hence, it follows that there is no obligation.⁽⁴⁾

Counterarguments: There are two points of contention:

First point: The intention from the non-Muslim may be impossible, yet the disbursement can still suffice without his intention, analogous to someone who is unable to perform Zakâh.⁽⁵⁾

Response: It can be argued that intention is not impossible for the non-Muslim; rather, it is invalid, which indicates the invalidity of his performance. In contrast, for someone who is unable, their intention is valid but is hindered due to their inability, and thus the intention of the imam can stand in for their intention.

Second point: The non-Muslim can intend a distinction, which is valid for him, unlike the intention of worship. Therefore, he may suffice with the intention of distinction.⁽⁶⁾

Counterargument: The intention in performing acts of worship must include both distinction and seeking closeness to Allah, and the non-Muslim is not qualified for seeking closeness.

(1) See: Al-Mughni (3/80).

(2) See: Al-Mughni (3/80).

(3) See Bada'i Al-Sana'i (2/69) , See: Al-Mughni (3/80).

(4) See: Al-Tajrid (3/1389) and Nihayat Al-Matlab (3/409).

(5) See: Bahr Al-Madhhab (3/209) and Al-Wasiti (2/503).

(6) See Al-Majmu' (6/107), Al-Sharwani on Tuhfat Al-Muhtaj (3/310).

Fourth evidence: The obligation of Zakâtul-Fitr for oneself is more emphatic than the obligation for others. Therefore, if his wealth becomes constrained, he should prioritize himself. Since it has been established that it is not obligatory for the non-Muslim to give Zakâtul-Fitr on his own behalf, it follows that it is even less obligatory on his behalf for others.⁽¹⁾

Fifth evidence The obligation of Zakâtul-Fitr for the one who requires support initially falls upon the one disbursing it, and the non-Muslim is not qualified for either the obligation or the performance.⁽²⁾

Counterargument: It can be contested that the obligation initially falls upon the performer, as it is obligatory on the one being supported, and the performer bears that obligation.⁽³⁾

Evidence for the second opinion: Those who argue for the obligation present the following:

First evidence: The one whose support is required is a Muslim and belongs to the category of the pure, so Zakâtul-Fitr must be disbursed on their behalf, just as if the one supported were a Muslim.⁽⁴⁾

Counterargument: This is a comparison with a significant difference, as the Muslim is eligible for obligation, unlike the non-Muslim.

Second evidence: The analogy to maintenance; just as the non-Muslim is obliged to provide maintenance, he should also be obligated to disburse Zakâh al-fitr, as both are financial rights.⁽⁵⁾

Counterargument: The analogy of Zakâtul-Fitr to maintenance is flawed, as Zakâtul-Fitr is an act of worship, whereas maintenance is not.

Third evidence: Zakâtul-Fitr is obligatory on the Muslim who performs it, while the non-Muslim is merely bearing the obligation.⁽⁶⁾

Counterargument: The non-Muslim is not qualified to bear or perform acts of worship.

(1) See: Mughni Al-Muhtaj (2/112) and Sharh Al-Zarkashi (2/527).

(2) See: Al-Mabsut (3/104) and Al-Dhakira (3/163).

(3)) See: Mughni Al-Muhtaj (2/112) and Sharh Al-Zarkashi (2/527).

(4) See: Bahr Al-Madhab (3/209) and Al-Mughni (3/80).

(5) See: Al Mughni Al-Muhtaj (2/112).

(6) See: Al-Muhadhab (1/302).

Preponderance and its rationale:

The most likely opinion— and Allah knows best— is the first one, which states that it is not obligatory for a non-Muslim to disburse Zakâtul-Fitr on behalf of the Muslim for whom he is responsible, due to the strength of the evidence supporting the first opinion and the counterarguments against the evidence for the second opinion.

Reason for disagreement: The effect of intention in this matter is evident in that one of the primary arguments from those who assert that Zakâtul-Fitr is not obligatory is that it is an act of worship that requires intention, which is not valid from the non-Muslim. Therefore, there is no basis for it being obligatory upon him.⁽¹⁾

On the other hand, proponents of the second opinion argue that this factor does not affect the ruling. They differ in their positions; some assert that the non-Muslim can disburse Zakâtul-Fitr on behalf of those he is responsible for without intention due to its impossibility for him, while others maintain that the non-Muslim can intend a distinction (the intent to differentiate) rather than the intention of seeking closeness, and that suffices. Both viewpoints have been previously discussed and countered in the context of the third proof supporting the first opinion.⁽²⁾

Topic (3): The Effect of Intention on the Distribution of Zakâtul-Fitr by Charitable Institutions,⁽³⁾ Considering Anticipated Amounts Before Receipt

Issue description:

Is it permissible for a charitable Zakâh institution to estimate an amount to purchase Zakâtul-Fitr and distribute it to the eligible recipients before receiving the funds from the donors, in order to allow sufficient time for purchasing and distributing the Zakâh? What is the effect of intention in this regard?

(1) For further details, see Bahr Al-Madhab (3/209), Nihayat Al-Matlab (3/409), and Sharh Al-Zarkashi (2/527).

(2) Refer to page (449) of this book.

(3) I have not found a specific definition for a zakat institution; however, it can be defined as a non-profit organization that manages the collection and distribution of zakat to its rightful recipients.

The issue is specifically focused on charitable Zakâh institutions, as these entities act on behalf of the donors in disbursing Zakâh, unlike government institutions that are authorized by the ruler to collect and distribute Zakâh. The latter acts on behalf of the eligible recipients,⁽¹⁾ and paying Zakâh to them is considered performance rather than a mandate. Distributing Zakâh before receiving it from the donors would be akin to borrowing from the recipients, which is to be repaid from the Zakâh funds once they are received.⁽²⁾

Opinions on the issue:

Scholars have diverged on this matter into two main opinions:

First opinion: Prohibition. This view is upheld by the Hanafite, Shafi'ite, and Hanbalite schools, as well as a position among the Malikites, who argue against allowing representation in the performance of Zakâtul-Fitr on behalf of a third party without their permission or intention.⁽³⁾ Contemporary scholars supporting this view include Dr. Muhammad bin Abdul Ghafaar Al-Sharif,⁽⁴⁾ Dr. Ahmad bin Abdullah bin Hamid,⁽⁵⁾ and Dr. Abdullah Al-Ghafili.⁽⁶⁾ This stance has also been endorsed by the Fatwa Authority in Kuwait.⁽⁷⁾

Second opinion: Permissibility. This perspective is also a position held by some Malikites, who allow representation in the performance of Zakâtul-Fitr on behalf of others without their permission or intention.⁽⁸⁾

Contemporary proponents of this view include Dr. Muhammad Naeem Yasin⁽⁹⁾

(1) See: "Zakat al-Fitr: Its Rulings and Contemporary Issues" by Al-Sharif (p. 110).

(2) See: Tajrid (5/2680), Al-Mafhum lima Ishtakhal min Talkhis Kitab Muslim (4/507), and Kifayat Al-Nabih (6/72).

(3) This issue has previously been discussed in the first requirement of this section; see p. (445) of this book. See: Al-Mabsut (3/105), Al-Hidayah (1/113), Al-Dhakirah (3/158), Sharh Al-Kharshiee on Mukhtasar Khalil (2/232), Al-Majmu' (6/136), Mughni Al-Muhtaj (2/119), Al-Mughni (3/96), and Al-Furu' (4/225).

(4) See: "Zakat al-Fitr: Its Rulings and Contemporary Issues" (p. 109).

(5) See: "Zakat al-Fitr" by Ahmad bin Hamid (p. 594).

(6) See: "Contemporary Issues of Zakat" (p. 545).

(7) See: "Al-Durar Al-Bahiyyah from Kuwaiti Fatwas" (3/383).

(8) See: "Al-Furuq" (3/187), "Mawahib Al-Jalil" (2/375), and Sharh Ibn Nagy Al-Tanukhi (1/303).

(9) See: "Research and Proceedings of the Sixth Symposium on Contemporary Zakat Issues" (p. 236).

and Sheikh Abdul Rahman bin Muhammad Al-Haloo.⁽¹⁾ They base their argument on what some Hanafites and Malikites have mentioned regarding the permissibility of representing a relative in disbursing Zakâtul-Fitr without their consent, citing customary practices that serve as implicit permission.⁽²⁾

However, this reasoning may not be valid due to the distinction between the two issues. The Hanafite and Malikite schools previously indicated that there is a position allowing the disbursement of Zakâtul-Fitr on behalf of another without their permission or intention, provided the recipient is known and specified.

The nature of the representation in this case differs,⁽³⁾ as the Zakâh institution disburses Zakâh for unspecified individuals. The Hanafite scholars have stated that representation is not valid for non-specified persons.⁽⁴⁾ This argument would only hold if we assume that the Zakâh institution is disbursing Zakâh for specific individuals with whom there is a customary relationship regarding the payment of Zakâh al-fitr, similar to a responsible individual disbursing Zakâtul-Fitr on behalf of a family member.

Evidence and counterarguments:

Evidence for the first opinion (prohibition):

First evidence: Zakâtul-Fitr is an act of worship that requires intention from the one obligated to pay it. In this case, the Zakâh institution disburses Zakâh without the intention of the donor. If the intention is absent, the condition for a valid performance is not fulfilled, rendering it invalid.⁽⁵⁾

Second evidence: The donor has not authorized the Zakâh institution to disburse Zakâtul-Fitr on their behalf. Representation for the performance of Zakâh is not valid without the donor's permission.⁽⁶⁾

(1) See the previous reference (p. 224).

(2) See: Al-Hidayah (1/113), Tabyin Al-Haqaiq (1/307), Al-Tawdhih (2/372), and Mawahib Al-Jalil (2/374).

(3) See: p. (445) of this book.

(4) See: Fath Al-Qadeer (3/151), Al-Bahr Al-Ra'iq (3/68), and the footnotes of Ibn Abidin (2/608).

(5) See: "Zakat al-Fitr: Its Rulings and Contemporary Issues" (p. 109) and "Contemporary Issues of Zakat" (p. 545).

(6) See: "Al-Durar Al-Bahiyyah from Kuwaiti Fatwas" (3/384).

Third evidence: Representation in performing acts of worship is only valid for specified individuals, whereas here the representation occurs for unspecified persons at the time of disbursement.⁽¹⁾

Fourth evidence: Allowing the Zakâh institution to disburse Zakâtul-Fitr would often lead to the institution using the pooled Zakâh funds, which amounts to borrowing from Zakâh assets, a practice that is impermissible.⁽²⁾

Fifth evidence: Advancing Zakâtul-Fitr is only permissible one or two days before Eid. Thus, the Zakâh institution should not disburse Zakâh based on anticipated amounts from the beginning or middle of the month.⁽³⁾

Counterargument: It is contested that advancing Zakâtul-Fitr is only permissible one or two days before Eid, as the majority of scholars agree that it can be advanced from the beginning of Ramadan,⁽⁴⁾ especially when there is a necessity for doing so.

Evidence for the second opinion (permissibility):

First evidence: It has become customary to permit Zakâh institutions to disburse Zakâtul-Fitr on behalf of the donors. A practice established by custom is considered as valid as one established by text. Therefore, the institution's performance on behalf of an individual is valid even without their explicit permission or intention, given that this practice is recognized.⁽⁵⁾

Counterargument: It is contested that such a custom exists for allowing Zakâh institutions to disburse Zakâh al-fitr, especially since those represented are unspecified at the time of disbursement. Even if we concede the existence of this custom, it does not replace the necessity of intention and permission from the individual represented.

Second evidence: The fact that donors later pay the institution the value of

(1) See: "Zakat al-Fitr: Its Rulings and Contemporary Issues" (p. 109).

(2) See the previous source.

(3) See: "Contemporary Issues of Zakat" (p. 545).

(4) The Hanafite school permits advancement of zakat without restrictions, while the Shafi'i school allows advancement from the beginning of Ramadan, which is also a view held by some Hanbalis. See: *Al-Mabsut* (3/110), *Tabyin Al-Haqaiq* (1/311), *Al-Hawi Al-Kabir* (3/389), *Al-Muhadhdhab* (1/303), *Al-Ri'ayah Al-Sughra* (1/425), and *Al-Furu'* (4/229).

(5) See: *Proceedings and Works of the Sixth Symposium on Contemporary Zakat Issues* (p. 224).

their Zakâh can be viewed as a subsequent approval, akin to a form of agency, making the institution's disbursement valid.⁽¹⁾

Counterargument: Donors provide the institution with the value of their Zakâh as a means of entrusting the institution to perform the disbursement, not as a retroactive approval of a prior act. Even if we accept that this could be seen as a subsequent approval, it does not equate to prior agency in acts of worship, where intention is a requisite.

Third evidence: The necessity and public interest require the institution to disburse Zakâtul-Fitr based on expected amounts before actually receiving them, as the time for collection and distribution may be limited due to the number of donors, potentially delaying the Zakâtul-Fitr beyond its due time.⁽²⁾

Counterargument: Even if we acknowledge the existence of a pressing need, this can be addressed without disbursing Zakâh without permission or intention from the donor. The institution could simply accept the value of Zakâtul-Fitr from the beginning of Ramadan as a form of advancement, clarifying that this is permissible according to many scholars. Advancing Zakâh for legitimate reasons is preferable to disbursing it without intention or permission.

Preponderance and its rationale:

The preponderant opinion-God knows best-is the first, which asserts that the Zakâh institution cannot disburse Zakâtul-Fitr based on anticipated amounts before receiving them from the donors. This is due to the strength of the first opinion's evidence and the weaknesses of the second opinion, which contradicts the consensus of scholars regarding the requirement of intention for Zakâh disbursement and does not withstand scrutiny.

The effect of intention on the issue:

Proponents of the first view, who argue against permissibility, base their stance on the principle that intention is a condition for the validity of Zakâh performance according to the majority of scholars. The act of the Zakâh institution distributing Zakâtul-Fitr based on expected amounts prior to their receipt leads to a situation where Zakâh is disbursed without the intention of the donor, as the donor has neither authorized nor consented to the institu-

(1) See: The same reference (p. 236).

(2) See: The same reference.

tion acting on their behalf at the time of distribution. Conversely, supporters of the second view maintain that the intention is effectively present due to customary consent, and the subsequent payment to the institution is akin to granting retroactive approval for its actions, equating the later approval to a type of agency. This claim is not accepted, as discussed previously in the critique of their arguments.



Chapter Five

The Impact of Intention on Contemporary Issues in Zakâh

This chapter includes ten treatises:

First Treatise: The Impact of Intention on Zakâh for Shares and Real Estate.

Second Treatise: The Impact of Intention on Zakâh for Investment Certificates.

Third Treatise: The Impact of Intention on Zakâh for Investment Funds.

Fourth Treatise: The Impact of Intention on the Zakâh Base for Takaful Insurance.

Fifth Treatise: The Impact of Intention on Zakâh for Moral Rights.

Sixth Treatise: The Impact of Intention on Zakâh for Revenue-Generating Assets.

Seventh Treatise: The Impact of Intention on Zakâh for Contemporary Debts.

Eighth Treatise: The Intention of Counting Taxes and Fees as Part of Zakâh.

Ninth Treatise: The Impact of Intention on Zakâh for Public Funds.

Tenth Treatise: The Impact of Intention on the Ruling of Investing Zakâh Funds.

First Treatise

The Impact of Intention on Zakâh for Shares and Real Estate

Topic (1): The Impact of Intention on Zakâh for Shares⁽¹⁾ in Companies

Issue description:

How should shares in joint-stock companies be subject to Zakâh? Does the shareholder's intention regarding the ownership of the shares affect their Zakâh?

Opinions on the issue: Contemporary scholars have various opinions on the method of Zakâh for company shares, and they hold three perspectives on whether the intention behind owning the shares affects their Zakâh. These perspectives are as follows:

First perspective: The intention of the shareholder does not affect the method of Zakâh for their Shares

Proponents of this perspective have three opinions:

First opinion: Shares are subject to Zakâh as commercial goods in all cases.

This opinion is considered the earliest view on the method of Zakâh for

(1) Shares are the plural of "share." In commercial law, a share is defined as "a certificate (suk) representing a proportional part of the capital of a joint-stock company." See: Financial Transactions: Fundamentals and Contemporary Issues, by Al-Dubyan [13:130], and Studies in Contemporary Financial Issues, by Al-Shubaily [15:2].

A joint-stock company is defined in the Saudi Companies Law as "a company established by one or more individuals, either natural or legal persons, with its capital divided into tradable shares. The company alone is responsible for the debts and obligations arising from its activities, and the shareholders' liability is limited to the value of the shares they have subscribed to." Refer to: The Companies Law issued by Royal Decree No. (M/132) dated 01/12/1443 AH.

shares. It was supported by Sheikh Muhammad Abu Zahra and others during the third session of the Social Studies Conference organized by the Arab League in 1372 AH ⁽¹⁾. It was also chosen by Dr. Rajeeb Biyoudh Al-Tamimi⁽²⁾, Dr. Saleh Al-Sudlan⁽³⁾, Professor Dr. Muhammad Naeem Yaseen⁽⁴⁾, and Sheikh Abdul Rahman Al-Helo⁽⁵⁾.

Second opinion: Shares are subject to Zakâh based on the company's activity. If the company is purely commercial or industrial-commercial, its shares are subject to Zakâh as commercial goods. If the company is agricultural, its shares are subject to Zakâh as crops and fruits. If the company is purely industrial or service-oriented, Zakâh is not required on its shares; instead, only the profits are subject to Zakâh as capital, similar to revenue-generating assets.

This opinion is held by Sheikh Abdul Rahman Issa ⁽⁶⁾ and is supported by other researchers. It is also noted that the shareholder's intention is considered only in one case: if the company's activity is unknown. In such a case, if the shareholder intended to own the shares for trade purposes, the shares are subject to Zakâh as commercial goods based on their market value at the end of the Zakâh year. If the shareholder intended to invest in the shares, only the revenue is subject to Zakâh, and no Zakâh is due on the value of the shares ⁽⁷⁾themselves.

Third opinion: Shares are subject to Zakâh based on the Zakâh able assets they represent, and the company pays this Zakâh similarly to how an individual pays Zakâh on their wealth. If the shareholder is responsible for paying the

(1) This has been reported by several researchers, including Sheikh Abdullah Al-Bassam in his study on the Zakâh of shares in companies, published in the Journal of the Islamic Fiqh Academy. See: Journal of the Islamic Fiqh Academy [4:523, 509].

(2) See: Zakâh of Shares in Companies, by Rajeeb Al-Tamimi, Journal of Islamic Fiqh [4:563].

(3) See: Zakâh of Shares, Bonds, and Paper Currency, by Al-Sudlan [P. 20].

(4) See: Proceedings and Papers of the 11th Symposium on Contemporary Zakâh Issues (P. 153).

(5) See: Proceedings and Papers of the 7th Symposium on Contemporary Zakâh Issues (P. 208).

(6) Reported by Professor Dr. Al-Siddiq Al-Darir from his book Modern Transactions and Their Rulings. See: Zakâh on Shares in Companies, by Al-Darir, Journal of Islamic Fiqh (537/4), and Islamic Jurisprudence and Its Evidence [3/1842].

(7) See: Zakâh on Shares, Bonds, and Treasury Bills (P. 62).

Zakâh on their shares and cannot determine the Zakâh able assets related to their shares, the intention of the shareholder is considered. If the shareholder intended to own the shares for trade purposes and planned to sell them when prices rise, the shares are subject to Zakâh as commercial goods. If the shareholder intended to own the shares for investment and profit, only the returns are subject to Zakâh after a year has passed upon receiving them.

This opinion is held by Professor Dr. Al-Siddiq Al-Darir ⁽¹⁾ and was endorsed by the International Islamic Fiqh Academy (IIFA) of the Organization of Islamic Cooperation during its fourth session⁽²⁾. Later, in its thirteenth session, the Academy issued a decision that replaced the consideration of the shareholder's intention in cases where Zakâh able assets are unknown, stating that shareholders must investigate as much as possible and pay Zakâh on the Zakâh able assets corresponding to their shares in the company⁽³⁾.

The view that shares are subject to Zakâh based on the company's Zakâh able assets was also a result of the First Zakâh Conference organized by the Zakâh House in Kuwait 1404 AH.

The fatwa issued by the conference states that shares are subject to Zakâh based on the Zakâh able assets if the company itself is responsible for paying the Zakâh, rather than the shareholder. However, if the shareholder is responsible for paying the Zakâh, the fatwa aligns with the following perspective, which considers the impact of the shareholder's intention on the method of Zakâh for their shares⁽⁴⁾.

Second perspective: The impact of the shareholder's intention, and categorizing the shareholder based on their intention into: trader and investor

Proponents of this perspective have both agreements and disagreements, as outlined below:

Firstly: The proponents of this perspective agree that a shareholder who trades in shares, or what is known as a speculator-i.e., someone who buys shares with the intention of selling them after their market value increases to

(1) See: Zakâh on Shares in Companies, by Al-Darir, Journal of Islamic Fiqh [540/4-543].

(2) See: Decisions and Recommendations of the International Islamic Fiqh Academy, Decision No. 28, P. 108.

(3) See: The Previous Reference [861/13].

(4) See: Proceedings and Papers of the First Zakâh Conference (P. 235).

profit from the price difference⁽¹⁾-must pay Zakâh on the shares as commercial goods⁽²⁾.

This view is supported by most contemporary scholars and has been confirmed by several, including Sheikh Abdul-Aziz ibn Baz⁽³⁾, Sheikh Muhammad ibn al-Uthaymin⁽⁴⁾, and the Permanent Committee for Scholarly Research and Ifta in Saudi Arabia⁽⁵⁾. It was also endorsed by the fatwa issued during the 11th Symposium on Contemporary Zakâh Issues⁽⁶⁾.

Secondly: There is a disagreement on how to pay Zakâh on shares held by an investor-someone who buys shares with the intention of benefiting from their returns rather than trading them⁽⁷⁾. This disagreement is expressed in three opinions:

First opinion: Shares are subject to Zakâh as revenue-generating assets. Zakâh is not required on the value of the shares themselves, but only on the returns they generate. This applies specifically when the shareholder is responsible for paying the Zakâh on the shares, rather than the company.

Dr. Muhammad Al-Qari ⁽⁸⁾ and Dr. Hussein Shahat ⁽⁹⁾ also support this view, and it has been endorsed by the Permanent Committee for Scholarly Research

(1) See: Shares, Bonds, and Their Rulings, by Al-Khalil (P. 266), and Studies in Contemporary Financial Issues, by Al-Shubaily [2:204].

(2) The question is whether the Zakâh is calculated based on the market value of the shares as determined by supply and demand or their actual value if the company were liquidated and its assets divided. Most scholars and researchers agree that Zakâh should be based on the market value. Dr. Al-Darir, however, argues that it should be based on the true value of the shares. See: Zakâh on Shares in Companies, by Al-Darir, Journal of Islamic Fiqh [4:543], Rulings on Zakâh of Contemporary Commercial Goods, by Ahmad Al-Kurdi (P. 191), and Shares, Bonds, and Their Rulings (P. 278).

(3) See: Collection of Fatwas by Ibn Baz]14:191 [.

(4) See: Explanation of the Concise Commentary [6:148 [.

(5) See: Fatwas of the Permanent Committee, Volume 3 [1:545 [.

(6) See: Proceedings and Papers of the 11th Symposium on Contemporary Zakâh Issues (P. 165).

(7) See: Investigation into the Zakâh of Shares and Companies (P. 221) and Guidelines for Accounting Zakâh for Companies (P. 36).

(8) See: Proceedings and Papers of the 11th Symposium on Contemporary Zakâh Issues (P. 151).

(9) See: Juristic Rulings and Accounting Principles for Zakâh on Shares (P. 92).

and Ifta in Saudi Arabia⁽¹⁾.

Second opinion: Shares are subject to Zakâh based on the company's activity, similar to the second opinion within the first perspective. This view is held by Sheikh Abdullah Al-Bassam ⁽²⁾ and Sheikh Abdullah bin Manee⁽³⁾.

Third opinion: Shares are subject to Zakâh based on the Zakâh able assets represented by the company. This view is held by Professor Dr. Ahmed Al-Khalil ⁽⁴⁾ and Professor Dr. Abdul Rahman Al-Atram⁽⁵⁾. This opinion was also endorsed by the fatwa issued during the 11th Symposium on Contemporary Zakâh Issues. The fatwa states that if an investor shareholder is responsible for paying Zakâh on their shares and cannot determine the Zakâh able assets corresponding to their shares, they should make every effort to ascertain this information and pay Zakâh on the portion of Zakâh able assets corresponding to their shares⁽⁶⁾.

Third perspective: The impact of the shareholder's intention, and categorizing them based on their intention into: trader, investor, and saver

According to this perspective, the trader's shares are subject to Zakâh as commercial goods, while the investor's shares are subject to Zakâh based on the Zakâh able assets of the company, aligning with the third opinion of the second perspective.

This perspective introduces a third category of shareholders based on their intention for owning shares, known as the "Saver." A saver is someone who acquires shares not for trading or frequent transactions but with the intent of holding them over a long period to benefit from their appreciation and the dividends they generate, planning to sell them when cash is needed⁽⁷⁾. This category lies between the trader and the investor. While the saver does not aim to actively trade or monitor stock prices closely, they do not intend to rely solely on the dividends. Instead, they plan to sell the shares in the long term

(1) See: Fatwas of the Permanent Committee, Volume 3 (P. 544).

(2) See: Zakâh on Shares in Companies by Al-Bassam, Journal of Islamic Fiqh (P. 516).

(3) See: Zakâh on Shares in Joint-Stock Companies by Al-Munee (P. 135).

(4) See: Shares, Bonds, and Their Rulings (P. 276).

(5) See: Proceedings and Papers of the 11th Symposium on Contemporary Zakâh Issues (P. 150).

(6) See: The same reference (P. 165).

(7) See: Studies in Contemporary Financial Issues, by Al-Shubaily (P. 206).

after their value has increased⁽¹⁾.

Proponents of this perspective base their classification of this type of shareholder on the distinctions made by Maliki jurists between an active trader and a speculative trader. An active trader, who sells goods at current prices, continually reinvests and does not wait for price increases, must calculate and pay Zakâh on their trade goods annually. This trader is not concerned with waiting for higher prices and may even sell without profit⁽²⁾. In contrast, a speculative trader, who buys goods and waits for prices to rise before selling, does not have to pay Zakâh on their goods every year. Instead, they pay Zakâh on the sale price only when they sell the goods, on an annual basis⁽³⁾. This distinction was first introduced by Professor Dr. Yusuf Al-Shubaily⁽⁴⁾ and was later supported by Professor Dr. Musa'id Al-Huqayl⁽⁵⁾.

There is a difference of opinion among the scholars who support this perspective regarding the method of Zakâh for the "Saver" shareholder or the one who holds shares for a long period ("Mutarabbis").

First opinion: The Saver should pay Zakâh on their shares annually, similar to the investor, by calculating the Zakâh based on the Zakâh base of the company⁽⁶⁾. If the shares are sold, Zakâh is paid on the sale price for one year. This opinion is held by Professor Dr. Yusuf Al-Shubaily⁽⁷⁾.

Second opinion: Zakâh on the shares is not obligatory until they are sold, and when the shares are sold, Zakâh is paid on the sale price for one year. This

(1) Details on differentiating between types of shareholders based on their intention for owning shares will be provided in the next section.

(2) See: Al-Nawadir wa al-Ziyadat [2:168], Al-Ma'unah 'Ala Madhhab 'Alim al-Madinah (P. 372), Mawahib al-Jalil [2:322].

(3) See: Al-Muqaddimat al-Mumahhidat [1:285], Al-Tanbih 'Ala Mabadi' al-Tawjih [2:802], Aqd al-Jawahir [1:226].

(4) See: Research on Contemporary Financial Issues [2:206-210].

(5) See: Zakâh of the Saver and Its Contemporary Applications, by Al-Huqayl, published in the Journal of the Fiqh Society, Issue 45, (p. 221).

(6) The Zakâh base refers to the wealth subject to Zakâh. See: Zakâh Base in Contemporary Companies, by Al-Furayyan (P. 64).

(7) He also added that if the saver anticipates selling their shares within the upcoming year, they should pay Zakâh on the value of those shares, considering it as an advance payment of Zakâh. See: Research on Contemporary Financial Issues [2:210].

view is held by Professor Dr. Musaed Al-Huqail⁽¹⁾.

Evidence for the opinions and discussions:

First: Evidence for the opinions of the first perspective, which argues that the shareholder's intention has no impact

Evidence for the first opinion: Those who argue that shares should always be subject to Zakâh as commercial goods present the following evidence:

First evidence: The argument that shares are financial instruments purchased for profit, whether through trading (buying and selling) or by benefiting from their returns. In both cases, the investor may either profit or incur losses, so shares should be treated like trading assets⁽²⁾.

Discussion: It has been debated that share, like other goods, should be treated according to their purpose. The majority of jurists hold that goods intended to generate profit from their returns do not fall under the Zakâh of trading assets. Instead, Zakâh on trading assets is only obligatory for goods intended to be traded for profit⁽³⁾.

Second evidence: Shares are financial instruments that their owners can convert into cash at any time; therefore, they must be subject to Zakâh based on their market value annually⁽⁴⁾.

Discussion: The ability to sell shares and convert them into cash does not necessarily mean that they should be subject to Zakâh every year. All tradable goods can be sold and converted into cash, and the ease or difficulty of selling them does not affect the ruling on Zakâh.

Third evidence: Requiring Zakâh on shares as commercial goods in all circumstances simplifies calculations and makes it easier for shareholders to comply. The simplicity and fewer complexities of this approach suggest its validity⁽⁵⁾.

(1) See: Zakâh of the Saver and Its Contemporary Applications, published in the Journal of the Fiqh Society, Issue 45, (P. 223).

(2) See: Al-Tahqiq fi Zakâh al-As'hum (P. 182), Nawazil al-Zakâh (P. 181).

(3) See: Al-As'hum wa al-Sanadat wa Ahkamuha (P. 271).

(4) See: Zakâh Ash'um al-Sharikat by Rajab al-Tamimi [4:563]

(5) See: Proceedings and Papers of the 7th Symposium on Contemporary Zakâh Issues (P. 208).

Discussion: However, the ease of application is only a supporting factor and should not be considered a decisive proof.

Evidence for the second opinion: Proponents of the view that shares should be subject to Zakâh based on the company's primary activity argue as follows: Companies engage in various activities with different purposes, and shares represent an ownership stake in the company. Thus, shares in commercial companies should be treated as trade goods and subject to Zakâh accordingly. For industrial companies, shares are invested in industrial machinery, equipment, and buildings—assets not intended for sale but for productive use—so Zakâh should be assessed on the income they generate. In the case of agricultural companies, shares represent crops and produce and should follow the Zakâh rules applicable to agricultural yields. The underlying principle is that each type of asset should be subject to Zakâh based on its specific characteristics⁽¹⁾.

This argument is contested in two ways:

First point: Even if a company primarily engages in a specific activity, it typically possesses Zakâh able assets beyond that activity, such as cash and expected receivables. Hence, it's important to evaluate the company's total assets as a whole, rather than judging it solely based on its main activity⁽²⁾.

Second point: Many shareholders intend to trade their shares in the market and do not consider the assets that the shares represent within the company. Therefore, shares have a market value that differs from their actual value. It is thus inappropriate to classify shares merely as a share in the company's assets without considering that they are financial instruments that can be bought and sold⁽³⁾.

Evidence for the third opinion: Those who argue that shares should be subjected to Zakâh based on the Zakâh able assets of the company provide the following evidence:

First evidence: A share essentially represents a portion of the company's

(1) See: Zakâh Ash'um al-Sharikat by Al-Bassam [4:511], Islamic Jurisprudence and Its Evidence [3:1844].

(2) See: Proceedings and Papers of the 11th Symposium on Contemporary Zakâh Issues (P. 150), Research on Contemporary Financial Issues [2:49].

(3) See: Zakâh on Shares, Al-Muslim (P. 11).

assets. Companies invariably possess Zakâh able assets, either from their core activities or from other sources. Therefore, a Zakâh base should be established for the company that encompasses all its Zakâh able assets, and the Zakâh on shares should be calculated based on their proportionate share of this base⁽¹⁾.

Second evidence: It is not permissible for the same wealth to be subjected to Zakâh more than once within a single Zakâh year. This is supported by the Prophet Mohammad [peace and blessings of Allah be upon him]: "There is no duplication of Zakâh "⁽²⁾. Differentiating between shareholders based on their intentions could lead to this forbidden [Althiny] Duplication Zakâh, as many shareholders intend to trade their shares. If the company pays Zakâh on those shares based on its Zakâh able assets, and we then require the trader to deduct what the company has paid from their own Zakâh, it would result in difficulty in calculation and implementation⁽³⁾.

Discussion from two perspectives:

First perspective: It is not necessarily the case that differentiating between shareholders based on their intentions leads to double Zakâh. This is because a trading shareholder is only required to pay Zakâh at a rate of 2.5% of the market value of their shares. If the company has already paid Zakâh on the portion of the shares they hold, the shareholder can deduct this amount from their own Zakâh obligation, provided the amount paid by the company is less than what the shareholder is required to pay.

Second perspective: Even if applying the Zakâh rules in this manner were difficult, it does not invalidate the categorization of shares held with the intention of trading and market speculation as commercial goods. This difficulty does not provide a valid reason to exempt trading shareholders from paying Zakâh on their shares based on their market value, as is required for other commercial goods.

They argue that the company pays Zakâh on behalf of shareholders in the same way an individual pays Zakâh on their own wealth based on the following reasons:

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- (1) See: Proceedings and Papers of the 11th Symposium on Contemporary Zakâh Issues (P. 150), Principles of Valuation in Zakâh Calculation (P. 400).
(2) For previous references, see P. 81 of this book.
(3) See: Principles of Valuation in Zakâh Calculation (P. 405).

First evidence: The principle of commingling impacts all joint assets, such as livestock and others, meaning that shared assets are treated similarly to individual assets. Thus, it is preferable for the company to pay Zakâh on behalf of the shareholders. If the company does not do so, the shareholder should pay Zakâh on their shares based on the Zakâh able base of the company⁽¹⁾.

Discussion: The counter-argument is that commingling does not have the same impact on assets other than livestock. While commingling affects livestock in terms of both benefit and harm, applying this principle to other types of assets could result in unjust disadvantage for the owner. Most scholars agree that commingling does not influence non-livestock assets in the same way⁽²⁾.

Second evidence: Applying the lunar year and threshold to shares based on each shareholder's individual status would require the company to assess the situation of every shareholder, which is impractical. Since difficulty should be met with facilitation, it is preferable to apply the principle of commingling to the threshold and consider that newly acquired assets, such as those resulting from the entry of a new shareholder, follow the Zakâh cycle of the existing assets⁽³⁾.

Discussion: This difficulty is specific to situations where the state collects Zakâh from the company. Thus, the principle of treating the company's shares as if they belong to a single person should be restricted to such cases, rather than being applied universally. Generally, each shareholder is responsible for paying Zakâh on their own shares, and there is no significant hardship for the shareholder in determining the Zakâh due based on the annual cycle and threshold.

Second: Evidence for the second opinion, which categorizes shareholders based on their intentions into: trader and investor

(1) See: Stocks and Bonds: Their Rules (P. 274).

(2) See: Contemporary Financial Issues [2:194].

The non-impact of mixing (khalta) on assets other than livestock is the view of the Hanafi and Maliki schools, as well as one opinion within the Shafi'i school and the prevailing view among the Hanbali school. However, the Shafi'i school (in its new position) and one opinion within the Hanbali school accept its impact on all forms of wealth. See: Al-Mab-sut [2:153], Al-Muhit al-Burhani [2:302], Al-Tafri' [1:156], Al-Mu'ina (P.407), Al-Bayan [3:226], Al-Majmu' [5:450], Al-Mughni 2:462, Al-Furu' [4:60].

(3) See: Stocks and Bonds: Their Rules (P. 275-276).

1- Evidence for the Zakâh of shares owned by traders:

Proponents of this view argue that shares owned with the intention of trading and circulating in the market should be subject to Zakâh as commercial goods. They base their argument on the fact that shares are financial instruments, similar to other commodities, which can be traded in the market through buying and selling. Shares have a market value that differs from their actual value. Therefore, those who own shares with the intention of trading them are obligated to pay Zakâh on them as commercial goods, in accordance with the general principles related to the Zakâh of commercial goods⁽¹⁾.

2- Evidence on the Zakâh of investor shares:

Evidence for the First Opinion: Proponents of the view that shares held for the purpose of earning returns, rather than trading, should be subject to Zakâh on investment assets argue that shareholders do not own any of the company's assets directly. Since they do not have control over or the ability to manage these assets, they should pay Zakâh on their shares in the same manner as other investment assets⁽²⁾.

Discussion: The fact that shareholders do not directly own or manage the company's assets does not negate their obligation to pay Zakâh on these assets. Shareholders hold ownership indirectly through their shares in the company, and thus the principle of ownership still applies. Consequently, Zakâh should be calculated based on the assets represented by the shares⁽³⁾.

Evidence for the second opinion: Proponents of the view that shares held with the intention of benefiting from their returns, rather than trading them, should be subject to Zakâh according to the company's activity, refer to the second opinion of the first approach. This perspective is challenged by the same objections as outlined in the first view, but with the exception of its second aspect⁽⁴⁾. This is because supporters of this view distinguish between shareholders who own shares for trading purposes and those who hold shares as partners seeking the company's profits and returns.

Evidence for the third opinion: Proponents of the view that shares held with the intention of benefiting from their returns, rather than trading them,

(1) See: Stocks and Bonds: Their Rules (P. 268), Contemporary Zakâh Issues (P. 181).

(2) See: "Contemporary Financial Issues Research" [2:198[.

(3) See: The same reference [2:200[.

(4) See: P. 464 of this book.

should be subject to Zakâh based on their proportional share of the company's Zakâh able base argue that a share essentially represents a portion of the company's assets. Since companies generally possess Zakâh able assets related to their activities or otherwise, the investor shareholder, who acquires shares to benefit from the company's profits, should therefore pay Zakâh on the portion of the company's Zakâh able assets corresponding to their shares. This is similar to how a partner in non-joint-stock companies pays Zakâh on their share of the company's assets⁽¹⁾.

Thirdly: Evidence for the third perspective, which classifies the shareholder based on his intention into: trader, investor, and saver

The proponents of the third perspective relied on the evidences of the second perspective regarding the manner of Zakâh for the trading shareholder, and they used the evidences of the third opinion within the second perspective to determine the manner of Zakâh for the investor shareholder.

As for their evidences concerning the Zakâh of the saving shareholder, they are as follows:

Evidence for the First Opinion: Those who hold that the saving shareholder should pay Zakâh on their shares in the same manner as the investor shareholder, and if they sell the shares, they should pay Zakâh on the proceeds for one year, base their view on the following:

First evidence: For someone who owns shares to benefit from their returns and then sells them over the long term after their value has increased, these shares are not considered commercial goods in his case. Therefore, Zakâh is not obligatory on them annually. Instead, he is treated according to his situation. During the years of saving, he is considered an investor, and in the year of sale, his shares become commercial goods, and he must pay Zakâh on the proceeds if he sells them, analogously to the waiting trader according to the Maliki school⁽²⁾.

Discussion: This approach would result in the obligation of Zakâh on these shares for two distinct reasons, which contradicts the original principle. The Maliki school requires only the waiting trader to pay Zakâh on the proceeds

(1) See: "Proceedings and Papers of the Eleventh Symposium on Zakâh Issues" (P. 150), "Fiqh of Valuation in Zakâh Calculation" (P. 400).

(2) See: "Contemporary Financial Issues Research" [2:208-209].

from the sale of commercial goods and does not impose any additional obligations beyond that⁽¹⁾.

Second evidence: The classification of anyone intending to benefit from the appreciation of share value as a trading shareholder is incorrect. This is because nearly all shareholders aim for the increase in the value of their shares, with only a few exceptions. Consequently, this would lead to the obligation of Zakâh on commercial goods for the majority of shareholders, which contradicts the original principle. The default ruling regarding commercial goods is that Zakâh is not required on their value⁽²⁾.

Evidence for the second opinion: Those who argue that the saving shareholder is only required to pay Zakâh on their shares when they sell them, and then only on the proceeds for one year, base their view on the following:

First evidence: The default rule is that Zakâh is not required on commercial goods. Zakâh is only obligatory on commercial goods due to their cash value, which the saving shareholder does not actually receive until the sale. This contrasts with the trading shareholder, who actively buys and sells shares throughout the year⁽³⁾.

Discussion: Shares are not like other commercial goods because they represent a share in the Zakâh able assets of a company, which may include cash, anticipated debts, or goods traded by the company. Thus, it is incorrect to compare them to other commercial goods that are not subject to Zakâh by default.

Second evidence: Zakâh is based on the principle of mutual support. Requiring Zakâh on commercial goods every year from a waiting trader or a saving shareholder would impose a hardship and undermine their investment capacity⁽⁴⁾.

Preference:

After considering the opinions, evidence, and the discussions surrounding them, it appears-Allah knows best-that the most probable view is the third

(1) See: "Al-Mudawwana" [1:309], "Al-Ishraf Ala Nukat Masail Al-Khilaf" [1:403], "Al-Taj wal-Iklil" [3:181], "Fiqh of Valuation in Zakâh Calculation" (P. 416).

(2) See: "Contemporary Financial Issues Research" [2:209].

(3) See: "Zakâh of the Waiting Trader and Its Contemporary Applications," published in the Journal of the Fiqh Association, Issue (45), (P. 210).

(4) See: The same reference.

perspective. This view holds that the intention of the shareholder is significant and impacts the manner in which Zakâh is applied to their shares. According to their intention, shareholders are categorized into: trading shareholders, investing shareholders, and saving shareholders. It is preferable to refer to the latter as a "waiting shareholder," as this description more accurately reflects their situation and aligns with the terminology used by Maliki jurists⁽¹⁾.

Thus, the trading shareholder should pay Zakâh on their shares along with their profits as commercial goods, based on their market value (closing price) on the day of the Zakâh year-end. The investing shareholder should pay Zakâh on the portion of the Zakâh able assets of the company that corresponds to their shares at the end of the Zakâh year.

As for the waiting shareholder, it appears- Allah knows best-that the most appropriate approach is to combine the two opinions regarding them. Thus, they should pay Zakâh as an investor during the years of saving, which involves paying Zakâh on the portion of the company's Zakâh able assets that corresponds to their shares. If they sell their shares, they must pay Zakâh on the proceeds exceeding the value of the Zakâh able assets corresponding to their shares in the year of sale, provided the proceeds reach the nisab (the minimum quantity) and a full year has passed since the original investment. They can calculate the Zakâh due by deducting the value of the Zakâh able assets corresponding to their shares from the sale proceeds and paying Zakâh on the remaining amount. For instance, if the Zakâh able portion corresponding to each share is forty riyals and the share is sold for one hundred sixty riyals, they should deduct forty riyals and pay Zakâh on the remaining one hundred twenty riyals. They would thus need to pay one-quarter of one-tenth (2.5%) on the one hundred twenty riyals per share if the total sale proceeds, after deducting the Zakâh able portion, reach the nisab (the minimum quantity). If the sale proceeds are less than the value of the Zakâh able assets corresponding to the shares, no additional Zakâh is required, as the entire amount is considered Zakâh from the investment and there is no surplus to account for.

This preference is not undermined by the objection that it imposes Zakâh on the same wealth for two different reasons. This is because the Zakâh paid by the waiting shareholder after the sale pertains to a different set of assets than

(1) See: "Al-Ishraf Ala Masail Al-Khilaf" [1:403], "Al-Kafi" 1:300, "Al-Bayan wal-Tahsil" [2:423].

the Zakâh paid annually. The former is based on treating the proceeds as commercial goods for a waiting trader, while the latter is Zakâh due on the original investment. An analogous situation mentioned by the Maliki school is when someone buys jewelry for trade purposes and is holding it. They pay Zakâh on the weight of the gold or silver in the jewelry each year. If they sell it, they must pay Zakâh on the amount exceeding the value of the gold and silver for one year, considering the difference as profit. According to "Mawahib al-Jaleel," for trade jewelry, if it is not possible to remove it without damage, one should estimate the weight of the precious metal in it and pay Zakâh accordingly. The jewels or additional items such as swords are treated as commercial goods; if they are held for trade, Zakâh is paid on their value each year. If sold, the proceeds should be Fadda ⁽¹⁾ (distinguish) into the value of the metal and the value of the jewelry as crafted. The Zakâh is due on the value added beyond the metal's value or the portion that exceeds the assessed value⁽²⁾.

Reasons for preference:

- 1- Shares are subject to the same rules as commercial goods because they can be bought, sold, and invested. Thus, the intention behind holding them affects how Zakâh is calculated, similar to other commercial goods.
- 2- A share represents a portion of the company's assets. Therefore, a shareholder who does not intend to trade should pay Zakâh based on the Zakâh able assets of the company corresponding to their shares.
- 3- Most shareholders intend to profit from the long-term increase in share value. Imposing Zakâh on commercial goods based on this intention would be unfair and diminish their wealth. Zakâh is intended to promote mutual support, especially since the Zakâh able assets corresponding to the shares are already subject to annual Zakâh.
- 4- **Shares encompass both Zakâh able and non-Zakâh able components. The Zakâh able part corresponds to the share's portion of the company's Zakâh able assets, while the non-Zakâh able part consists of**

(1) "Fadda" means to distinguish or separate. See: "Maqayis al-Lughah" [4:440], "Mukhtar al-Sihah" (P. 240), entry (F-D-D).

(2) "Mawahib al-Jaleel" [2:300], and see: "Al-Mudawwana" [1:305], "Al-Tabsira" [2:866], "Al-Muqaddimat al-Mumahhidat" [1:295].

the excess market value. This can be compared to jewelry, which includes both Zakâh able elements (gold or silver) and non-Zakâh able components (craftsmanship or gemstones). Maliki jurists have ruled that a trader must pay Zakâh on the value of the jewelry each year if actively trading it. However, if they are holding it for potential price increases, they must pay Zakâh annually on the weight of the gold or silver, and when sold, Zakâh is due on the excess value over the gold or silver from the craftsmanship or gemstones. They can determine the Zakâh due on the sale proceeds by deducting the Zakâh already paid on the gold or silver⁽¹⁾.

Impact of intention on the issue:

From the above, it is clear that intention significantly affects the manner of Zakâh on shares, particularly among the proponents of the second and third perspectives.

As for the proponents of the first perspective, they do not see the shareholder's intention as affecting the manner of Zakâh on their shares. However, some within this group- as previously mentioned-acknowledge its impact in cases where the shareholder is unable to determine the company's activity according to the second opinion or cannot identify the Zakâh able assets related to their shares according to the third opinion.

Branch: How to pay zakâh on shares held with the intention of trade if the company pays zakâh on its shares

Issue description:

The generally agreed principle among scholars is the prohibition of [Al-thiny] Duplication Zakâh. It is not permissible to impose Zakâh on a person more than once for the same wealth within the same Zakâh year⁽²⁾.

Contemporary scholars have agreed that if a company pays Zakâh on its shares, the investing shareholder only needs to consider the Zakâh already paid by the company. The shareholder is then only required to pay Zakâh on

(1) See: "Mawahib al-Jaleel" [2:300], and see: "Al-Mudawwana" [1:305], "Al-Tabsira" [2:866], "Al-Muqaddimat al-Mumahhidat" [1:295].

(2) See: Al-Mabsut [2:170], "Tuhfat al-Fuqaha" [1:278], "Al-Mudawwana" [1:358], "Al-Dhakhira" [3:22], "Al-Hawi al-Kabir" [3:303], "Nihayat al-Matlab" [3:3016], "Al-Tah-dhib" [3:109], "Al-Mughni" [3:62], "Kashaf al-Qina" [2:243].

any cash profits they receive⁽¹⁾.

There is a dispute regarding the trading shareholder, also known as a “mu-darib,” concerning the obligation of Zakâh on commercial goods for their shares. The debate revolves around whether the shareholder should:

- 1- Rely solely on the Zakâh paid by the company.
- 2- Pay Zakâh on their shares as commercial goods without considering the company's Zakâh.
- 3- Deduct the amount paid by the company from the Zakâh they owe.

The opinions among contemporary scholars on this issue are as follows:

First opinion: The shareholder should be satisfied with the Zakâh paid by the company. This is the view of Sheikh Muhammad ibn Uthaymeen⁽²⁾.

Second opinion: The shareholder should pay Zakâh on their shares as commercial goods, without considering the Zakâh paid by the company. This view is evident in the research presented by Sheikh Muhammad Abu Zahra and his colleagues at the third session of the Social Studies Circle organized by the Arab League in 1372 AH. The research states: “It should be noted that the Zakâh collected from shares and bonds for those who trade in them is different from the Zakâh collected from the companies themselves. This is because the Zakâh collected from the company considers the company's funds as growing due to industry or similar activities, whereas the traded shares are considered growing as commercial goods.”⁽³⁾

This opinion was endorsed by Professor Dr. Abdul Rahman Al-Atram ⁽⁴⁾and was adopted by the executive regulations for Zakâh collection in the Kingdom

(1) See: "Fatwas of the Permanent Committee, Volume 3" [1:544], "Contemporary Financial Issues Research" [2:199], "Fiqh al-Taqrîr fî Hisâb al-Zakâh " (P. 399).

(2) Mentioned in three fatwas. See: "Collected Fatwas and Letters of Ibn Uthaymeen" [18:196-199].

(3) This text was cited by several researchers from the study by Sheikh Abu Zahra and his colleagues presented at the third session of the Social Studies Circle organized by the Arab League. I have not located it directly. See: "Islamic Jurisprudence and Its Evidence" [3:1851], "Fiqh al-Taqrîr fî Hisâb al-Zakâh " (P. 409).

(4) In a video fatwa published at the following link: <https://www.youtube.com/watch?v=Eop-W5t7tpHU>

of Saudi Arabia⁽¹⁾.

Third opinion: The shareholder should consider the Zakâh paid by the company. If the company's Zakâh is less than what is due from the shareholder, they should deduct the amount paid by the company and pay the remaining balance. If the company's Zakâh exceeds the amount due, the shareholder may either apply the excess toward Zakâh on other assets or use it as a prepayment for future Zakâh. This view is held by Sheikh Abdullah al-Munee' ⁽²⁾and was endorsed in the fatwa of the 11th Symposium on Contemporary Zakâh Issues⁽³⁾.

Professor Dr. Yusuf Al-Shubaily also chose this opinion. However, he believes that the deduction should be proportional to the number of days the shareholder owned the share relative to the remaining days of the year. For example, if the company paid 4 riyals in Zakâh per share and the trading shareholder "mudarib" owned the share for three months during that year, the trading shareholder "mudarib" should deduct 1 riyal from the amount due on that share and pay Zakâh on the remaining amount⁽⁴⁾.

Evidence for the opinions and discussions:

Evidence for the first opinion: Those who assert that a trading shareholder suffices with the Zakâh paid by the company argue that the company has discharged the Zakâh on behalf of the shareholder, thereby relieving him of the obligation. This is because an individual is not required to pay Zakâh on their wealth more than once⁽⁵⁾.

Discussion: It is obligatory for a shareholder to pay one-quarter of the tenth (2.5%) of the market value of their shares. However, the company only purifies the assets corresponding to the shares in terms of Zakâh without considering their market value. Consequently, the amount paid by the company often differs from the amount required of the shareholder, and thus, relying solely on the company's payment is not sufficient.

(1) See: Article 43 of the Executive Regulations for Zakâh Collection, issued by the Zakâh, Tax, and Customs Authority, year 1445 H.

(2) See: "Zakâh on Shares of Joint Stock Companies" (P. 27).

(3) See: "Proceedings of the Eleventh Conference on Contemporary Zakâh Issues" (P. 165).

(4) See: Research on Contemporary Financial Issues [2:205].

(5) See: Collection of Fatwas and Essays by Al-Uthaymeen [18:198].

Evidence for the second opinion: Those who argue that a trading shareholder should pay Zakâh on his shares regardless of the company's Zakâh payment base their position on the fact that the Zakâh paid by the company differs from what is required of the trading shareholder. This is because the company pays Zakâh on its own Zakâh able assets, whereas the shareholder is obligated to pay Zakâh on his shares as they are considered business commodities. Therefore, the Zakâh paid by the company should not be taken into account for the shareholder⁽¹⁾.

Discussion: It is argued that this approach could result in the imposition of two separate Zakâh obligations on the same wealth for the same underlying reason, which is the increase in wealth. This is not permissible. The Hanbali scholars have noted that if livestock intended for trade completes the Zakâh year for grazing before it completes the Zakâh year for trade, and the livestock reaches the nisab (the minimum quantity) for grazing but not for trade, then Zakâh should be paid based on grazing. For instance, if a person has five camels intended for trade, but their value is below the nisab (the minimum quantity), the Zakâh would be calculated as if they were grazing livestock. However, if the trade Zakâh year is completed and their value meets the nisab (the minimum quantity), Zakâh should then be paid on the value exceeding the grazing nisab (the minimum quantity). The scholars explained that the reason for not requiring two full Zakâh payments is that it is not permissible to impose Zakâh twice on the same wealth owned by the same individual, despite the differences between grazing Zakâh and trade Zakâh ⁽²⁾.

Evidence for the third opinion: Those who argue that the trading shareholder should take into account the Zakâh paid by the company base their position on the following points:

First evidence: Imposing full Zakâh on business commodities upon the shareholder, despite the company already having paid Zakâh on the shares, leads to [Althiny] Duplication Zakâh, which is prohibited⁽³⁾.

Second evidence: The required Zakâh for trading shares is one-quarter of one-tenth of their market value, regardless of whether the value is high or low.

(1) See: Islamic Jurisprudence and Its Proofs [3:1851].

(2) See: Al-Mughni [3:62], Al-Furoo' [4:202], Al-Insaf [3:158].

(3) See: Zakâh of Public Company Shares, Al-Munai' (P. 138).

If the Zakâh paid by the company is less than this amount, the shareholder must pay the difference. If the Zakâh paid by the company is more, the excess can be counted either as an advance payment of Zakâh or for another asset⁽¹⁾.

Discussion: It is argued that a trading shareholder cannot firmly intend for any excess amount paid by the company beyond the required Zakâh to be considered as either an advance Zakâh payment or Zakâh for another asset, because the shareholder does not know if there is any excess until they are aware of the market value of their shares when the Zakâh year is complete. Furthermore, the intention cannot be delayed until after the Zakâh has been paid, nor can the Zakâh be allocated to another nisab (the minimum quantity) different from the one originally intended.

Professor Dr. Yusuf Al-Shubayli argued that the deduction should be proportional to the number of days the shareholder owned the shares relative to the entire year, stating that a trader typically does not hold shares on which Zakâh has been paid throughout the year. Instead, they frequently trade from one share to another. If we were to say that the Zakâh amount paid by the company should be deducted from the shareholder's Zakâh obligation, this would lead to the same amount being deducted multiple times, corresponding to the number of traders who owned the shares throughout the year, which is not valid⁽²⁾.

Conversely, the proponents of the first perspective do not consider the shareholder's intention to impact the method of zakat on their shares. However, some within this group- as previously mentioned-acknowledge its effect in situations where the shareholder is unable to ascertain the company's activity according to the second opinion or cannot determine the zakatable assets related to their shares according to the third opinion. Top of Form

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Discussion from two perspectives:

First perspective: There is difficulty in accounting and application, as it requires the shareholder to calculate the amount distributed by the companies, they own within the year based on the number of days they held each share,

(1) See: Studies on Contemporary Financial Issues [2: 205].

(2) See: The previous reference.

to deduct it from the amount they are obligated to pay. The difficulty in this is apparent⁽¹⁾.

Response: The deduction of what the company has distributed is not mandatory for the shareholder who finds the application challenging. The shareholder may choose not to deduct the company's distributions and instead intend the excess over the obligatory amount as voluntary charity. This view is preferable to requiring the shareholder to pay the full Zakâh based on the market value of their shares without deductions, as they may be able to perform the calculations and deductions, and electronic accounting tools may be developed to assist with this. Additionally, this view is preferable to exempting the trading shareholder from Zakâh on commercial goods and accepting what the company has distributed as sufficient.

Second perspective: The company might be legally required to pay additional amounts after reviewing its Zakâh declaration. It has the right to appeal this before specialized committees, which can take several years. Requiring the trading shareholder to track such disputes for every share they once owned in order to determine the amount to deduct from their obligation is an unbearable burden⁽²⁾.

Response: The shareholder is not required to monitor these disputes. If they deduct the amount distributed by the company from their shares and the company later faces a requirement to pay additional sums, the deduction made by the shareholder will exceed their obligation, with any excess considered as voluntary charity. This approach is supported by the principle that if there is uncertainty about the exact obligatory amount of Zakâh, one should err on the side of caution, with any surplus treated as voluntary charity⁽³⁾.

Preference:

The most appropriate view on this matter, and Allah knows best, is as follows:

- 1- If the amount of Zakâh due from the trading shareholder exceeds what the company has distributed, the preferred opinion, according to Pro-

(1) See: Jurisprudence of Estimation in Zakâh Calculation (P. 408).

(2) See: The previous reference (P. 407-408).

(3) See: *Asna al-Matâlib* [1:377], *Tuhfat al-Muhtj* [3:348], *Mâ'unat Awli al-Nohâ* [3:247], *Kashâf al-Qinâ'* [2:230].

fessor Dr. Yusuf Al-Shubaily, is that the trading shareholder may deduct from their obligatory amount what the company has distributed, based on the proportion of the days they held the share to the remaining days of the year. For example, if the company distributed four riyals per share and the shareholder held the share for half the year, they should deduct two riyals from their obligatory Zakâh for that share.

- 2- If the amount due from the trading shareholder is less than what the company has distributed, the preferred opinion, and Allah knows best, is that the excess should not be counted as Zakâh for other assets or as an advance payment of Zakâh. Instead, it should be considered voluntary charity, contrary to the view of the third opinion.

Reasons for preference:

- 3- Shares are considered trade goods, similar to other commercial assets. Therefore, a shareholder who owns shares with the intention of trading them is obligated to pay Zakâh on them as trade goods, regardless of whether the company has distributed Zakâh on its shares or not. Permitting the deduction of the amount distributed by the company helps to avoid the imposition of double Zakâh on the same asset.
- 4- Since a trading shareholder typically does not hold the shares for the entire financial year of the company, it is appropriate for them to deduct from their Zakâh only the proportion of the distribution made by the company, based on the number of days they held the shares compared to the total days of the year.
- 5- The preferred opinion, as previously mentioned, is that Zakâh paid on a specific nisab (threshold) cannot be redirected to another nisab after payment⁽¹⁾. Additionally, any excess amount paid cannot be counted as Zakâh for the following year⁽²⁾. Therefore, if the Zakâh due from the trading shareholder is less than what the company has distributed for their shares, the shareholder is not permitted to consider the excess as Zakâh for other assets or as advance Zakâh for the same assets.

Impact of intention on the issue:

The effect of intention in this matter is reflected in the views of the scholars.

(1) See: (P. 388) of this book.

(2) See: (P. 386) of this book.

According to the second and third opinions, the intention to trade shares affects the obligation to pay Zakâh on them as trade goods, regardless of whether the company has distributed Zakâh on its shares. In contrast, according to the first opinion, the intention to trade shares does not impact the Zakâh obligation if the company has already distributed Zakâh on its shares; in this case, the shareholder is considered to have fulfilled their Zakâh obligation based on what the company has distributed.

Topic (2): Criteria for Differentiating Between the Trading Shareholder and the Investing Shareholder

In the previous topic, we discussed that shareholders in public companies are categorized based on their intention for holding the shares into investors, traders, and speculators. Each category has specific rules for calculating Zakâh on their shares. In this section, I will define each category, its characteristics, and the criteria for distinguishing between them, to facilitate the application of rules to each specific case.

First: The investing shareholder

Economists define investment in shares as: “Buying shares with the purpose of obtaining the returns they generate, which are reflected in periodic profits”⁽¹⁾. This definition is close to the description provided by jurists for the investing shareholder. However, some researchers have added the exclusion of trading from this definition. This addition is crucial to exclude the trading shareholder from this definition, as a shareholder may intend to earn returns from the shares in addition to having a trading intention. Therefore, the definition should clearly distinguish between the two. The investing shareholder is defined as: “One who owns shares not with the intention of trading them, but with the intention of obtaining the returns generated from the company’s profits”⁽²⁾.

Characteristics of the investing shareholder:

The investing shareholder has several distinguishing characteristics, including:

- 1- The investing shareholder does not intend to trade the shares by buy-

(1) See: Trading in Financial Markets, Al-Suhaibani (P. 6).

(2) See: Proceedings of the Eleventh Symposium on Zakâh Issues (P. 165), Zakâh of Shares and Investment Funds (P. 15).

ing and selling them in the market to profit from price fluctuations.

- 2- The investing shareholder does not intend to sell their shares for profit; instead, they plan to hold them for an extended period, primarily to obtain periodic returns.
- 3- When purchasing shares, the investing shareholder does not focus on short-term fluctuations in the market value of the shares. Instead, they concentrate on the company's activity, its economic strength, and the historical returns of its shares⁽¹⁾.

Second: The trading or speculative shareholder

The term "speculation in shares" does not refer to the *fiqh* (jurisprudential) definition of *mudarabah*, which involves providing capital to someone who trades with it in exchange for a specified share of the profit⁽²⁾. Instead, speculation in shares means trading them, and both terms are considered synonymous by contemporary jurists. However, some researchers argue that the term "trading" is more accurate than "speculation" for two reasons⁽³⁾:

- 1- The term *mudarabah* is associated with high risk and has been defined by some economists as: "The risk involved in buying or selling based on predictions of price fluctuations to achieve a profit from price differences"⁽⁴⁾.
- 2- There is a need to align the terminology with *Zakâh* on trade goods.

The trading shareholder, according to most contemporary jurists, is defined as: "One who buys shares with the intention of selling them when their price increases to benefit from price differences"⁽⁵⁾. This definition aligns with the view that there is no distinction between the trading shareholder and the speculative shareholder; both are required to pay *Zakâh* on their shares annually as trade goods.

(1) See: Verification of *Zakâh* on Shares (P. 219), Financial Transactions: Traditional and Contemporary, Al-Dubayan [13:247].

(2) See: Al-Bayan [7:181], Al-Mughni [19:5], Al-Iqna' [2:259].

(3) See: *Zakâh* on Index Funds (P. 17).

(4) See: Islamic Jurisprudence and Its Evidence [7:5034].

(5) See: Shares and Bonds and Their Rulings, Al-Khalil (P. 266), Contemporary *Zakâh* Issues (P. 178).

However, according to the preferred opinion, which differentiates between the trading shareholder and the speculative shareholder, the trading shareholder is defined as: “One who owns shares with the intention of actively trading them in the market by buying and selling to profit from price differences”⁽¹⁾.

Characteristics of the trading shareholder:

The trading shareholder has several distinguishing characteristics, including:

- 1- The trading shareholder does not retain shares for a long period and frequently rotates their investments among stocks within a single year. They may sell shares at a loss to compensate by purchasing at a lower price or by buying other stocks expected to rise.
- 2- They continuously monitor the market and devote most of their time to it.
- 3- They do not target stocks with good profit returns but rather focus on stocks expected to increase in market value within a short period⁽²⁾.

Third: The speculative shareholder:

Professor Dr. Yusuf Al-Shubaily defines the speculative shareholder—whom he calls the saving shareholder—as: “One who owns shares not with the intention of trading and frequent rotation, but with the intention of saving them for a long period to benefit from an increase in their value and from distributed returns, and then sells them when in need of cash”⁽³⁾. A critique of this definition is that it includes a condition that may exclude a significant portion of those who fall into this category, namely, the condition of “intending to benefit from distributed returns.” A speculative or saving shareholder might not intend to benefit from the distributed returns but rather plans to sell the shares in the long term once they reach a certain value to profit from the price difference. Additionally, the description that they sell when in need of cash may also apply to an investing shareholder rather than a speculative shareholder; the latter is essentially a trader but does not frequently trade in

(1) See: Studies on Contemporary Financial Issues, Al-Shubaily [2:204].

(2) See: Speculation in Financial Markets (P. 5 and following).

(3) See: The same reference [2:206].

the market, selling only when the desired profit is achieved, even if not in need of cash. The speculative shareholder can be defined as: “One who owns shares with the intention of holding them until their market value rises, then selling them later to profit from the price difference.”

It is noted that the speculative shareholder shares with the trading shareholder in treating the shares as trade goods. Therefore, the majority of contemporary jurists agree on not distinguishing between them in terms of Zakâh rulings⁽¹⁾. However, differentiation is made by those who follow the Maliki school, which differentiates between the active trader and the speculative trader, as previously mentioned⁽²⁾.

Characteristics of the speculative shareholder:

From the above, it is evident that the speculative shareholder has distinct characteristics that set them apart from others, including:

- 1- The speculative shareholder does not dedicate themselves to actively tracking the market and does not engage in frequent trading of shares through buying and selling over the short term.
- 2- The speculative shareholder intends to profit from price differences and does not sell the shares for less than their purchase price unless necessary.
- 3- They plan to hold the shares for a long period to benefit from a substantial increase in value, even if the shares do not provide returns.

Fourth: Criteria for differentiating between the three categories:

After research, I did not find a defined criterion for differentiating between the categories of shareholders or between the investing shareholder and the trading shareholder, except from Professor Dr. Yusuf Al-Shubaily. He noted that the common distinction between an investor—who intends to profit from distributed returns—and a speculator—who seeks to benefit from price appreciation—is questionable. This is because, with rare exceptions, most market participants consider the potential increase in share value in their investment decisions. This implies that most shareholders could be classified as speculators⁽³⁾.

(1) See: (P. 461) of this book.

(2) See: (P. 462) of this book.

(3) See: Studies on Contemporary Financial Issues [2:209].

Based on this observation, Professor Dr. Yusuf Al-Shubaily proposed a criterion for distinguishing between investing and speculative shareholders: those who do not intend to sell their shares within a year are considered investors, while those who plan to sell within a year are deemed speculators. He also mentioned that the saving shareholder can be classified into one of these two categories, being an investor in years when they do not plan to sell their shares and a speculator in the year, they intend to sell them⁽¹⁾.

Dr. Mohammed Al-Suhaibani and Dr. Abdullah Al-Ghafili endorsed this criterion, noting that the duration of holding a share could be a significant factor if considered as an indication of the intention to trade. They agreed that setting the period to one year is a common practice among specialists⁽²⁾.

It appears that this criterion is not precise, as it relies on the holding period of the shares as an indication of the intention to trade or not. The duration of holding the shares may not be clear to the shareholder; they may not know when they will sell them. An investor might plan to benefit from the distributed returns and only sell when cash is needed, potentially selling within a year or holding for several years. Similarly, a speculative shareholder might intend to hold their shares until they reach a certain value without knowing exactly when that will occur; it might happen within less than a year or take longer. Therefore, the Maliki scholars have noted that a speculative trader might sell within the first year and not necessarily hold the assets for more than a year, yet they are still considered a speculative trader.

Ibn Bashir al-Tanukhi stated⁽³⁾: "If the assets are held with the intention of monitoring market fluctuations and price increases rather than managing them, Zakāh is not obligatory until they are sold. At that point, Zakāh becomes due if the year of ownership is completed, or it will be deferred until the completion of the year if it has not yet been completed. Even if the assets

(1) See: The same reference [2:210].

(2) See: Zakāh on Index Funds (P. 22).

(3) Ibrahim ibn Abd al-Samad ibn Bashir al-Tanukhi al-Mahdawi, known as Abu al-Tahir, was a prominent Imam of the Maliki school of thought. He was related to Abu al-Hasan al-Lakhmi and was a student of many of his teachings. Some of his positions were challenged in his works, including *Al-Tanbih 'ala Mabadi' al-Tawjih* and *Al-Anwar al-Badi'ah ila Asrar al-Shari'ah*. He was martyred by highwaymen after the year 526 AH. For further information, see: *Al-Dibaj al-Mudhahhab* (1/265) and *Shajarat al-Nur al-Zakiyyah* (1/186).

are held without being sold, only one Zakâh is required”⁽¹⁾.

Accordingly, this criterion applies specifically to the trading shareholder or what is termed as the speculator, as they are the ones who intend to sell their shares within the year, and one of their characteristics is actively rotating their investments among stocks within the year.

It appears that a more precise criterion for distinguishing between the three categories is as follows:

- 1- Any shareholder who does not intend to profit from the price difference between buying and selling is an investing shareholder.
- 2- Any shareholder who actively rotates their money among stocks through buying and selling over the short term is a trading shareholder.
- 3- Any shareholder who aims to profit from the price difference between buying and selling, and who retains their shares until their value appreciates over the long term and only sells at a loss, if necessary, is a speculative shareholder.

Branch: Changing the shareholder's intention during the year from one category to another

First: If a trading shareholder changes their intention during the year to that of a speculative or investing shareholder, their Zakâh year is considered interrupted. They must then pay Zakâh according to the new category they have adopted, provided that the change is not made as a means to evade Zakâh. This is based on the previously preferred view regarding the change of intention from trading to personal use ⁽²⁾ and from management to speculation ⁽³⁾. Similarly, if the trading shareholder ceases to actively trade their shares due to personal reasons or market conditions ⁽⁴⁾, they will be subject to the rules for speculative shareholders ⁽⁵⁾.

Second: If an investing or speculative shareholder changes their intention to trading shares, they will then fall under the Zakâh rules for trading share-

(1) Al-Tanbih 'ala Mabadi' al-Tawjih (2/802); also see: Aqd al-Jawahir (1/226) and Al-Fawakih al-Dawani (1/331).

(2) See: p. 198 of this book.

(3) See: p. 199 of this book.

(4) "Kisad al-Shay'" refers to the lack of demand for an item due to reduced interest in it. See: Al-Misbah al-Munir (2/533) and Mu'jam Lughat al-Fuqaha (p. 380), entry (K-S-D).

(5) See: Al-Tabsirah (2/897), Manahij al-Tahsil (2/214), and Al-Taj wa al-Iklil (3/188).

holders and must begin a new Zakâh year accordingly.

Based on the previously preferred opinion in the matter of changing the intention of owning assets from personal use (qinya) to trade⁽¹⁾, and the matter of a trader changing their intention from holding (tarabbus) to active management⁽²⁾.

Third: If a passive shareholder (mutarabbis) changes their intention to investment, they transition to the Zakâh ruling of an investor shareholder, as long as this change is not an attempt to evade Zakâh. If they sell their shares, they are not required to pay Zakâh on the sale proceeds, based on the previously preferred view regarding the change in intention from trade to personal use⁽³⁾.

Fourth: If an investor shareholder changes their intention to holding (tarabbus), intending to keep the shares until their price increases and then sell them for profit, they transition to the ruling of a passive shareholder. The investment Zakâh cycle does not end, but they must pay Zakâh on the sale proceeds, as previously mentioned in the Zakâh rulings for passive shareholders⁽⁴⁾.

Topic (3): The Impact of Intention on the Obligation of Zakâh Initially for a Joint-Stock Company as a Legal Entity⁽⁵⁾.

Issue description:

Is the Zakâh on the shares of joint-stock companies obligatory on the shareholders, on the company itself as a legal entity, or is it obligatory on the company initially without distinguishing between the company's assets and those of the shareholders? What is the role of intention in this matter?

Opinions on the issue:

Contemporary scholars have differed on this matter, with three main opinions:

First opinion: Zakâh on the shares is obligatory on the shareholders, and the company may pay it on their behalf. This is the view of most contemporary

(1) See: (P. 195) of this book.

(2) See: (P. 200) of this book.

(3) See: (P. 198) of this book.

(4) See: (P. 496) of this book.

(5) A legal entity refers to a body that has its own legal standing, allowing it to acquire rights and bear obligations. It is established for a specific purpose, has representatives, and is financially separate from its founders, beneficiaries, and those contributing to its activities. See: Zakâh of Legal Entities and Contemporary Applications, Al-Saleem, (P. 30).

scholars, including Dr. Al-Sadiq Al-Darir⁽¹⁾, Dr. Ahmed Al-Khalil⁽²⁾, and Dr. Yusuf Al-Shubayli⁽³⁾. This view has also been endorsed by the decision of the International Islamic Fiqh Academy⁽⁴⁾ and the fatwa issued by the 17th Symposium on Contemporary Zakâh Issues⁽⁵⁾.

The International Islamic Fiqh Academy (IIFA), in its fourth session, issued the following statement: "Zakâh on shares is obligatory for their owners, and the company's management may discharge it on their behalf if stipulated in its bylaws, if a resolution is passed by the General Assembly, if the law of the country mandates companies to pay Zakâh, or if the shareholder authorizes the company's management to pay Zakâh on his shares"⁽⁶⁾.

Second opinion states that the Zakâh on shares is obligatory upon the company through its legal personality. This view is supported by Professor Dr. Muhammad Al-Farfour⁽⁷⁾, Professor Dr. Ahmed Majzoub⁽⁸⁾, and Dr. Riyadh Al-Khalifi⁽⁹⁾.

Third opinion holds that the Zakâh on shares is initially obligatory upon the company through its legal personality, without distinguishing between its liability and that of the shareholders. In the case where the company does not pay Zakâh, it becomes incumbent upon the shareholders to do so. This view is supported by Professor Dr. Saleh Al-Marzouqi⁽¹⁰⁾, Dr. Ahmed Al-Bashir⁽¹¹⁾, and Dr. Fawaz Al-Sulaim⁽¹²⁾.

(1) See: Zakâh of Shares and Bonds, part of the research from the Proceedings and Papers of the 11th Symposium on Contemporary Zakâh Issues (P. 27).

(2) See: Shares and Bonds and Their Rulings, (P. 285).

(3) See: Research in Contemporary Financial Issues, [2:193]

(4) See: Decisions and Recommendations of the International Islamic Fiqh Academy, Decision No. 28, (P. 107).

(5) See: Research and Proceedings of the 17th Symposium on Contemporary Zakâh Issues, (P. 379).

(6) Resolution of the International Islamic Fiqh Academy (IIFA), Decision No. 28, (P. 107).

(7) Farfour, "Zakâh on Shares in Companies," Journal of the Fiqh Academy, [4:582].

(8) "Zakâh on Company Shares," included in the research of the 11th Contemporary Zakâh Symposium, (P. 136).

(9) "Renewal in Zakâh Jurisprudence," (P. 173).

(10) "Comprehensive Study on Zakâh on Shares," (P. 53).

(11) Bashir, "Zakâh on Legal Entities," (P. 39).

(12) Saleem, "Zakâh on Legal Entities and its Contemporary Applications," (P. 193).

Evidence for the opinions and discussions:

The evidence of the first opinion, which holds that the Zakâh on shares is obligatory upon the shareholders, provide the following evidence:

First evidence:

Zakâh is an act of worship, and acts of worship are only directed towards natural persons⁽¹⁾.

Second evidence:

The assets of the company are owned by the shareholders, and the company merely manages these assets on their behalf. This is evident from the fact that, upon liquidation of the company, each shareholder receives their share of the company's assets⁽²⁾.

Third evidence:

Zakâh requires intention (niyyah) for its validity, and a legal entity is not capable of forming such an intention; therefore, Zakâh is not obligatory upon it⁽³⁾.

Discussion from two perspectives:

First perspective: It is claimed that intention (niyyah) in Zakâh is a condition for reward and merit, not for validity and sufficiency. Hence, Zakâh is obligatory on a child and an insane person, even though they cannot form an intention. It is also considered valid if taken from someone who refuses to pay, even without their intention ⁽⁴⁾.

Response: The intention is a condition for the validity of Zakâh, just as it is for other obligatory acts of worship. The intention distinguishes Zakâh from other forms of giving. It is incorrect to use the examples of a child or an insane person, as their guardian makes the intention on their behalf. Similarly, in the case of a defaulter, the ruler or his representative's intention substitutes for the individual's due to the inability to form their own intention.

(1) "Research on Contemporary Financial Issues," [2:193]; "Zakâh on Corporations," Der-shawi, (P. 257).

(2) Dareer, "Zakâh on Shares in Companies," Journal of the Fiqh Academy, [4:539]; "Shares and Bonds and Their Rulings," p. 282.

(3) See: Zakâh of Joint Stock Companies, Al-Deirshawy (P. 257).

(4) See: Verification of Zakâh on Shares (P. 119).

Second perspective: It can be argued that intention is not a condition for the obligation of Zakâh but rather for the validity of its performance. Evidence for this is the obligation of Zakâh on a child and an insane person, despite their lack of intention. Thus, the issue pertains to the obligation of Zakâh, not its valid performance.

Fourth evidence: Islam is a condition for the obligation of Zakâh, and a legal entity cannot be described as either Muslim or non-Muslim⁽¹⁾.

Discussion: It is argued that a company can be described as Islamic if most of its owners are Muslims, or if it is based in an Islamic country⁽²⁾.

Response: Determining which shareholders are Muslim and which are not is often impractical. Additionally, judging a company as Islamic or non-Islamic based on its location or the country that issued its license is not reliable, given that there are many Muslim-owned companies in non-Islamic countries and vice versa⁽³⁾.

Evidence for the second opinion: Proponents of the view that Zakâh should be obligatory for legal entities argue as follows:

First evidence: Accepting the principle of legal personality and recognizing that it has an independent financial status which bears rights and obligations implies that Zakâh should be obligatory on it, similar to other financial obligations⁽⁴⁾.

Discussion: It has been argued that Zakâh is a form of worship and, as such, is obligatory only on natural persons, unlike other financial obligations. This does not negate the acceptance of the concept of legal personality; rather, it means that only those rulings consistent with Islamic law are applicable to it ⁽⁵⁾

Second evidence: Legal personality holds the assets of shareholders, as their funds are integrated into it, preventing any individual from reclaiming their specific share or controlling it directly. Zakâh is obligatory on the owner of the wealth ⁽⁶⁾

(1) See: Zakâh of Legal Entities, Al-Darir (P. 8).

(2) See: Research and Proceedings of the Seventeenth Symposium on Contemporary Zakâh Issues (P. 45).

(3) See: Research in Contemporary Financial Issues [2:193].

(4) See: Zakâh on Shares in Companies, Journal of the International Fiqh Academy (P. 528).

(5) "Zakâh of Joint Stock Companies", Al-Deirshawi (P. 260).

(6) "Zakâh of Shares in Companies", Al-Farfour, Journal of the Islamic Fiqh Academy [4:582].

Discussion: It is disputed that legal personality owns shareholders' assets. Instead, it manages them on their behalf. This is evidenced by the fact that a shareholder can sell their shares whenever they wish. Zakâh is due on the owner of the actual asset, not merely on the one who has the power to manage it⁽¹⁾.

Third evidence: Zakâh is an act of worship related to wealth, and its obligation does not require legal capacity. Thus, it is obligatory for minors and the insane despite their lack of legal responsibility, and this is used to analogize legal personality⁽²⁾.

Discussion: Comparing legal personality to minors and the insane is not entirely appropriate for two reasons: First, minors and the insane own property but cannot manage it, whereas legal personality manages property but does not own it. Therefore, making Zakâh obligatory on it imposes an obligation on one who does not own the wealth. Second, minors and the insane are natural persons and can receive Zakâh when eligible. There is no opinion that a legal personality would receive Zakâh if it meets any criteria for eligibility⁽³⁾.

Fourth evidence: The principle of commingling of assets indicates that when different assets are mixed, they become as one. Given that the assets of shareholders are intermixed, it is not permissible to distinguish between them when paying Zakâh, and this can be addressed by making Zakâh obligatory on the legal entity itself⁽⁴⁾.

Discussion: The principle of commingling is not necessary for those who hold that Zakâh is obligatory on the legal entity, as it is considered a single entity. The principle of commingling is relevant for those who argue that Zakâh is obligatory on shareholders, particularly when the company pays Zakâh on their behalf⁽⁵⁾.

Fifth evidence: One of the primary objectives of Zakâh is to meet the needs of the beneficiaries. Obliging Zakâh on the company as a legal entity is con-

(1) "Shares and Bonds and Their Rules" (P. 248).

(2) "Zakâh of Shares and Bonds", Ahmed Majdoub (P. 137).

(3) "Research and Proceedings of the Seventeenth Symposium on Contemporary Zakâh Issues" (P. 197).

(4) "Comprehensive Guide to Zakâh of Shares" (P. 53).

(5) "Zakâh of Legal Entities", Al-Durreer (P. 9).

sidered a stronger means of achieving this goal, as we then view the company's assets as belonging to a single entity, thus increasing the Zakâh collected and maximizing the benefit to the recipients⁽¹⁾.

Discussion: It is disputed whether obligating Zakâh on the company truly results in a greater benefit to the recipients. Many Islamic countries do not require companies to pay Zakâh. Even if it were conceded that this approach might result in greater benefits for the recipients, the mere potential for increased benefit does not serve as a definitive reason to impose Zakâh on a non-natural entity.

Evidence for the third opinion: Proponents of the third opinion, which asserts that Zakâh on shares should be initially obligatory on the company, base their argument on the evidence used for the second opinion. They argue that if the company fails to pay Zakâh, the shareholders cannot be absolved of their responsibility. This is because shareholders own the assets of the legal entity by virtue of their ownership of the entity itself. If the principal (the company) does not discharge Zakâh, the subordinate (the shareholders) is then required to do so⁽²⁾.

Discussion: This argument implies that Zakâh should be obligatory on the shareholders rather than the legal entity, as the assets held by the company ultimately belong to the shareholders.

Preference:

The preferred opinion, and Allah knows best, is the first one, which holds that Zakâh on shares of joint-stock companies is obligatory on the shareholders, and it is permissible for the company to pay it on their behalf.

Reasons for preference:

- 1- The evidence supporting the first opinion is robust and free from significant counterarguments, while the arguments against the evidence of the second and third opinions are substantial.
- 2- The primary motivation for advocating Zakâh on legal entities is the desire to apply the principle of mixing assets and including newly acquired wealth with previous wealth within the same Zakâh cycle to in-

(1) Comprehensive Guide to Zakâh on Shares (P. 46).

(2) Zakâh on Legal Entities by Al-Saleem (P. 194).

crease the amount of Zakâh and avoid complications related to tracking the shareholders' status regarding nisab (minimum threshold) and the Zakâh cycle. However, this can be achieved without making Zakâh obligatory on non-natural persons who own the wealth. This is possible if the state collects Zakâh from companies or if the company's management pays Zakâh on behalf of the shareholders. Additionally, preferring the view that mixing does not apply to assets other than livestock and not including newly acquired wealth with previous wealth in the Zakâh cycle aligns with this opinion, which addresses practical needs and benefits.

- 3- The argument for making Zakâh obligatory directly on the legal entity without distinguishing between its liability and that of the shareholders aims to resolve the issue of clearing the shareholders' liability if the company does not pay Zakâh. However, proponents of this view fall into a contradiction. Zakâh must either be required of the shareholders, with the company being allowed to pay it on their behalf, or be required of the company as the owner of the wealth, with shareholders not being held accountable for it, similar to debts owed by the company.

Implications of the dispute:

The disagreement in this matter is largely theoretical, and its implications are as follows:

- 1- Under the first view, it is the shareholder's responsibility to pay Zakâh on their shares, and the company can only do so on their behalf if it has been explicitly authorized. Conversely, under the second and third views, the company itself is responsible for paying the Zakâh and can do so without needing explicit permission or authorization from the shareholder.
- 2- According to the first and third views, if the company fails to pay the Zakâh, the shareholder must pay the Zakâh on their shares. However, under the second view, the shareholder has no obligation to pay Zakâh on their shares, regardless of the company's actions.

Impact of intention on the issue:

The impact of intention on the issue manifests in two aspects:

- 1- Proponents of the first view argue that Zakâh on shares is required for

shareholders because Zakâh is an act of worship that necessitates intention, and a legal personality is incapable of intention. However, this argument is flawed because intention is a condition for the validity of performance, not for its obligation. Even if Zakâh were required from the company, the performance would be carried out by natural persons managing the company.

- 2- Proponents of the second view argue that Zakâh should be obligatory for the legal personality, asserting that Zakâh pertains to the realm of situational obligations rather than personal obligations, and thus could be imposed on entities that are not legally accountable. In response, proponents of the first view argue that Zakâh is indeed a matter of personal obligation, evidenced by the requirement of intention for its performance. The requirement of intention supports the argument that Zakâh falls under personal obligation rather than situational, and therefore should only be obligatory for accountable individuals.

Branch: The requirement of intention for zakâh disbursed by the company on behalf of the shareholder

Issue description:

When a company disburses Zakâh on behalf of the shareholder, is it necessary for the shareholder to have the intention to pay the Zakâh? If so, at what point should the shareholder make this intention?

Ruling on the issue:

It has been established that the intention to pay Zakâh is obligatory for the person who has authorized someone to pay Zakâh on their behalf ⁽¹⁾. Thus, a shareholder must have the intention to discharge Zakâh if the company's management is responsible for disbursing it on their behalf, provided it falls within the four conditions under which the company's representation for the shareholder is valid, as specified by the International Fiqh Academy's resolution⁽²⁾.

However, some scholars argue that if the state collects Zakâh from companies, the intention of the state or its representative can substitute for the shareholder's intention, and thus the shareholder's intention may not be required

(1) See: (P.304) of this book.

(2) See: (P.481) of this book.

in this case⁽¹⁾.

Nevertheless, the prevailing view is that voluntary payment of Zakâh to the state or its representative is valid only if it is done with the payer's intention. The intention of the state or its representative can only substitute for the payer's intention if the payer is unable to make their intention due to absence or refusal⁽²⁾. Therefore, the shareholder must make the intention in all cases. If the shareholder is absent or unaware of the need for intention, the intention of the state or its representative will replace the shareholder's intention.

The intention should be made by the shareholder if they are aware that the company will discharge the Zakâh on their behalf and are satisfied with this arrangement, as intention follows knowledge. If the shareholder is unaware that the company is paying Zakâh on their behalf, the company's payment will not suffice due to the absence of the necessary condition of intention from the owner.

Topic (4): The Impact of Intent on the Ownership of Shares and Real Estate Regarding Their Zakâh

This section addresses six issues:

First issue: Ownership of shares and real estate with the intention of holding

Issue description:

When someone acquires shares or real estate with the intention of holding them, meaning they are keeping them from sale until their value increases over the long term in anticipation of profit, should they pay Zakâh on their value each year, or should they pay Zakâh on the sale price only once after selling? And what is the difference between shares and real estate in this regard?

Before clarifying the Zakâh ruling for those holding shares or real estate, it is essential to present the differing opinions of scholars on the Zakâh of a merchant who is holding goods. Scholars have disagreed on the Zakâh of such goods, leading to two primary views:

First opinion: He must pay Zakâh on the value of his assets every year. This view is held by the majority of scholars, including Sufyan al-Thawri and Ish-

(1) See: "Zakâh of Joint-Stock Companies," Al-Dier Shawi, (P.264).

(2) See: (P.258) of this book.

aq ibn Rahwayh⁽¹⁾. It is also the stance of the Hanafi⁽²⁾, Shafi'i⁽³⁾, and Hanbali⁽⁴⁾ schools, and was chosen by Ibn Abd al-Barr among the Malikis⁽⁵⁾. The Permanent Committee for Scholarly Research and Ifta in Saudi Arabia has also endorsed this opinion⁽⁶⁾.

Second opinion: He does not need to pay Zakâh on the value of his assets, but rather he should pay Zakâh on the sale price of the assets for one year. This view was held by some early scholars, including Al-Shaabi, Ata'⁽⁷⁾, Amr ibn Dinar⁽⁸⁾, Rabi'a⁽⁹⁾, and Al-Layth ibn Sa'd⁽¹⁰⁾. It is also the opinion of the Maliki school⁽¹¹⁾ and was endorsed by the Fatwa Committee of the Kuwaiti Zakâh House⁽¹²⁾.

Evidence for the opinions and discussions:

Evidence for the first opinion:

The scholars who support the view that the person who holds assets for speculation must evaluate and pay Zakâh on them annually provide the following evidence:

First evidence: The general evidence indicating the obligation of Zakâh on trading assets. For example, Allah says: "O you who have believed, spend from the good things which you have earned"⁽¹³⁾. Additionally, there is the Hadith

(1) Al-Istidhkar [3:168], Al-Mughni [3:58].

(2) Al-Mabsut [2:190], Tuhfat al-Fuqaha [1:271], Al-Binaya [3:382].

(3) Al-Hawi al-Kabir [3:282], Al-Majmu' [6:47], Asna al-Matali [1:381].

(4) Al-Mughni [3:58], Al-Furu' [4:194], Kashaf al-Qina' [2:241].

(5) Al-Kafi fi Fiqh Ahl al-Madina [1:299].

(6) Fatwas of the Permanent Committee [9:324].

(7) Musannaf Abdul Razzaq (4/96, ed. Al-Azmi), Al-Istidhkar [3:167].

(8) Amr ibn Dinar al-Jumahi, also known as Imam al-Haram, was a renowned scholar and hadith compiler from the Tabi'un. He learned from Ibn Abbas, Ibn Umar, and other Companions. Known for his deep knowledge and piety, he taught in Mecca for thirty years and passed away in 126 AH. See his biography in Tabaqat 'Ulama al-Hadith [1:184] and Siyar A'lam al-Nubala [5:300].

(9) Al-Binaya [3:382], Al-Majmu' [6:47].

(10) Al-Tamhid [10:494].

(11) Al-Mudawwana [1:309], Ishraf 'ala Nukt Masail al-Khilaf [1:403], Al-Taj wa al-Iklil [3:181].

(12) Fatwas and Recommendations of the Kuwait Zakâh House (P. 58, 83).

(13) From Surah Al-Baqarah, verse 267.

of Samura ibn Jundub, who said: “The Messenger of Allah (peace be upon him) used to command us to give charity from what we prepare for sale”⁽¹⁾. This Hadith does not distinguish between those who hold assets for speculation and others⁽²⁾.

This argument is contested in two ways:

First point: The argument that Zakâh becomes obligatory on the speculative seller upon sale does not contradict the general evidence supporting the obligation of Zakâh on trading goods. The evidence confirms the obligation of Zakâh but does not indicate that it must be paid annually if no sale or transaction through buying and selling has occurred.

Second point: The hadith narrated by Samurah ibn Jundub ⁽³⁾has a weak chain of transmission. Even if it is considered valid, it applies to a regular trader ⁽⁴⁾and not to a speculative seller.

Second evidence: It is narrated by Himas ibn Amr ⁽⁵⁾that Umar ibn al-Khattab, may Allah be pleased with him, passed by him and said, “Pay Zakâh on your wealth.” Himas replied, “I have no wealth except in (khafâf) light cloth and (adm) leather.” ⁽⁶⁾Umar said, “Estimate its value and pay Zakâh on it.” ⁽⁷⁾

Point of evidence: Umar, may Allah be pleased with him, commanded the evaluation of trading assets for Zakâh purposes without distinguishing be-

(1) Previously cited. See (P. 83) of this book.

(2) Tuhfat al-Fuqaha [1:271].

(3) See: Al-Badr Al-Muneer [5:594], Irwa' Al-Ghaleel [3:311].

(4) See: (P. 199) of this book, regarding the definition of a regular trader.

(5) He is: Himas ibn Amr al-Laythi al-Madani, Abu Omar, a successor (Tabi'i), who was a prominent figure during the era of Umar ibn al-Khattab. Ibn Hatem classified him among the trustworthy. For details, see: Tahdhib al-Asma' wal-Lughat [1:168], Ta'jil al-Manafa [1:466].

(6) Al-Adm refers to hides. See: Lisan al-Arab [12:10], entry for (Aadam).

(7) Narrated with this wording by Abdul Razzaq in his Musannaf, Book of Zakâh, Chapter on Zakâh of Trading Assets, no. (7099) [4:96], and similarly reported by Al-Shafi'i in his Musnad, Book of Zakâh, Chapter on the Command for Zakâh, Threat for Neglecting it, and Its Obligatory Nature, no. 633, (vol. 1, p. 229), Ibn Abi Shayba in his Musannaf, Chapter on the Merchandise One Possesses for a Year, no. (10456) [2:406], and Al-Bayhaqi in Al-Sunan Al-Kubra, Book of Zakâh, Chapter on Zakâh of Commerce, no. (7603) [4:248]. Ibn al-Mulaqqin said: Al-Bayhaqi narrated it with a sound chain of transmission, which I do not know of any objection to, as mentioned in Khulasat Al-Badr Al-Muneer [1:309].

tween a regular trader and a speculative seller ⁽¹⁾

Discussion: It was argued that the apparent implication from the narration of Himas is that he was managing the trade, which is outside the scope of the current dispute⁽²⁾.

Third evidence: Trading assets are considered wealth subject to the passage of a full lunar year (ḥawl), so Zakâh is required for each year, similar to live-stock and currencies. There is no basis for limiting the obligation to just one full lunar year (ḥawl)⁽³⁾.

Discussion: The claim that trading assets are wealth subject to the passage of a full lunar year (ḥawl) is not accepted. Instead, Zakâh on trading assets is fundamentally due when they are sold and converted into cash. For the regular trader, however, his assets are evaluated annually because he continuously turns over his wealth between goods and cash within the same year, making it impractical to maintain a fixed assessment of his assets⁽⁴⁾.

Fourth evidence: Gold and silver do not accrue growth unless they are invested in trade by purchasing trading assets. When they are placed into trading assets, they take on the same ruling as gold and silver, and Zakâh is required on them every ḥawl (lunar year)⁽⁵⁾.

Discussion: The claim is that trading assets do not achieve growth until they are converted into cash. The default is that Zakâh is not obligatory on them until they are sold, and thus they do not take on the same ruling as gold and silver⁽⁶⁾.

Evidence for the second opinion: Proponents who argue that the speculative trader only pays Zakâh on the proceeds from the sale of trading assets present the following evidence:

First evidence: The saying of the Prophet (peace be upon him): “No sadaqa is due from a Muslim on his slave or his horse.” (Hadith)⁽⁷⁾.

(1) See: Sharh Al-Risala by Qadi Abd al-Wahhab [1:380], Al-Majmu‘ [6:48].

(2) See: Sharh Al-Risala by Qadi Abd al-Wahhab [1:380].

(3) See: Bada’i‘ al-Sana’i‘ [2:20], Al-Hawi Al-Kabir [3:284].

(4) See: Al-Muntaqa Sharh al-Muwatta’ [2:122], Tanbeeh ‘ala Mabadi’ al-Tawjeeh [2:802].

(5) See: Al-Kafi fi Fiqh Ahl al-Madina [1:300].

(6) See: Sharh al-Risala by Qadi Abd al-Wahhab [1:382].

(7) Previously cited; see: P. 59 of this book.

Point of evidence: The hadith indicates that the default ruling for trading assets is that Zakâh is not obligatory. When someone uses cash to purchase trading assets, they have transferred what Zakâh is required on into something where Zakâh is not obligatory. Therefore, Zakâh is only required when the assets are sold and revert to something on which Zakâh is due⁽¹⁾.

Discussion: This reasoning is refuted by the case of the regular trader. It is required for him to evaluate his trading assets and pay Zakâh on their value⁽²⁾, despite Zakâh not being obligatory on the assets themselves.

Second evidence: Zakâh is only obligatory on wealth intended for growth, and trading assets during the period of speculation are not growing. Growth only occurs through their turnover by buying and selling. If they remain unsold, their growth only occurs upon sale, and thus they are only subject to Zakâh once, similar to fruits⁽³⁾.

Discussion: The essence of growth is not considered; rather, it suffices that the wealth is capable of growth. Furthermore, growth is deemed to occur in the case of the speculative trader due to the increase in the value of the trading assets⁽⁴⁾.

Third evidence: Cash is held by the speculative trader twice: first, before purchasing the trading assets, and second, after selling them. The period between these two instances is considered like one hawl (lunar year), even if it spans several years, since Zakâh is not due on the assets themselves. Therefore, Zakâh is only required for the hawl (lunar year) during which the cash was present at both ends⁽⁵⁾.

Discussion: Zakâh is obligatory on the value of trading assets, not on the assets themselves. Thus, the hawl (lunar year) for the wealth does not cease simply because it becomes trading assets.

(1) See: Sharh al-Risala by Qadi Abd al-Wahhab [1:381], Al-Muntaqa Sharh al-Muwatta' [2:122].

(2) See: Al-Nawadir wal-Ziyadat [2:168], Al-Mu'ina 'ala Madhhab 'Aalim al-Madina [P. 372], Mawaheeb al-Jaleel [2:322].

(3) See: Tanbeeh 'ala Mabadi' al-Tawjeeh [2:802], Hashiyat al-Dusuqi 'ala al-Sharh al-Kabeer [1:473], Majmu' Fatawa Ibn Taymiyyah [25:16].

(4) See: Bada'i' al-Sana'i' [2:11].

(5) See: Al-Ishraf 'ala Nukt Masail al-Khilaf [1:384], Al-Muntaqa Sharh al-Muwatta' [2:113].

Fourth evidence: Obliging Zakâh on trading assets of the speculative trader before receiving the sale proceeds is seen as unfair to the owner of the wealth. It imposes a burden on them by requiring Zakâh on the assets before the profit is realized. Zakâh is fundamentally based on mutual assistance and equity⁽¹⁾.

Discussion: Just as it is permissible for a trader to benefit from the profit of what he sells before the ḥawl, even if the entitled recipients do not benefit from receiving its Zakâh, it is also permissible for the entitled recipients to advance Zakâh on the assets before the sale proceeds are finalized and the profit is realized⁽²⁾.

Preference: After considering both opinions and their evidences, as well as the discussions surrounding them, it appears that both opinions have merit. The issue is one where the evidence is balanced. However, I lean—Allah knows best—to prefer the second opinion, which is that the speculative trader is not required to pay Zakâh on the value of the trading assets every year. Instead, Zakâh is due on the sale proceeds for one ḥawl only.

Reasons for preference:

- 1- The obligation of Zakâh on trading assets is based on their being prepared for trade, which involves turning them over through buying and selling. The speculative trader does not engage in this turnover; instead, he plans to profit from selling the asset after a long period. Therefore, the condition for requiring Zakâh on the value every year does not apply to him.
- 2- The default ruling is that Zakâh is not obligatory on trading assets. Zakâh is required on trading assets in relation to the cash they represent, which is realized only upon sale. This differs from the regular trader, who turns over his assets through buying and selling within the same year.
- 3- The second opinion aligns with the purpose of mutual assistance in Zakâh. Requiring Zakâh from the speculative trader every year, especially when such years may be many, would impose hardship. Speculation in trading assets is considered a low-risk investment for those who are not proficient in trading or for those managing the funds

(1) This evidence is mentioned by Al-Mawardi and attributed to the proponents of the second opinion. See: Al-Hawi al-Kabir [3:283].

(2) See: the same reference [3:285].

of orphans and minors. Dr. Abdullah Al-Sulami suggested that the speculative trader should pay Zakâh annually based on the purchase price rather than the market value, as requiring Zakâh based on market value annually when there is no intention to sell is problematic and burdensome. This opinion seeks to reconcile the views of the majority and the Maliki school⁽¹⁾.

However, the view that trading assets should be assessed annually based on the purchase price is not widely recognized among scholars.

Ibn Rushd attributed it to some individuals without naming them⁽²⁾. Therefore, following the opinion of the Maliki school and earlier scholars is preferable to adopting this less established view.

Zakâh on speculative real estate and shares:

First: Speculation in real estate:

Based on the preferred opinion, if someone owns one or more properties with the intention of holding them and not selling until their value increases over the long term, Zakâh is not required on these properties. Zakâh becomes due only when the property is sold, and then the Zakâh is due on the sale proceeds for one year. This opinion was endorsed by Sheikh Abdullah bin Jebreen⁽³⁾ and supported by Professor Dr. Musaed Al-Hakeel⁽⁴⁾.

Second: Speculation in shares:

Speculation in shares differs from speculation in real estate and other assets except for jewelry. This is because shares are backed by Zakâh able assets in the company, such as cash, trading assets, or recoverable debts. The ruling on Zakâh for the speculative shareholder has been previously discussed. It is required that he pay Zakâh on the Zakâh able assets corresponding to his shares, similar to the investor shareholder. If he sells his shares, he must pay Zakâh on the proceeds exceeding the value of the Zakâh able assets corresponding

(1) See: The Impact of Contingencies on the Intention of Zakâh on Real Estate, by Al-Sulami (pp. 74-75).

(2) See: Bidayat al-Mujtahid [2:31].

(3) See: Audio Fatwa available at the following link: <https://www.youtube.com/watch?v=cuS-NxjQMVuQ>.

(4) See: Zakâh on Speculative Assets and Contemporary Applications, published in the Journal of the Fiqh Association, Issue (45), (P. 210).

to his shares for the year of the sale, to avoid [Althiny] Duplication Zakâh ⁽¹⁾.

Second issue: Ownership of shares and real estate with the intention of safeguarding wealth

First: Ownership of real estate with the intention of safeguarding wealth

Issue description:

If someone owns real estate with the intention of preserving their wealth from expenditure, loss, theft, depreciation, or similar concerns, is Zakâh required on these properties or not?

This issue is considered a contemporary problem, and, after thorough research, I have found no discussion by earlier scholars regarding its ruling, even though real estate existed during their time. This is because real estate was not regarded as a repository for wealth and assets as it is now. Contemporary scholars have differed on this issue, with two primary opinions:

First opinion: Zakâh is not required on real estate owned with the intention of safeguarding wealth.

This opinion was endorsed by Sheikh Muhammad ibn Uthaymeen⁽²⁾, and it was chosen by the following researchers: Professor Dr. Ahmad Al-Khalil⁽³⁾, Professor Dr. Abdullah Al-Sulami⁽⁴⁾, and Dr. Abdulaziz Al-Fawzan⁽⁵⁾. This opinion can be aligned with the Hanafi, Maliki, Shafi'i, and Hanbali schools, all of which agree that Zakâh is not obligatory on assets owned without the intention of trade⁽⁶⁾.

Second opinion: Zakâh on Real Estate Owned with the Intention of Safeguarding Wealth

This opinion was endorsed by the Permanent Committee for Scientific Re-

(1) See: (P.469) of this book.

(2) See: Majmoo' Fataawa wa Rasaa'il al-Uthaymeen [18:229], Fataawa Noor 'ala al-Darb al-Uthaymeen [2:10].

(3) See: Zakâh al-Arâdi by Al-Khalil (P. 7).

(4) See: Aathar al-Tawaari' 'ala Niyyat Zakâh al-Aqar (P. 59).

(5) See: Aathar al-Niyyah fi Zakâh al-Aqarat (P. 428).

(6) See: Al-Mabsut [2:198], Tuhfat al-Fuqaha [1:264], Badai' al-Sana'i' [11:2], Al-Talqeen [1:60], Al-Qawaaneen al-Fiqhiyyah (P. 68), Al-Um [2:50], Al-Hawi al-Kabir [3:130], Al-Ri'ayah al-Sughra [1:420], Al-Furu' [4:141].

search and Ifta, chaired by His Eminence Sheikh Abdulaziz ibn Baz⁽¹⁾, and was also supported by His Eminence Sheikh Abdulaziz Al-Sheikh⁽²⁾. A fatwa was issued on this matter by the Symposium on Land Zakâh organized by the Saudi Fiqh Society⁽³⁾. Additionally, this opinion was chosen by researchers including Professor Dr. Fahad Al-Mishal⁽⁴⁾ and Professor Dr. Saleh bin Muhammad Al-Fawzan⁽⁵⁾.

Evidence and discussions:

Evidence for the first opinion: Those who argue against the obligation of Zakâh present the following evidence:

First evidence: Scholars agree that Zakâh is not obligatory on real estate owned with the intention of personal use, and there is no difference between personal use and safeguarding wealth, as personal use refers to holding assets not for trade⁽⁶⁾.

Discussion: This argument is contested on the grounds that safeguarding wealth is not equivalent to personal use. Personal use involves holding assets for benefit or exploitation, while the intention of safeguarding wealth is more closely related to trade due to its association with money⁽⁷⁾.

Counterargument: It can be argued that holding property for utilization is intended for financial gain, and thus does not necessitate Zakâh on trade, similar to holding it for the purpose of preserving wealth.

Second evidence: One of the conditions for the obligation of Zakâh on

(1) See: Fatwa of Permanent Committee for Scholarly Research and Ifta Second Collection [8:115].

(2) See: A sermon delivered by His Eminence at the Imam Turki bin Abdullah Mosque, where he stated: "O Muslim, some may question this and deposit their money in lands, for example, saying: 'I do not want to sell it this year or in the coming years, so why did I put the money in it?' They say: 'I want to preserve my wealth,' but it is said: 'This is intended for trade, either directly or indirectly, and thus it should be valued and a quarter of its value should be given in Zakâh.'" The sermon is published on the Al-Minbar website at this link. <http://www.alminbar.net/alkhutab/khutba.asp?mediaURL=6737>

(3) See: Nataij Nadi Zakâh al-Arâdi - Ru'ya Ta'siliyyah Tatbiqiyyah (P. 2).

(4) See: Zakâh al-Ard - 'Ind al-Fuqaha (P. 282).

(5) See: Hukm Zakâh al-Arâdi (P. 294).

(6) See: Aathar al-Niyyah fi Zakâh al-Aqarat (P. 426).

(7) See: Hukm Zakâh al-Arâdi (P. 291).

trading assets is the intention of trade. Since property owned with the intention of preserving wealth does not involve an intention of trade, Zakâh is not obligatory on it⁽¹⁾.

Discussion: While there is no disagreement about the necessity of having the intention of trade, it is not accepted that the intention of preserving wealth differs from the intention of trade. In fact, it is considered closer to it⁽²⁾.

Counterargument: It can be argued that merely preserving wealth is conceptually different from engaging in trade. Therefore, if someone deposits their money with another person for safekeeping, it cannot be considered as depositing it for trade purposes.

Third evidence: The majority of jurists argue that owning trading assets without exchange does not necessitate Zakâh even if there is an intention of trade⁽³⁾. This is because the default assumption is that such assets are for personal use. Therefore, if Zakâh is not obligatory on such assets even with the intention of trade, it is even less likely to be obligatory on those without any intention of trade⁽⁴⁾.

Discussion: It is not accepted that Zakâh is not obligatory on assets owned without exchange even with an intention of trade, as this matter is subject to dispute⁽⁵⁾.

Evidence for the second opinion: Proponents of the mandatory nature of Zakâh support their position with the following evidence:

First evidence: Owning property with the intention of preserving wealth is not solely for acquiring the property but rather to safeguard the money, making it closer to owning it for trade purposes⁽⁶⁾.

Discussion: The intention of trade involves seeking profit, which is an additional factor beyond merely preserving wealth.

(1) See "Fatâwâ Nûr 'ala al-Darb" by Al-'Uthaymîn, [10:2]; "Zakât al-Arâqî" by Al-Khalîl, (P.7).

(2) See "The Ruling on Zakât of Lands," (P. 291).

(3) See (P. 191) of this book.

(4) See "The Effect of Intention on Zakât of Real Estate," (P.428).

(5) See "The Ruling on Zakât of Lands," (P. 292).

(6) See "Zakât of Land According to the Jurists," (P. 282).

Second evidence: It is widely accepted in economic circles that converting cash into fixed assets is regarded as an investment decision, particularly when there is concern about cash devaluation. Consequently, buying real estate to preserve cash is considered a form of trade⁽¹⁾.

Discussion: However, economic norms are not recognized by scholars unless they satisfy the condition agreed upon by jurists, which is the intention to profit from buying and selling goods.

Third evidence: Zakâh is not obligatory on personal use goods because they provide benefit to their owner without being productive assets. Similarly, items used for community benefit but not growing in value are exempt. However, real estate owned with the intention of preserving wealth does not directly benefit the owner or the community, despite its typical growth in value, making it more akin to commercial goods⁽²⁾.

Discussion: That the properties exceeding personal needs, such as farms and palaces, have no benefit to society, and their prices rise with the increase in the prices of other properties, and no one has stated the obligation of Zakâh on them⁽³⁾.

Fourth evidence: Currently, properties have become a means of hoarding wealth and preserving assets. The apparent principles of Sharia suggest the obligation of Zakâh on such properties unless they are intended for personal use⁽⁴⁾.

Preference:

After considering the two opinions and their evidences, it appears that the preferred view—Allah knows best—is to distinguish between two cases:

- 1- The first case: When an individual intends to protect their wealth from loss, as indicated by the fact that they cannot find a better means of preserving their wealth than buying real estate. In this situation, Zakâh is not obligatory.
- 2- The second case: When an individual intends to protect their wealth

(1) See "The Ruling on Zakât of Lands," (P. 295).

(2) See the ruling on Zakâh of lands, 43 (296).

(3) See: The impact of intention on Zakâh of real estate, (P. 429).

(4) See: Results of the Lands Zakâh Symposium - Foundational and Applied Perspective, (P. 2).

from the depreciation of currency, as indicated by their access to more secure means of preserving their wealth, such as depositing it in a current account. In this situation, Zakâh is obligatory.

Reasons for preference:

- 1- Zakâh is not obligatory on owned assets without the intention of trade, and real estate owned with the intention of protecting wealth from loss does not involve the intention of trade.
- 2- If an individual cannot find a better means of protecting their wealth than buying real estate, it is conceivable that their intention is solely to preserve their wealth from loss without seeking profit or engaging in trade, so Zakâh is not obligatory. Conversely, if better and more secure means are available, it appears that their intention is to protect their wealth from inflation and currency depreciation rather than from loss, and it is unlikely that their intention is free from seeking profit. If their intention was to protect their wealth from loss, then current accounts and similar options would be safer than real estate, making their intention closer to that of trade.
- 3- The aforementioned preference is that if someone does not engage in buying and selling real estate but intends to profit by selling their property after its value has increased over the long term, they are only required to pay Zakâh on the sale proceeds for one year⁽¹⁾.

Reasons for disagreement:

- 1- The difference in understanding the meaning of protecting wealth: Is it closer to the concept of personal use or to the concept of trade? Those who see it as closer to personal use argue that Zakâh is not obligatory, while those who consider it closer to trade argue that Zakâh is obligatory.
- 2- The difference in considering the current status of real estate as a means of hoarding wealth: Those who do not take this into account argue that Zakâh is only obligatory when there is a clear intention of trade, like other types of assets. Conversely, those who consider this status argue that Zakâh is obligatory unless the intention is for personal use or exploitation.

(1) See: Results of the Lands Zakâh Symposium - Foundational and Applied Perspective, (P. 2).

Second: Ownership of Shares with the Intention of Preserving Wealth

Issue description:

If someone owns shares with the intention of protecting their wealth from spending, loss, theft, or similar concerns, should they pay Zakâh as an investor, trader, or speculator?

I have not found any contemporary scholars who have addressed this issue; perhaps this is because shares are different from real estate. Shares are high-risk investments, and it is rare for someone to invest in them solely for the purpose of safeguarding their wealth.

Ruling on the issue:

It seems-Allah knows best-that owning shares with the intention of preserving wealth is not valid because shares are an investment vehicle. Those intending to preserve their wealth typically use safe-holding methods such as a current account, not investment vehicles. If one claims that their intention in owning shares is to preserve their wealth, it can be said: If you are actively trading your money in shares through buying and selling, Zakâh should be paid as a trader. Your actions contradict your intention. If you are holding shares for a long time intending to benefit from future price increases, Zakâh should be paid as a speculator. Otherwise, only the Zakâh of an investor is due⁽¹⁾.

Third: The difference between the intention of selling and the intention of trade in shares and real estate

Issue description:

If someone owns shares with the intention of investing in them and then sells them, or owns real estate with the intention of acquiring it and then sells it, or if they originally owned it for personal use and then intended to sell it, should they pay Zakâh on the commercial assets? What is the difference between the intention of selling and the intention of trade?

Opinions on the issue:

First opinion:

Zakâh is not obligatory on anyone who intends to sell their assets, unless

(1) See the section on how to pay Zakâh for each category of shareholders: (P. 469) of this book.

there is an intention of trade, which involves seeking profit and earning income⁽¹⁾. Not every intention to sell implies an intention of trade; for instance, the owner might intend to sell their assets for reasons other than trade, such as:

- 1- Selling assets to purchase a replacement.
- 2- Selling assets due to not needing them anymore.
- 3- Selling assets to obtain cash⁽²⁾.

This is the view of the majority of scholars, including the Hanafi⁽³⁾, Maliki⁽⁴⁾, Shafi'i⁽⁵⁾, and Hanbali ⁽⁶⁾schools of thought.

Second opinion: Zakâh on trade goods is obligatory for anything that one intends to sell if a full lunar year has passed. This view was issued by the Permanent Committee for Scholarly Research and Ifta⁽⁷⁾, and several fatwas by Sheikh Abdul Aziz bin Baz support this⁽⁸⁾.

Some researchers ⁽⁹⁾have attributed this opinion to Sheikh Bakar Abu Zaid in his book (A Comprehensive Fatwa on Real Estate Zakâh). However, this attribution appears to be inaccurate because Sheikh Bakar Abu Zaid explicitly stated in the same book that Zakâh on trade goods is not obligatory solely based on the intention to sell. He said: "Real estate intended for personal use, such as a residence, if sold to purchase a better property for living, does not require Zakâh because the sale is for a purpose other than trade⁽¹⁰⁾." The texts

(1) See: Al-Mabsut [3:27], Al-Muhit Al-Burhani [2:247], Al-Talqeen [1:61], Manahij Al-Tahseel [2:209], Al-Um [2:50], Al-Tahdheeb [3:103], Al-Insaf [3:154], Mu'awna Awli Al-Nuha [3:264].

(2) See: Sharh Al-Mumti' [6:143], Hukm Zakâh Al-Aradi (P. 288).

(3) See: Al-Mabsut [3:27], Al-Muhit Al-Burhani [2:247].

(4) See: Al-Talqeen [1:61], Manahij Al-Tahseel [2:209].

(5) See: Al-Um [2:50], Al-Tahdheeb [3:103].

(6) See: Al-Insaf [3:154], Mu'awna Awli Al-Nuha [3:264].

(7) See: Fatwas of the Permanent Committee - Second Collection (P. 948). There is another fatwa from the Committee that states Zakâh is not obligatory for items offered for sale for purposes other than trade. See: Fatwas of the Permanent Committee - First Collection [9:338].

(8) See: Fatwas Noor Ala Al-Darb [15:133, 258, 259], Mujmu' Fatawa wa Maqalate Ibn Baz [1:165].

(9) See: Athar Al-Niyya Fi Zakâh Al-Aqarat (P. 435), Hukm Zakâh Al-Aradi (P. 289).

(10) Fatwa Jami'a Fi Zakâh Al-Aqar (P. 27).

that suggest the obligation of Zakâh for those intending to sell their assets should be understood as referring to the intention of trade.

Evidence and discussions:

Evidence for the first opinion:

Those who argue that Zakâh is not obligatory merely based on the intention to sell cite that the intention of trade is a condition for the obligation of Zakâh on assets. The intention to sell is broader than the intention of trade, as trade specifically involves selling for profit and gain. If this intention is absent, Zakâh is not required⁽¹⁾.

Evidence for the second opinion:

The argument for the obligation of Zakâh on all assets intended for sale can be supported by the generality of the Hadith of Samurah ibn Jundub, may Allah be pleased with him, who said: “The Messenger of Allah, peace be upon him, used to command us to give Zakâh from that which we prepare for sale”⁽²⁾.

Discussion: It can be argued that the meaning of “preparing for sale” in the Hadith of Samurah, may Allah be pleased with him, refers to owning assets with the intention of selling them for trade, profit, and gain, not merely any form of sale⁽³⁾.

Preferred opinion and its reason:

The preferred view—Allah knows best—is the one held by the majority of scholars, which is that the obligation of Zakâh on assets is limited to those intended for trade and profit. This is because the evidence supporting this view is stronger and the evidence for the opposing view is weaker.

Branch: The Convergence of the Intention of Trade with the Intention of Selling

The intention of seeking profit and earning income may coincide with other purposes for selling that are not related to trade, such as disposing of an asset or needing cash. Is Zakâh on trade goods required in this scenario?

(1) See: Al-Um [2:50], Mu'awna Awli Al-Nuha [3:264], Sharh Al-Mumtî' [6:143].

(2) Previously cited, see: (P. 83) of this book.

(3) See: Al-Kafi Fi Fiqh Al-Imam Ahmad [1:410].

First scenario: If the assets are owned with the intention of trade, then Zakâh on trade goods is obligatory, even if the owner later intends to sell them to dispose of them or to purchase a replacement without intending profit from that sale. This is because the intention of trade in the assets is not invalidated except by the intention of personal use⁽¹⁾.

Second scenario: If the assets are owned with the intention of personal use and then the owner intends to sell them for profit along with another purpose, such as disposal or needing cash, the primary intention for selling should be considered. If the original intention was to use the sale proceeds as capital for trade or to earn profit from the sale, and this intention is accompanied by the desire to dispose of the asset or similar reasons, then Zakâh on trade goods is required. If the sale proceeds are intended to be used as capital for trade, the year of Zakâh calculation begins from the moment of the sale intention.

If the owner intends to speculate with the asset, they should pay Zakâh on the sale proceeds for one year if they sell it⁽²⁾. This is based on the preferred opinion, which is that personal use assets become trade goods as soon as the intention of trade is made⁽³⁾.

However, if the original purpose of selling personal use assets is not profit and earning, such as buying a replacement or needing cash, and they also intend to profit by selling at a higher price, Zakâh is not obligatory. This is because the primary intention was not trade, and the profit intention is secondary to another purpose⁽⁴⁾.

Fourth: Ownership of shares and real estate without intention

Issue description:

Ownership of shares, real estate, or other assets may occur without a specific intention in two cases:

First case: Indecision regarding the intention and lack of a specific purpose. This case will be discussed in the next issue.

Second case: Lack of knowledge about owning the assets, such as inherit-

(1) See: Tuhfat Al-Fuqaha' [1:272], Al-Bayan [3:308], Al-Mughni [3:62].

(2) See: (P. 490) of this book.

(3) See: (P. 195) of this book.

(4) See: Al-Dhakhira [3:20], Mu'awna Awli Al-Nuha [3:264], Sharh Al-Mumti' [6:142].

ing them and having them in one's possession when the year of Zakâh is due without being aware of it. In this case, is Zakâh required?

First: Ownership of real estate without intention

Scholars agree that Zakâh is not required for real estate and other assets unless they are owned with the intention of trade⁽¹⁾. When the intention is absent due to lack of knowledge of ownership, the intention of trade is also absent, and thus, Zakâh is not obligatory.

Evidence for the issue:

First evidence: The default rule for real estate and other assets is that Zakâh is not obligatory. This is supported by the saying of the Prophet (peace be upon him): "No sadaqa is due from a Muslim on his slave or his horse." ⁽²⁾(Hadith). This principle holds unless there is an intention of trade⁽³⁾.

Second Evidence: When the intention of ownership is absent, it is assumed to be for personal use, as this is the default assumption for owning assets. Personal use assets are not subject to Zakâh ⁽⁴⁾.

Second: Ownership of shares without intention

Company shares differ from real estate and other assets in that they represent a proportional share of the company's assets. Typically, these assets include Zakâh able assets like cash, receivables, and trade goods. If someone owns shares without intention—due to lack of knowledge of their ownership, such as inheriting them without realizing it and then discovering them after a year has passed—does Zakâh become obligatory?

I have not found any contemporary scholars who have addressed this specific issue. Therefore, I have approached it by applying the views of earlier scholars, leading to two differing opinions:

First opinion: Zakâh is not obligatory, and the owner should begin a new

(1) Consensus reported by Al-Mawardi and Ibn Abdul Barr. See: Al-Hawi Al-Kabir [3:88], Al-Istidhkar [3:168], and also see: Al-Muhit Al-Burhani [2:249], Al-Bahr Al-Ra'iq [2:246], Al-Talqeen [1:61], Al-Tabsira [2:883], Al-Tahdheeb [3:102], Al-Majmu' [6:48], Al-Mughni [3:59], Al-Iqnâ' [1:242].

(2) Previously cited, see: (P.59) of this book.

(3) See: Al-Hawi Al-Kabir [3:88], Al-Taj wal-Iklil [3:182].

(4) See: Al-Dhakhira [3:18].

Zakâh year after becoming aware of and taking possession of the shares.

This opinion can be supported by a view among the Hanafi scholars that Zakâh is not required for grazing livestock owned without intention⁽¹⁾. Shares can be compared to grazing livestock because both are self-growing Zakâh able assets, and their growth does not depend on the owner's ability to manage them.

It can also be aligned with the Hanbali view that inherited wealth, of which the heir was unaware, does not require Zakâh under any circumstances⁽²⁾.

Second opinion: Zakâh is obligatory for each past year.

This opinion can be attributed to the Maliki scholars ⁽³⁾and another view among the Hanafi scholars⁽⁴⁾, based on their opinion that Zakâh is required annually for livestock inherited without intention or knowledge, once the owner becomes aware of it.

It can also be aligned with the Shafi'i view that if someone inherits cash and only becomes aware of it after a year has passed, Zakâh is due for that year⁽⁵⁾. Shares are considered even more applicable than cash because they grow by themselves.

Additionally, this view can be related to another opinion among the Hanbali scholars, based on the correct narration in their school, which requires Zakâh for inherited wealth of which the owner was unaware, and that Zakâh should be paid for each year once the owner takes possession of it⁽⁶⁾. Based on this narration, if the shares have not been divided and the heir, who was unaware of their existence, has not yet taken possession of them, he is obligated to pay Zakâh for each past year upon taking possession.

Evidence and discussion:

Evidence for the first opinion: It can be argued that Zakâh is not obligatory

(1) See: Al-Nahr Al-Fa'iq [1:420], Manhaj Al-Khaliq on Al-Bahr Al-Ra'iq [2:229].

(2) See: Al-Furu' [3:447], Al-Mubdi' [2:298], Al-Insaf [3:21].

(3) See: Al-Dhakhira [3:39], Al-Tawdi' [2:250], Sharh Al-Zarqani on Mukhtasar Khalil [2:255].

(4) See: Al-Bahr Al-Ra'iq [2:225], Hashiyat Ibn Abidin [2:273].

(5) See: Al-Hawi Al-Kabir [3:183], Al-Tahdheeb [3:72].

(6) See: Tashih Al-Furu' [3:447], Kashaf Al-Qina' [2:174], Sharh Muntaha Al-Iradat [1:389].

on the shares by stating that Zakâh is based on mutual assistance, and money of which the owner is unaware cannot be subject to Zakâh because the owner cannot manage it⁽¹⁾.

Discussion: The requirement of being able to manage the money for Zakâh to be obligatory may be valid for non-growing assets. However, for self-growing assets like livestock and shares, this condition is not applicable.

Evidence for the second opinion:

First evidence: The general saying of the Prophet Muhammad (peace be upon him): “Whoever acquired wealth, then there is no Zakâh on it until the Hawl has passed while it is in his possession.”⁽²⁾ Since the shares have been in the possession of the owner for a full year, Zakâh is due.

Second evidence: Shares generate growth, which does not depend on the owner’s intention, knowledge, or management. Therefore, Zakâh is required for each past year once the owner becomes aware of them⁽³⁾.

Supporting the Opinion on Zakâh Due After Taking Possession: It is argued that Zakâh is based on mutual assistance, and it is not in line with mutual assistance to obligate the owner to pay Zakâh on wealth he has not yet taken possession of⁽⁴⁾.

Preference:

The preferred view—Allah knows best—is the second opinion, which holds that Zakâh is required on shares inherited by the owner without his knowledge or intention once he becomes aware of them for past years. If he acquired them without his knowledge, such as if they were added to his investment portfolio without his awareness, he should pay Zakâh upon discovering them. Otherwise, he should pay Zakâh when he actually takes possession of them.

He should pay Zakâh as an investor, calculating it based on the Zakâh able assets of the company for that year and giving one-quarter of one-tenth (2.5%). The Zakâh of a trader or a speculator does not apply, as the intention of trade was not present.

(1) See: Sharh Muntaha al-Iradat [1:389]

(2) Previously cited, see: (P.60) of this book.

(3) See: Al-Tawdeeh [2:250], Sharh al-Zurqani on Mukhtasar Khalil [2:255].

(4) See: Al-Mubdi' [2:298].

It should be noted that if the company pays Zakâh on behalf of its shareholders, this does not suffice for the shareholder in this context, as he was unaware of the Zakâh payment, and thus the intention requirement was not met. He must independently pay Zakâh on his shares for the past years.

Reasons for preference:

- 1- The strength of the evidence for the second opinion and the weakness and unsoundness of the first opinion's evidence.
- 2- Shares grow independently of the owner's knowledge, intention, or ability to manage them; thus, Zakâh is due each year.
- 3- Zakâh on trade goods is only required with the intention of trade, and shares held without the owner's knowledge or intention do not meet the trade intention, so they are subject to investment Zakâh.
- 4- As previously mentioned, if a company pays Zakâh on behalf of its shareholders, it suffices if the shareholder is aware of this payment, as it fulfills the intention requirement⁽¹⁾. If the shareholder is unaware, as in this case, the company's payment does not suffice, and the shareholder must personally pay Zakâh on their shares.

Five: Ambivalence between trade and investment intentions for stocks

Issue description:

A person owns shares with a fluctuating intention between trading them (buying and selling) and investing them for annual returns, or owns properties or other assets with uncertain intentions between trade and personal use. The question is whether Zakâh on trade is required in these situations.

Ruling on the issue:

Zakâh on trade is not required for shares owned with an ambivalent intention between trade and investment, nor for properties or other assets owned with a fluctuating intention between trade and personal use. This view is supported by the Hanafi scholars ⁽²⁾ and the Malikis ⁽³⁾, and it is the apparent stance of the Shafi'is, who stipulate that a clear intention of trade is needed to dif-

(1) See: (P.486) of this book.

(2) See: Badâ't al-Şanâ'i' [2:13], al-Muḥiṭ al-Burhâni [2:249], al-Bahr al-Râ'iq [2:226]

(3) See: Jawâhir al-Durar [3:99], Sharḥ al-Khurashī on Mukhtaṣar Khalīl [2:195]

ferentiate between trade assets and personal assets⁽¹⁾. With uncertainty, this differentiation does not occur. The Hanbali view also aligns with the principle that a definitive intention is generally required, and an ambivalent intention holds no legal effect⁽²⁾.

And thus, the Permanent Committee for Scientific Research and Ifta⁽³⁾, as well as Shaykh Abd al-Aziz ibn Baz ⁽⁴⁾and Shaykh Muhammad ibn Uthaymin⁽⁵⁾, have issued a fatwa.

Evidence for the issue:

First evidence: The intention for trade is a condition for the obligation of trade Zakâh. Among the conditions of intention is certainty; if certainty is not achieved, the intention is not fulfilled, and thus trade Zakâh is not obligatory due to the lack of its condition⁽⁶⁾.

Second evidence: The intention for trade was stipulated to distinguish trade goods from personal possessions. Non-certainty in intention does not achieve this distinction, so it is not considered⁽⁷⁾.

Branch: Utilizing circumstantial evidence to determine intention

Some scholars argue that circumstantial evidence and the apparent state of affairs-when available-can be used to ascertain the intention of someone who is uncertain or unaware of their intention⁽⁸⁾. This view is based on the principle established by al-Qarafi and others, which asserts: "Everything that has an apparent meaning should be understood according to its apparent meaning, unless there is a stronger counter-evidence. For what lacks apparent meaning, its interpretation depends on a legal justification"⁽⁹⁾.

(1) See: Kifâyat al-Nabih [5:444], al-Iqnâ' fi ḥall Alfâz Abi Shujâ' [1:215]

(2) See: al-Mughni [1:337], al-Furû' [2:148], Mu'ânat Awli al-Nuhâ [3:386]

(3) See: Fatwas of the Permanent Committee, Second Collection [8:122].

(4) See: Fatwas of Noor on the Path by Ibn Baz [15:259].

(5) See: Collection of Fatwas and Letters by Al-Uthaymeen [18:232].

(6) See: Bada'i' al-Sana'i' [2:13], Jawahir al-Durar [3:99].

(7) See: Al-Iqna' in Solving the Terms of Abu Shuja' [1:215].

(8) See: Zakâh on Lands and Contemporary Issues, Al-Hibani (p. 205), The Effect of Intention on the Zakâh of Properties (P. 441), Recommendations of the Land Zakâh Symposium (P. 2).

(9) Al-Furuq [2:193], and see: Encyclopedia of Juridical Principles [8:562].

For instance, if an individual purchases property in partnership with traders, or acquires a large property that is clearly not intended for personal use and is situated in a non-agricultural area, and then claims uncertainty about their intention or lack of knowledge regarding it, the apparent circumstances indicate that their intention is trade⁽¹⁾. Similarly, if someone buys shares in a company that does not provide annual returns but profits through the increase in share price, the apparent circumstances suggest that the shares were not bought for investment purposes.

It is evident-Allah knows best-that relying on circumstantial evidence to determine intention is especially significant when dealing with individuals known for frequent indecision and lack of consistent intention. This is particularly relevant if they initially declare an intention to trade and later express doubts. Frequent indecision should be disregarded in such cases, as considering it would render the obligation of trade Zakâh effectively non-existent for them.

Six: Combining the intention of trade with the intention of investment in stocks

The combination of two intentions differs from indecision between them. Indecision refers to not being certain about a specific intention, while combining two intentions means being certain of both simultaneously. The intention of trade opposes the intention of absolute acquisition, which is holding for use or exploitation. Therefore, the combination of these two intentions can only occur when one is primary and the other is secondary. Hence, combining the intention of trade with the intention of acquisition in assets can be divided into two cases:

Case one: When the intention of trade is primary and the intention of acquisition or exploitation is secondary:

Issue description:

A person who owns stocks or other assets with the intention of trade and preparation for sale seeking profit, while also intending to benefit from the yield or use the assets until they are sold, does this person have to pay Zakâh on the trade?

(1) See: Ruling on Zakâh on Lands (P. 284).

Ruling on the issue:

Scholars agree that if a person's primary intention ⁽¹⁾is to trade with the assets and they also intend to use or exploit them until sold, this does not affect the intention of trade. Therefore, they must pay Zakâh on these assets as trade goods⁽²⁾.

Benefiting from the yield of trade stocks while they remain in the shareholder's possession is akin to benefiting from other trade assets by wearing them, riding them, or renting them until they are sold.

Evidence for the issue:

First evidence: The intention of trade is not invalidated except by abandoning it and shifting to the intention of acquisition. Here, the intention of trade remains unchanged, and the intention of acquisition or exploitation is merely incidental. Therefore, the intention of trade remains valid, and Zakâh is required⁽³⁾.

Second evidence: It is well known that a person who intends to trade alone may benefit during this time through use, such as wearing, riding, or leasing the asset until it is sold. This use necessarily involves a secondary intention, not a primary one. If this secondary intention had an impact, Zakâh would be waived on many trade assets⁽⁴⁾.

Case two: When the Intention of Acquisition or Exploitation is Primary and the Intention of Trade is Secondary:

Issue description:

A person owns stocks with the intention of investment or assets with the intention of use or exploitation, and if they find a profit, they may sell them, or they intend to sell them seeking profit once their need for them ends. Does

(1) The primary intention of ownership is the true motive for acquiring the property, without which the acquisition would not have occurred. The secondary intention of ownership is that which, if absent, would undermine the purpose of acquisition. See: Manahij al-Tahsil [2:211].

(2) See: Al-Binaya [3:384], Khizanat al-Muftin (p. 842), Al-Tabsira [2:890], Al-Taj and Al-Iklil [3:181], Al-Majmu' [5:359], Hashiyat Qalyubi on Sharh al-Muhalli [2:38], Al-Furu' [4:203], Kashaf al-Qina' [2:243]

(3) See: Al-Binaya [3:384], Khizanat al-Muftin (P. 842).

(4) See: Al-Tabsira [2:890].

Zakâh on trade assets apply in this case?

Opinions on the issue: Scholars have differing opinions on this matter:

First opinion: Zakâh on trade assets is not required. This view is held by the Hanafi school ⁽¹⁾ and is one opinion among the Maliki school⁽²⁾.

There is no specific text from the Shafi'i and Hanbali schools on this issue. For the Shafi'is, this opinion may be derived from their requirement that Zakâh on trade assets necessitates a distinct intention of trade separate from the intention of acquisition⁽³⁾. For the Hanbalis, this opinion aligns with their view that Zakâh on trade assets is only obligatory for those assets specifically prepared for profit and trade⁽⁴⁾.

Second opinion: Zakâh on trade assets is required. This view is reported from Ashhab regarding Imam Malik, and it is the well-known opinion among the Malikis⁽⁵⁾.

Evidence and discussions:

Evidence for the first opinion: Those who argue against the obligation of Zakâh present the following evidence:

First evidence: Zakâh on trade assets is only obligatory for assets specifically prepared for trade with a definitive intention. In this case, the owner acquired the assets with the intention of acquisition due to their need, and the intention to sell them if a profit is found or if they are no longer needed does not change the fact that the assets are intended for acquisition⁽⁶⁾.

Second evidence: The default assumption for assets is acquisition, and if the intention of acquisition coincides with the intention of trade, the intention of acquisition prevails, as it is the primary intention ⁽⁷⁾

(1) See: Al-Muhit al-Burhani [2:249], Fath al-Qadir [2:218], Al-Bahr al-Ra'iq [2:246].

(2) See: Al-Muntaqa Sharh al-Muwatta' [2:121], Al-Tawdih [2:214], Al-Sharh al-Kabir by Al-Dardir [1:472].

(3) See: Kifayat al-Nabih [5:444], Al-Iqna' in Solving the Terms of Abu Shuja' [1:215].

(4) See: Al-Mughni [2:467], Al-Mubdi' [2:292], Mu'ina Awli al-Nuha [3:264].

(5) See: Al-Taj and Al-Iklil [3:181], Al-Durr al-Thamin and Al-Mawrid al-Mu'in (P.424), Sharh al-Zurqani on Mukhtasar Khalil [2:276].

(6) See: Al-Muhit al-Burhani [2:249].

(7) See: Al-Dhakhira [3:18], Al-Tawdih [2:214].

Evidence for the second opinion: Those who argue that Zakâh is required present the following evidence:

First evidence: Acquisition and trade are two distinct primary intentions, each with its own ruling—one necessitates Zakâh, while the other does not. When both intentions are present, the ruling of the one that necessitates Zakâh should be applied as a precaution⁽¹⁾.

Discussion: Precaution should be applied when the evidence is balanced and no clear preference exists. In this case, there is a clear preference, as the default assumption is acquisition, not trade⁽²⁾.

Second evidence: Requiring Zakâh serves as a precaution for the rights of the entitled and considers their interests⁽³⁾.

Discussion: Precaution for the entitled is not more important than precaution for the owner of the assets; nothing should be taken from the owner's property without clear evidence.

Preferred opinion:

The preferred opinion—Allah knows best—is the first view. If a person's primary intention in acquiring stocks is to benefit from their annual returns, or if their primary intention in acquiring other assets is for use or exploitation, and they only intend to sell them for profit if needed, then Zakâh on trade assets is not required unless they decide to sell them for profit and their need for acquisition has ended.

Reasons for preference:

- 1- The strength of the evidence supporting the first opinion and the weakness of the evidence supporting the second opinion, which is not free from criticism.
- 2- Zakâh on trade assets is only obligatory for assets specifically prepared for trade and set aside for that purpose. This description does not apply to assets originally acquired for purposes other than trade.

Seven: Using circumstantial evidence to determine the intention behind owning stocks and real estate

(1) See: Al-Taj and Al-Iklil [3:181].

(2) See: Zakâh on Lands and Contemporary Issues (P. 207).

(3) See: Al-Tawdih [2:214].

Branch one: Using circumstantial evidence when it conflicts with the claim of the zakâh payer in determining their intention:

The scholars of the four Sunni schools of thought agree that the default position is to accept the claim of a Zakâh payer who asserts a reason for exemption from Zakâh, such as claiming that a full lunar year has not passed on their wealth or that they do not intend to trade with it. The majority of scholars accept their statement without requiring an oath⁽¹⁾, while some scholars require an oath⁽²⁾. However, this is the case unless there are evidentiary circumstances that contradict their claim. If such evidence exists, should their statement be accepted or rejected in favor of the evidence? This is what we will discuss in this topic.

Issue description:

If a Zakâh payer specifies their intention in a manner that exempts or reduces the obligation of Zakâh, such as claiming that their intention in acquiring stocks, real estate, or other assets is for exploitation or personal possession, and there are evidentiary circumstances indicating that this claim is false, should their statement be accepted, or should the evidence be taken into account?

An example in stocks: If a Zakâh payer claims that their intention in acquiring shares of a specific company is for investment, but evidence shows that the company has a policy of not distributing dividends and its shares are bought for speculation or profit from price differences at sale, and this infor-

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- (1) The acceptance of the Zakâh payer's statement without requiring an oath: Abu Yusuf from the Hanafi school (according to one of his reports), along with the Malikis, Shafi'is, and Hanbalis (according to the predominant view). See Al-Mabsût: [2:161] Tebyeen al-Haqâ'iq: [1:282] Al-Mudawwana: [1:331] At-Tabsira: [3:940] Al-Majmû': [6:149] Asnâ al-Ma'tâlib: [1:404] Mu'âwana Âwli an-Nuhâ: [3:293] Kashf al-Qinâ': [2:258]
 - (2) The requirement of an oath from the Zakâh payer: The Hanafi school (according to the predominant view) requires an oath from the Zakâh payer. Additionally, the Malikis have an opinion that requires an oath if suspicion arises. Ibn Hamid from the Hanbali school, as mentioned by Ibn Muflih in Al-Furû', suggests the possibility of requiring an oath when suspicion arises. The Shafi'is recommend taking an oath if the claim contradicts the general rule, such as when someone claims to have paid Zakâh themselves, with some scholars even mandating the oath in such cases. See Al-Mabsût: [2:161] Al-Hidâya: [1:104] At-Tabsira: [3:940] Mawâhib al-Jalîl: [2:270] Al-Um: [2:18] Al-Majmû': [6:149] Al-Furû': [4:248] Al-Insâf: [3:190]

mation is well-known to the individual, should their claim be accepted?

An example in real estate: If a company claims that its ownership of certain properties is intended for exploitation, but evidence shows that these properties are outside urban areas and the company's activities are known to involve trading rather than utilizing such properties, should the company's claim be accepted?

Ruling on the issue:

There appears to be consensus among the scholars of the four Sunni schools that if there is evidence indicating that a Zakâh payer is lying about claims such as not having completed a lunar year, having debt that reduces the Zakâh threshold, or not intending to trade with their wealth, their statement should not be accepted. For instance, the Hanafi scholars illustrate this with a case where an individual claims to have paid Zakâh to another official, yet no such official existed that year; they argue that the claim should be rejected due to the clear evidence of falsehood.

Al-Kasani said: "If someone claims that they paid their Zakâh to another collector, and there was no other collector in that year, their claim will not be accepted due to the clear evidence of falsehood."⁽¹⁾

The Malikis state that if the collector comes and someone claims that their livestock was acquired a month or two before the claim, they are believed unless evidence shows otherwise. As mentioned in Al-Jami': "If a person has livestock that is subject to Zakâh and says they acquired it a month or so ago, they are believed unless evidence of falsehood appears."⁽²⁾

The Shafi'is note that if a livestock owner claims that the offspring which completed the Zakâh threshold were born after the lunar year has passed, and the offspring are four months old while the lunar year ended a month or two ago, their claim is not accepted due to the evidence of falsehood. As stated in Tuhfat al-Muhtâj: "If the owner claims the offspring were born after the lunar year or during the Zakâh period or other conditions that would exempt Zakâh, and the collector disputes this, the claim should be scrutinized."⁽³⁾ Shu-

(1) Badâ'i' al-Şanâ'i': [2:36], and see also Al-Mabsûr: [2:161], Tebyeen al-Haqâ'iq: [1:283].

(2) Al-Jâmi' li-Masâ'il al-Mudawwana: [4:262], and see also Mawâhib al-Jalîl: [2:270], Lawâmi' al-Durar: [3:285].

(3) Tuhfat al-Muhtâj: [3:234], and see also Nihâyat al-Muhtâj: [3:65].

rawani adds in his commentary: “The phrase ‘and the claim of each is considered’ means that if evidence clearly shows the falsehood of one party, such as if the lunar year ended in Ramadan and the offspring were four months old, and the owner claims in mid-Shawwal that they were born after the lunar year, their claim is disregarded.” ⁽¹⁾

The Hanbalis state that if a person sells their property or reduces their Zakâh threshold before the lunar year ends and claims they did not intend to evade Zakâh, but evidence indicates otherwise, their claim is not accepted and the evidence is considered. As mentioned in *Kashf al-Qinâ’*: “If someone who sold their property or reduced their Zakâh threshold claims they did not intend to evade Zakâh, but evidence suggests otherwise, the evidence is upheld and their claim is rejected.” ⁽²⁾

Evidence for the issue:

First evidence: The presence of evidence indicating that the Zakâh payer is lying about their claim means that their statement cannot be accepted when their falsehood is apparent. ⁽³⁾

Second evidence: Ignoring the evidence that reveals the Zakâh payer’s falsehood and the obligation of Zakâh would lead to the loss of the rights of those entitled to receive Zakâh. ⁽⁴⁾

From the above, it is evident that it is permissible to consider evidence indicating the intention of the Zakâh payer regarding the ownership of their assets. Saudi Consultative Assembly (The Shura Council) studied the issue of Zakâh collection on land owned with the intention of trade and issued its decision No. (26/19) dated 10/05/1425H, which includes certain indicators to determine the intention of trade in land ownership. These indicators include: ⁽⁵⁾

1- Offering the land for sale.

(1) Hashiyat al-Shurawâni ‘alâ Tuhfat al-Muhtâj: [3:234].

(2) *Kashf al-Qinâ’*: [2:180], and see also *Al-Mubdi’*: [2:305], *Sharḥ Muntahâ al-Îrâdât*: [1:397].

(3) See *Badâ’i’ al-Şanâ’i*: [2:36], *Al-Tahdhīb fi Ikhtisâr al-Mudawwana*: [1:465], *Sharḥ Muntahâ al-Îrâdât*: [1:397].

(4) See *Al-Ṭuruq al-Ḥukmiyya*: [1:4].

(5) See: Shura Council Decision No. (26/19) dated 10/05/1425H, published on the official Shura Council website: <https://www.shura.gov.sa/wps/wcm/connect/shuraarabic/inter-net/Councils+Resolutions/Third+Term/Fourth+Year/>

- 2- The amount of land owned by the payer exceeding their personal and family needs.
- 3- The payer's habit of trading land, buying, and selling.
- 4- The land being outside urban areas with no indication that it is used for agriculture or other non-trade purposes.

The Zakâh, Tax, and Customs Authority in Saudi Arabia adopted the principle of using indicators to determine whether an investment portfolio is held with the intention of trade. The executive regulations for Zakâh collection include conditions that suggest an intention for trade in investment portfolios, such as:⁽¹⁾

- 1- If the payer's activity is trading in investments, as evidenced by financial statements, regulatory documents, or other documents showing the nature of the payer's activity.
- 2- If the investment is listed on the stock market and the payer conducts a sale followed by a purchase, or vice versa, or engages in multiple transactions within the same portfolio during the year.
- 3- If the investor has a declared intention or decision to dispose of the investment⁽²⁾, either at a specific price or within less than one year.

Second branch: Using evidence to determine the intention of the payer who is uncertain about their intention

Issue description:

If a Zakâh payer claims ignorance about their intention regarding the ownership of their shares, real estate, or other assets due to hesitation or inability to distinguish between intentions, and evidence exists indicating their intention, should this evidence be used?

Ruling on the issue:

It appears from the discussions of scholars on the previous topic and their

(1) See: Article (18) of the Executive Regulations for Zakâh Collection issued by the Zakâh, Tax, and Customs Authority, Year: 1445H.

(2) This is the text from the regulations. Note that selling to dispose of assets is different from selling for trading purposes according to the majority of scholars, which is the prevailing view. See: (P.596) of this book.

stipulations about using evidence when it contradicts the Zakâh payer's claim ⁽¹⁾that using evidence in this matter is even more justified. If it is permissible to use evidence when it opposes the payer's claim, it is even more appropriate to use it when it does not contradict their claim.

The Saudi Fiqh Association held a symposium on 04/02/1434H titled: "Zakâh on Land: A Foundational and Practical Perspective," where several scientific papers were presented. The recommendations included: "Evidence should be used to determine whether land is for trade purposes, such as when someone buys land and their habit is trading in land or when someone acquires a large piece of land that is usually not intended for personal use"⁽²⁾.

An example of using evidence is if a payer buys a real estate plot for development or participates in a venture to develop a real estate project, and then claims uncertainty or ignorance about their intention. In such cases, the apparent intention is likely to be trade⁽³⁾.

Similarly, if someone buys shares in a company that does not provide annual dividends but profits from the increase in share price, it is evident that their intention is not investment. It is also permissible to use evidence for individuals known for frequent indecision and rare commitment to a specific intention, especially if they initially affirm the intention of trade, and then later express uncertainty, particularly if indecision is a common trait. In such cases, their indecision is disregarded because if it were considered, they would never be liable for Zakâh on trade.

Evidence for the issue:

The permissibility of using evidence to determine the intention of someone who is unsure about their intention is supported by the principle established by al-Qarafi and others, which states that everything with an apparent meaning is assumed to have that meaning unless there is stronger opposing evidence. For matters with no apparent meaning, no particular interpretation is preferred over another without a valid legal reason ⁽⁴⁾

(1) See: Al-Mabsût: [2:161], Tebyeen al-Haqâ'iq: [1:283], Al-Jâmi' li-Masâ'il al-Mudawwana: [4:262], Mawâhib al-Jalîl: [2:270], Tuhfat al-Muhtâj: [3:234], Nihâyat al-Muhtâj: [3:653], Al-Mubdi': [2:305], Kashf al-Qinâ': [2:180], Sharh Muntahâ al-Îrâdât: [1:397].

(2) Recommendations from the Land Zakâh Symposium: (P.2).

(3) See: Ruling on Land Zakâh : (P.284).

(4) Al-Furûq: [2:193], and see: Encyclopedia of Legal Principles: [8:562], Contemporary =

Evidence can serve as a factor that opposes and changes the apparent meaning of an action. For example, if someone buys personal items like clothing or other goods, the apparent intention is to keep them. However, if these items are placed in a store, this evidence contradicts the apparent intention and suggests that the actual intention is trade.

Similarly, evidence can be a determining factor when there is no clear apparent meaning. For instance, if someone buys a property and it is possible that their intention is for residential use, exploitation, or trade, placing an advertisement to sell the property serves as evidence that favors the intention of trade.

Topic (5): Zakâh on Investment Stocks when the Owner Intends to Donate the Profits

Issue description:

If someone owns stocks with the intention of investing them to donate the profits, is Zakâh required on both the stocks and their profits? Or does the intention to donate the profits exempt the stocks from Zakâh?

Ruling on the issue:

If a person owns stocks with the intention of donating their profits, Zakâh is still required on both the stocks and their profits. The mere intention to donate the profits does not exempt the stocks from Zakâh.

The ruling that Zakâh is due on productive Zakâh able wealth, even when the intention is to donate the income, aligns with the views of the four schools of Islamic jurisprudence:

It aligns with the Hanafi school, which requires Zakâh on wealth pledged for charity ⁽¹⁾(such as through a vow). If Zakâh is due on wealth that is vowed to be donated, it is even more fitting that Zakâh be required on wealth intended for charity, since there is no obligation to actually follow through with the donation.

It aligns with the Maliki school, which requires Zakâh on livestock endowed for charity from its profits, such as milk or wool ⁽²⁾. Zakâh on wealth

= Issues in Land Zakâh, Al-Suhaibani: (P.205).

(1) See: Al-Mabsut [3:38], Al-Muhit Al-Burhani [2:295], Fath Al-Qadeer [2:162].

(2) See: Al-Tabsira [3:1098], Aqd Al-Jawahir [1:213], Al-Dhakhira [3:54].

intended for donation of its profits is even more appropriate, as the owner retains full ownership and control over it ⁽¹⁾

It aligns with the Shafi'i and Hanbali schools, which require Zakâh on any Zakâh able wealth that is owned and fully under the owner's control. Additionally, it aligns with the Hanbali school, which requires Zakâh on jewelry intended for rental income, regardless of whether the owner intends to keep or donate the income ⁽²⁾

Evidence for the issue:

First evidence:

These shares are owned by their holder, and they have the ability to dispose of them freely. The intention to donate the profits has no effect on the completion of ownership, so Zakâh is obligatory on them, just as it would be if the owner had not intended to donate the profits⁽³⁾.

Second evidence:

Shares owned with the intention of earning profits are considered investment shares, and Zakâh is obligatory on them like all other investment shares, regardless of whether the shareholder intends to keep the profits or donate them. This is because the intention to donate is not binding and does not remove the wealth from the owner's possession.

Third evidence:

The wealth intended for donation may be used in ways other than the prescribed channels for Zakâh, and preventing Zakâh recipients from receiving their due from such wealth would be an injustice to their rights.

Based on the above, it is clear that the view of Dr. Fawaz Al-Sulaim, which holds that shares owned with the intention of donating their profits are not subject to Zakâh, is incorrect⁽⁴⁾. I have not found anyone else who holds this opinion, and perhaps he was referring to endowed shares and expressed it as "intended for donation."

(1) See: Al-Hawi Al-Kabir [3:130], Al-Majmu' [5:327], Tuhfat Al-Muhtaj [3:337], Al-Kafi [1:379], Al-Mubdi' [2:296], Kashaf Al-Qina' [2:170].

(2) See: Al-Mughni [3:42], Al-Furu' [4:141], Kashaf Al-Qina' [2:235].

(3) See: Al-Mabsut [3:38], Al-Muhit Al-Burhani [2:295].

(4) See: Zakâh on Legal Entities (P.216).

Topic (6): Zakâh on Non-Traded Shares Owned with the Intention of Trade

Introduction:

Non-traded shares refer to shares whose buying and selling have been temporarily suspended, or whose listing has been canceled in the stock market⁽¹⁾.

The suspension of share trading can either be voluntary, where the issuing company requests the Capital Market Authority (CMA) to temporarily suspend or cancel the listing of its shares in the market for reasons stated in the request, or it can be compulsory, based on a decision by the CMA to suspend trading or cancel the listing of a company's shares. This occurs when any of the situations listed in the listing rules issued by the CMA are met, including the following⁽²⁾:

- 1- If the Authority deems it necessary to suspend or delist the shares in order to protect investors or maintain market order.
- 2- If the company substantially fails to comply with the law, its executive regulations, or the market rules.
- 3- When a final court ruling orders the liquidation process or administrative liquidation of the company that issued the shares according to the Bankruptcy Law.
- 4- If the company issuing the shares fails to meet the deadlines for disclosing its periodic financial information as required by the relevant executive regulations.

Issue description:

If someone owns shares with the intention of trading them by buying and selling in the financial market, and during the year, a decision is made to suspend these shares from trading, is Zakâh due on these shares? Should the Zakâh be calculated as for a trader (the speculative), an investor, or someone waiting for an opportunity (the waiting)?

(1) See: Article 1 of the Capital Market Law issued by Royal Decree No. (M/30) dated 02/06/1424 AH, and the Listing Rules issued by the Capital Market Authority's Board Decision No. (3-123-2017) dated 09/04/1439 H (P.24).

(2) See: Article 6 of the Capital Market Law issued by Royal Decree No. (M/30) dated 02/06/1424 AH, and the Listing Rules issued by the Capital Market Authority's Board Decision No. (3-123-2017) dated 09/04/1439 H (P.24-26).

Opinions on the issue: Contemporary scholars have differed on the matter, forming three main opinions:

First opinion: Zakâh on suspended shares is waived, and Zakâh is only due on their sale price for one year after they are sold. This view was supported by Professor Khalid Al-Mushayqih ⁽¹⁾ and was adopted by the 23rd Contemporary Zakâh Issues Symposium⁽²⁾.

Second opinion: The Zakâh cycle for trading is interrupted, and Zakâh on investment is due instead. This is the view of Professor Yusuf Al-Shubayli⁽³⁾.

Third opinion: Zakâh on the shares should be treated as trade goods, except if the suspension lasts for more than one year, in which case Zakâh is only due on the sale price for one year after the sale. Dr. Mohammed Al-Fazi supports this opinion' and Dr. Ibrahim Al-Seba'i⁽⁴⁾.

Evidence for the opinions and discussions:

Evidence for the first opinion: Those who argue that suspended stocks are exempt from Zakâh and only the sale price should be Zakâh able for one year base their position on the following:

First evidence: They draw an analogy between suspended stocks and debt owed by an insolvent debtor. The common factor is that neither can be disposed of, and debt owed by an insolvent debtor is Zakâh able after being received for one year⁽⁵⁾.

Discussion: This analogy is flawed because the debt owed by an insolvent

(1) See: <https://almoslim.net/node/61793> for a fatwa on distressed stocks, including those that cannot be sold.

(2) See: Proceedings of the 23rd Symposium on Contemporary Zakâh Issues (P. 300).

(3) See: Research on Contemporary Financial Issues [2:222].

(4) See: Zakâh on Suspended Stocks by Al-Fuzai' and Al-Sibai (P498-501). The researchers mention that the Islamic Fiqh Academy issued Decision No. 28, which requires Zakâh on suspended stocks based on their market value, as assessed by experts. However, upon examining the Academy's decision, it is clear that it does not address stocks suspended from trading but rather refers to stocks without a market. There is a distinction between stocks without a market that can still be traded, such as shares in closed joint-stock companies, and stocks listed on the market that have been suspended from trading by legal force, where trading is not possible.

(5) See: Contemporary Financial Issues Research [2:222].

debtor is not received by the owner, whereas the suspended stocks are still owned and can yield benefits, even though they cannot be sold.

Second evidence: The analogy is drawn between suspended stocks and inaccessible property, on the grounds that both are assets that cannot be utilized while retaining ownership. Inaccessible property is Zakâh able after being received for one year⁽¹⁾.

Discussion: This analogy is flawed for two reasons⁽²⁾:

First reason: Inaccessible property is lost, unlike suspended stocks which are still in existence.

Second reason: Inaccessible property is not considered to be growing wealth, whereas suspended stocks are still considered growing wealth.

Evidence for the second opinion: Those who argue that the trading cycle is interrupted and that Zakâh on investment should be applied provide the following evidence:

First evidence: The suspension of stocks from trading prevents their use for trading purposes, and thus, the intention of trade becomes irrelevant because intentions for an impossible action are not considered. If the intention to trade is nullified, the condition for the Zakâh of trade does not apply⁽³⁾.

Second evidence: Suspending a company's stocks from trading does not mean the company's operations, such as buying, selling, and manufacturing, have stopped. The company's assets are still subject to Zakâh, and the stock represents a share of those assets. Therefore, the owner must pay Zakâh on the equivalent portion of the company's Zakâh able assets, which is the Zakâh of investment stocks⁽⁴⁾.

Discussion: The suspension of stocks is often due to violations of disclosure rules and the failure to publish the company's financial statements, which makes it difficult to ascertain the Zakâh able assets corresponding to the stock⁽⁵⁾.

(1) See: Zakâh on Distressed Stocks (P.8) (2) See: Zakâh on Suspended Stocks (P.492)

(3) See: Contemporary Financial Issues Research [2:222], Zakâh on Lands and Contemporary Issues (P.255)

(4) See: Contemporary Financial Issues Research [2:222].

(5) See: Zakâh on Suspended Stocks (P.500)

Counterargument: If it is not possible to determine what corresponds to the stock from the Zakâh -able assets, one can investigate and apply the preponderance of evidence based on the latest published financial data, rather than stating that the obligatory Zakâh has lapsed.

Evidence for the third opinion: Those who assert that Zakâh on stocks is due as trade goods, unless the suspension lasts more than a year, in which case Zakâh is due on its value for one year after sale, support this with the following:

The first evidence: Suspended stocks are fully owned by their holder, who retains the ability to manage them. The trading intention remains intact despite their suspension from the official market, as the owner can still sell them in informal markets; thus, Zakâh is due on them as trade goods⁽¹⁾.

Discussion: The ability to sell stocks in informal markets is not considered valid, as it contradicts both religious principles and regulations. Its inconsistency with Islamic law is evident in that it resembles speculative sales, as the buyer does not know the outcome of those stocks or when the suspension will be lifted. Moreover, such transactions contradict the authority's mandate to regulate the stock market⁽²⁾.

The second evidence: Suspending stocks from trading for more than a year renders them akin to unsold goods, shifting the trader's status from a manager to a speculative trader. Thus, Zakâh is not obligatory unless he sells them for one year⁽³⁾.

Discussion from two perspectives:

First point: The analogy to unsold goods contradicts the notion that the owner can sell stocks in informal markets, regardless of whether the suspension lasts less than a year or more.

Second point: Assigning the status of a speculative trader to the owner of suspended stocks does not negate the obligation of Zakâh on the equivalent Zakâh able assets, as the stocks represent Zakâh able assets that do not lose their Zakâh obligation due to the shift to speculative trader status or the inability to trade.

(1) See: the previous reference (P. 497).

(2) See: Zakâh on Distressed Stocks (P. 5), Proceedings and Papers of the 23rd Symposium on Contemporary Zakâh Issues (P. 122). (3) See: Zakâh on Suspended Stocks (P. 500).

Preference:

The preferred view, and Allah knows best, is the second opinion: that suspended stocks cease to have a trading Zakâh cycle. Their owner takes on the status of a speculative investor, and thus, Zakâh is required on the equivalent Zakâh able assets of the company, unless the company disburses Zakâh on those stocks. If the suspension is lifted and the owner intends to return to trading and actively buying and selling, they initiate a new Zakâh cycle based on that intention.

Reasons for preference:

- 1- The strength of the evidence supporting the second opinion is robust and free from contestation, while the evidence for the first and third opinions is weak.
- 2- Analogizing suspended stocks to distressed assets or debts owed by insolvent parties is flawed; suspended stocks remain under the owner's control, who can secure their value in case of company liquidation, despite being prohibited from selling them in the financial market, unlike distressed assets or debts.
- 3- Stocks correspond to Zakâh able assets within the company, such as cash, trade goods, or recoverable debts. The cessation of trading does not negate the obligation of Zakâh on those assets, similar to livestock intended for trade, where Zakâh remains due even if trading ceases.

Topic (7): The Impact of Intention on Zakâh for Properties Under Construction ⁽¹⁾

Issue description:

For properties under construction owned with the intention of selling for profit, does the intention for trade materialize from the moment of ownership, thus establishing a Zakâh cycle from that time? Or does the intention for trade only become valid after completion? Is Zakâh due on their value each year, or

(1) Properties under construction, or what is referred to as properties under development, are incomplete buildings and include land undergoing infrastructure preparation, as well as real estate facilities under construction, such as residential and commercial buildings. See: Guidelines for Zakâh Accounting for Companies (P.47), Proceedings and Papers of the 22nd Symposium on Contemporary Zakâh Issues (P.448).

is Zakâh only applicable on their sale price for one year after sale?

Clarifying the point of dispute:

- 1- I have not found any disagreement among those who assert the obligation of Zakâh on trade goods regarding properties under construction owned with the intention of trade and offered for sale during their construction. Zakâh is due on their value every year based on their current state, as they are actively offered for sale; therefore, they are considered managed trade goods by consensus⁽¹⁾.
- 2- Scholars have differed regarding properties under construction owned with the intention of selling for profit once they are fully developed or constructed. Is the intention for trade established from the time of ownership? Or are they considered personal property until completion and offering for sale? Is Zakâh due on their value every year, or is it only applicable to their sale price for one year after sale?

Opinions on the issue: I have not found any textual evidence on this matter among earlier scholars, so I adopted an approach of deduction. However, contemporary scholars have differed on this issue into four opinions:

First opinion: Zakâh is due on their value every year based on their current state. This view is supported by the Sharia standard issued regarding Zakâh by the Accounting and Auditing Organization for Islamic Financial Institutions⁽²⁾, and it was also endorsed by Sheikh Muhammad ibn Uthaymeen ⁽³⁾and chosen by Professor Dr. Saleh bin Muhammad Al-Fawzan⁽⁴⁾.

This opinion can be attributed to the Hanafi, Shafi'i, and Hanbali schools, based on their assertion that Zakâh is due every year on the dyer for materials like saffron and turmeric used to dye people's clothes. They reason that these materials leave a trace in the item; thus, Zakâh is required on their value annually⁽⁵⁾.

(1) See: Al-Mabsut [2:190], Al-Binayah [2:382], Al-Mu'inah (P.372), Mawahib Al-Jalil [2:322], Al-Hawi Al-Kabir [2:284], Al-Bayan [2:306], Al-Mughni [2:58], Al-Furu' [4:194], Real Estate Issues (P.393), Proceedings and Papers of the 22nd Symposium on Contemporary Zakâh Issues (P.448), Studies on Contemporary Financial Issues (P.396).

(2) See: Sharia Standards (P 476 – 477).

(3) See: Collected Fatwas and Messages of Al-Uthaymeen [18:227].

(4) See: The Ruling on Zakâh for Land (P.267).

(5) See: Al-Mabsut [2:198], Baday'i Al-Sana'i [2:13], Al-Bayan [2:323], Al-Najm Al-Wahhaj

If they require Zakâh every year on the value of materials that leave an effect in trade items, it is more appropriate to require it on the value of the items during their production and construction.

Second opinion: Zakâh is only obligatory when the property is sold, and its price is due for Zakâh for one year. This view is held by Professor Dr. Abdul Aziz Al-Qasar ⁽¹⁾ and Professor Dr. Musaad Al-Huqail ⁽²⁾

This opinion may also align with the Maliki school if the owner of the property under construction is not actively engaged in trading real estate, purchasing a property, and leaving it for more than a year before selling it for profit, in accordance with their view on Zakâh for the waiting trader⁽³⁾.

Third opinion: Zakâh is not due until the property is completed and offered for sale. Once it is offered for sale after completion, the Zakâh cycle begins, and Zakâh on its value is required every year.

The Permanent Committee for Scientific Research and Ifta in the Kingdom of Saudi Arabia ⁽⁴⁾ endorsed this opinion. It was also adopted by the Sixth Barakah Symposium on Islamic Economics⁽⁵⁾, as well as by the executive regulations for Zakâh collection in the Kingdom of Saudi Arabia, with the addition of several stipulations⁽⁶⁾.

Fourth opinion: Zakâh is due on their value every year based on their current state if there is no barrier preventing their sale during construction. If the owner wishes to delay offering them for sale until after completion in hopes of increasing profit, Zakâh is not required every year if there is a legal, religious,

[3:221], Al-Furu' [4:204], Kashaf Al-Qana' [2:244].

- (1) In his research presented at the 19th Symposium on Contemporary Zakâh Issues titled: Zakâh on Properties Under Development, see: Proceedings and Papers of the 19th Symposium on Contemporary Zakâh Issues (P.66).
- (2) See: Zakâh for the Speculative Trader, published in the Journal of the Fiqh Society, Issue [45], (P.217).
- (3) See: Al-Mudawwanah [1:309], Al-Ishraf on Nukt Masail Al-Khilaf [1:403], Al-Taj and Al-Ikleel [3:181].
- (4) See: Fatwas of the Permanent Committee, Second Collection [8:105].
- (5) See: Resolutions and Recommendations of Barakah Symposia (P.95).
- (6) See: Article [1:53] of the executive regulations for Zakâh collection, issued by the Zakâh, Tax, and Customs Authority in the year 1445 H.

or economic barrier⁽¹⁾. Instead, Zakâh is due only on the sale price for one year after the sale⁽²⁾. This view is held by Dr. Ahmad Al-Umayrah ⁽³⁾and Professor Dr. Yusuf Al-Shubaily⁽⁴⁾. It was also adopted by the 22nd Symposium on Contemporary Zakâh Issues ⁽⁵⁾ and the guidelines for calculating Zakâh for companies issued by the Kuwait Zakâh House⁽⁶⁾. However, the fatwa from the symposium indicates that Zakâh is due when the barrier is removed, implying that the Zakâh cycle begins at that point, and the value should be assessed every year⁽⁷⁾.

Evidence for the opinions and discussions:

Evidence for the first opinion: Proponents of the obligation of Zakâh on the value every year based on its current state argue as follows:

First evidence: The general evidence for the obligation of Zakâh on trade goods does not differentiate between trade goods sold during their construction and those sold after completion. Zakâh is due on the value of trade goods

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- (1) An example of a legal barrier is when the property is mortgaged to another party, a legal barrier could be if the project's permit does not allow for sale during construction, and an economic barrier could be that the property is unsellable due to lack of demand before completion, making it possible to sell only at a loss. See: Studies on Contemporary Financial Issues [2:403].
 - (2) The difference between this opinion and the first is that proponents of the first opinion do not consider the possibility of selling the property during construction; they require Zakâh on its value every year based on the intention to sell after completion. In contrast, those supporting this opinion distinguish between those who can sell the property during construction and those who cannot, even if both intend to sell it after completion. They require Zakâh every year on the first group but not on the second.
 - (3) See: Real Estate Issues (P. 412-413).
 - (4) During his presentation, while comparing the opinions on this issue, he indicated that if the Zakâh obligation period coincides with properties under construction expected to be completed and offered for sale in the following year, there should be no disagreement regarding the obligation of Zakâh on their current value, as they would then be considered liquid assets due to their potential for conversion within a year. See: Studies on Contemporary Financial Issues [2:403].
 - (5) See: Proceedings and Papers of the 22nd Symposium on Contemporary Zakâh Issues (P. 448).
 - (6) See: Guidelines for Calculating Zakâh for Companies (P. 47).
 - (7) See: Proceedings and Papers of the 22nd Symposium (P. 448), Guidelines for Calculating Zakâh for Companies (P. 48).

every year⁽¹⁾.

Discussion: that not all trade goods are required to have their value assessed every year; speculative assets only require Zakâh for one year after sale, which includes properties under construction⁽²⁾.

Second evidence: The intention to trade is established from the moment the owner acquires these properties, as the owner intends to sell them for profit after construction or development. There is no difference between intending to sell them immediately or later; where there is an intention to trade, Zakâh is due every year⁽³⁾.

Discussion: the claim that the intention to trade is only realized after the properties are completed and offered for sale⁽⁴⁾.

Counterargument: It is not a prerequisite for the intention to trade that the item be offered for sale; rather, the essential factor is the existence of the intention to sell for profit, even if in the future.

Third Evidence: Properties can be classified as either for benefit, exploitation, or trade. Properties under construction that are owned with the intention of selling them for profit after completion are not intended for benefit or exploitation, thus they are deemed for trade, and Zakâh on their value is due every year⁽⁵⁾.

Fourth evidence: This can be compared to someone who purchases fabrics to sell them after tailoring for profit. Even if the fabrics are not yet offered for sale, Zakâh on their value is required when the Zakâh period arrives. Similarly, those who buy properties to sell them after construction or development are subject to the same obligation⁽⁶⁾.

(1) See: Proceedings and Papers of the 19th Symposium on Contemporary Zakâh Issues (P.86).

(2) See: Zakâh on Real Estate Plans During the Planning and Development Period, Al-Suhibani, published online: <https://almoslim.net/elmy/291042>.

(3) See: The Ruling on Zakâh for Land (P.267).

(4) See: Zakâh on Real Estate Plans During the Planning and Development Period <https://almoslim.net/elmy/291042>.

(5) See: Proceedings and Papers of the 19th Symposium on Contemporary Zakâh Issues (P.129), Studies on Contemporary Financial Issues [2:398].

(6) See: Collection of Fatwas and Messages of Al-Othaymeen [18:227].

Fifth evidence: A property under construction or development is considered a growing asset, as its value increases over time. Growth is a reason for the obligation of Zakâh on assets, and where the reason exists, the ruling applies⁽¹⁾.

This is contested on the grounds that growth is not a consistent reason; there are growing assets that are exempt from Zakâh according to the majority of scholars, such as fruits and vegetables harvested from the land, and livestock that is fed⁽²⁾.

Evidence for the second opinion: Those who argue that Zakâh is only due when the property is sold, thus requiring Zakâh on its value for one year, present several arguments, including:

First evidence: The owner of a property under construction is compared to a speculative trader, as neither actively engages in buying and selling their assets within a single Zakâh year. Both intend to sell in the long term, and a speculative trader is only required to pay Zakâh on the sale price for one year after the sale⁽³⁾.

This argument is contested in two ways:

First point: It is not valid to differentiate between a speculative trader and a managing trader. What matters is the intention to trade, and trade assets are subject to Zakâh every year, just like other assets that require Zakâh ⁽⁴⁾.

Second point: The comparison is flawed; most owners of properties under construction are actively engaged in trading, gradually developing, and selling as they complete each stage. Thus, they have properties available for sale each year, making them managing traders, unlike those who merely speculate and wait for price increases⁽⁵⁾.

Counterargument: it is argued that while this may be common among property owners, not all should be judged by this norm. Each owner should

(1) See: Zakâh on Operational Assets and Under Development, by Issam Abu Al-Nasr (P.27).

(2) See: Research on Contemporary Financial Issues [2:398].

(3) See: Zakâh on Speculative Assets, published in the Journal of the Jurisprudential Society, Issue (45) (P.218).

(4) See: Zakâh on Real Estate Projects During Planning and Development: <https://almoslim.net/elmy/291042>

(5) See: Research on Contemporary Financial Issues [2:400].

be evaluated for Zakâh on their properties based on their individual circumstances.

Second evidence: Growth in properties under construction or development is only realized upon sale; therefore, Zakâh is only required once growth is confirmed⁽¹⁾.

Discussion: that their growth is indeed realized through increased value, and the sale merely reveals that growth rather than creating it⁽²⁾.

Third evidence: Difficulty in reaching a fair valuation for properties under construction, due to the variability in the value of materials used and the difficulty in obtaining comparable properties⁽³⁾.

Counterargument: It is not accepted that achieving a fair valuation is difficult; estimation suffices for valuation, and this estimation is recognized in Islamic rulings. Moreover, accounting standards acknowledge it. Additionally, market valuation of properties under construction or development is common for financial accounting purposes, so there are no additional burdens⁽⁴⁾.

Evidence for the third opinion: Those who argue that Zakâh is not obligatory on these properties until they are completed and offered for sale cite several points, including:

First evidence: These properties are not prepared for sale during their construction or development because they are only offered for sale once completed. Therefore, they do not fall under the definition of trade commodities until they are listed for sale⁽⁵⁾.

Counterargument: The fact that they are not offered for sale does not mean they are not intended for it. Preparation for sale does not require immediate listing; it involves ownership with the intention of selling for profit, whether now or later.

(1) See: Zakâh on Real Estate Projects During Planning and Development: <https://almoslim.net/elmy/291042>

(2) See: Research on Contemporary Financial Issues [2:398].

(3) See: Research and Proceedings of the Nineteenth Symposium on Zakâh Issues (P.97).

(4) See: Zakâh on Operational Assets and Under Development (P.27), Research on Contemporary Financial Issues [2:399].

(5) See: Research and Proceedings of the Nineteenth Symposium on Zakâh Issues (P.62).

Second evidence: Zakâh is obligatory on trade commodities because they hold the status of money, facilitating transactions through buying and selling. Thus, they are treated similarly to money in terms of Zakâh rulings, including the threshold, required amount, and valuation. Properties under construction or development fall outside the meaning of money as they are not readily tradable or easily liquidated, making Zakâh on them a potential burden on the owner⁽¹⁾.

Counterargument: The claim of difficulty in trading properties under construction is disputed; the owner can often sell them in their current state but may postpone the sale to achieve higher profits⁽²⁾.

Third evidence: Obliging Zakâh on properties under construction each year is unjust to the owner, as these projects may take several years to complete and be sold, causing Zakâh to consume most, if not all, of the project's profits⁽³⁾.

Counterargument: The reduction of profits in a commercial project does not exempt the obligation of Zakâh. Zakâh is a right of Allah on the servant's wealth, and it is not abrogated, even if it exceeds the principal, let alone the profits.

Evidence for the fourth opinion: They argue for the obligation of Zakâh on the value of properties each year if there is no hindrance to selling them during construction, based on the evidence of the first opinion. They argue against the obligation of Zakâh if there is a hindrance to selling them during construction by stating that the existence of such a hindrance removes them from the category of trade commodities, thus Zakâh is only required after the hindrance is removed by the completion of construction or development.

Counterargument: This reasoning holds if the owner intends to sell the real estate project during its construction but is unable to do so due to a hindrance. However, the matter pertains to those who intend to sell only after the project is completed. In such cases, the existence of a hindrance during construction does not affect the owner's intention and does not prevent them from achieving their goal.

(1) See: Research on Contemporary Financial Issues [2:398], Zakâh on Real Estate Company Lands, by Al-Dakhil (P.121).

(2) See: Research on Contemporary Financial Issues [2:399].

(3) See: Research and Proceedings of the Nineteenth Symposium on Zakâh Issues (P.95).

Preference:

Upon reflection on the opinions and evidence, it appears that the preferred stance—Allah knows best—is to differentiate based on the status of the property owner under construction. If the owner is a company or institution engaged in real estate development, they likely own both properties under construction and completed ones available for sale during the year. In such cases, Zakâh is obligatory on the value of the properties under construction or development each year, assessed based on their condition at the time of the Zakâh year. However, if the owner possesses only one project under construction and does not intend to sell until completion, which may take longer than a year, Zakâh on the value of that property is not required; they would only owe Zakâh on its sale for one year.

Reasons for preference:

- 1- The intention to trade is fulfilled in properties under construction owned with the intent to sell for profit after completion. Not offering them for sale before completion does not remove them from being trade commodities, as they are owned for a singular purpose and definitive intention, which is future sale for profit.
- 2- Real estate development companies, which manage their funds in real estate projects, should not be likened to speculative traders; they often have both completed properties for sale and properties under construction within the same year. Therefore, they are subject to the ruling of active traders rather than speculative ones.
- 3- It has been previously stated that properties held with the intent of selling after price increases over the long term do not require annual Zakâh; rather, Zakâh is due on the sale price for one year. This applies to those who do not actively manage their funds across various projects but own properties with the intention of construction over a period exceeding one year before selling for profit.
- 4- The stance that Zakâh on properties under construction is only required after they are offered for sale could lead to the total omission of Zakâh in many commercial projects. Typically, completed projects are sold before the end of the Zakâh year, causing the funds to enter other projects, leaving nothing for the deserving recipients.

- 5- The view of those who adopt the fourth opinion, which differentiates between properties that have a hindrance to selling them during construction and those that do not, is not justified. The issue concerns those who intend to sell the properties after their completion, not those who plan to sell them during construction. Therefore, the existence of such a hindrance does not affect the owner's intention.

Impact of intention on the issue:

In this matter, intention is the cause of disagreement between the proponents of the third opinion, who assert that Zakâh is not obligatory on properties under construction until they are offered for sale, and the other opinions. The proponents of the third opinion believe that the intention to trade is not realized in those properties until they are listed for sale. If the intention to trade is not established, Zakâh is not required. Conversely, other opinions hold that the intention to trade is indeed present and that offering the properties for sale is not a condition for its realization—this is the preferred view. They then differ on whether Zakâh is due on the value of the properties each year or only on the sale price for one year after the sale. They also debate whether a distinction should be made between properties that can be sold during construction and those that cannot. The preferred stance is the previous differentiation, and Allah knows best.

Topic (8): The Impact of Renting Property During Construction on the Obligation of Zakâh

Issue description:

Some property owners with properties under construction—such as buildings and commercial shops—rent them out during construction ⁽¹⁾ with the intention of selling them later at a higher price. This situation involves both the intention to trade and the intention to lease. Does the intention to lease conflict with or affect the intention to trade?

(1) Renting properties under construction falls under the category of renting a described item in a liability; since the building is not specified, determining the land does not necessitate specifying what is built on it. Renting a described item in a liability is permissible according to the majority of scholars, analogous to the sale of a described item in a liability. See: Bada'i Al-Sana'i [4:223], Al-Muhit Al-Burhani [7:563], Al-Mu'inah (P. 1093), Sharh Al-Zarqani [7:5], Al-Mahdhab [2:242], Al-Bayan [7:296], Al-Mughni [5:352], Al-Iqna' [2:283], Research on Contemporary Financial Issues [2:408].

Ruling on the issue:

I have not found any disagreement among those who affirm the obligation of Zakâh on trade commodities that if a person's original intention in acquiring the property is to trade by selling it for profit, and they additionally intend to rent it until the sale, Zakâh is still required on it as a trade commodity. The intention to lease does not impact the obligation of Zakâh on trade⁽¹⁾.

Sheikh Abdul Aziz Ibn Baz (may Allah have mercy on him) states: "As for other lands prepared for trade that may be rented, Zakâh is due on them every year. They should be valued, and Zakâh is paid based on the price at the time of valuation. Likewise, the rent is subject to Zakâh corresponding to its original value"⁽²⁾.

Sheikh Muhammad Ibn Uthaymeen (may Allah have mercy on him) says: "If someone buys a building intending to profit from selling it, with no intention of keeping it, but says, 'As long as I haven't sold it, I will rent it,' then he owes Zakâh on the building itself and also on the rent"⁽³⁾.

Thus, if the owner of properties under construction intends to sell them for profit and also plans to rent them out during construction to increase their selling price, the intention to lease does not affect the intention to trade. Zakâh on trade is obligatory as described in the previous section⁽⁴⁾.

Evidence for the issue:

First Evidence: The intention to trade is not nullified except by abandoning it and shifting to an intention of personal use or exploitation. Here, the intention to trade remains intact, while the intention to lease is merely incidental, thus it does not invalidate the intention to trade⁽⁵⁾.

Second evidence: It is well-known that anyone intending to trade may still benefit from personal use, such as wearing, riding, or renting until the sale occurs. This use inherently includes a secondary intention rather than a pri-

(1) See: Al-Binayah [3:384], Hashiyat Ibn Abidin [2:272], Al-Taj wal-Iklil [3:181], Mawahib Al-Jalil [2:323], Mughni Al-Muhtaj [2:106], Hashiyat Qalyubi on Sharh Al-Mahalli [2:38], Al-Furu' wa Tasih Al-Furu' [4:203], Kashaf Al-Qina' [2:243].

(2) See: Majmu' Fatawa and Various Articles by Ibn Baz [14:169].

(3) See: Fatawa Noor Ala Al-Darb by Al-Uthaymeen [2:10].

(4) See: (P. 515) of this book.

(5) See: Al-Binayah [3:384], Khazanat Al-Muftin (P. 842).

mary one. If this intention were to affect Zakâh, it would exempt many trade commodities from Zakâh ⁽¹⁾.

Third evidence: Renting properties under construction—owned with the intention of trade—is aimed at increasing their value upon sale, not for its own sake. This is evidenced by the fact that they are often sold before a year has passed since the rental, and before the receipt of the subsequent rent. Therefore, the leasing and its intention have no impact on the intention to trade⁽²⁾.



(1) See: Al-Tabsirah [2:890]

(2) See: The Ruling on Zakâh for Lands (P. 270).

Second Treatise

The Impact of Intention on Zakâh for Investment Certificates

Topic (1): Definition of Islamic Investment Certificates (Sukuk)

This section seeks to define investment sukuk, clarify their characteristics, distinguish them from stocks and bonds⁽¹⁾, and enumerate their various types, as elaborated in the following elements:

First: Definition of Islamic investment certificates (Sukuk)

In linguistic terms, “sukuk” is the plural of “suk.” Originally, “suk” refers to a strong blow with a broad object, as in “strike – struck – struck.”⁽²⁾ The term is also used to denote a document or certificate. It is borrowed from Persian and can be pluralized as “asak” and “sukuk,” or “sikkak.”⁽³⁾

In Islamic jurisprudence, a “suk” is defined as a document issued to confirm a right or transaction⁽⁴⁾.

As for investment certificates (sukuk), they have been defined in various ways. The most precise definition, according to the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), is: “Documents of equal value representing common shares in the ownership of assets, benefits,

(1) Bonds: Financial instruments that represent a long-term loan from the issuer to the holders, where the issuer is obligated to pay the nominal value upon maturity along with interest or a conditional benefit. See: Research on Financial Issues [2:267], Participation Sukuk, Al-Anzi (P. 436).

(2) See: Tahdhib al-Lugha [9:318], Al-Muhit in Language [2:18], entry (s-k-k).

(3) See: Mukhtar al-Sihah (P. 187), Lisan al-Arab [10:457], entry (s-k-k).

(4) See: Al-Mabsut [30:205], Al-Binayah [8:466], Al-Nawadir wa al-Ziyadat [10:565], Sharh al-Talqin [2:230], Al-Muhimmat [6:90], Al-Najm al-Wahaj [10:362], Al-Mubdi [8:225], Kashaf al-Qina [6:367].

or services, or in the assets of a specific project or investment activity.”⁽¹⁾

Second: Characteristics of Islamic investment certificates (sukuk)

- 1- They represent a common share in the ownership of financial assets⁽²⁾.
- 2- They are issued in the form of a contract governed by Islamic law and are subject to its rulings⁽³⁾.
- 3- They are issued at equal value and are tradable, but such trading is not valid under Sharia unless the conditions for the sale of the underlying assets are met⁽⁴⁾.
- 4- Islamic Certificates (Sukuk) holders participate in the agreed-upon profits and bear losses in proportion to their ownership⁽⁵⁾.

Third: Similarities and differences between islamic investment certificates (Sukuk) and shares

Islamic Investment Certificates (Sukuk) and shares are alike in that both are financial instruments, tradable, issued at equal value, representing a common share in real ownership, and involve investment risks⁽⁶⁾.

However, they differ in the following ways:

- 1- Sukuk represent ownership in benefits, assets, or investment projects, while shares represent a common stake in the capital of the issuing company⁽⁷⁾.

(1) Sharia Standards (P. 276).

(2) See: Resolutions and Recommendations of the International Islamic Fiqh Academy, Resolution No. 178 (P. 600).

(3) See: Participation Sukuk, Shariq (P. 163).

(4) Islamic Investment Certificates (Sukuk) may represent cash funds, in which case currency exchange rules apply; they may also represent debts, in which case trading them is not permissible; or they may represent ownership in assets and benefits, allowing for trading after the subscription period closes and activities commence. In cases of mixed assets, the predominant nature is considered. See: Sharia Standards [p. 243], Issuance and Trading of Shares and Sukuk, Al-Shubaily (P. 13).

(5) See: Participation Sukuk (P. 163).

(6) See: Zakāh on Islamic Investment Certificates (Sukuk) (P. 52), Rules on Endowments of Shares and Sukuk, Al-Salmi (P. 1330).

(7) See: Rules on Endowments of Shares and Sukuk, Al-Salmi (P. 1330).

- 2- Sukuk serve as a financing tool for the issuer and are usually temporary with a specified duration, whereas shares constitute a partnership in the issuing company and remain as long as the company exists⁽¹⁾.

Fourth: Similarities and differences between islamic investment certificates (Sukuk) and bonds

Islamic Investment Certificates (Sukuk) and bonds are similar in that both are financial instruments, tradable, issued for the purpose of financing investment projects⁽²⁾.

However, they differ in the following ways:

- 1- Sukuk represent a common share in the project or investment activity and are a Sharia-compliant alternative to bonds, which represent a usurious loan⁽³⁾.
- 2- Sukuk are subject to profit and loss, unlike bonds, where the holder receives the principal loan amount and the agreed-upon interest⁽⁴⁾.
- 3- Upon liquidation of the project, the sukuk are sold, and the holders receive their value as agreed with the buyer. In contrast, bondholders receive the nominal value at which the bond was issued⁽⁵⁾.

Fifth: Types of Islamic investment certificates (Sukuk)

Islamic Investment Certificates (Sukuk) are categorized into two types based on what they represent:

First Type: Ownership Sukuk

These represent ownership in assets or benefits⁽⁶⁾. Examples include:

- 1- Ijara (Lease) Sukuk: These represent ownership of leased assets or benefits. They are defined as: "Documents of equal value issued by the owner of an existing asset or its benefits for the purpose of leasing it, with the rental income collected from the subscription proceeds. The

(1) See: Participation Sukuk (P. 438).

(2) See: Zakāh on Islamic Investment Certificates (Sukuk) (P. 51).

(3) See: Islamic Sukuk, Beyond and Correction (P. 3).

(4) See: Participation Sukuk (P. 438).

(5) See: Resolutions and Recommendations of the International Islamic Fiqh Academy, Resolution No. 178 (P. 601); Musharaka (Participation) Sukuk (P. 437).

(6) See: Research on Contemporary Financial Issues (P. 229).

benefits of the asset become owned by the sukuk holders”⁽¹⁾.

- 2- Murabaha (Cost-plus-profit margin sale): These represent ownership in projects or activities managed based on a Mudaraba partnership. They are defined as: “Investment certificates based on dividing the Mudaraba capital into equal shares owned by the sukuk holders, whose profits are proportionate to their ownership in the capital”⁽²⁾.
- 3- Service Sukuk: These represent ownership of specific services or services described as a liability. They are defined as: “Documents of equal value issued for the purpose of providing a service by a specific party or as a liability, with the service’s fees collected from the subscription proceeds. The services become owned by the sukuk holders”⁽³⁾.”

Second Type: Debt-based Sukuk

Examples include:

- 1- Murabaha Sukuk: These are defined as: “Documents of equal value issued to finance the purchase of a Murabaha commodity, which becomes owned by the sukuk holders”⁽⁴⁾.”
- 2- Salam (Sale with spot payment but deferred delivery): These are defined as: “Documents of equal value issued to collect the Salam capital, and the Salam commodity becomes owned by the sukuk holders”⁽⁵⁾.
- 3- Istisna (Construction/Manufacturing Financing) Sukuk: These are defined as: “Documents of equal value issued to use the subscription proceeds for the manufacturing of a product, which becomes owned by the sukuk holders”⁽⁶⁾.

Topic (2): The Impact of Intention on the Zakâh of Islamic Investment Certificates (Sukuk)

Issue description:

Should Islamic Investment Certificates (Sukuk) be subject to Zakâh as trade goods in all cases, or should they be Zakâh able based on the nature of

(1) See: Sharia Standards (P. 238).

(2) See: Mudaraba Sukuk, Shariq (P. 166).

(3) See: Sharia Standards (P. 238).

(4) See: Previous Reference (P. 239); Zakâh on Contemporary Debts (P. 172).

(5) See: Sharia Standards (P. 239).

(6) See: Previous reference, Guide to Calculating Zakâh for Companies (P. 41).

the underlying assets? Furthermore, does the intention behind their ownership affect how they should be subjected to Zakâh?

Opinions on the issue:

Contemporary scholars have differed on this matter, with four main opinions:

First opinion: Zakâh on Islamic Investment Certificates is due as trade goods (Zakâh on trade assets) in all cases. This means that one-quarter of a tenth (2.5%) of their market value must be paid when a full lunar year has passed.

This is the opinion of Dr. Essam Al-Anzi ⁽¹⁾ and is supported by the fatwa of the 13th Contemporary Zakâh Issues Symposium ⁽²⁾.

Second opinion: Zakâh is due on Islamic Investment Certificates held with the intention of trading ⁽³⁾, through buying and selling, as trade goods. However, if the certificates are held with the intention of investment and generating returns, Zakâh is due based on the nature of the underlying Zakâh able assets, which vary depending on the type of Sukuk ⁽⁴⁾.

This is the view of Dr. Abdullah Al-Aydhi ⁽⁵⁾.

(1) See: Research and Proceedings of the 21st Symposium on Contemporary Zakâh Issues (P. 332).

(2) The resolutions of the 13th Symposium state: "Bonds and sukuk representing various assets, benefits, or others, such as participation bonds, Ijarah bonds, and Salam bonds, are subject to Zakâh, including their profits." Research and Proceedings of the 13th Symposium on Contemporary Zakâh Issues (P. 494).

(3) The trading of Islamic Investment Certificates (Sukuk) through buying and selling is permissible when its conditions are met, though this is not the place to elaborate on those conditions. See: Sharia Standards (P. 243–244).

(4) Sukuk representing ownership of assets or leased benefits, such as Ijarah Sukuk, are subject to Zakâh on productive assets (Zakâh al-Mustaghillat). Sukuk representing a common share in commercial activities, such as Mudaraba and Musharaka Sukuk, are subject to Zakâh on trade goods. Sukuk representing debts, such as Murabaha, Salam, and Istisna Sukuk, are subject to Zakâh on debts. Sukuk representing shares in agricultural contracts, such as Musaqah and Muzara'ah Sukuk, are subject to Zakâh on agricultural produce. In all cases, any cash surpluses or receivables within the Sukuk assets are included in the Zakâh able assets. See: Guide to Calculating Zakâh for Companies [p. 42], Research and Proceedings of the 21st Symposium on Contemporary Zakâh Issues (P. 357).

(5) See: Zakâh on Contemporary Debts (P. 182).

Dr. Abdullah Al-Ghufaili ⁽¹⁾also holds this view, and it was endorsed by the 21st Contemporary Zakâh Issues Symposium⁽²⁾.

Third opinion: Zakâh is due on Islamic Investment Certificates (Sukuk) held with the intention of trading through buying and selling, as trade goods. However, if the Sukuk are held with the intention of investment and generating returns, they are subject to Zakâh on productive assets (Zakâh al-Mus-taghillat).

This is the view of Sheikh Abdullah bin Manie⁽³⁾.

Fourth opinion: Sukuk held with the intention of short-term trading through buying and selling are subject to Zakâh as trade goods (Zakâh on trade assets). Sukuk held with the intention of investment and generating returns are Zakâh able based on the nature of their underlying assets. However, if the Sukuk are held with the intention of long-term retention (for more than a year) before being sold for profit, they are subject to Zakâh based on the nature of their underlying assets during the holding period, and in the year of sale, they are subject to Zakâh as trade goods.

This is the opinion of Dr. Yusuf Al-Shubayli⁽⁴⁾.

Evidence for the opinions and discussions:

Evidence for the first opinion: Those who argue that Islamic Investment Certificates (Sukuk) are always subject to Zakâh as trade goods (Zakâh on trade assets) base their opinion on the following:

First evidence:

They claim that Islamic Investment Certificates (Sukuk) have a defined term after which they are liquidated⁽⁵⁾. Therefore, the intention to sell their underlying assets is inevitable, making them comparable to trade goods, thus subject to Zakâh as such⁽⁶⁾.

(1) See: Research and Proceedings of the 21st Contemporary Zakâh Issues Symposium (P. 324-328).

(2) See: Previous reference (P. 357).

(3) See: Previous reference (P. 339).

(4) See: Research on Contemporary Financial Issues [2/231:233].

(5) Sukuk liquidation refers to the process whereby Sukuk holders retrieve their funds by selling the Sukuk's underlying assets back to the issuer. See: Regulations on Sukuk Guarantees and Returns by Al-Qari (P. 7)

(6) See: Research and Proceedings of the 21st Contemporary Zakâh Issues Symposium (P. 332).

Discussion from two perspectives:

First perspective:

It cannot be universally accepted that all Islamic Investment Certificates (Sukuk) have a set term and are liquidated after a certain period, as some Sukuk are issued without a specified end date⁽¹⁾.

Second perspective:

The intention to sell Sukuk for liquidation purposes differs from the intention to sell them for profit. The former does not fulfill the criteria for Zakâh on trade goods, while the latter does.

Second evidence: Supporters of this view also draw from the arguments used by those who advocate for the mandatory payment of Zakâh on trade goods (commercial stocks) in all cases. They argue that Islamic Investment Certificates (Sukuk) are financial instruments purchased with the aim of profit, whether through trading (buying and selling) or through earning returns. In both scenarios, the investor may either profit or incur losses. Therefore, they should be treated as trade goods for Zakâh purposes⁽²⁾.

Discussion: Trade goods are only considered as such when they are acquired with the intention of being sold for profit. If they are acquired with the intention of profiting from their yield, they are not classified as trade goods.

Evidence for the second opinion:

First Evidence: They argue that Zakâh on trade goods is obligatory for Sukuk owned with the intention of trading. This is because some Sukuk can be traded in the market, with a market value that fluctuates from its real value. Thus, those who own Sukuk with the intention of trading them must pay Zakâh on trade goods, as supported by general evidence mandating Zakâh on trade goods⁽³⁾.

Second evidence: They further argue that Sukuk owned with the intention of investment should be subject to Zakâh based on the type of assets they represent. This is because different types of Sukuk represent different assets: Ijar-

(1) See: Shariah Standards (P. 243).

(2) See: Investigation into the Zakâh on Stocks (P. 182), Contemporary Zakâh Issues (P. 181).

(3) See: Research and Proceedings of the 21st Contemporary Zakâh Issues Symposium (P. 232).

ah Sukuk primarily represent leased assets. Musharaka and Mudaraba Sukuk are largely composed of trade goods. Murabaha and Salam Sukuk mainly consist of debts.

In addition, all Sukuk may include cash surpluses and debts among their assets. Thus, the owner should pay Zakâh according to the nature of the assets represented by the Sukuk, just like any other property ⁽¹⁾

Evidence for the third opinion:

Those who support the third view base their argument for the obligation of Zakâh on trade goods for Sukuk intended for trading on the same evidence presented by the proponents of the second view.

They also argue that Sukuk owned for investment should be subject to Zakâh on productive assets (mustaghlat). This is because the Sukuk holder does not directly own the underlying assets or have the right to manage them. Instead, they own the Sukuk themselves, which are used for generating income and profit. Therefore, they should be treated like other productive assets for Zakâh purposes⁽²⁾

Discussion: The fact that the holder of the Islamic Investment Certificates (Sukuk) does not directly own the underlying assets and cannot dispose of them does not imply that he is exempt from Zakâh on those assets. This is because he possesses them indirectly through the ownership of the Sukuk, thereby establishing the foundation of ownership.

Evidence for the fourth opinion: The evidence for this opinion, which states that Sukuk owned with the intention of trading through buying and selling should be subject to Zakâh as trade goods, and that those held with the intention of investment and obtaining returns should be Zakâh able based on what they represent in terms of Zakâh able assets, is essentially the same as the evidence for the second opinion.

As for the evidence that Sukuk owned with the intention of holding them for more than a year before selling for profit should have their Zakâh assessed based

(1) See: Research on Contemporary Financial Issues (P. 277), Guidelines for Calculating Zakâh for Companies (P. 42).

(2) See: Research on Contemporary Financial Issues [2:198], Research and Proceedings of the 21st Contemporary Zakâh Issues Symposium (P. 339).

on what they represent in terms of Zakâh able assets during the holding period, and during the year of sale, they should be Zakâh able as trade goods, it is stated that those who own Sukuk to benefit from their returns and then sell them in the long term after their value increases do not treat the Sukuk as trade goods for Zakâh purposes. Therefore, Zakâh does not become obligatory on them every year, but is based on their situation. In years of savings, they are considered investors, while in the year of sale, their Sukuk are treated as trade goods, necessitating Zakâh on the sale price, akin to the behavior of a trader who is waiting for the right moment according to the Maliki school of thought⁽¹⁾.

Discussion: This leads to the obligation of Zakâh on these Sukuk for two different reasons, which contradicts the original principle. The Maliki school only requires the waiting trader to pay Zakâh on the sale price of trade goods upon selling and does not impose any additional obligation⁽²⁾.

Preference: It appears, and Allah knows best, that the most likely opinion is the fourth one, with slight variations. The Zakâh rulings for Islamic Investment Certificates (Sukuk) do not differ from those of stocks, and they can be classified into three situations:

- 1- Sukuk owned with the intention of trading through buying and selling, which should be Zakâh able as trade goods, requiring the payment of one-quarter of ten percent (2.5%) of their market value upon the completion of a lunar year.
- 2- Sukuk Owned with the Intention of Speculation: These are held with the intention of selling them for profit in the long term, whether the sale occurs through the trading market or through their liquidation. The owner must pay Zakâh on these Sukuk similarly to how a shareholder would pay Zakâh on his shares. This is done by paying what corresponds to their value from the Zakâh base each year. If the Sukuk are sold, the owner pays Zakâh on the excess amount over what corresponds to the Zakâh able assets in the year of sale, provided that the sale price reaches the nisab and the original asset has completed its year⁽³⁾.

(1) See: Research on Contemporary Financial Issues [2:208,231]

(2) See: Al-Mudawana [1:309], Supervision on Notes of Disputed Issues [1:403], Al-Taj and Al-Ikleeel [3:181], Fiqh Al-Taqqdeer in Zakâh Calculation (P. 416).

(3) The individual can calculate the obligatory amount by deducting from the price at which =

- 3- Sukuk Owned with the Intention of Investment for Returns Only: In this case, the owner pays Zakâh based on what these Sukuk represent in terms of assets, and this varies depending on their type. It should be noted here that the rules regarding Zakâh on shares apply to Zakâh on Islamic Investment Certificates (Sukuk) as well (for example, prohibition of [Althiny] Duplication Zakâh). If the Sukuk manager pays the Zakâh on behalf of the Sukuk holders, those who intend to invest in them are exempted from additional Zakâh obligations. Similarly, a speculator is content with what has been paid in Zakâh during the investment years, and he can deduct from the obligatory Zakâh upon selling what was paid for his units in the year of sale. The investor can also deduct what has been paid in Zakâh from his obligatory Zakâh based on the previously discussed method in Zakâh on shares⁽¹⁾.

Reasons for preference:

- 1- Some Sukuk investment units are tradable through buying and selling and can be invested in. Thus, the intention impacts how their Zakâh is calculated, similar to other tradable assets.
- 2- Sukuk investment represents ownership of a shared stake in assets, benefits, debts, or investment activities. The owner pays Zakâh on them without the intention of trade based on what they represent in Zakâh able assets.
- 3- The previously preferred method for calculating Zakâh on shares and Sukuk does not show any significant difference between them that would affect how Zakâh is calculated, as both are tradable securities representing shared ownership in real assets.

Impact of intention on the issue:

From the above, it is clear that the intention affects how Zakâh is calculated for Sukuk investments according to the second, third, and fourth opinions. However, for the first opinion, the intention of owning Sukuk does not affect how Zakâh is calculated. The preferred view is that it does have an effect, as mentioned earlier, and Allah knows best.

= he sold what corresponds to his Sukuk from the Zakâh able assets in the year of sale and then pay Zakâh on the remainder. See p. 468 of this book.

(1) See (P. 473) of this book.

Third Treatise

The Impact of Intention on Zakâh for Investment Funds

Topic (1): The Meaning of Investment Funds

First: Definition of investment funds

The concept of investment funds is based on the idea that a number of small investors pool their funds into an investment vehicle managed by a specialized financial institution, aiming to achieve investment advantages that individual investors cannot attain. Investment funds have been defined in several ways, among the most prominent are:

- 1- It is defined as: A financial vehicle for gathering individual savings and investing them in financial securities, through an entity with expertise in managing investment portfolios⁽¹⁾.

This definition is criticized for being limited to funds that invest only in financial securities and does not encompass other activities.

- 2- It is also defined as: A vehicle created by a specialized financial institution for managing investments; with the purpose of collecting funds and investing them in various fields⁽²⁾.
- 3- According to the definition in the Saudi Capital Market Authority: It is a joint investment program aimed at providing investors the opportunity to collectively participate in the profits of the program, managed by an investment manager for specified fees⁽³⁾.

Based on the above, a comprehensive definition of an investment fund can

(1) See: Islamic Investment Funds, Al-Shayou'i (P. 94).

(2) See: Contemporary Financial Issues [2:237].

(3) See: Article 39 of the Capital Market Law issued by Royal Decree No. (M/30) dated 2/6/1424 H.

be articulated as: A financial vehicle in which investors participate by purchasing units, with the objective of generating profits through the investment of their funds in various fields, managed by a specialized entity for a defined fee.

Second: The elements of investment funds

Investment funds consist of four essential elements:

- 1- The Fund: This is the container in which funds are pooled, consisting of several units⁽¹⁾.
- 2- Fund Units: These are certificates representing ownership rights in a shared portion of the fund's net assets. They closely resemble shares, as both represent a stake in common assets⁽²⁾.
- 3- Fund Manager: This is a licensed individual responsible for managing, safeguarding, and investing the fund's assets⁽³⁾.
- 4- Investor: This is the individual who owns units in the fund⁽⁴⁾.

Third: Types of investment funds

Investment funds can be categorized into several types based on different criteria, as follows:

1- Classification based on fund activity:

a. Securities Funds: In these funds, the money is invested in securities such as stocks, bonds, and others⁽⁵⁾.

b. Murabaha Funds: Also known as commodity funds, in these funds, the money is invested in purchasing goods for cash and then selling them on credit.

c. Real Estate Funds: In these funds, the money is invested in developing, selling, or leasing properties⁽⁶⁾.

(1) See: The Juristic Qualification of Investment Funds, Osama Al-Sheikh (P. 17).

(2) See: Financial Transactions: Original and Contemporary [2:495].

(3) See: Real Estate Investment Fund Regulations, Ministry of Justice Magazine, Issue (58), (P. 243).

(4) See: Zakāh on Investment Funds, Al-Da'ila (P. 4).

(5) See: Research in Contemporary Financial Issues [2:237].

(6) See: Real Estate Investment Fund Regulations, Ministry of Justice Magazine, Issue (58), (P. 246); Research in Contemporary Financial Issues [2:237].

- 2- Classification based on the fund's capital increase potential⁽¹⁾:
 - (a) Closed-End Funds: These are funds with a fixed capital, where no additional units are issued. Investors are not allowed to redeem the value of their units until a specified period ends, although units can be traded on the stock market.
 - (b) Open-End Funds: These are funds with variable capital, where the process of issuing units continues. Investors can redeem the value of their units.
- 3- Investment funds can be categorized into three sections⁽²⁾:
 - (a) Growth Funds: These funds retain their earnings and reinvest them again, aiming to achieve capital gains.
 - (b) Income Funds: These funds distribute their profits at the end of each period, aiming to provide current income for investors.
 - (c) Balanced Funds: These funds distribute a portion of their profits while retaining another portion for investment, positioning them between growth funds and income funds.

Topic (2): The Impact of Intention on Zakâh for Investment Funds

Issue description:

How should investment funds be subjected to Zakâh? Should an investor's units in the fund be treated as Zakâh able assets in all cases, or should they be evaluated based on what they represent in the fund's Zakâh able base? Does the intention behind owning these units influence how Zakâh is calculated?

Opinions on the issue: Contemporary scholars have differing views on this issue, which can be summarized into four main opinions:

- 1- First Opinion: Zakâh is mandatory on investment fund units as trade goods in all circumstances, necessitating the payment of 2.5% of their market value upon the completion of the year. This perspective is en-

(1) See: Research in Contemporary Financial Issues [2:237[.; The Juristic Qualification of Investment Funds (P. 23); Islamic Investment Funds (P. 102).

(2) See: Research on Contemporary Financial Issues [2:237-238[, Islamic Investment Funds (P. 104).

dorsed by Dr. Khaled Al-Mosleh ⁽¹⁾ and Dr. Mohammed bin Saud Al-Asimi⁽²⁾.

- 1- Second Opinion: Zakâh is due on units owned with the intention of trading them through buying and selling as trade goods, while units held for investment and income generation should be Zakâh able based on what they represent in the fund's Zakâh able assets, which varies depending on the fund's activities. This opinion is supported by Dr. Abdullah Al-Ghafili ⁽³⁾ and was echoed in the Fatwa from the Twenty-First Conference on Contemporary Zakâh Issues⁽⁴⁾.
- 2- Third opinion: states that units owned with the intention of trading through buying and selling are subject to Zakâh as trade goods. However, units owned with the intention of investment and earning returns only require Zakâh on their yields, similar to other income-generating assets. This is the view of Sheikh Abdullah bin Mani ⁽⁵⁾.
- 3- Fourth opinion: asserts that in open-end funds, Zakâh on units is mandatory as trade goods, calculated at one-twentieth of their net market value. In contrast, units of closed-end funds are Zakâh able based on what corresponds to the Zakâh base of the fund. Professor Dr. Yusuf Al-Shubaily ⁽⁶⁾ holds this view.

Evidence for the opinions and discussions:

Evidence for the first opinion: Proponents of the obligation to pay Zakâh on investment fund units as trade goods present the following arguments:

First evidence: Investment funds engage in trading the fund's assets on behalf of their participants. Therefore, the units of the fund represent a share of trade assets, making Zakâh on trade goods obligatory⁽⁷⁾.

Discussion: It is contested that investment funds exclusively engage in

(1) In a Fatwa on his official website available at: <https://www.almosleh.com/ar/16848/>.

(2) In a published Fatwa available online at: <https://ar.islamway.net/fatwa/40023/>.

(3) See: Research and Proceedings of the Twenty-First Conference on Contemporary Zakâh Issues (P. 309).

(4) See: The same reference (P. 359).

(5) See: the previous reference (P. 339).

(6) See: Research in Contemporary Financial Issues [2:254-269].

(7) See: Zakâh on Portfolios and Funds (P. 15).

trading. Some funds operate in areas other than buying and selling, such as investing in securities or renting properties⁽¹⁾.

Response: It is asserted that these funds have a defined term after which they are liquidated, thus the intention to sell their assets is inevitable. Therefore, such assets are considered trade goods in all circumstances⁽²⁾.

Counterargument: The intention to sell the fund's assets for liquidation purposes differs from the intention to sell for profit; the former does not impact the obligation of Zakâh on trade goods, while the latter does.

Second evidence: An investor in the fund only benefits upon selling their units, as funds do not distribute cash returns to investors; instead, they add these returns to the unit's value. Unlike shares, the intention to sell the fund's units is inherently present for the owner at all times, making Zakâh on them obligatory as trade goods⁽³⁾.

Discussion: It is contested that not all investment funds do not distribute cash returns; rather, only growth funds do not. Additionally, growth funds can provide utility from their units without selling them by remaining in the fund until its liquidation and retrieving the value of the units. Therefore, the intention of trade is not necessarily realized in those units.

Evidence for the second opinion:

First evidence: It is argued that Zakâh on trade goods should be applied to units of the fund owned with the intention of trading, as some investment funds allow for trading their units in the market, having a market value distinct from their actual value, similar to other financial instruments. Hence, those who own them with the intent of trade are obligated to pay Zakâh on them based on the general evidence supporting the obligation of Zakâh on trade goods⁽⁴⁾.

Second evidence: It is also argued that units of the fund owned with the intention of investment should be Zakâh -able based on what corresponds to the

(1) See: Zakâh on Investment Funds (P. 22).

(2) See: Research and Proceedings of the Twenty-First Symposium on Contemporary Zakâh Issues (P. 332).

(3) See: Research in Contemporary Financial Issues [2:241].

(4) See: Research and Proceedings of the Twenty-First Symposium on Contemporary Zakâh Issues (P. 309).

Zakâh base of the fund. Investment units represent a share of the fund's assets, which must contain Zakâh -able assets from its operations or otherwise. A unit holder intending to invest is a partner in the fund's assets, and thus must pay Zakâh on what corresponds to their investment units, similar to other partners in various companies⁽¹⁾.

Evidence for the third opinion: Proponents of the obligation of Zakâh on trade goods in units of the fund owned with the intention of trading cited the same arguments presented by the supporters of the second opinion. They also argued that the units of the fund owned with the intention of investment are subject to Zakâh as al-Mustaghillat. This is based on the premise that the investor does not own any of the fund's assets, as they cannot manage these assets directly. Instead, they only own the units, which they have acquired for the purpose of utilization and profit. Thus, they are required to pay Zakâh on them, just like any other al-Mustaghillat⁽²⁾.

Discussion: The fact that the investor does not directly own the fund's assets and cannot act upon them does not imply they are exempt from Zakâh. They possess those assets indirectly through their ownership of the units, and the original ownership is maintained.

Evidence for the fourth opinion: Proponents of the view that open-ended investment fund units are subject to Zakâh as commercial goods, while closed-ended investment fund units are assessed according to their corresponding Zakâh base, present several arguments, including:

First argument: The default position regarding closed-ended fund units is that they are non-tradable, as exit from these funds is considered an exception; the norm is for investors to remain until the fund is liquidated. Therefore, the intention for trade is not realized in these units, and they should be assessed based on what corresponds to their Zakâh base⁽³⁾.

Discussion: It is disputed that the default position of closed-ended fund units is non-tradability; there are indeed closed funds whose units are traded in the financial market, and this does not contradict the inherent characteris-

(1) See: Zakâh on Portfolios and Funds (P. 17).

(2) See: Research on Contemporary Financial Issues [2:198], Research and Proceedings of the Twenty-First Symposium on Contemporary Zakâh Issues (P. 339).

(3) See: Research in Contemporary Financial Issues [2:254].

tic of fixed capital in closed-ended funds⁽¹⁾.

Second argument: The structure of open-ended funds is based on the continuous trading of their assets, as they allow investors to enter and exit on an ongoing basis. Hence, the fundamental assumption is that they are intended for trade, and they should be assessed accordingly, regardless of the nature of their assets⁽²⁾.

Discussion: This notion can be challenged by the nature of shares; the structure of joint-stock companies—especially those listed on trading markets—also involves continuous trading with the entrance and exit of shareholders. Nevertheless, Zakâh on commercial goods is not obligatory for all shareholders; rather, it is necessary to consider the intention of the shareholder and the activities of the company.

Third argument: The predominant activity of open-ended funds is trading through the buying and selling of assets. Even the assets that the fund manager holds for a certain period are subjected to price fluctuations, and the manager is always waiting for the right opportunity to sell. Consequently, the intention for trade is inevitably present with the fund manager⁽³⁾.

Discussion: It is challenged that the predominant activity of open-ended funds is trading, and that the intention for trade is inherent with the fund manager. There are funds that engage in leasing and long-term investments, where selling may not be driven by profit motives but rather by intentions of liquidation and disposal.

Fourth argument: Open-ended funds do not include non-Zakâh able assets, as all of their holdings can be liquidated at any time, thus they fall under the category of commercial goods⁽⁴⁾.

Discussion: It has been argued that the liquidity of assets is not a criterion for classifying them as trade commodities. For instance, a person may own real estate for the purpose of investment that they can sell at any time; thus, while these assets are liquid, they are not considered trade goods⁽⁵⁾.

(1) See: *The Juridical Structuring of Investment Funds* (p. 23).

(2) See: *Research in Contemporary Financial Issues* [2:269].

(3) See: The previous reference.

(4) See: The previous reference [2:270].

(5) See: *Researches and Proceedings of the Twenty-First Symposium on Contemporary Zakâh Issues* (P. 342).

Fifth argument: An investor in open-end funds benefits from their units only upon selling them, either through redemption or sale in the market. This is because open-end funds do not distribute cash returns to investors but rather add those returns to the unit's value, unlike stocks. Therefore, the intent to sell the fund's units is inherent for the owner, which necessitates the payment of Zakâh on them as trade goods⁽¹⁾.

Discussion: This point is countered in the same manner as the second argument presented for the first opinion.

Preference:

Upon careful consideration of the various opinions and their supporting evidence, it appears that the second opinion, with minor variations, is the most compelling. The predominant view—Allah knows best—is that the Zakâh of investment fund units varies based on the intention behind their ownership, which can be classified into three scenarios:

- 1- Units Owned with the Intention of Trading: Those that are bought and sold for profit must pay Zakâh as trade commodities, calculated at a quarter of ten percent of their market value upon the completion of the year.
- 2- Units Owned with the Intention of Speculation: This refers to units intended for long-term profit through eventual sale. The owner should pay Zakâh on these units similarly to how a speculative shareholder pays Zakâh on their shares, which involves calculating what corresponds to them from the Zakâh base each year. If sold, the Zakâh on the price exceeding the equivalent of the Zakâh able assets in the year of sale is also required, provided that the price reaches the Nisab and the year of the principal amount has passed⁽²⁾.
- 3- Units Owned for Investment and Income Generation Only: In this case, without any intention of profiting from price differences, the owner should pay Zakâh according to what corresponds to them from the Zakâh base of the fund, which varies depending on its activities. The Zakâh base for the fund is akin to that of companies.

(1) See: Studies in Contemporary Financial Issues [2:269].

(2) He can determine the amount due by deducting from the price at which he sold what corresponds to his units from the Zakâh base in the year of sale, and then he pays Zakâh on the remaining amount. See: (P. 468) of this book.

It should be noted that the same rules applied to Zakâh on stocks regarding the prohibition of deduction also apply to Zakâh on investment fund units. If the fund management pays Zakâh on behalf of the investors, this suffices for the investment intention. Similarly, a speculative investor can rely on what the fund management pays during the investment years and may deduct from the obligatory Zakâh upon sale what the management has contributed regarding their units in the year of sale.

The investor is also entitled to deduct the Zakâh amount that the management has paid on his units from the Zakâh due on him, in the manner previously discussed regarding the Zakâh of shares⁽¹⁾.

Reasons for preference:

- 1- Some investment funds have units that are tradable through buying and selling, as well as being suitable for investment, so the intention affects the way Zakâh is calculated, similar to other trade goods.
- 2- The units of investment funds represent a share of the fund's assets, so their owner must pay Zakâh on them without the intention of trading, according to what corresponds to them from the Zakâh base of the fund.
- 3- The previous preference regarding the calculation of Zakâh for shares applies here as well, and there is no significant difference between investment fund units and shares regarding the manner of Zakâh; the fund is akin to a joint-stock company, the units are like shares, and the unit holder is comparable to a shareholder.

Impact of intention on the issue:

From the above, it is evident that intention influences the manner of Zakâh for investment funds according to the second and third opinions. However, proponents of the first and fourth opinions do not see that the intention of holding investment units affects how Zakâh is calculated. The prevailing view is that it does have an effect, as previously discussed, and Allah knows best.

Branch: The difference in investment funds in shares between the investor's intention and the fund manager's intention

(1) See (P. 468) of this book.

Issue description:

Investment funds that focus on stocks have varying Zakâh bases depending on the intention behind owning those shares. The intention of the unit holder may differ from that of the fund manager. For instance, the unit holder may intend to invest in these shares, while the fund manager may intend to trade them or hold them for speculation, and vice versa. Thus, the question arises: Is the intention of the unit holder or that of the fund manager more significant when calculating the Zakâh base for these funds?

Ruling on the issue:

The key factor in determining the Zakâh base for stock funds is the intention of the fund manager, regardless of whether that intention involves trading, speculation, or investment. The unit holder's intention concerning the ownership of the fund's assets is not considered in the calculation of the Zakâh base. Rather, the unit holder's intention is pertinent only for assessing how Zakâh should be applied to their units⁽¹⁾.

Evidence for the issue:

First evidence: The fund manager is the one who has control over the fund's assets, such as stocks and others, and makes the investment decisions, whether for trading, speculation, or investment. In contrast, the unit holder can only act regarding their units, so their intention is not considered in matters they have no control over⁽²⁾.

Second evidence: This ruling is supported by the fact that participating in equity investment funds implicitly grants the fund manager the authority to decide on the management of the fund's assets, as it is based on their mandate to manage those assets. Consequently, the intention of the agent is the determining factor, rather than the intention of the principal.

Topic (3): The Impact of Intention on the Zakâh of Exchange-Traded Funds

Exchange-traded funds (ETFs) are a specific type of investment fund. An

(1) See: "Research on Contemporary Financial Issues" [2:259] and "Proceedings of the 21st Symposium on Contemporary Zakâh Issues" (P. 322).

(2) See: Research and Proceedings of the 21st Symposium on Contemporary Zakâh Issues (P. 322).

ETF is defined as “an investment vehicle divided into several units listed on the financial market, whose assets consist of a collection of securities belonging to a specific index⁽¹⁾, such that the fund’s investments align with the components of that index”⁽²⁾.

ETFs have several characteristics, including⁽³⁾:

- 1- They invest solely in securities and do not engage in other commercial activities.
- 2- Their investment units are tradable on the financial market.
- 3- The fund’s assets consist of securities that match the components of a specified index.
- 4- The fund management is passive, focusing on maintaining fixed ratios of the securities represented by the targeted index without actively trading the assets.

Issue description:

How should the units of exchange-traded funds (ETFs) be subjected to Zakâh? Should the holder treat them as trade goods in all cases, or should the Zakâh be based on the holder’s intention for owning them? If the holder does not intend to trade, does the intention of the fund manager affect the calculation of the Zakâh base, similar to other investment funds?

Opinions on the issue:

Researchers are divided into two opinions on this matter:

First opinion: Zakâh is mandatory on ETF units as trade goods, necessitating the payment of 2.5% of their market value at the end of the year. This

(1) In financial markets, an index is: a number calculated statistically based on the prices of a selected bundle of securities, assigning each a weight according to its market value and dividing the total by a fixed number. See: Standard No. (27) from the Standards of the Accounting and Auditing Organization for Islamic Financial Institutions (P. 382).

(2) See: Research on Contemporary Financial Issues [2:268], Islamic Exchange-Traded Funds and Their Role in Enhancing the Performance of Emerging Financial Markets, by Dr. Azeddine Ben Sharchar (P. 376).

(3) See: Jurisprudential Rules for Exchange-Traded Funds, Al-Qaydi (P. 19), Research on Contemporary Financial Issues [2:268], Zakâh of Exchange-Traded Funds, Al-Suhibani and Al-Ghufaili (P. 6).

perspective is endorsed by Professor Dr. Yusuf Al-Shubaili⁽¹⁾.

Second opinion: The units are subject to Zakâh as trade goods if they are owned with the intention of trading. However, if they are owned with the intention of investment, Zakâh should be calculated based on what corresponds to the Zakâh base of the fund. The Zakâh base of the fund consists of the assets represented by the stocks held by the fund, and if those stocks are already subject to Zakâh, then there is no Zakâh owed by the unit holder. This view is held by Professor Dr. Mohammed Al-Suhaibani and Dr. Abdullah Al-Ghufaili⁽²⁾.

Evidence and discussions:

Evidence for the first opinion: Proponents of the obligation of Zakâh on the units of investment funds as trade goods cite the following:

First evidence: An investor in open-end funds—such as ETFs—only benefits from their units upon selling them, as these funds do not distribute cash returns to investors. Instead, they add those returns to the value of the unit, unlike stocks. Therefore, the intention to sell the fund units is present for the holder in all cases, making it obligatory for them to pay Zakâh as trade goods⁽³⁾.

Discussion: It should be noted that the policies of ETFs vary; some distribute profits, as seen in ETFs that invest in sukuk, such as the (Albilad Saudi Sovereign Sukuk ETF)⁽⁴⁾. Others aim for long-term capital growth and retain distributions within the fund to reflect on the net asset value.

For example, the “Yaqeen Saudi Equity Fund” ⁽⁵⁾serves as a case where the intention of investment from the unit holder cannot be assumed, except in cases of ignorance regarding the fund’s policies. Generally, it is expected that those trading units in such funds intend to profit from the price differences of the units, whether through long-term holding—which is more common—or through short-term speculation and trading. Consequently, it is not appropriate to apply a uniform ruling to all funds; rather, the ruling should depend on

(1) See: Research on Contemporary Financial Issues [2:270].

(2) This is discussed in their paper titled: “Zakâh on Index Funds,” refer to (P. 36) of the mentioned research.

(3) See: Research on Contemporary Financial Issues [2:269].

(4) See: Terms and Conditions of the Albilad Saudi Sovereign Sukuk ETF (P. 25).

(5) See: Conditions and Regulations of the Yaqeen Exchange-Traded Fund for Saudi Stocks (P. 14).

the intention of the unit holder.

Second evidence: The structure of open-end funds, including exchange-traded funds (ETFs), is based on the continuous trading of their assets, as they are open to the constant entry and exit of investors. Therefore, the original intention is that of trading, and they should be subject to Zakâh based on this principle, regardless of the nature of their assets⁽¹⁾.

Discussion: This is countered by the case of stocks; the structure of joint-stock companies—especially those listed in the trading market—is also based on continuous trading through the entry and exit of shareholders. Nonetheless, Zakâh on trade goods is not obligatory for all shareholders; rather, the intention of the shareholder and the activity of the company are considered.

Third evidence: The primary activity of these funds involves trading their assets through buying and selling, thus establishing the intention of trade on the part of the fund manager in any case⁽²⁾.

Discussion: This does not apply to exchange-traded funds, as a key characteristic is that they have passive management, which does not actively trade the fund's assets. Instead, the fund retains fixed proportions of the securities represented by the targeted index⁽³⁾.

Evidence for the second opinion:

First evidence: The obligation of Zakâh on trade goods for units of index funds owned with the intention of trading is supported by the fact that exchange-traded funds can have their units traded in the market through buying and selling, and they possess a market value that differs from their intrinsic value, similar to other financial instruments. Therefore, anyone who owns these units with the intention of trading is required to pay Zakâh on trade goods, based on the general evidence that supports Zakâh on trade goods⁽⁴⁾.

Second evidence: It is argued that the units of the fund owned with the intention of investment and earning returns should be Zakâh according to what corresponds to them from the Zakâh base of the fund, based on the following:

(1) See: Research in Contemporary Financial Issues [2:269].

(2) See: The previous reference.

(3) See: Zakâh on Index Funds (P. 27).

(4) See: Research and Proceedings of the 21st Symposium on Contemporary Zakâh Issues (P. 309).

The units represent a share of the fund's assets, which include Zakâh -able assets from its own activities or others. The unit holder who intends to invest is essentially a partner in the fund's assets, and thus must pay Zakâh on what corresponds to their investment units from the Zakâh base, similar to other partners in various companies⁽¹⁾.

Evidence Three: It is also argued that if the fund's assets consist of Zakâh -able securities, then there is no Zakâh due from the unit holder, because exchange-traded index funds are managed passively, where the fund manager does not have the intention of trading the assets. Therefore, the Zakâh base for the fund is determined by identifying what corresponds to the fund's assets from the Zakâh bases of the issuing companies. If those securities are already subject to Zakâh by the companies, then there is no Zakâh on the fund's assets to avoid [Althiny] Duplication Zakâh ⁽²⁾.

Preference:

The preferable opinion—Allah knows best—is the second one. It is added that if the unit holder intends to wait for a profit from price differences in the long term, they should pay Zakâh similarly to how a shareholder with similar intentions would⁽³⁾. Consequently, the units of exchange-traded index funds are subject to Zakâh as trade goods if owned with the intention of trading. They are subject to Zakâh as a waiting shareholder if owned with the intention of holding. However, if owned with the intention of investment only, they should be paid Zakâh based on what corresponds to them from the fund's Zakâh base.

The Zakâh base of the fund consists of what corresponds to the shares it holds from the Zakâh bases of the issuing companies. If these shares are Zakâh -able by the companies, then there is no Zakâh due from the unit holder, and the manager's intention has no effect whatsoever, as they cannot trade the assets.

Reasons for preference:

- 1- The strength and validity of the second opinion's evidence, and the weakness of the first opinion's evidence.

(1) See: Zakâh on Portfolios and Funds (P. 170) See: Zakâh on Index Funds (P. 36).

(3) See: (P. 468) of this book.

- 2- The units of exchange-traded index funds are tradable and suitable for investment, making intention significant for their Zakâh calculation, similar to other trade goods.
- 3- The units of the fund represent a share of its assets, and the holder of these units is required to pay Zakâh based on what corresponds to their share in the Zakâh base of the fund, regardless of any trading intention.
- 4- Exchange-traded funds (ETFs) are characterized by passive management, meaning that the fund's assets are not actively traded; thus, the intention of the fund manager does not affect the calculation of the Zakâh base.
- 5- Previous discussions regarding the Zakâh of stocks and investment fund units indicate that the intention behind ownership significantly impacts how Zakâh is calculated.

Impact of intention on the issue:

The effect of intention on how Zakâh is calculated for units of exchange-traded funds is evident among proponents of the second opinion, who differentiate between those intending to trade the units and those intending to invest. The former is required to pay Zakâh as trade goods, while the latter must pay Zakâh based on what corresponds to their share in the fund's Zakâh base. They assert that the manager's intention does not impact the Zakâh base, as they cannot engage in trading. Conversely, proponents of the first opinion do not believe that the intention behind unit ownership affects how Zakâh is calculated; rather, they argue that Zakâh should always be considered as trade goods. The prevailing view is that the intention behind unit ownership does affect how Zakâh is calculated, with unit holders classified as traders, speculators, or investors. However, the Zakâh base for exchange-traded funds remains unaffected by the manager's intention, unlike other investment funds, since the ETF manager cannot trade the fund's assets as previously explained.

Fourth Treatise

The Impact of Intention on the Zakâh Base for Takaful Insurance

Topic (1): The Meaning of the Zakâh Base for Takaful Insurance

Before explaining the meaning of the Zakâh base for Takaful insurance, it is appropriate to first introduce the concept by defining insurance linguistically and technically, outlining its types, and then defining Takaful insurance and explaining its characteristics. These will be addressed in the following points:

First: Definition of insurance linguistically and technically

Linguistic Definition of Insurance:

The word “insurance” in Arabic is (Al-Ta’men) which comes from the root word for “security” in Arabic, (A’mn). Ibn Faris said: “The letters <hamza,’ which is the first letter <meem,’the second letter and <noon’ the third letter form two closely related roots: the first is trustworthiness, which is the opposite of betrayal and means peace of mind; the second is belief or confirmation.” ⁽¹⁾

Security: refers to a state of mental calm and the removal of fear. Allah says: “and made them safe, [saving them] from fear.” ⁽²⁾ It is said: “So-and-so felt secure,” meaning he felt assured that danger had been averted, and “I granted so-and-so security,” meaning I gave him protection⁽³⁾.

Technical definition of insurance:

The definition of insurance varies depending on its type. It is divided by its nature into commercial, Takaful ⁽⁴⁾(or cooperative), and social insurance.

(1) See: Maqaees Al-Lugha [1:133], under the entry (hamza, meem, noon).

(2) See: from verse (4) of Surah Quraysh (The Tribe of Quraysh).

(3) See: Lisan Al-Arab [13:21], Al-Qamus Al-Muheet (P. 1176), Taj Al-Aroos]34:184], under the entry (hamza, meem, noon), Mu'jam Lughat Al-Fuqaha (P. 119).

(4) It is called “Takaful” from the concept of kafala, meaning guarantee. It is said: “The people =

Each of these types has its own characteristics that distinguish it from the others. If we seek a definition that encompasses all these types, we can say that insurance is: an agreement between two or more parties to compensate for certain potential risks in exchange for a specific monetary contribution⁽¹⁾.

Second: Meaning of Takaful insurance

Takaful insurance is divided into two categories:

1. Direct (Simple) Takaful insurance: This is the participation of a group of individuals in contributing a sum of money as a donation to compensate for damages that may occur to any of them when the insured risk materializes⁽²⁾.

2. Developed (Compound) Takaful insurance: This can be defined as the participation of a group of individuals exposed to a certain risk or risks, whereby each contributes a specified amount to a fund with an independent financial identity and a non-profit objective, to compensate for damages that may occur to any of them if the specified risk materializes. The fund is managed by a body elected from the participants or by a company that manages it for a fee⁽³⁾.

Upon examining the definitions of each type, two main differences become apparent:

1. Simple Takaful Insurance is based on donations, and thus the participants are not obligated to compensate the affected party in case the fund is insufficient. In contrast, in Compound Takaful Insurance, the fund manager is obligated to compensate the policyholder.

2. The participants manage Simple Takaful Insurance themselves, whereas Compound Takaful Insurance is managed by an organization or company that charges a fee for its services and invests the fund's assets through profit-sharing agreements⁽⁴⁾.

= supported each other," indicating the solidarity and cooperation among believers. See: Al-Sihah [5:1811], Mu'jam Al-Lugha Al-Arabia Al-Mu'asira [3:1946], under the entry (kaf, fa', lam).

(1) See: Islamic Insurance (P. 14), The Subsidiary Rules of Insurance Contracts, Al-Wunis (P. 30).

(2) See: Insurance Regulations, Al-Zarqa (P. 82), Cooperative Insurance, Al-Ghanayem (P.7)

(3) See: Sharia Standards (P. 438), Decisions and Recommendations of the International Islamic Fiqh Academy, Resolution No. 200 (P. 686).

(4) See: Insurance and Its Provisions, Al-Thunyan (P. 267, 273), Subsidiary Rules of Insurance =

Third: Characteristics of Takaful insurance

Takaful insurance shares some characteristics with commercial insurance, such as both being obligatory contracts and each having a probabilistic contract that may involve an insured risk, thereby entitling the insurer to compensation, or it may not occur. Both also share the characteristic of having unequal value exchanged between them⁽¹⁾. However, Takaful insurance has distinct characteristics, the most prominent of which are:

- 1- It is based on the principles of donation and cooperation among participants to mitigate risks that may occur to some of them. This is evident in simple Takaful insurance, where the fund is not obligated to compensate the participants. Some researchers dispute the existence of this characteristic in compound cooperative insurance⁽²⁾.
- 2- The existence of a base in which the contributions of the participants are pooled, managed either by themselves or by a company for a specified fee, with any surplus from this base remaining for the benefit of the participants⁽³⁾.
- 3- The separation of the assets belonging to the company responsible for managing the insurance process from those of the policyholders (participants)⁽⁴⁾.

Fourth: Definition of the Takaful insurance base

As previously mentioned, one of the characteristics of Takaful insurance is the existence of a base where the contributions of the participants are pooled, which is maintained separately in its accounts from the funds of the insurance company. This base in compound Takaful insurance is the focal point of study and the issue concerning the obligation of Zakâh. It is defined as follows:

A base established by the Takaful insurance company in accordance with its

= Insurance Contracts (P. 72).

(1) See: Insurance and Its Provisions (P. 93), Commercial Insurance and Islamic Insurance, Mukhtar (P. 32).

(2) See: The Concept of Cooperative Insurance (P. 3), Cooperative Insurance, Al-Shadhili (P. 14).

(3) See: Sharia Standards (P. 438), Takaful Insurance through Endowment, Al-Shubaily (P. 6).

(4) See: Cooperative Insurance, Sayyid Hamid (P. 13), Cooperative Insurance, Al-Shadhili (P. 15).

bylaws, where the contributions of the participants, their returns, and reserves are deposited. It has a financial identity distinct from the company, focusing on assets and returns, and is responsible for obligations and compensations⁽¹⁾.

Topic (2): The Impact of Intention on the Obligation of Zakâh for the Takaful Insurance Base

Issue description:

Is Zakâh obligatory on the assets of the Takaful insurance base, and does the intention of the participants have any effect on this?

Opinions on the issue:

Contemporary scholars have differing views on this issue, which can be categorized into three opinions:

First opinion: There is no obligation to pay Zakâh on the assets of the Takaful insurance base.

This view is supported by the Sharia standard regarding Zakâh issued by the Accounting and Auditing Organization for Islamic Financial Institutions⁽²⁾. It is also the opinion of several contemporary scholars, including Professor Dr. Ajil Al-Nashmi⁽³⁾, Professor Dr. Saad Al-Khathlan⁽⁴⁾, and Professor Dr. Yusuf Al-Shubaily⁽⁵⁾.

A fatwa was issued by the 8th Symposium on Contemporary Zakâh Issues stating that Zakâh is not obligatory on the assets of the Takaful insurance base, with the exception of investments from the surplus insurance ⁽⁶⁾ and the

(1) See: Sharia Standards (P. 365), A Jurisprudential Treatment of Some Issues Related to the Zakâh Calculation of Takaful Insurance, Al-Fuza'i (P. 8).

(2) See: Sharia Standards (P. 479).

(3) See: Zakâh on Frozen Assets, Al-Nashmi, published in the Journal of the International Islamic Fiqh Academy, Issue (16), (P. 89).

(4) See: Proceedings and Papers of the 27th Symposium on Contemporary Zakâh Issues (P. 185).

(5) See: Takaful Insurance through Endowment (P. 30).

(6) The insurance standard issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines surplus insurance as "what remains of the participants' contributions, reserves, and their returns after deducting all expenses and compensations paid or to be paid within a year," Sharia Standards (P. 376).

returns to the participants⁽¹⁾.

Second opinion: Zakâh is obligatory on the assets of the Takaful insurance base.

This view is held by a group of contemporary scholars, including Professor Dr. Qutb Mustafa Sano⁽²⁾, Dr. Saud Al-Thubaiti⁽³⁾, Dr. Suleiman Al-Jwaiser⁽⁴⁾, and Dr. Ali Muhammad Noor⁽⁵⁾.

Third opinion: Zakâh is required on the surplus from the Takaful insurance base for the participant who intends to take their share and should be paid after receiving it for one year. It is not obligatory for those who do not have that intention. Professor Dr. Ahmad Al-Yusuf ⁽⁶⁾hold this opinion.

Evidence for the opinions and discussions:

Evidence for the first opinion: Those who argue against the obligation of Zakâh on the Takaful insurance base provide several evidences, including:

First evidence: The contributions paid to the Takaful insurance base are no longer owned by the participants once they are contributed to the base, so Zakâh is not obligatory on them due to the absence of ownership⁽⁷⁾.

This argument is contested in two ways:

First point: It is disputed whether the participants truly relinquish ownership of the assets in the base, as the Takaful insurance system is based on the principle that the surplus insurance returns to the participants, which indicates the continuity of ownership rights⁽⁸⁾.

(1) See: Proceedings and Papers of the 8th Symposium on Contemporary Zakâh Issues (P. 640).

(2) See: Zakâh on Frozen Assets, Sano, published in the Journal of The International Islamic Fiqh Academy (IIFA), Issue (16), (P. 183).

(3) See: Journal of The International Islamic Fiqh Academy (IIFA), Issue (16), (P. 303).

(4) See: A Jurisprudential Treatment of Some Issues Related to the Zakâh Calculation of Takaful Insurance Companies, Al-Jwaiser (P. 14).

(5) See: A Jurisprudential Treatment of Some Issues Related to the Zakâh Calculation of Takaful Insurance Companies, Ali Noor (P. 29).

(6) See: Contemporary Issues in Zakâh on Frozen Assets, Al-Yusuf (P. 49).

(7) See: Takaful Insurance through Endowment (P. 30), The Subsidiary Rules of Insurance Contracts (P. 547).

(8) See: A Jurisprudential Treatment of Some Issues Related to the Zakâh Calculation of Takaful Insurance Companies, Al-Jwaiser (P. 10).

Response: The distribution of the surplus insurance to participants each year is not implemented in many Takaful insurance companies. The surplus may be carried over to subsequent years, benefiting other participants.

Second point: The Takaful insurance system allows each participant to withdraw their funds at any time, which indicates continued ownership, and that the paid contribution is akin to a deposit⁽¹⁾.

Response: The ability to withdraw the paid contribution does not necessarily indicate continued ownership of the money. Rather, it is an option to terminate the Takaful insurance contract, with a portion of the contribution being deducted.

Second evidence: The funds in the Takaful insurance base are owned by it as a legal entity, and Zakâh is an act of worship. One of its conditions is that the owner of the wealth must be among those who are legally addressed by Islamic law, which is not applicable to a legal entity⁽²⁾.

Discussion: Even if it is accepted that the Takaful insurance base has an independent legal personality, a legal entity must have an owner. In this case, the owners are the participants in the insurance, so the ownership reverts to them, and they are subject to Islamic obligations.

Third evidence: Assuming that the funds in the base remain the property of the participants, their ownership is not complete, as they are unable to control or access the funds. When the condition of complete ownership is lacking, Zakâh is not obligatory⁽³⁾.

Discussion: The lack of control over the jointly held funds does not affect the completeness of ownership. Companies are based on delegation of control, and most shareholders in joint-stock companies do not have direct control over their assets, yet Zakâh is still obligatory on them⁽⁴⁾.

Fourth evidence: The contributions paid to the base were given for the purpose of cooperation and solidarity among the participants to mitigate risks and compensate for damages. This has a charitable and benevolent aspect, and

(1) See: Previous reference.

(2) See: Takaful Insurance through Waqf (P. 30).

(3) See: Subsidiary Rulings of the Insurance Contract (P. 548).

(4) See: Fiqh-based Solutions to Some Issues in Calculating Zakâh for Takaful Insurance Companies, Al-Juwaier (P. 11).

thus it can be compared to endowed wealth, which is not subject to Zakâh⁽¹⁾.

This argument is contested in two ways:

First point: Endowed wealth is subject to differing opinions regarding the obligation of Zakâh, and it is not valid to make an analogy based on a matter that is disputed⁽²⁾.

Second point: It can be argued by rejecting the assumption that the rationale applies to the subsidiary issue, as the participant in takaful insurance does not, by default, intend to donate or benefit others. Rather, they intend to receive compensation in the event of the insured risk. Therefore, what motivates them to participate differs from endowed wealth.

Fifth evidence: Even if it is assumed that the participants own the funds in the pool, they are not a fixed or specific group. New participants join daily, while others leave, and wealth that does not have a specific owner is not subject to Zakâh⁽³⁾.

Discussion: Shareholders in joint-stock companies are also not fixed, with new members joining and others exiting on a daily basis. Nevertheless, Zakâh is still required on their collective wealth within the company. This is based on the principle of co-ownership (khulta) for non-livestock assets and the principle of aggregating newly acquired wealth with existing wealth when calculating the Zakâh year. Both principles can likewise be applied to the Zakâh on takaful insurance funds.

Evidence for the second opinion: Those who argue for the obligation of Zakâh on takaful insurance funds provide several proofs, including:

First evidence: The generality of the texts obligating Zakâh, as takaful insurance funds fall under this generality and fulfill all the conditions for Zakâh obligation⁽⁴⁾.

(1) See: Subsidiary Rulings of the Insurance Contract (P. 548).

(2) See: Fiqh-based Solutions to Some Issues in Calculating Zakâh for Takaful Insurance Companies, Al-Fuzai' (P. 29).

(3) See: Proceedings and Papers of the 27th Symposium on Contemporary Zakâh Issues (P. 185).

(4) See: Zakâh on Frozen Assets, Sano, published in the Journal of the International Islamic Fiqh Academy, No. (16), (P. 184).

Discussion: The fulfillment of Zakâh conditions is in question, as the condition of full ownership is not met, as previously discussed in the evidence supporting the first opinion⁽¹⁾.

Second evidence: The funds in the takaful insurance base are allocated for compensation purposes and remain under the ownership of the participants until they are disbursed as compensation. This establishes ownership and thus makes Zakâh obligatory⁽²⁾.

Discussion: The fact that allocating the funds for compensation indicates that the participants do not have stable ownership over them.

Third evidence: An analogy can be drawn between the participants' funds in the takaful insurance base and the wealth of a minor regarding Zakâh obligation. In both cases, the owner is restricted from direct control, while someone else manages the funds for preservation and growth⁽³⁾.

Discussion: This analogy is deemed invalid because the wealth of a minor does not leave their ownership to another entity, unlike the contributions in the takaful insurance base, which exit the ownership of the participants and enter the takaful base⁽⁴⁾.

Fourth evidence: The funds in the takaful insurance base are invested for the benefit of the participants by those managing the insurance process. Therefore, these are growing funds owned by the participants, and Zakâh is obligatory on them⁽⁵⁾.

Discussion: The participant in takaful insurance does not aim to invest his funds; rather, his goal is to obtain compensation in exchange for that subscription, which is the insurance coverage. The purpose of investing the funds in the base is to achieve that coverage, not to grow the participants' wealth⁽⁶⁾.

(1) See: *Subsidiary Rulings of the Insurance Contract* (P. 549).

(2) See: *Fiqh-Based Solutions to Some Issues in Calculating Zakâh for Takaful Insurance Companies*, Al-Juwaier (P. 13).

(3) See: *Zakâh on Frozen Assets*, Sano, published in the *Journal of the International Islamic Fiqh Academy*, No. (16), (P. 184).

(4) See: *Subsidiary Rulings of the Insurance Contract* (P. 550).

(5) See: *Fiqh-Based Solutions to Some Issues in Calculating Zakâh for Takaful Insurance Companies*, Al-Juwaier (P. 14).

(6) See: The previous reference.

Evidence for the third opinion: Those who argue for the obligation of Zakâh on the surplus from the takaful insurance base for the participant who intends to take his share assert that Zakâh is not obligatory for those who do not intend to do so, based on the following:

The one who intends to take his share of the insurance surplus aligns his intention with the original purpose, which is to keep that surplus in his ownership. He must pay Zakâh on it if he receives it for one year, like any property, because his ownership is not established until he takes possession of it. In contrast, someone who does not take his share of the surplus is considered a donor by subscribing to the base, and thus, no Zakâh is required from him⁽¹⁾.

Discussion: The intention to take the surplus does not indicate ownership before its distribution and receipt, as there is uncertainty regarding its actual receipt. Similarly, the intention not to take it does not remove it from the ownership of its owner by mere intention.

Preference:

After reflecting on the opinions and evidence, it appears that the preferred view—Allah knows best—is a detailed approach: The obligation of Zakâh in the takaful insurance base varies depending on the nature of the base. If the participants have a property interest in the funds such that the surplus is distributed among them and does not carry over to subsequent years, and if the base is liquidated for any reason, its funds will be distributed to them and not go to any other party, then Zakâh is obligatory on them. The management of the base can pay it on their behalf, similar to joint-stock companies.

However, if the relationship of the participants with the funds in the base is merely to obtain insurance coverage, and the surplus is not distributed to them, and if the base is liquidated, its funds go to a charitable organization or similar, then no Zakâh is required on it.

Reasons for preference:

1. The reason for the dispute in the issue is the difference in ownership of the base: whether it is owned by the participants or by the base itself as a legal entity, with no relation to the participants. It appears that even if we say the funds in the base are owned by it, the base itself must have an owner unless

(1) See: Contemporary Zakâh Issues on Frozen Assets (P. 49).

it is a waqf (endowment) or a charitable entity. What determines this is the nature of the base. If it is based on maintaining the relationship of the participants with it, such that the surplus is directly distributed to them and does not carry over to subsequent years, and if the funds are returned to them upon liquidation, then they own it. If it is based on the premise that the surplus carries over to subsequent years to cover the damages of other participants, and that the funds are spent on charitable purposes upon liquidation, then the participants do not own it.

2. The essence lies in the nature of the base, not in the intention of the participant. If a participant intends to reclaim the insurance surplus, but the nature of the base is such that the surplus is not distributed to the participants, that intention has no effect because it contradicts reality. Similarly, if a participant intends to donate the surplus to other participants, but the nature of the base is that the surplus is distributed among the participants, then the intention has no effect; merely intending does not remove the money from their ownership, and they can retract that intention and not donate the surplus.

Impact of intention on the issue:

Those who support the third opinion argue that intention affects the obligation of Zakâh on the surplus of the takaful insurance base, and that whether Zakâh is obligatory or not depends on the intention of the participant. If the participant intends to reclaim the surplus, then Zakâh is obligatory upon receiving it. Conversely, if the intention is to donate it, then no Zakâh is due on it.

It appears that intention has no effect on this matter, as previously stated, and that the decisive factor is the nature of the base. If its nature indicates the preservation of ownership relations for the participants, then Zakâh is obligatory on them. If its nature indicates the absence of a relationship between the participants and the funds—such that the surplus is not distributed annually among the participants, and upon liquidation, the funds are directed to charitable purposes—then Zakâh is not obligatory.



Fifth Treatise

The Impact of Intention on Zakâh for Intangible Rights

Topic (1): Definition of Intangible Rights

This topic aims to clarify the meaning of Intangible rights by defining them, outlining their types, and discussing their legal classification, before delving into the main subject, which is the impact of intention on their Zakâh. This section will be presented in several elements:

First: Definition of rights in language and terminology

In language: The term “right” comes from the root (haqq) which means to confirm or establish. Thus, a right is something that is confirmed and obligatory⁽¹⁾. Allah, the Almighty, says: “And for the divorced women is a provision according to what is acceptable, a duty upon the righteous”⁽²⁾. The term “right” can refer to property, ownership, a tangible existence, and is the opposite of falsehood⁽³⁾.

In the terminology of jurists, a right is defined as: “What is established for a person according to the law for their benefit”⁽⁴⁾. It can also be defined as: “A designation established by law granting authority or obligation”⁽⁵⁾. These two definitions are closely related, with one focusing on the subject of the right as being beneficial to its owner, while the other emphasizes the owner of the benefit in terms of their authority and actions regarding the subject of the right⁽⁶⁾.

(1) See: Maqayis al-Lugha [15:2], “H Q” term; Lisan al-Arab (10/49), “H Q Q” term.

(2) [Al-Baqarah (The Cow): 241].

(3) See: Tahdhib al-Lugha [3:241], “H Q Q” term; Al-Qamus al-Muhit (P. 874).

(4) The Rulings of Islamic Transactions (P. 31).

(5) Introduction to the Theory of Obligation (P. 19).

(6) See: Sale of Trade Names, Al-Nashmi, research published in the Journal of the International Islamic Fiqh Academy [5:1865].

A right that entails authority, such as a guardian's right to manage the affairs of their ward, represents authority of one person over another. A right that involves obligation, such as a seller's right over a buyer to demand payment, represents an obligation on the buyer in favor of the seller⁽¹⁾.

Second: Definition of intangibility in language and terminology

Intangibility in Language: It refers to the concept or meaning derived from a word, or the qualities attributed to a person. In language, "intangible" is the opposite of "material" and "physical" (modern usage)⁽²⁾.

Intangibility in Terminology: It refers to the modern linguistic meaning, where something intangible is the opposite of material, i.e., something that has no tangible reality⁽³⁾.

Third: Definition of intangible rights

In Islamic law, rights are divided into two main categories:

First category: Financial rights, which pertain to wealth, such as debts, physical assets, or benefits, like the right to claim a price or the right of a tenant to benefit from the leased property⁽⁴⁾.

Second category: Non-financial rights, which have no relation to wealth, such as a father's right to raise and discipline his child, or a guardian's right to marry off his charge⁽⁵⁾.

Financial rights are further divided into three types:

First type: Personal rights, which are obligations between individuals, such as the mutual rights of a seller and a buyer, where the seller is entitled to receive the price, and the buyer is entitled to receive the sold item⁽⁶⁾.

Second type: Real rights, which are direct authority over a specific financial asset, such as an owner's right to benefit from and dispose of their property⁽⁷⁾.

(1) See: Introduction to the Theory of Obligation (P. 19).

(2) See: Maqayis al-Lugha [4:149], Mu'jam al-Lugha al-Arabiyya al-Mu'asira [3:2078], Al-Mu'jam al-Wasit [1:10].

(3) See: Sharh Hudud Ibn Arafah (P. 15), Al-Milkiyya fi al-Shari'a al-Islamiyya (P. 14).

(4) See: Nihayat al-Matlab [5:468], Tahdhib al-Furuq [3:284].

(5) See: Al-Tahdhib fi Fiqh al-Imam al-Shafi'i [8:288], Al-Mughni [10:213].

(6) See: Al-Milkiyya fi al-Shari'a al-Islamiyya (P. 14).

(7) See: Al-Huquq al-Ma'nawiyya: Maliyyatuhâ wa Wujub al-Zakah fiha, Abu al-Sibaa (P. 173).

Third type: Intangible rights, which are rights over something non-material, giving the owner the right to exploit and manage it⁽¹⁾. These are the subject of this study.

The intangible rights referred to in this research are those recognized by commercial customs. They are products of modern civil, economic, and cultural life, whether they are intellectual creations like copyright, or results of business activities that attract customers, such as a trader's right to a trade name or trademark. These rights include the exclusive right to exploit and manage such results or creations.⁽²⁾

Intangible rights have been defined as "a right over something non-material, which is the result of the owner's thought, imagination, or activity"⁽³⁾. Contemporary scholars have used various terms to describe these rights. Some have referred to them as (moral rights)⁽⁴⁾, though this term has been criticized for being too narrow, excluding many types of rights such as the right to a commercial name or a patent⁽⁵⁾. Others have called them (creative rights)⁽⁶⁾, but this has been objected to for implying that these rights necessarily involve innovation, while some do not⁽⁷⁾. Another term used is (intellectual rights)⁽⁸⁾, which is a more accurate description as all of these rights originate from thought and reflection. However, I have chosen to use the term (intangible rights) for its wider acceptance, as the International Islamic Fiqh Academy⁽⁹⁾ and the Seventh Symposium on Contemporary Zakâh Issues⁽¹⁰⁾ have endorsed it.

(1) See: Zakâh of Intangible Rights, Albouti (P.2).

(2) See: Bai' al-Ism al-Tijari, Nashmi, published in the Journal of the International Islamic Fiqh Academy [5:1857].

(3) Ownership in Islamic Law (P. 14); see also: Introduction to the Theory of Obligation (P. 31).

(4) See: Fiqh of Contemporary Issues [2:164].

(5) See: Islamic Jurisprudence and Intangible Rights by Al-Abadi, Journal of the Islamic Fiqh Academy [5:2012 [

(6) See: Introduction to the Theory of Obligation (P. 32).

(7) See: Zakâh on Intangible Rights (P. 71).

(8) See: Fiqh of Contemporary Issues [2:152].

(9) See: Resolutions and Recommendations of the International Islamic Fiqh Academy, Resolution No. 43 (P. 149).

(10) See: Proceedings of the Seventh Symposium on Contemporary Zakâh Issues (P. 350).

Fourth: Types of intangible rights

Intangible rights encompass various types, with the most prominent being the following three categories:

1- Literary and artistic property rights

This category includes rights such as authorship, painting, and design. These can be defined as: the exclusive legal ownership granted to an author, painter, or designer over their work, allowing them to attribute the work to themselves, protect it from infringement, manage its use, and retain financial benefits derived from its exploitation⁽¹⁾.

2- Patent rights

These differ from the former category in that they pertain to industrial inventions or methods, where the outcomes manifest as tangible objects or devices⁽²⁾.

The Patent Rights can be defined as the legitimate entitlement granted to the inventor, established through a certificate issued by the state, which enables the inventor to attribute the invention to themselves, prevent infringement, manage the invention, and exclusively benefit financially from its exploitation⁽³⁾.

3- Commercial property rights

One of the most prominent examples of this is the right to a commercial name, which is the legitimate and legal entitlement granted to the owner of a commercial establishment to use a distinctive title for their business, differentiating it from others engaged in the same commercial activity, to attribute the name to themselves, and to protect it from infringement⁽⁴⁾.

Another example is the right to a trademark, which refers to the legitimate and legal entitlement of a business owner to use a distinct emblem for their

(1) See: Rights of Patents and Authorship by Al-Shahrani (P. 100).

(2) Invention is defined as any new innovation that is usable, whether related to new industrial products, methods, or both. Rights of Patents and Authorship (P. 63).

(3) See: The Impact of Ownership on the Obligation of Zakâh (P. 326), Patent Rights and Authorship (p. 77).

(4) See: The Saudi Trade Names System issued by Royal Decree No. (M/15) dated: 12/08/1420 H, Zakâh Issues (P. 300).

products or services, attribute that emblem to themselves, protect it from infringement, manage it, and exclusively benefit financially from its exploitation⁽¹⁾.

Fifth: Jurisprudential classification of intangible rights

Contemporary scholars have reached a consensus that intangible rights are considered assets and bear significant resemblance to benefits. Owners of these rights are permitted to manage, exploit, and prevent infringement upon them⁽²⁾.

In Resolution No. (5) issued by the International Islamic Fiqh Academy, it is stated: "The commercial name, trade title, trademark, and rights of authorship and invention or innovation are special rights for their owners. In contemporary custom, these rights hold considerable financial value, making them a subject of trade for people"⁽³⁾.

Topic (2): The Impact of Intention on Zakâh for Intangible Rights

Issue description: Is Zakâh obligatory on intangible rights? What is the impact of intention in this matter?

Clarifying the point of dispute

- 1- I found no disagreement-after research-on the fact that intangible rights are not considered assets that require Zakâh simply upon ownership⁽⁴⁾.
- 2- I found no disagreement-after research-on the fact that Zakâh is due

(1) This trademark may consist of words, signatures, letters, symbols, numbers, titles, seals, drawings, images, engravings, packaging, pictorial elements, shapes, colors, color combinations, or a mixture of these. See: Article (2) of the Trademark System of the Gulf Cooperation Council, issued by Royal Decree No. (M/51) dated 26/07/1435 H.

(2) This aligns with the opinion of the majority regarding the consideration of benefits as assets, contrary to some Hanafi scholars who limited assets to tangible items. See: Al-Mab-sut [11:79 [, Badâ'i' al-Şanâyi' [2:278 [, al-Binâya]10:228 [, al-Dhakîra [8:282 [, al-Tawdîh [7:142 [, al-Wasîf [3:391 [, Asnâ al-Maţâlib [3:56 [, al-Muqni' (P. 152), Kashf al-Qanâ' [3:152].

(3) Journal of the Islamic Fiqh Academy [5:2095].

(4) See: Research and Proceedings of the Seventh Symposium on Contemporary Zakâh Issues (P. 585), and Sharia Standards (P. 474).

on intangible rights once they are utilized⁽¹⁾, similar to other assets⁽²⁾.

- 3- There is a difference of opinion regarding whether Zakâh is required on commercial assets in intangible rights when they are prepared for sale in pursuit of profit.

Opinions on the issue: Contemporary scholars differ in this matter into three opinions:

First opinion: There is no obligation to pay Zakâh on commercial assets in intangible rights under any circumstances.

Among those who hold this view are: Dr. Muhammad al-Bouti⁽³⁾, Dr. Hassan al-Shadhili⁽⁴⁾, and Dr. Abdul Hamid al-Baali⁽⁵⁾.

Second opinion: There is no obligation to pay Zakâh on commercial assets in rights of authorship and innovation, but Zakâh is obligatory on commercial rights such as trade names and trademarks if the conditions for Zakâh on commercial assets are met.

This view is held by Dr. Ajeel al-Nashmi⁽⁶⁾, Dr. Abdullah al-Ghufaili⁽⁷⁾, and was issued in the fatwa of the Seventh Symposium on Contemporary Zakâh Issues⁽⁸⁾.

Third opinion: Zakâh on commercial assets in intangible rights is obligatory in all cases if the conditions are met.

(1) See: Zakâh on Intangible Rights, Al-Bouti (P. 21), and Intangible Rights: Their Financial Aspects and the Obligation of Zakâh on Them (P. 159).

(2) An example of utilizing intangible rights: An author receives a percentage of the profits from the printing and sale of their work for a specified number of copies or for a specific edition, without selling the complete printing and publishing rights.

(3) See: Zakâh on Intangible Rights, Al-Bouti (P. 21-25).

(4) See: Research and Proceedings of the Seventh Symposium on Contemporary Zakâh Issues (P. 531).

(5) See: Zakâh on Intangible Rights, Al-Baali, from the Research of the Seventh Symposium on Contemporary Zakâh Issues (P. 422).

(6) See: Zakâh on Intangible Rights, Al-Nashmi, from the Research of the Seventh Symposium on Contemporary Zakâh Issues (P. 513-515).

(7) See: Contemporary Zakâh Issues (P. 307).

(8) See: Research and Proceedings of the Seventh Symposium on Contemporary Zakâh Issues (P. 586).

And among those who support this view is Dr. Saleh Al-Muslim⁽¹⁾, and it is also adopted by the Sharia standard issued regarding Zakâh by the Accounting and Auditing Organization for Islamic Financial Institutions⁽²⁾, and The Implementing Regulation for Zakâh collection in the Kingdom of Saudi Arabia⁽³⁾

Evidence for the opinions and discussions:

Evidence for the first opinion: Those who argue against the obligation of Zakâh on commercial goods in intangible rights base their reasoning on the following:

First evidence: It is argued that it is not conceivable to establish the intention of commerce in intangible rights; because trade, buying, and selling cannot occur on the essence of the right but only on its fruits and outcomes. If the intention of commerce is not realized, Zakâh does not become obligatory⁽⁴⁾.

This argument is contested in two ways:

First point: The assertion that intangible rights lack financial value implies their ability to be traded, as every asset can be involved in trade⁽⁵⁾.

Second point: It can be argued against the notion that intangible rights cannot embody commercial intention, as the right to exploit products can indeed be sold and exchanged for profit. It is conceivable for an individual or a company to specialize in purchasing intangible rights from their owners and selling them-seeking profit-from companies that engage in the trading of those rights' effects, whether in books or other products.

Second evidence: It is claimed that what can be sold and exchanged among intangible rights, such as commercial names and trademarks, is impermissible to sell according to Sharia due to the potential for uncertainty regarding consumers and the risk of deception.

(1) See: The Impact of Ownership on the Obligation of Zakâh (P. 335-338).

(2) See: Sharia Standards (P. 478).

(3) See: Article 50 of The Implementing Regulation for Zakâh collection, issued by the Zakat, Tax, and Customs Authority, 1445 H.

(4) See: Zakâh on Intangible Rights, Al-Bouti (P. 19); Zakâh on Intangible Rights, Al-Baali, in The Proceedings of the Seventh Symposium on Contemporary Zakâh Issues (P. 422).

(5) See: The Impact of Ownership on the Obligation of Zakâh (P. 333).

Clarification of This: These rights derive their value from the reputation of their owner and the quality of their products, which were subjects of public trust. This quality remains stable even if the name or trademark changes. Conversely, the product associated with that name or trademark may be of inferior quality or at least not as good as the original, leading to potential deception and fraud against the public. Such prohibited contracts are invalid and have no bearing on Zakâh.

Discussion: It can be argued that deceit and misrepresentation in the sale of commercial names or trademarks are not inherent. The quality of the goods associated with the name or trademark may be high; however, the owner may seek that name due to its reputation and history. If deceit is not an intrinsic part of the sale of these rights, then the sale cannot be deemed void in all cases.

Evidence for the second opinion: Proponents of the second opinion argue against the obligation of Zakâh on commercial offerings for intellectual rights, such as authorship and innovation, by referencing the first argument from the first opinion⁽¹⁾, which is subject to the same rebuttal.

They also support the necessity of Zakâh on commercial offerings related to commercial rights, like trade names and trademarks, provided the conditions for Zakâh are met. They argue that commercial intellectual rights, such as trade names and trademarks, can be exchanged for profit through buying and selling, and can be treated as separate entities from the commercial establishment. Thus, Zakâh is required for these rights in the same manner as it is for other goods prepared for sale⁽²⁾.

Discussion: It can be contested that this reasoning applies to all contemporary intellectual rights and is not limited to commercial rights.

Evidence for the third opinion: Advocates of the third opinion assert that Zakâh on commercial offerings is required for all intellectual rights prepared for sale in pursuit of profit. They argue that these rights possess a value recognized both religiously and socially, and can be traded through buying and selling. If these rights are prepared for sale, whether separate from or connected to their effects, Zakâh on commercial offerings becomes obligatory, similar to

(1) See: Issues of Zakâh (P. 306).

(2) See: Zakâh on Intellectual Rights, by Al-Nashmi, in the proceedings of the Seventh Symposium on Contemporary Zakâh Issues (P. 513).

all other commercial goods⁽¹⁾.

Preference:

The prevailing view – and Allah knows best – is the third opinion, which states that if intellectual rights are prepared for sale with the intention of profit, Zakâh on commercial offerings is required. This applies whether the original owner sells them, based on the previous discussion that the ownership of these rights does not necessitate the intention of trade for Zakâh to be obligatory⁽²⁾, or if the buyer resells them. This requirement holds true whether the rights are sold separately from their effects or in connection with them, as long as they hold a value that is acknowledged in legal and financial terms.

Some regulations may prohibit the sale of certain intangible rights separately from their effects, as is the case with commercial names. For instance, the Saudi Commercial Names System states in Article 8: “The commercial name may not be disposed of independently of the disposal of the commercial establishment”⁽³⁾. However, this does not preclude the obligation to pay Zakâh on the value of the name if it is prepared for sale along with the commercial establishment, provided it has a financial value that enhances the value of the commercial establishment.

Reasons for preference:

- 1- The strength of the evidence supporting the third opinion and its immunity from objections, contrasted with the weaknesses of the arguments supporting the other two opinions.
- 2- The realization of the intention to engage in trade is conceivable for intangible rights; these rights possess a recognized financial value, and ownership can be transferred. There are no prohibitions against trading them. For example, an author could potentially offer the rights for printing and publishing their book for sale to earn a profit, or a company could be established that specializes in buying and selling intangible rights.

(1) See: The Financial Aspects of Intellectual Rights and the Obligation of Zakâh on Them (P. 216).

(2) See: P. 191 of this book.

(3) See: The Commercial Names System issued by Royal Decree No. (M/15) dated 12/08/1420 H.

Impact of intention on the issue:

The impact of intention in this matter is evident in that proponents of the first and second opinions argue against the obligation to pay Zakâh on commercial goods for all intangible rights (in the first opinion) or some of them (in the second opinion), relying on the argument that the intention to engage in trade with these rights is not conceivable. In contrast, the proponents of the third opinion maintain that the intention to engage in trade with intangible rights is indeed conceivable, which aligns with the preferred view mentioned earlier.



Sixth Treatise

The Impact of Intention on Zakâh for Revenue-Generating Assets

Topic (1): The Impact of Intention on Zakâh for Revenue-Generating Assets (Exploited Zakâh)

The word “mustaghallât” is the plural of “mustaghal”, which is the object form of the verb “Istaghalla”, derived from “Al-ghallah”, which is income, it is said, “So-and-so rented out his house” meaning: he rented it to earn income from it⁽¹⁾.

Mustaghallât are defined as: assets that are not intended for sale, nor are they used for trade, but rather for earning a benefit and profit from them⁽²⁾.

They are also defined as: assets owned without the intent of trade, which generate renewed income⁽³⁾.

Mustaghallât existed since the age of the prophecy, but it was not among the most significant sources of wealth, as is the case in our present time. Hence, symposiums and jurisprudential councils were convened to discuss the rulings on their zakah, as will be explained.

Issue description:

Is zakah obligatory on revenue-generating assets themselves or only on their income? And what is the impact of intention in this regard?

Opinions on the issue: scholars disagreed regarding this issue resulting into four opinions:

First opinion: Zakâh is not obligatory on the revenue, generating assets

(1) See: “Lisân Al-`arab”, [11: 504]; “Al-Qamûs Al-Mohît”, [page 1039], entry (ghulal).

(2) See: “Zakâh Al-Mustaghalât” by Âl Saif, [page 236].

(3) See: “Hukm Zakât Al-Arâdy”, [page 276].

themselves, And its income is treated like newly acquired wealth⁽¹⁾. This is the opinion of the majority of scholars. This is doctrine for the Hanifah⁽²⁾, and the popular among the Malikiah⁽³⁾, and doctrine for the Shafi'iah⁽⁴⁾ and Hanabiah⁽⁵⁾.

And it was chosen by the fifth⁽⁶⁾ and the twenty third Symposium⁽⁷⁾ on Contemporary Zakâh Issues, and with it, the Islamic Fiqh Academy⁽⁸⁾ have issued a decision, as well as the Shari'ah standard issued by the Accounting and Auditing Organization for Islamic Financial Institutions⁽⁹⁾.

Second opinion: The value of revenue-generating assets is subject to Zakâh for one year if sold⁽¹⁰⁾, and their revenue is treated like new income. This is an opinion among the Malikiah narrated by Ibn Al-Qâsim from Imâm Mâlik⁽¹¹⁾,

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- (1) In the case of the obligation of agricultural zakat, there is a difference of opinion regarding Zakâh on newly acquired wealth. Is a full lunar year (hawl) required, or is it obligatory to pay Zakâh upon receipt? Some scholars hold that for income from rental (i.e., agricultural produce), the hawl begins from the contract, while others argue that it starts from the moment of receipt. There are also opinions stating that it should be paid upon receipt without initiating a new hawl. This is not the place for a detailed discussion of the differences in this matter. Refer to: Tuhfat al-Fuqaha (1/294), Al-'Inayah (2/196), Al-Mudawwanah (323/1), Al-Kafi fi Fiqh Ahl al-Madinah (1/289), Al-Um (2/50), Tuhfat al-Muhtaj (340/3), Al-Mughni (2/468), Al-Insaaf (303), and the resolutions of the International Islamic Fiqh Academy (p. 273).
 - (2) See: "Al-Mohit Al-Burhâny", [2: 249]; "Al-Bahr Ar-Râ'iq", [2: 246]; "Hâshiyat Ash-Shalaby 'la Tabyîn Al-Haqâ'iq", 1: 253].
 - (3) See: "At-Tawdhîh", [2: 213]; "Tahbîr Al-Mukhtasar", [2: 79]; "At-Tâj wa Al-Iklîl", [3: 182].
 - (4) See: "Al-Om", [2: 50]; "Al-Hâwy Al-Kabîr", [3: 297]; "Tuhfat Al-Muhtâj", [3: 340].
 - (5) See: "Al-Furû", [4: 205]; "Al-Insâf", [3: 161]; "Kashâf Al-Qinâ'", [2: 168].
 - (6) See: Proceedings and Papers of the 5th Symposium on Contemporary Zakâh Issues (P. 417).
 - (7) See: Proceedings and Papers of the 23th Symposium on Contemporary Zakâh Issues (P. 299).
 - (8) See: Resolutions and Recommendations of the International Islamic Fiqh Academy, Resolution No. 2 (p. 40).
 - (9) See: Sharia Standards (p. 474).
 - (10) Like the merchandise of a monopolistic trader according to the Malikis. Despite this view being mentioned in their texts, I have not come across anyone who has transmitted and confirmed it among the opinions on the issue.
 - (11) See: "An-Nawâdir Wa Az-Ziyâdât", [2: 120]; "At-Tabsirah", [2: 889]; "Manâhij At-Tahsîl", [2: 210].

preferred by Ibn Nâfi⁽¹⁾, and was mentioned in “Tahbîr Al-Mukhtasar” : Ibn Nâfi’ said, “If the asset intended for revenue generation is sold, it is subject to Zakah like monopolized goods.”⁽²⁾.

Third opinion: Zakâh is obligatory on the value of revenue-generating assets and their returns, similar to trade goods. Ibn derived this opinion `aqîl in the Hanabilah doctrine -what is prepared for rental- based on the obligation of Zakâh on jewelry intended for rental⁽³⁾. The reason for deriving it being that zakah is not obligatory jewelry intended for personal use according to the doctrine, but if it is prepared for rental, Zakâh becomes obligatory. Therefore, Zakâh is due on everything that is prepared for rental⁽⁴⁾

A number of contemporary scholars have supported this opinion regarding all revenue-generating assets, including Dr. Mundhir.

Qahf⁽⁵⁾, Dr. Muhammed Na`îm Yassîn⁽⁶⁾, and Dr. Daif Allah Ash-Shahrî⁽⁷⁾

Fourth opinion: Zakâh is not obligatory on the value of revenue-generating assets, but their returns are subject to Zakâh like crops and fruits. This is done by giving a tithe upon receiving them after deducting expenses or half a tithe without deducting expenses. This is the opinion of some contemporary schol-

(1) He is Abdullah ibn Nafi al-Qurashi al-Makhzumi, known as Abu Muhammad, the goldsmith. He was one of the prominent companions of Imam Malik and served as the mufti of Medina after him. Although he was illiterate and did not write, he stated, “I accompanied Malik for forty years and did not write anything from him; I memorized it instead.” Ashhab mentioned that he never attended a session of Malik without Abdullah ibn Nafi being present. He passed away in 186 AH. For more on his biography, see: Tartib al-Madarik (3/129) and Al-Dibaj al-Mudhhab (1/409).

(2) “Tahbîr Al-Mukhtasar”, [2: 79].

(3) See: “Ar-Ri`âyah As-Sughrah”, [1: 420]; “Al-Furû’”, [4: 205]; “Al-Insâf”, [3: 161].

(4) This conclusion is addressed by distinguishing between jewelry and other types of property; the principle for jewelry is that Zakâh is obligatory unless it is used, while the principle for other property is that Zakâh is not required unless there is the intention to trade it. Refer to: Al-Furu' [4:205].

(5) See: Zakâh on Fixed Investment Assets, Mundhir Qahf, in the proceedings of the Fifth Seminar on Contemporary Zakâh Issues (P. 324).

(6) See: Proceedings and Papers of the 22 Symposium on Contemporary Zakâh Issues (P. 194).

(7) See: Zakâh on Exploited Assets in Islamic Jurisprudence, Al-Shahri, Journal of Human and Natural Sciences, Issue 9, [3:609].

ars, including Sheikh Muhammed Abu Zahrah and Sheikh `abd Al-Wahâb Khilâf and Sheikh `abd Al-Rahmân Hassan in the third session of the Social Studies Circle held by the League of Arab States in 1372 H ⁽¹⁾

Evidence for the opinions and discussions:

Evidence of the first opinion: Those who argue that Zakâh is not obligatory on the value of revenue-generating assets and that their returns are treated like new income have provided evidence, including:

First evidence: The hadîth of Samura b. Jundub said Allah's messenger used to order them to deduct the sadaqa from what they prepared for trade. ⁽²⁾

Point of the evidence: The hadîth, by its implication, indicated that items not prepared for sale are not subject to Zakâh, and since revenue-generating assets are not prepared for sale, their Zakâh is not obligatory ⁽³⁾

Discussion: The hadîth's chain of narration is weak ⁽⁴⁾

Response: The hadîth has supporting evidence, and the scholars have accepted it, even though there are some criticisms regarding its chain of narration.

Second evidence: The saying of the Prophet (peace be upon him): "No sadaqa is due from a Muslim on his slave or his horse." ⁽⁵⁾

Point of the evidence: The Prophet (peace and blessings of Allah be upon him) denied the obligation of Zakâh on slaves and horses because they are considered personal property. Revenue-generating assets can be analogized to them due to the shared aspect of being held for personal benefit⁽⁶⁾.

(1) several researchers have cited This statement. See: Zakâh on Fixed Investment Assets, Mundhir Qahf, in the proceedings of the Fifth Seminar on Contemporary Zakâh Issues (P. 315), Zakâh Issues (P. 130), Zakâh on Exploited Assets in Jurisprudence, Khalil Hani (P. 39).

(2) The previously mentioned source can be found on (P. 83) of this book.

(3) See: "Al-Bahr Ar-Râ'iq", [2: 246]; Zakâh on Fixed Investment Assets, Muhammad Shubair, in the proceedings of the Fifth Seminar on Contemporary Zakâh Issues (P. 359).

(4) See: Proceedings of the Twenty-Second Seminar on Contemporary Zakâh Issues (P. 198).

(5) The previously mentioned source can be found on (P.59) of this book.

(6) See: "Kashâf Al-Qinâ'", [2:168], Zakâh on Fixed Investment Assets, Muhammad Shubair, in the proceedings of the Fifth Seminar on Contemporary Zakâh Issues (P. 359).

Discussion: The analogy of revenue-generating assets to personal property is a flawed analogy, because personal property is not taken for growth and profit, but rather for personal use. Hence, there is a text indicating that Zakâh is not obligatory on it. In contrast, revenue-generating assets are intended for growth and profit⁽¹⁾.

Third evidence: The default ruling is that Zakâh is not obligatory on wealth except with evidence, and there is no evidence for the obligation of Zakâh on revenue-generating assets themselves. However, their returns are treated like other forms of new income⁽²⁾.

Discussion: The absence of a text stating the obligation of Zakâh on revenue-generating assets does not mean it is not obligatory. Rather, the Prophet (peace and blessings of Allah be upon him) explicitly mentioned the obligation of Zakâh on growing wealth that was prevalent during his time⁽³⁾.

Response: Revenue-generating assets were widespread during the time of the Prophet (peace and blessings of Allah be upon him), and people were renting out their properties. This is evidenced by what has been authentically reported about Ibn Umar (may Allah be pleased with him), who used to lease his farms during the time of the Prophet (peace and blessings of Allah be upon him), as well as during the caliphates of Abu Bakr, 'Umar, and 'Uthmân, and for a period during the governorship of Mu'âwiyah (may Allah be pleased with them)⁽⁴⁾.

Fourth evidence: The analogy of revenue-generating assets to agricultural land regarding the non-obligation of Zakâh on the principal is based on the commonality that both have returns. Scholars have unanimously agreed that Zakâh is not obligatory on the agricultural land itself; rather, it is obligatory on the crops or fruits produced from it, under specific conditions⁽⁵⁾.

(1) See: "Nawâzil Az-Zakat", [p. 359].

(2) See: "Kashâf Al-Qinâ'", [2: 168]; "As-Sayl Al-Jarrâr", [P. 237].

(3) See: "Nawâzil Al-'aqâr", (P. 406)

(4) Narrated by Al-Bukhari in his Sahih, Book of Agriculture and Farming, Chapter on the Companions of the Prophet (peace be upon him) supporting each other in agriculture and produce, hadith number (2343), [3:108], and by Muslim in his Sahih, Book of Transactions, Chapter: Renting Land, hadith number (1547), [3:1180].

(5) See: Proceedings of the Twenty-Second Seminar on Contemporary Zakâh Issues (P. 202).

Evidence of the second opinion: Those among the Malikiah who argue for the obligation of Zakâh on the value of revenue-generating assets when sold provide the following evidence:

First opinion: Whoever intends to generate income has intended to engage in trade, and there is no difference between seeking profit from the value of assets or from their benefits; thus, Zakâh is due on them like that of the goods of a monopolizing trader⁽¹⁾.

Discussion from two perspectives:

First point: Not accepting that one who intends to generate revenue has intended trade, because trade involves selling assets to earn profit⁽²⁾, while generating revenue involves holding goods to benefit from them.

Second point: There is a difference between selling goods and profiting from their assets, and holding them and profiting from their benefits. In the case of preparing them for sale, the growth comes from the asset itself, so its Zakâh is obligatory, In the case of holding them, the growth comes from renting, so Zakâh is not due on the asset.

Second evidence: Zakâh was waived on personal possession goods because their owner does not intend to profit from their assets or benefits, which indicates that anything intended for profit is subject to Zakâh⁽³⁾.

Discussion: The waiving of Zakâh on personal possession goods intended for personal use does not necessarily mean that Zakâh is waived on other types of goods.

Third evidence: Analogy between revenue-generating assets and livestock in the obligation of Zakâh on their assets, based on the fact that both are wealth held for purposes other than trade, and both produce growth and surplus⁽⁴⁾.

Discussion: Livestock has a specific characteristic that necessitated the obligation of Zakâh on its assets by explicit text and in a particular manner unlike other animals. Therefore, it is not valid to make an analogy between them and other types of animals.

(1) See: "At-Tabsirah", [2: 889]; "At-Tawdîh", [2: 213]; "Tahbîr Al-Mukhtasar", [2: 79].

(2) See: Al-Um [2:50], Ma'ouna Uli Al-Nahaa [3:264], Al-Sharh Al-Mumti' [6:143].

(3) See: Al-Tabsirah [2:889].

(4) See: The previous reference.

Evidence of the third opinion: Those who argue for the obligation of Zakâh on the value of revenue-generating assets provide the following evidence:

First evidence: The general evidence indicating the obligation of Zakâh, like Allah saying: {"Take, [O Muḥammad], from their wealth a charity by which you purify them and cause them increase"}⁽¹⁾, and it includes the assets of revenue-generating items.

Discussion: These general evidences have been subject to specification by the Prophet's (peace and blessings of Allah be upon him) saying: "No Zakah is to be paid on one's horse (that he rides) or one's slave."⁽²⁾, and his saying (peace and blessings of Allah be upon him): "there is no Zakâh on less than five aw-suq (three hundred sa)."⁽³⁾. They are not applicable in a general sense⁽⁴⁾.

Second evidence: Making an analogy between revenue-generating assets and trade goods regarding the obligation of Zakâh on their assets, based on the commonality of owning them with the intention of earning income and profit⁽⁵⁾.

Discussion: the analogy between revenue-generating assets and trade goods is a flawed analogy based on two ways⁽⁶⁾:

First point: Trade goods are prepared for sale, and the growth comes from their assets, whereas revenue-generating assets are not prepared for sale; instead, their benefits are utilized.

Second point: Trade goods can easily be converted into cash; thus, Zakâh is due on their assets. In contrast, imposing Zakâh on the assets of revenue-generating assets increases costs, so Zakâh is due on their benefits rather than on their assets.

Third evidence: The reason for the obligation of Zakâh on wealth is growth; thus, whenever growth is realized in an asset, Zakâh becomes obligatory. Rev-

(1) From verse (103) of Surah Al-Tawbah.

(2) The previous reference; see (P. 59) of this book.

(3) The previous reference; see (P. 60) of this book.

(4) See: New Issues of Zakâh (P. 133).

(5) See: Zakâh of Fixed Investment Assets, Munthir Qahf, in the Proceedings of the Fifth Symposium on Contemporary Issues of Zakâh (P. 319).

(6) See: Zakâh of Fixed Investment Assets, Shubair, in the Proceedings of the Fifth Symposium on Contemporary Issues of Zakâh (P. 365).

revenue-generating assets are growing wealth, so Zakâh is obligatory on their assets⁽¹⁾.

Discussion: Growth is a condition for the obligation of Zakâh, not the reason for its obligation, and the presence of a condition does not necessarily imply the existence of the obligation. Therefore, we see that growth is present in fed livestock and in a small number of sheep, yet Zakâh is not required on them⁽²⁾.

Evidence of the fourth opinion: Those who argue for the obligation of Zakâh on revenue-generating assets, like the Zakâh on crops and fruits, by giving a tithe or half a tithe of the yield, base their argument on: the analogy between revenue-generating assets and growing agricultural land regarding the obligation of Zakâh on what comes from them in the amount of a tithe or its half, due to the commonality that both generate yield and profit⁽³⁾.

This argument is contested in three ways:

First point: The analogy is flawed because of two reasons:

1- Agricultural lands do not deplete with frequent use over time, unlike revenue-generating assets, which can be consumed and affected by extensive use and the passage of time⁽⁴⁾.

2- Zakâh is only taken from crops and fruits once, even if they remain for several years, unlike the yield of revenue-generating assets, as it is often in the form of cash, which is subject to Zakâh every year⁽⁵⁾.

Second point: Revenue-generating assets existed during the time of legislation, yet the legislator only mandated Zakâh on one-tenth of crops and fruits, indicating that the non-obligation for others was intentional by the legislator⁽⁶⁾.

Third point: It can be argued that the threshold for crops and fruits is defined as five *awsuq*, and it is not possible to determine a threshold for the yield

(1) See: Zakâh of Exploited Assets (P. 301).

(2) See: Journal of the Islamic Fiqh Academy [2:116].

(3) See: Zakâh of Fixed Investment Assets, Shubair, in the Proceedings of the Fifth Symposium on Contemporary Issues of Zakâh (P. 361).

(4) See: Zakâh of Exploited Assets, Al-Salous, Journal of the Islamic Fiqh Academy [2:95].

(5) See: New Issues of Zakâh (P. 135).

(6) See: Zakâh of Exploited Assets, Al-Salous, Journal of the Islamic Fiqh Academy [2:95].

of revenue-generating assets based on this, as they are often in the form of cash. This indicates that the analogy is not valid.

Preference:

The preferred is -and Allah is the all-knowing- is the first opinion, which is what was held by the majority of scholars, being the non-obligation of zakah on the revenue-generating assets themselves, and that their yield is treated as new wealth.

Reasons for preference:

- 1- The strength of the evidence of the first opinion and its immunity from criticism, along with the weakness of the evidence of the other opinions.
- 2- The absence of any text from the Prophet (peace and blessings of Allah be upon him) or narration from the companions (may Allah be pleased with them) regarding the obligation of Zakâh on the assets of revenue-generating items, despite their existence during their time, serves as the strongest evidence against the obligation of Zakâh on them.
- 3- The default rule regarding goods is that Zakâh is not obligatory on them. However, the legislation mandates Zakâh on trade goods because a trader's wealth fluctuates between cash and goods, and there may be times when a year passes without any cash in hand. If it were not necessary to assess the value of the goods, they would be exempt from Zakâh for many years. In contrast, revenue-generating assets have yields that qualify for Zakâh.

Impact of intention on the issue:

The impact of intention in this matter is evident in that the proponents of the second and third opinions compared revenue-generating assets to trade goods regarding the obligation of Zakâh based on the commonality of the intention for profit and earning, and that this intention is the same as the intention of trade⁽¹⁾. In contrast, the proponents of the first and fourth opinions argue that the intention for profit and earning has no effect on the obligation of Zakâh unless it is accompanied by the intention to sell. This is the correct

(1) See: Manahij al-Tahsil [2:210].

view, as Zakâh is obligatory on trade goods due to the intention to sell their assets and to engage in trade for profit. There is a distinction between profiting through sales and profiting through exploitation.

Topic (2) The Impact of Intention on Zakâh for Utilized Animals That Are Not Livestock⁽¹⁾

Issue description:

Some companies and institutions engage in the field of raising and taking care of animals to obtain their eggs, offspring, wool, or silk for sale and profit. Is Zakâh obligatory on the assets of those animals owned with the intention of holding them for profit from their yield and offspring? Or is Zakâh only obligatory on their yield?

Opinions on the issue: Scholars argued regarding this issue, resulting into five opinions:

First opinion: Zakâh is not obligatory on the assets of those animals or their yield. This is an opinion among the Malikiah⁽²⁾. I have not found any text on the issue among the Hanifah, Shafi'iah, and Hanabilah. However, this opinion could be derived from their stance on the non-obligation of Zakâh on all animals-other than livestock-such as horses and birds, unless they are intended for trade⁽³⁾. Additionally, they assert that revenue-generating assets are not considered trade goods, and Zakâh is not obligatory on their assets⁽⁴⁾, nor do they consider goods to be for trade unless they are owned through a transaction⁽⁵⁾.

(1) The intended meaning is to exclude what is obligatory to pay Zakâh on, such as camels, cattle, and sheep, as previously discussed regarding their exploitation. See: (P. 87) of this book.

(2) See: Al-Nawadir wal-Ziyadat [2:134], Al-Tabsirah [3:1023], Sharh Zuruq 'ala Matn al-Risalah [1:496].

(3) See: Khazanat al-Muftin (P. 840), Hashiyat al-Shalabi 'ala Tabyeen al-Haqa'iq [1:253], Al-Hawi al-Kabir [3:193], Rawdat al-Talibin [2:151], Al-Ri'ayah al-Sughra fi al-Fiqh [1:420], Al-Iqna' [1:242].

(4) See: Al-Muhit al-Burhani [2:249], Al-Bahr al-Raiq [2:246], Al-Um [2:250], Tuhfat al-Muhtaj [3:340], Al-Furu' [4:205], Kashaaf al-Qina' [2:168].

(5) This is a position among the Hanafis and the Madhhab of the Malikis and Shafi'is, as well as a narration among the Hanbalis. See: Baday' al-Sana'i [2:12], Al-Muhit al-Burhani [2:248], Al-Muqaddimat al-Mumahhadat [1:284], Al-Dhakirah [3:17], Nihayat al-Matlab [3:314], Tuhfat al-Muhtaj [3:297], Al-Kafi [1:411], Al-Furu' [4:194].

Second opinion: Zakâh is not obligatory on their assets, but their yield is subject to Zakâh as trade goods.

This opinion can be aligned with the opinion of the Hanifah and Hanabilah regarding the non-obligation of Zakâh on all animals—other than livestock—unless they are intended for trade⁽¹⁾. They also maintain that revenue-generating assets are not considered trade goods, and Zakâh is not due on their assets⁽²⁾. Furthermore, they assert that goods qualify as trade only if they are owned with the intention of trade by their owner⁽³⁾, which includes caring for those animals and managing them to obtain their offspring.

This opinion is chosen by contemporary scholar Dr. Abdullah Al-Ghafilî ⁽⁴⁾ and is reflected in the legal standard issued regarding Zakâh by the Accounting and Auditing Organization for Islamic Financial Institutions⁽⁵⁾.

Third opinion: Zakâh is obligatory on the proceeds from the sale of those animals if they are sold for one year. This is an opinion among the Malikiah⁽⁶⁾.

Fourth opinion: Zakâh is obligatory on those animals themselves and their yield as trade goods. This is the opinion of some contemporary scholars, including Professor Dr. Muhammad Ra'fat 'Uthmân ⁽⁷⁾ and Dr. Muhammad Shubeir⁽⁸⁾.

Fifth opinion: Zakâh is not obligatory on those animals themselves, but their yield is subject to Zakâh like honey by paying half a tenth. This is the opinion of some contemporary scholars, including Dr. Ahmed Burj⁽⁹⁾.

(1) See: Khazanat al-Muftin (P. 840), Hashiyat al-Shalabi 'ala Tabyeen al-Haqa'iq [1:253], Al-Ri'ayah al-Sughra [1:420], Al-Iqna' [1:242].

(2) See: Al-Muhit al-Burhani [2:249], Al-Bahr al-Raiq [2:246], Al-Furu' [4:205], Kashaaf al-Qina' [2:168].

(3) This is a position among the Hanafis and the position among the Hanbalis. See: Al-Mab-sut [2:198], Al-Hidayah [1:96], Al-Insaf [3:153], Kashaaf al-Qina' [2:240].

(4) See: Nawaazil al-Zakah (P. 124).

(5) See: Al-Ma'ayir al-Shar'iyah (P. 480).

(6) See: Al-Tabsirah [3:1023], Al-Taj wal-Iklil [3:182], Sharh Zuruq 'ala Matn al-Risalah [1:496].

(7) See: Zakah al-An'am, Muhammad Ra'fat Othman, in the Proceedings of the Twelfth Symposium on Contemporary Zakah Issues (P. 190).

(8) See: Proceedings of the Thirteenth Symposium on Contemporary Zakah Issues (P. 95).

(9) See: The Rulings of Zakah on Livestock and Agricultural Wealth, Ahmad Burj (P. 210).

Evidence for the opinions and discussions:

Evidence of the first opinion: They argued regarding their opinion being the non-obligation of Zakâh on the animals themselves with the following evidence:

First evidence: The default ruling is that Zakâh is not obligatory on wealth unless there is evidence to the contrary, and there is no evidence to establish the obligation of Zakâh on the assets of those animals⁽¹⁾.

Second evidence: These animals are not subject to Zakâh on their assets, nor are they considered trade goods that are bought and sold. Instead, they are assets from which their yield is obtained, so Zakâh is not obligatory on them⁽²⁾.

They argued against the obligation of Zakâh on their yield by stating: the yield is owned without any transaction, and wealth is considered for trade only if it is owned through a transaction, allowing the intention to be connected with the intended purpose⁽³⁾.

Discussion: Not accepting that wealth is not considered for trade unless it is owned through a transaction. The intention to trade can be connected to any action that indicates a trading purpose, even if it is merely holding and waiting for the right opportunity to sell.

Evidence of the second opinion: They argued regarding the non-obligation of zakah on the assets of those animals with the evidence of the first opinion. Additionally, they argued that the yield of those animals is owned with the intention of selling it for profit, which constitutes the intention of trade, thus Zakâh is required on it as trade goods⁽⁴⁾.

Evidence of the third opinion: Those among the Malikiah who argued for the obligation of Zakâh on the proceeds from the sale of those animals if sold for one year support their view with the following evidence:

First evidence: Those who intended to utilize have also intended to trade, and there is no distinction between seeking profit from the proceeds of the animals or from their yield. Therefore, zakah is paid on these assets like the

(1) See: Kashaaf al-Qina' [2:168], Al-Sayl al-Jarar (P. 237).

(2) See: Nawaazil al-Zakah (P. 124).

(3) See: Al-Binayah [3:311], Tuhfat al-Muhtaj [3:297].

(4) See: Nawaazil al-Zakah (P. 124).

goods of a monopolistic trader⁽¹⁾.

This argument is contested in two ways:

First point: It is not accepted that one who intends to utilize has intended to trade, because trade is the sale of goods for profit and seeking gain⁽²⁾, while utilization is holding goods to benefit from their yield.

Second opinion: There is a difference between selling animals and profiting from their assets and holding them to benefit from their yield. The growth that occurs when preparing them for sale comes from the asset itself, making Zakâh obligatory. In contrast, when holding them, the growth comes from the yield, so Zakâh is not obligatory on the asset.

Second evidence: Zakâh is exempted from personal goods because their owner did not intend to profit from their assets or their yield. This indicates that whatever is intended for profit is subject to Zakâh⁽³⁾.

Discussion: The exemption of Zakâh on personal goods intended for use does not imply the exemption of Zakâh on other assets.

Evidence of the fourth opinion: Those who argue for the obligation of Zakâh on the assets of those animals and their yield support their opinion with the following evidence:

First evidence: Those animals and their yield are owned with the intention of trade and profit, so Zakâh is required on them as trade goods⁽⁴⁾.

Discussion: Not accepting that the assets of those animals are not owned with the intention of trade, as trade is the sale of goods for profit, while the assets of those animals are owned with the intention of holding them, not selling them.

Second evidence: The cause for the obligation of Zakâh on wealth is growth. Wherever growth is realized in wealth, Zakâh becomes obligatory. Revenue-generating assets are considered growing wealth, so Zakâh is obligatory on their assets⁽⁵⁾.

(1) See: Al-Tabsirah [2:889], Al-Tawdih [2:213], Tahbir al-Mukhtasar [2:79].

(2) See: Al-Um [2:50], Ma'unat Awli al-Nuha [3:264], Al-Sharh al-Mumti' [6:143].

(3) See: Al-Tabsirah [2:889].

(4) See: Proceedings of the Thirteenth Symposium on Contemporary Zakah Issues (p. 96).

(5) See: Exploited Zakâh (Zakâh al-Mustaghlat) (p. 301).

Discussion: Growth is a condition for the obligation of Zakâh, not its cause. The presence of a condition does not necessarily entail the obligation. Due to that, we find growth realized in fed livestock and in a small flock of ten sheep, and yet Zakâh is not obligatory on them ⁽¹⁾

Evidence of the fifth opinion: Those who argue that Zakâh is not obligatory on the assets of those animals, and that their yield should be subject to Zakâh similar to honey by paying half a tenth, provide the following evidence:

First evidence: These revenue-generating animals are similar to bees in terms of reproduction, growth, and production, so their products are analogous to what bees' produce being honey. Honey that is obtained through effort is subject to half a tenth, as it is reported that 'Umar ibn Al-Khatâb, (may Allah be pleased with him), said about honey tithes: "What is collected from the plains has a full tenth due on it, and what is collected from the mountains has half a tenth." ⁽²⁾ Since the products of these animals are only obtained through effort—such as feeding, care, equipment, and the like—half a tenth is due on their products⁽³⁾.

Discussion: By not accepting that zakah is obligatory on honey, as the narration attributed to 'Umar, may Allah be pleased with him, is not authentic⁽⁴⁾. Imam Al-Bukhari said "There is nothing authentic regarding Zakâh on honey"⁽⁵⁾, and Imam At-Tirmidhi said "There is nothing significant that is authentic from the Prophet, (peace and blessings of Allah be upon him) on this matter."⁽⁶⁾

Second evidence: By making an analogy between the products of those animals and honey, based on the common factor that both are derived from animals in which Zakâh is not obligatory on themselves⁽⁷⁾.

(1) See: Journal of the Islamic Fiqh Academy [2:116].

(2) Narrated by Abu Ubaid in Al-Amwal, Book of Zakah and its Regulations and Sunnah, Chapter on Disputes Regarding the Obligation of Zakah on Wealth, which includes three categories: honey, olives, and vegetables, Hadith number (1490), (P. 598). Ibn Hazm criticized it due to the presence of Al-Baqi bin Al-Walid in its chain, who is weak, and Hilal bin Murrah, who is unknown. See: Al-Muhalla [4:38], Mizan al-I'tidal [4:316].

(3) See: The Rulings on Zakah for Livestock and Agricultural Wealth (P. 210).

(4) See: Al-Muhalla [4:38], Mizan al-I'tidal [4:316].

(5) Reported by Imam Al-Tirmidhi. See: Al-'Ilal al-Kabir (P. 102).

(6) See: Sunan Al-Tirmidhi [3:15].

(7) See: Zakah on Livestock, Muhammad Ra'fat Othman, in Proceedings of the Twelfth Symposium on Contemporary Zakah Issues (P. 190).

Discussed: Since the original basis for the analogy is disagreed upon, the analogy is invalid⁽¹⁾.

Preference:

The preferred is -and Allah is the all-knowing- is the second opinion, which is that animals owned with the intention of keeping them and profiting from their yield and offspring are not subject to Zakâh on their value, but their yield is subject to Zakâh as trade goods.

Reasons for preference:

- 1- The strength of the evidence of the second opinion and its immunity to criticism, along with the weakness of the arguments of the other opinions.
- 2- What has been previously preferred is the non-obligation of Zakâh on the revenue-generating assets, which includes animals owned with the intention of keeping them and selling their offspring for profit⁽²⁾.
- 3- That the produce of those animals is owned with the intention of trade, thus it is subject to Zakâh as trade goods. It has been previously preferred that ownership of trade goods does not require the intention of transaction, and that any item intended for trade is liable for Zakâh⁽³⁾.

Impact of intention on the issue:

The impact of intention on the Issue appears in two points:

First: The proponents of the third and fourth opinions compared animals -owned with the intention of selling their produce for profit- to trade goods in terms of the obligation of Zakâh, base their evidence on the commonality of the intention for profit and gain, saying it is the same as the intention for trade⁽⁴⁾. In contrast, proponents of the first, second, and fifth opinions argue that the intention for profit and gain does not affect the obligation of Zakâh unless accompanied by the intention to sell. Therefore, Zakâh is not required on the actual animals, and this is the correct opinion. Zakâh is obligatory on trade goods due to the intention to sell their actual value and engage in trade,

(1) See: Contemporary Zakah Issues (P. 124).

(2) See: (P. 563) of this book.

(3) See: (P. 191) of this book.

(4) See: Manahij al-Tahsil [2:210].

which distinguishes between profit from selling and profit from holding and utilizing.

Second: Proponents of the first and third opinions argue that the yield of those animals is not subject to Zakâh as trade goods because it is owned without a transaction, even if the intention is for trade. In contrast, supporters of the second opinion believe that the intention for trade suffices for Zakâh to be obligatory, and ownership through a transaction is not required. This is the more accurate opinion, as previously stated.

Topic (3): The Impact of Intention on the Zakâh of Leased Assets under Financial Leasing ⁽¹⁾

Issue description: In financial leasing, the intention of selling the asset to the lessee coincides with the intention of leasing. So, should leased assets under financial leasing be subject to Zakâh as revenue-generating assets or be treated as trade goods? Or should they be considered deferred debts since the contract is an installment sale with the lease acting as a cover for it?

Opinions on the issue: Contemporary scholars disagreed regarding this issue, resulting into four opinions:

First opinion: Zakâh is not obligatory on the asset, but the rental payments are subject to Zakâh as revenue-generating assets (Exploited Zakâh).

Among those who said this are Dr. Abdullah Al-Ghufayl⁽²⁾, and Professor Dr. 'Isâm Abu Al-Nasr⁽³⁾.

(1) Financial leasing is defined as: a contract for the use of a specified asset, with a known compensation paid in installments over a specific period, which is followed by the transfer of ownership of the leased asset either by virtue of the contract itself or through a new contract for a known compensation or without it. It is also referred to as lease ending in ownership. However, some researchers argue that ownership may not be obtained, so it is preferable to call it financial leasing. Others believe that financial leasing is specific to cases where ownership is transferred within the same contract. See: Contemporary Zakah Issues (p. 313), Research on Contemporary Financial Issues [1:100], Zakah on Assets Under Lease Ending in Ownership, Abu Al-Nasr, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 395).

(2) See: Contemporary Zakah Issues (P. 316).

(3) See: Zakah on Leased Assets Ending in Ownership, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 414).

Second opinion: Zakâh is not obligatory on the asset, and the rental payments are subject to Zakâh as deferred debt. This opinion is the one applied by the Zakâh, Tax, and Customs Authority in the Kingdom of Saudi Arabia⁽¹⁾.

Third opinion: The asset is subject to Zakâh as trade goods every year along with its rental income. This opinion is derived ⁽²⁾from the opinion of the majority of the Hanifah, Shafi'iah, and Hanabilah that Zakâh is due on the value of goods prepared for sale and trade when leased, along with their rental income each year⁽³⁾.

Among those who support this opinion are Professor Dr. Muhammad Khalid Mansûr⁽⁴⁾, and this is also reflected in the executive regulations for Zakâh collection in the Kingdom of Saudi Arabia⁽⁵⁾.

Fourth opinion: The rental payments are subject to Zakâh as newly acquired wealth, and upon the sale and transfer of ownership, the entire price is subject to Zakâh for one year. This opinion aligns with the Maliki opinion⁽⁶⁾ that Zakâh is due on the yield of goods prepared for sale and trade when utilized⁽⁷⁾, and that goods not traded within a single year are subject to Zakâh for one year after the sale⁽⁸⁾.

Among those who hold this opinion are Professor Khâlid Al-Muslih ⁽⁹⁾and

(1) Mentioned by Professor Khalid Al-Dhahiri, one of the advisors of the authority. See: Proceedings of the Twenty-Third Symposium on Contemporary Zakah Issues (P. 293).

(2) See: Zakah on Leased Assets Ending in Ownership, Al-Musleh, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (p. 371).

(3) See: Al-Binayah [3:384], Khazanat Al-Muftin (P. 842), Al-Majmu' [5:359], Commentary of Qalyubi on Al-Mahalli's Explanation [2:38], Al-Furu' [4:203], Kashaaf Al-Qina' [2:243].

(4) See: Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 434).

(5) See: Article (35) of The Implementing Regulation for Zakâh collection, issued by the Zakah and Tax Authority, year: 1445 H.

(6) See: Zakah on Leased Assets Ending in Ownership, Al-Musleh, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 372).

(7) See: Al-Mudawwanah [1:324], Al-Tawdih [2:169].

(8) See: Al-Mudawwanah [1:309], Al-Ishraf [1:403], Al-Taj wal-Iklil [3:181].

(9) See: Zakah on Leased Assets Ending in Ownership, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 373).

Professor Yusuf Al-Shubaili⁽¹⁾, and this

a fatwa was issued in the twenty third Symposium on Contemporary Zakâh Issues⁽²⁾.

Evidence for the opinions and discussions:

Evidence of the first opinion: Those who argue against the obligation of Zakâh on the asset and that rental payments are to be Zakâh of revenue-generating assets support their view with the following:

First evidence: That the meaning of trade is the turnover of money through buying and selling in pursuit of profit, and the intention of renting in the case of assets rented through financial leasing prevents turnover and interrupts the intention of trade, leaving only the intention of value generation; thus, rental payments are subject to Zakâh as revenue-generating assets⁽³⁾.

Discussion: That trade does not necessarily require the turnover of money; some forms of trade involve holding goods, and it is not accepted that the intention of leasing and utilization prevents the intention of trade, as there is no contradiction between the two intentions.

Second evidence: That the default is non-trade in assets, and this principle is reinforced by the presence of the intention of leasing, so it is not obligatory except the Zakâh of lease⁽⁴⁾.

Discussion: That the owner intends to sell the assets after the lease period ends, and this intention overrides the default principle of non-trade. The pres-

(1) He added that companies find it difficult to pay zakah at the time of sale; they pay zakah at the end of the financial year, thus paying zakah on the payment they will receive in the coming year, effectively zakah on the price for one year, since the last price is distributed over the years. If they pay zakah each year for the payment of the next year, they have effectively paid zakah on the full price for one year. See: Research on Contemporary Financial Issues [1:535].

This raises a concern that it assumes that the sale occurs from the beginning of the contract, while it is known that the sale and transfer of ownership do not take place until the rental installments are completed, and thus, the transfer of ownership to the tenant is a potential matter and not definitively established.

(2) See: Proceedings of the Twenty-Third Symposium on Contemporary Zakah Issues (P. 301).

(3) See: Zakah on Contemporary Debts (P. 132).

(4) See: The previous reference.

ence of the intention of leasing does not conflict with the intention of trade.

Third evidence: That the asset in a financing lease does not leave the ownership of the lessor throughout the lease period, thus it is treated like other leased assets⁽¹⁾.

Discussion⁽²⁾: The analogy of assets leased under a financing lease to other leased assets is flawed; because the assets leased under a financing lease are owned with the intention of selling them, not merely holding them, unlike assets leased under an operational lease⁽³⁾.

Fourth evidence: whoever owns a piece of land with the intention of trade and then plants it is only required to pay the Zakâh of one-tenth, and he is not obligated to pay the Zakâh on the land itself due to the obstacle of planting⁽⁴⁾. Similarly, if someone owns an asset with the intention of trade and then leases it, he is not obligated to pay Zakâh on the asset itself due to the obstacle of the lease⁽⁵⁾.

Discussion: Not accepting that if someone owns a piece of land with the intention of trade and then plants it, he is not required to pay Zakâh on the land as trade Zakâh, and the issue is controversial, so it is not valid to make an analogy based on it⁽⁶⁾.

Evidence of the second opinion: Those who argue that Zakâh is not obligatory on the asset and that rental payments are to be Zakâh on deferred debts present the following:

First evidence: The essence of financing lease is a sale on installment, and the lease is a cover for the sale and is not intended for itself. Therefore, the sale

(1) See: Zakah on Leased Assets Ending in Ownership, Abu Al-Nasr, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 414).

(2) See: Zakah on Contemporary Debts (P. 140), Zakah on Leased Assets Ending in Ownership, Al-Muslih, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 372).

(3) Operational leasing: An accounting term referring to the type of lease where the contract pertains to the benefit of the asset without transferring ownership of the asset to the lessee. See: Research on Contemporary Financial Issues [1:102].

(4) See: Al-Mabsut [3:47], Baday' al-Sana'i [2:57], Al-Bayan [3:311], Kifayat al-Nabih [5:477].

(5) See: Research on Contemporary Financial Issues [2:409].

(6) See: (P. 130) of this book.

is concluded, resulting in a deferred debt in installments, and Zakâh is obligatory on it like other debts⁽¹⁾.

Discussion: The invalidity of characterizing financing lease as a sale because a sale necessitates the transfer of ownership to the buyer upon contract, while in a financing lease, ownership does not transfer until all installments are completed. This is evidenced by the fact that the liability for loss rests with the lessor. It would be unfair to impose the burden of loss on the lessor while considering the rental installments as a stable debt that requires Zakâh⁽²⁾.

Second evidence: That the owner of the assets leased under a financing lease did not intend to retain them but aimed to sell them and collect their price in installments. Therefore, the installments should be regarded solely as deferred price payments, as the essence of contracts lies in their purposes and meanings⁽³⁾.

Discussion: That the existence of the intention to sell does not mean that the sale has occurred. The owner of the asset intends to sell it after the completion of the rental installments, and the installments may be completed, resulting in the sale, or they may not be completed, and thus the sale may not occur.

Third evidence: That the installments paid in a financing lease are not appropriate to the lease contract, and more appropriate to the price of the commodity, indicating that the contract is a sale contract and not a lease contract, and that the payments are installments of a deferred price⁽⁴⁾.

Discussion: That when determining the rent for assets leased under a financing lease, the potential transfer of ownership at the end of the term is considered. An increase or decrease in the rent does not mean that the contract is a sale rather than a lease, as both the lessor and the lessee can mutually agree on the rent, whatever the amount.

Evidence of the third opinion: Those who argue that the asset should be subject to Zakâh as trade goods every year, along with its rental income, base

(1) See: Zakah on Contemporary Debts (P. 145).

(2) See: The previous reference (P. 147).

(3) See: Zakah on Contemporary Debts (P. 140), Zakah on Leased Assets Ending in Ownership, Al-Muslih, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 372).

(4) See: Lease Ending in Ownership, Al-Yamani (P. 227).

their reasoning on the following: the assets leased under a financing lease are fundamentally owned with the intention of trade, specifically selling them for profit. The intention to lease them until the sale occurs does not change their status as trade goods. Therefore, they should be subject to Zakâh each year along with their income, just like other trade goods⁽¹⁾.

Discussion: By not accepting that all trade goods are subject to Zakâh every year in all cases, as trade goods that are not regularly bought and sold are only subject to Zakâh on their price for one year, and that occurs at the time of sale⁽²⁾.

Evidence of the fourth opinion: Those who argue that rental payments are subject to Zakâh as earned wealth, while upon sale, the full price is subject to Zakâh for one year, base their reasoning on the following: two intentions co-exist in leasing items under a financing lease, the intention to trade by selling later when the rental payments are completed, and the intention to lease until those payments are fulfilled. Each intention is given its due ruling, and it is through paying Zakâh as rental Zakâh on the income, and paying Zakâh as the Zakâh of a monophyletic trader on the asset itself⁽³⁾.

Discussion: They argue that this would lead to double taxation, which is prohibited in Zakâh, because the rental payments effectively become the purchase price in the event of ownership transfer, resulting in paying Zakâh on them twice ⁽⁴⁾

This argument is contested in two ways:

First point: Double taxation that is prohibited refers to taking Zakâh twice for the same reason from the same wealth. Here, however, the wealth and the reason differ. The rental payments are subject to Zakâh as earned income due to the possibility that the sale might not occur, while the asset is subject to Zakâh on its sale price for one year when the sale takes place, as it is a trade good owned by a speculative trader⁽⁵⁾.

(1) See: Research on Contemporary Financial Issues [2:409].

(2) See: Zakah on Leased Assets Ending in Ownership, Al-Muslih, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 373).

(3) See: The previous reference (P. 157).

(4) See: Zakah on Leased Assets Ending in Ownership, Al-Muslih, in Proceedings of the Twenty-Second Symposium on Contemporary Zakah Issues (P. 374).

(5) See: The previous reference.

Second point: It can also be answered by: stating that the rental payments may not remain by the time a full year passes, and thus no Zakâh would be due on them. This indicates the validity of the opinion that Zakâh is due on the full sale price when the sale occurs.

Preference:

It appears that the preferred opinion-Allah knows best-is the fourth opinion, which states that the leased assets in a financial lease are subject to Zakâh on their rental income, and when a sale and ownership transfer occur, the entire price is subject to Zakâh for one year.

Reasons for preference:

- 1- The method of Zakâh on the leased assets under a financial lease is based on the nature of the contract. It is correctly classified as a lease contract that may ultimately lead to a sale, as it includes the intention of leasing in the present and the intention of trading through sale in the future. Each aspect is given its respective ruling.
- 2- The original intention behind acquiring the leased assets in a financial lease is to trade them. Scholars agree that if a person's original intention in owning trading assets is to trade them, and they intend to exploit them until they are sold, this does not affect the intention of trading, and they must pay Zakâh on them as trading assets⁽¹⁾.
- 3- The leased assets under a financial lease do not change hands through buying and selling within a single year; rather, they are held to be sold after more than a year at a higher price than their current sale. Thus, they are akin to the trading assets of a speculative trader, and it has been previously preferred that the trading assets of a speculative trader are subject to Zakâh for one year after the sale⁽²⁾.

Impact of intention on the issue:

The intention has a significant effect on this matter, and its impact is evident in all opinions. The clarification is as follows:

- 1- Proponents of the first opinion believe that leasing the assets in a financial lease negates the intention of trading them, and the intention

(1) See: p. 503 of this book.

(2) See: p. 486 of this book.

of trading is only realized upon the completion of the rental payments, thus they are subject to Zakâh as investment properties.

- 2- Proponents of the second opinion believe that the owner's intention to sell is evidence that the contract is an installment sale, and the lease conceals the sale, hence the payments are subject to Zakâh as deferred debts.
- 3- Proponents of the third and fourth opinions believe that the intention to sell those assets after the completion of the rental payments renders them as trading assets, and if they are leased at the same time, they are subject to Zakâh as trading assets.

Topic (4): The Impact of Intention on Factory Zakâh⁽¹⁾

First Issue: The impact of intention on the ruling of factory Zakâh

Issue description:

Is Zakâh obligatory on the fixed assets of factories, such as real estate, machinery, equipment, and similar items? What is the impact of intention on this?

Clarifying the point of dispute:

- 1- If the fixed assets of factories are owned with the intention of trading by selling them for profit, then Zakâh is required on them as trading assets, subject to its conditions, just like other trading assets. ⁽²⁾
- 2- If the fixed assets of factories are intended for leasing and benefiting from their revenue, then exploited Zakâh is required on them as investment properties. ⁽³⁾

(1) Factories is the plural of factory, and in the language, the term "factory" refers to large constructions made by people, such as palaces, fortresses, and the like. This is derived from the saying of Allah: "And you make factories, hoping to live forever" (Surah Ash-Shu'ara, 129). The term also refers to the place where industry is practiced, which is work and creation. See: Lisân al-'Arab [8:211], Contemporary Arabic Dictionary [2:1324].

(2) See: Al-Mabsût (1982), Badâ'i Al-Sanâ'i [2:12], Al-Muqaddimât Al-Mumahhidât (1/284), Al-Tawdîh [2:213], Al-Um [2:50], Bahr Al-Madhab [3:156], Al-Mubdi' [2:369], Kashaf Al-Qinâ' [2:240].

(3) The disagreement regarding The Ruling on Exploited Zakâh has been previously mentioned; see (P. 563) of this book.

- 3- The point of dispute lies in the fixed assets of factories owned with the intention of using them in the production process—what are commonly referred to as productive fixed assets in accounting⁽¹⁾—whether Zakâh is obligatory on them or not.

Opinions on the issue:

Scholars have differing opinions on this issue, with two main views:

First opinion: There is no obligation for Zakâh on the fixed assets of factories. This is the position of the majority, who state that the machinery of craftsmen is not subject to Zakâh. This has been mentioned by the Hanafi⁽²⁾ and Maliki schools, according to their common understanding⁽³⁾, and the Shafi'is⁽⁴⁾ and the Hanbalis⁽⁵⁾.

And this is what the Sharia standard regarding Zakâh issued by the Accounting and Auditing Organization for Islamic Financial Institutions⁽⁶⁾ is based on. The fatwa of the 23rd symposium on contemporary Zakâh issues has also been issued⁽⁷⁾.

Second opinion: Zakâh on the fixed assets of factories is obligatory as trading assets. This is the position of some of the later Maliki scholars who mandated Zakâh on trading assets for craftsmen's machinery⁽⁸⁾. This view is held by contemporary scholars such as Dr. Munther Qahf⁽⁹⁾ and Dr. Muhammad Naim Yaseen⁽¹⁰⁾.

(1) Productive fixed assets are defined as anything through which a commodity or product is produced without the substance being consumed in what it produces, and it has not been earmarked for trade. See: Zakâh on Fixed Assets, Abdul Fattah Idris, in the proceedings of the 23rd symposium on Zakâh issues (P. 45).

(2) See: Badâ'i Al-Sanâ'i [13:2], Al-Muḥiṭ Al-Burhânî [2:249], Al-Binâya [3:304].

(3) See: Al-Dhakhîra [3:22], Jawâhir Al-Durar [3:103], Mawâhib Al-Jalîl [2:324].

(4) See: Al-Hâwî Al-Kabîr [3:189], Bahr Al-Madhhab [3:153], Al-Bayân [3:324].

(5) See: Al-Furû' [4:205], Al-Insâf [3:154], Kashaf Al-Qinâ' [2:167].

(6) See: Sharia Standards (p. 474).

(7) See: Proceedings and Papers of the 23rd Symposium on Contemporary Zakâh Issues (p. 299).

(8) See: Al-Tanbih 'ala Mabâdi' Al-Tawjîh [2:807], 'Aqd Al-Jawâhir [1:228], Mawâhib Al-Jalîl [2:324].

(9) See: Zakâh on Fixed Investment Assets by Munther Qahf in the proceedings of the 5th Symposium on Contemporary Zakâh Issues (p. 324).

(10) See: Proceedings and Papers of the 22nd Symposium on Contemporary Zakâh Issues (p. 194).

Evidence and discussions:

Evidence for the first opinion: Those who argue against the obligation of Zakâh support their view with the following:

First evidence: The saying of the Prophet (peace be upon him): “No sadaqa is due from a Muslim on his slave or his horse.”⁽¹⁾

Point of evidence: The Prophet (peace be upon him) negated the obligation of Zakâh on a slave and a horse because they are considered personal possessions, and the fixed assets of factories are analogous in terms of being held for personal benefit⁽²⁾.

Discussion: The analogy of the fixed assets of factories to personal possessions is a flawed analogy; personal possessions are not intended for growth and profit, whereas the fixed assets of factories are intended for growth and profit⁽³⁾.

Second evidence: The default ruling is that there is no obligation of Zakâh on wealth unless there is evidence to the contrary, and there is no evidence mandating Zakâh on the fixed assets of factories⁽⁴⁾.

Third Evidence: The default ruling regarding trading assets is that Zakâh is not obligatory on them unless there is a clear intention for trade.

And these assets are not owned with the intention of trade; rather, they are held for the purpose of retaining and benefiting from them, so Zakâh is not obligatory on them⁽⁵⁾.

Discussion: It is not accepted that they are owned without the intention of trade, because trade is not limited to the sale of goods but extends to the use of assets for growth and increase⁽⁶⁾.

Response: Scholars agree that trading assets are those owned with the intention of selling them for profit⁽⁷⁾. However, what contributes to the growth

(1) Previously referenced; see: p. 59 of this book.

(2) See: Kashaf Al-Qinâ' [2:168].

(3) See: Nawâzil Al-Zakâh (p. 132).

(4) See: Kashaf Al-Qinâ' [2:168], Al-Sayl Al-Jarâr (p. 237).

(5) See: Al-Muḥiṭ Al-Burhânî [2:249], Al-Tanbîh 'ala Mabâdî' Al-Tawjîh [2:807].

(6) See: Zakâh on Fixed Assets, Muhammad Abdul Halim, in the proceedings of the 22nd Symposium on Contemporary Zakâh Issues (P. 181).

(7) See: Badâ'i Al-Sanâ'i [2:13], Al-Muḥiṭ Al-Burhânî [2:249], Al-Dhakhîra (223), Jawâhir Al-Durar [3:103], Al-Hâwî Al-Kabîr [3:130], Al-Bayân [3:324], Al-Furû' [4:205], Kashaf =

of wealth while retaining its principal is not classified as trading assets.

Fourth evidence: The fixed assets of factories are engaged in primary needs and are not growth-oriented, so Zakâh is not obligatory on them⁽¹⁾.

Discussion: They are engaged in primary needs but rather for investment and wealth enhancement, and they also contribute to the growth of wealth, even if they are not growth-oriented themselves⁽²⁾.

Response: They are occupied with the owner's needs and may be the sole source of their income, and the wealth that grows as a result has its own specific ruling. The issue here is the Zakâh on these assets, which are not growth-oriented and diminish over time.

Evidence for the second opinion: Those who argue that Zakâh is obligatory on the fixed assets of factories as trading assets support their view with the following:

First evidence: The general evidence indicating the obligation of Zakâh, such as the saying of Allah: "Take from their wealth a charity by which you purify them and cause them to grow" (Surah At-Tawbah, 103)⁽³⁾, which includes the fixed assets of factories.

Response: This general evidence has been specified by the saying of the Prophet (peace be upon him): "No sadaqa is due from a Muslim on his slave or his horse."⁽⁴⁾ and his saying: "There is no Zakâh on less than five camels, there is no Zakâh on less than five awaq (two hundred dirhams of pure silver) and there is no Zakâh on less than five awsuq."⁽⁵⁾ indicating that they are not universally applicable⁽⁶⁾.

Second evidence: The analogy of the fixed assets of factories to trading assets regarding the obligation of Zakâh on these assets, based on the common-

= Al-Qinâ' [2:167].

(1) See: Al-Binâya [3:304].

(2) See: Zakâh on Fixed Assets, Muhammad Abdul Halim, in the proceedings of the 22nd Symposium on Contemporary Zakâh Issues (P. 184).

(3) From verse 103 of Surah At-Tawbah.

(4) Previously referenced; see: (P. 59) of this book.

(5) Previously referenced; see: (P. 60) of this book.

(6) See: Nawâzil Al-Zakâh (P. 133).

ality of ownership with the intention of earning and profit⁽¹⁾.

Discussion: The analogy of the fixed assets of factories to trading assets is flawed for two reasons⁽²⁾:

First point: Trading assets are prepared for sale, and growth is derived from them, whereas the fixed assets of factories are not prepared for sale; rather, their revenue is utilized.

Second point: Trading assets can easily be converted into cash; hence Zakâh is obligatory on their value. In contrast, imposing Zakâh on the fixed assets of factories increases costs, so Zakâh is more appropriately applied to their products rather than their fixed assets.

Third evidence: The fixed assets of factories assist in trade because their products are prepared for sale, and whatever assists trade is subject to Zakâh⁽³⁾.

Discussion: The mere fact that they assist trade does not necessitate the obligation of Zakâh on them, as evidenced by the absence of Zakâh on the shops of traders, even though they assist in trade.

Fourth evidence: Historically, craftsmen's tools were merely small implements associated with the work of the craftsman and were not considered primary assets in manufacturing and production. In contrast, today's factories rely primarily on their fixed assets, so it is not valid to exempt them from Zakâh⁽⁴⁾.

Discussion: Reliance on them for production does not necessitate the obligation of Zakâh on these assets, as Zakâh is obligatory on what is prepared for trade, not on what is prepared for production.

Preference:

The preferred opinion—Allah knows best—is the first opinion, which states that factories set up for production are not required to pay Zakâh on their fixed assets, such as real estate, machinery, and equipment.

(1) See: Zakâh on Fixed Investment Assets, Munther Qahf, in the proceedings of the 5th Symposium on Contemporary Zakâh Issues (P. 319).

(2) See: Zakâh on Fixed Investment Assets, Shubeir, in the proceedings of the 5th Symposium on Contemporary Zakâh Issues (P. 365).

(3) See: 'Aqd Al-Jawahir Al-Thaminah [1:228].

(4) See: Zakâh on Fixed Assets, Muhammad Abdul Halim, in the proceedings of the 22nd Symposium on Contemporary Zakâh Issues (P. 184).

Reasons for preference:

- 1- The strength of the evidence for the first opinion and its immunity from criticism, alongside the weakness of the evidence for the second opinion.
- 2- The previously established preference regarding the non-obligation of Zakâh on the assets of exploited properties ⁽¹⁾is equally applicable to factories, as they share similarities with exploited properties in that they are intended for retention and benefit from their products.

Impact of intention on the issue:

The impact of intention is evident in that the second opinion holders analogize factories to trading assets concerning the obligation of Zakâh, based on the commonality of the intention for profit and gain. They argue that this intention is the same as the intention for trade. In contrast, the first opinion holders maintain that the intention for profit and gain does not influence the obligation of Zakâh unless it is accompanied by the intention of sale, which is the more valid stance.

Second issue: The impact of intention on Zakâh for raw materials⁽²⁾

Issue description:

Is Zakâh obligatory on raw materials prepared for manufacturing and construction—where their presence remains in the final product—if a full year passes while they remain in their original state?

Examples include wood for furniture-making, cotton for clothing, and glass for pottery. Should Zakâh be applied if a year passes before, they are incorporated into the final product?

Opinions on the issue:

Scholars have differing opinions on this matter, with two main views:

First opinion: Zakâh is obligatory on trading assets. This is the apparent

(1) See: (P.563) of this book.

(2) Raw materials refer to the materials used in manufacturing and construction that are incorporated into the final product, such as steel for automobile manufacturing and wood for furniture-making. See: Proceedings and Papers of the 7th Symposium on Contemporary Zakâh Issues (P. 584).

stance of the Hanafi⁽¹⁾, Shafi'i⁽²⁾, and Hanbali⁽³⁾ schools, as they state that materials whose effects remain in the finished product, such as dyes and similar items, are subject to Zakâh on trading assets.

This view aligns with that of the Maliki school, which asserts that the status of a manufacturer is akin to that of a managing trader; since the manufacturer produces and sells or offers for sale what they have made, they should evaluate their inventory annually, adding the value of their inventory to their available liquid assets and pay Zakâh on the total⁽⁴⁾.

It was stated in the Fatwa of the 7th Symposium on Contemporary Zakâh Issues⁽⁵⁾, and this was adopted in the Sharia standard issued regarding Zakâh by the Accounting and Auditing Organization for Islamic Financial Institutions⁽⁶⁾. The Implementing Regulation for Zakâh collection in the Kingdom of Saudi Arabia also adopted this⁽⁷⁾.

Second opinion: Zakâh is not required for these materials. This is the view of some contemporary scholars⁽⁸⁾, including Sheikh Abdullah Al-Muni' ⁽⁹⁾ and

(1) See: Badâ'i' al-ṣanâ'i' (P. 132), al-Binâyah Sharh al-Hidâyah [3:304 [, al-Bahr al-Râ'iḳ [2:222].

(2) See: al-Bahr al-Madhab [3:152 [, Asnâ al-Maṭâlib [1:382 [, Tuḥfat al-Muḥtâj [3:297].

(3) See: al-Ri'âyah al-Sughra [1:418 [, al-Furū' [4:204 [, Kashâf al-Qinâ' [2:244].

(4) See: Ḥāshiyat al-Bannānī 'ala Sharḥ al-Zurqānī [2:279 [, Ḥāshiyat al-Dasūqī 'ala al-Sharḥ al-Kabīr [1:474 [, Lawâmi' al-Durar fī Hikṭ al-Astâr al-Mukhtaṣar [3:428].

(5) See: Proceedings and Papers of the 7th Symposium on Contemporary Zakâh Issues (P. 584).

(6) See: Sharia Standards (P. 478).

(7) See: Article [2:52 [of the Implementing Regulation for Zakâh Collection, issued by the Zakat, Tax, and Customs Authority in the year 1445 H.

(8) Some researchers attribute the opinion of the non-obligation of Zakâh to Majd al-Din Ibn Taymiyyah. See: Zakâh Images of Trade Assets, Rafiq Al-Masri, from the Proceedings of the 7th Symposium on Contemporary Zakâh Issues (P. 274), and Zakâh Issues (P. 142). Upon reviewing the statements of the Hanbalis, it appears that what is reported about Al-Majd in his book "Nihayat Al-Ghayah" pertains specifically to what the tanner purchases to tan with, as he stated that Zakâh is not due on it because it does not leave a mark. His differing opinion on this matter is due to the specifics of the application rather than a disagreement on the principle of the issue. See: Al-Ri'âyah Al-Sughra [1:418 [, Al-Furu' [4:204 [, and Ma'oonat Uli Al-Nahya [3:268].

(9) See: Zakâh Images of Trade Assets, Al-Muni' from the Proceedings of the 7th Symposium on Contemporary Zakâh Issues (P. 313).

Professor Dr. Khalid Al-Muṣliḥ⁽¹⁾.

Evidence and discussions:

Evidence for the first opinion: Those who argue that Zakâh is required on these materials, as Zakâh on trade assets, provide the following evidence:

First evidence: These materials are owned with the intention of selling or exchanging them for profit after they enter into the product. Any asset that meets this intention is considered part of trade assets, and Zakâh is due on it due to the general evidence indicating the obligation of Zakâh on trade assets⁽²⁾.

Second evidence: These materials are incorporated into the final product intended for trade, leaving their mark on it, thus they are also considered intended for trade, making Zakâh on trade assets applicable⁽³⁾.

Evidence for the second opinion: Those who argue against the obligation of Zakâh state that these materials are not owned with the intention of trade, but rather for manufacturing purposes. The owner does not intend to sell them in their current state; thus, they fall under personal use assets, which are not subject to Zakâh⁽⁴⁾.

Discussion: It is argued that preparing raw materials for manufacturing does not contradict the existence of the intention to sell them after they are produced for the purpose of profit, which constitutes the intention of trade. There is no requirement for the intention to sell them in their original state as long as they are owned with the intention of trade.

Preference:

The preferred view-Allah knows best-is the first opinion, which states that raw materials prepared for manufacturing and construction are subject to the Zakâh of trade assets if a full lunar year passes while they remain in their current state.

(1) In a fatwa published on his official website, accessible via the link: <https://www.almosleh.com/ar/22060>.

(2) See: Bahr Al-Madhhab [3:152], Ma'oonat Uli Al-Nahya [3:268].

(3) See: Baday' Al-Sanai' [2:13], Al-Furu' [4:204].

(4) See: Zakâh Images of Trade Assets, Al-Muni' from the Proceedings of the 7th Symposium on Contemporary Zakâh Issues (P. 313).

Reasons for preference:

- 1- The strength of the evidence supporting the first opinion and the weaknesses of the second opinion, which is not free from challenges.
- 2- A trader may find that a full lunar year has passed while only raw materials are in their possession for manufacturing and construction. The argument against including them in the Zakâh base would be unjust to the poor.

Note: Some researchers argue that raw materials should be treated as trade assets in general. According to the Maliki school, they do not constitute a Zakatable asset; instead, only their price is Zakatable for one year after sale. They justify this by stating that raw materials are not considered for sale until they enter into the final product, thus making them non-circulating and simply held in reserve⁽¹⁾.

However, this perspective appears inaccurate for two reasons:

First: If we consider raw materials as trade assets, the lunar year for their Zakâh would be the same as for the original product. It is possible for a full lunar year to pass shortly after acquiring them, after which they enter the product and are sold in less than a year; thus, there is no basis for categorizing them as trade reserves.

Second: The focus of this discussion is on raw materials that are not sold in their original form, making it inappropriate to assert Zakâh on them upon sale, as is the case with all trade reserves.

The correct view is that raw materials follow the final product they will become. If the product is subject to management Zakâh, then the raw materials should also be Zakatable as trade assets. If they are held in reserve, then the Zakâh is due on the sale price of the product for one year after its sale. This differentiation aligns with the Maliki school, which distinguishes between managed assets and reserved assets⁽²⁾.

(1) See "Zakâh of Types of Trade Assets" by Al-Kurdi, in the Proceedings of the Seventh Symposium on Contemporary Zakâh Issues (P. 192), and "Zakâh of Reserves and Its Contemporary Applications," published in the Journal of the Fiqh Society, Issue (45), (P. 219).

(2) The issue of Zakâh on reserve assets has been previously discussed. For more details, refer to (P. 486) of this book.

Impact of intention on the issue:

The role of intention becomes evident in that the disagreement arises from differing views on whether the intention of trade is present in raw materials before they enter the product. Proponents of the first opinion believe that the intention of trade is indeed realized in these materials, as they are intended for exchange while still retaining their presence in the final product. In contrast, proponents of the second opinion contend that the intention of trade is not realized, as these materials are not intended for sale but rather for manufacturing.

Topic (5): The Combined Intent of Exploitation and Ownership and Its Impact on Exploited Zakâh

Issue description:

In contemporary times, the exploitation of ownership assets has become prevalent. Individuals rent out their private residences during certain seasons or utilize their personal vehicles for transportation services, thereby combining the intentions of exploitation and ownership.

This combination of the intentions of exploitation and ownership does not raise any issues according to the majority opinion of scholars among the Hanafi, Maliki (in the commonly held view), Shafi'i, and Hanbali schools, all of whom maintain that no Zakâh is due on the actual assets of exploited properties⁽¹⁾; the ruling remains unchanged whether these assets are considered for ownership or exploitation, while the income derived from them is regarded as a distinct type of wealth subject to specific rulings.

However, this issue becomes contentious when considering the opinion that Zakâh is obligatory on the actual assets of exploited properties, a view attributed to some Malikis ⁽²⁾and contemporary scholars⁽³⁾. This raises the question: Is Zakâh required on assets owned with the dual intention of exploitation and ownership, or not?

(1) The issue of Zakâh on exploited properties has been previously discussed. See: (P. 563) of this book.

(2) They stated that Zakâh is due on them as it is on the assets of a trader who is holding for speculation. See: (P. 564) of this book.

(3) See: (P. 564) of this book.

Opinions on the issue: The Malikis have articulated three opinions on this matter:

First opinion: No Zakâh is due on these assets, which is the prevailing view among the Malikis⁽¹⁾.

Second opinion: Zakâh is due on these assets if they are sold within a year, similar to other exploited properties. This is a possibility within the Maliki ⁽²⁾framework.

Third opinion: No Zakâh is due if the primary intention is ownership, with the intention of exploitation being secondary. Zakâh becomes obligatory if the primary intention is exploitation, with the intention of ownership being secondary. This view is attributed to Al-Rajraji ⁽³⁾ among the Malikis.

He stated in *Methods of Acquisition*: "If the intention behind the purchase is for use and enjoyment, then without that, it would not have been purchased. If, during that time, it is rented out or becomes disliked, the ruling is for personal use. However, if the intention in the purchase is for renting out and, without it, it would not have been purchased, and if his family needs to enjoy and use it during that time, the ruling is for the rental"⁽⁴⁾.

Evidence and discussions:

Evidence for the first opinion: Those who argue against the obligation of Zakâh contend that if one combines the intention of personal use with trade, Zakâh is waived in favor of the intention of personal use. Therefore, it is more appropriate for Zakâh to be waived for someone who combines the intentions

(1) See: *Al-Tabsirah* [2:889], *Jewels of the Pearls* [3:99], and the *Great Commentary of Al-Dardir* [1:424].

(2) See: *Al-Tawdh* [2:215], *The Crown and the Garland* [3:182], and *The Precious Pearl and the Abundant Source* (P. 424).

(3) He is Ali ibn Said Al-Rajraji, known as Abu Al-Hasan, a scholar and memorizer of hadith who was skilled in Arabic, jurisprudence, and principles. He authored a book titled *Methods of Acquisition and Results of Subtle Interpretations* in explaining the *Muwatta* and resolving its issues, summarizing the interpretations of the imams and relying on the statements of Al-Qadi Ibn Rushd, Al-Qadi Iyad, and the extrapolations of Abu Al-Hasan Al-Lakhmi. He was alive in the mid-seventh century AH, and the date of his death is not known. For more details about his biography, refer to *The Joy of Delight in Embellishing the Gloss* (p. 316) and the introduction by the editor of *Methods of Acquisition* [1:12].

(4) See: *Methods of Acquisition* [2:211].

of personal use and exploitation, given the differing views on the obligation of Zakâh on exploited properties⁽¹⁾.

Discussion: It is not necessarily true that combining personal use and trade automatically waives Zakâh; rather, this should be determined by the original intention and the genuine motivation behind ownership.

Evidence for the second opinion: Those who assert the obligation of Zakâh argue that personal use and exploitation are two fundamental categories, each independent and with its own ruling—one necessitating Zakâh while the other negates it. Therefore, when they coexist, the ruling should favor Zakâh out of caution⁽²⁾.

Discussion: The principle of caution is applied when evidence is equally balanced without any preference, whereas here there is a preference: the original ruling for properties is personal use, not exploitation.

Evidence for the third opinion: Those who prioritize the original intention over any subsequent ones argue that the critical factor is the genuine motivation behind owning the properties—what would have led to their purchase. Some properties may be owned with the intention of exploitation from the outset, but they might be used subsequently. Conversely, others may be owned with the intention of acquisition but later exploited. Thus, determining the ruling based on intention and genuine motivation is preferable to a blanket statement of obligation or non-obligation⁽³⁾.

Preference:

The previous conclusion favored the opinion that Zakâh is not obligatory on the assets of exploited properties⁽⁴⁾. However, in the case of the obligation, the more appropriate stance—Allah knows best—is the third opinion, which states that Zakâh is not obligatory on properties that combine the intentions of personal use and exploitation if the original intention and motivation for ownership is personal use. Conversely, Zakâh is obligatory if the original intention and motivation for ownership is exploitation.

(1) See: Al-Tawdih [2:214].

(2) See: Al-Taj and Al-Ikleel [3:181].

(3) See: Methods of Acquisition [2:211].

(4) See: p. (563) of this book.

Reasons for preference:

- 1- The strength of the third opinion's evidence, which is based on a valid differentiation by assigning a ruling to each case.
- 2- The combination of the two intentions in the ownership of assets necessarily includes a primary intention and a secondary intention. The primary intention is the true motivation for ownership, without which ownership would not have occurred, while the secondary intention is one whose absence would negate the purpose of ownership. Thus, the ruling is based on the primary intention.
- 3- The previously established ruling regarding the obligation of Zakâh when both intentions of ownership and trade are present, provided that the intention of trade is the primary one, and the non-obligation if the intention of ownership is the primary one⁽¹⁾. Therefore, in the case of Zakâh on the assets, there is no justification for distinguishing between the intention of exploitation and the intention of trade when both are present.

The impact of intention on the issue:

The impact of intention is evident in that the proponents of the first opinion believe that the combination of the intention of ownership with the intention of exploitation nullifies the obligation of Zakâh. In contrast, the proponents of the second opinion see no effect on the obligation of Zakâh. The third opinion differentiates between situations where the intention of exploitation is the motivating factor for ownership and situations where the intention of ownership is the motivating factor, such that Zakâh is obligatory in the former but not in the latter.



(1) See: (P.503) of this book.

Seventh Treatise

The Impact of Intention on Zakâh for Contemporary Debts

Topic (1): The Impact of Intention on the Zakâh of Goods-Based Debts

First issue: The impact of intention on the zakâh of salam debt⁽¹⁾.

Issue description:

Does Zakâh become obligatory on goods purchased through a Salam contract (forward-purchase) —such as cars or appliances—if one year passes before receiving the goods? ⁽²⁾

Clarifying the point of dispute:

- 1- I found no disagreement among scholars that goods purchased through Salam with the intention of personal use or investment (not for trade) ⁽³⁾are not subject to Zakâh before they are received. This is because Zakâh does not become obligatory even after receiving them, so it is more appropriate that Zakâh would not be due when the goods are still

(1) Salam in the Arabic language means “advance payment” and is synonymous with “Salaf,” which refers to the payment of money for a known product to be delivered at a future time. The terms Salam and Salaf are used interchangeably, although Salaf can also mean “loan,” making Salam the more specific term. Refer to Tahrir Alfadh al-Tanbih (P. 187), Lisan al-Arab]12:295 [, entry (S-L-M).

In Islamic legal terminology, Salam refers to a contract on a specified product to be delivered at a later date in exchange for an advance payment made at the time of the contract. See: Al-Iqna' [2:133 [, Muntaha al-Iradat [3:381].

- (2) The relevance of this issue as a contemporary matter is due to the widespread use of Salam contracts (forward-purchase) by companies and institutions to purchase goods.
- (3) This is based on the opinion of the majority of scholars who do not differentiate between personal assets and investment goods regarding the non-obligation of Zakâh on their inherent value. Refer to (P.563) of this book.

a debt in the seller's liability⁽¹⁾.

- 2- Scholars differ on the issue of goods purchased through Salam with the intention of trade. Does Zakâh become obligatory on the buyer before receiving the goods or not?

Opinions on the issue:

The scholars have expressed two differing opinions regarding this issue:

First Opinion: Zakâh is not obligatory on Salam debt at all, and once it is received, it begins a new Zakâh year. This is the prevailing view among the Hanafi scholars⁽²⁾, the Shafi'i school⁽³⁾, and a narration from the Hanbalis⁽⁴⁾.

Second opinion: Zakâh is obligatory on Salam debt, similar to other debts⁽⁵⁾. This view is held by some Hanafi scholars ⁽⁶⁾, the Maliki school concerning managing traders⁽⁷⁾, the prevailing opinion among Hanbalis⁽⁸⁾, and is also reflected in the Shari'ah standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions⁽⁹⁾.

Evidence and discussions:

Evidence for first opinion: Those who argue against the obligation of Zakâh

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- (1) See: Al-Nahr al-Fa'iq [1:413], Hashiyat Ibn Abidin [2:260], Al-Taj wa al-Ikleel [3:188], Sharh al-Kharshi 'ala Mukhtasar Khalil [2:197], Al-Hawi al-Kabir [3:320], Al-Majmu' Sharh al-Muhadhdhab [6:28], Al-Furu' [3:454], Ma'unat Uli al-Nuha [3:157].
 - (2) See: Al-Tajreed [3:1262], Al-Jawharah Al-Nayyirah [1:114], Hashiyat Ibn Abidin [2:260].
 - (3) See: Al-Hawi Al-Kabir [3:320], Tamam Al-Ibanah, Al-Mutawalli (P. 318), Al-Majmu' [28:6].
 - (4) See: Al-Furu' [3:454], Al-Insaf [3:20].
 - (5) Scholars differ on how to calculate Zakâh for Salam goods; some say the goods should be valued in cash, and Zakâh is due on that value, while others say Zakâh is due on the cost, i.e., the principal amount of the Salam. However, this is not the place to elaborate. See: Sharh Al-Kharashi [2:197], Lawami' Al-Durar [3:428], Shari'ah Standards (P. 497).
 - (6) See: Al-Muheet Al-Burhani [2:307], Al-Bahr Al-Ra'iq [2:225].
 - (7) As for the hoarding trader, Zakâh is not obligatory on him because he does not assess his goods, and there is a view regarding not paying Zakâh on Salam debts if they are food, as valuing food is like selling it, and selling food before receiving it is prohibited. However, the prevailing view among them is that Zakâh is obligatory in all cases. See: Al-Jami' Li Masail Al-Mudawwanah [4:50], Al-Taj and Al-Iklil [3:188], Mawahib Al-Jalil [2:322].
 - (8) See: Al-Furu' [3:454], Mu'eenat Awli Al-Nuha [3:157], Kashaf Al-Qina' [2:171].
 - (9) See: Shari'ah Standards (P. 497).

on Salam debt support their view with the following reasoning:

First evidence: The buyer cannot dispose of Salam debt before receiving the goods, which renders his ownership incomplete due to the lack of physical possession, and Zakâh is only obligatory on fully owned assets⁽¹⁾.

Discussion: This assumption is challenged by the assertion that Salam debt can indeed be disposed of before receipt. Some scholars maintain that the Salam debt can be transferred to another party or sold⁽²⁾, meaning ownership is not incomplete.

Second evidence: Salam debt is considered non-productive because the debtor cannot act upon it, and the ability to generate profit is a condition for Zakâh obligation⁽³⁾.

Discussion This point is disputed by arguing that Salam debt can generate profit, especially in cases where it is purchased with the intention of trade, in which case profit is indeed realized.

Third evidence: The debt of Salam is described as a liability, and what is characterized as a liability does not allow for the intention of trade; therefore, Zakâh is not obligatory on it⁽⁴⁾.

Discussion: The liability does allow for the intention of trade; the intention of trade is the intention of selling for the purpose of profit. If the sale occurs on the described liability, then so does the intention.

Fourth evidence: The owner of the Salam does not possess the purchased goods in a definitive manner prior to their receipt, as there is a possibility of cancellation due to the discontinuation of the Salam subject. Non-definitive debts are not subject to Zakâh⁽⁵⁾.

Discussion: The possibility of cancellation does not weaken complete ownership; for instance, a son is obligated to pay Zakâh on a gift from his father, even though it is subject to the father's right of retraction⁽⁶⁾.

(1) See: Al-Jawharah Al-Nayyirah [1:114], Al-Bahr Al-Ra'iq [2:225].

(2) See: Majmua' Al-Fatawa [29:506], Al-Sharh Al-Mumtî' [9:91].

(3) See: Al-Mabsut [2:168].

(4) See: Tamamat al-Ibana (P. 318), Tahrir al-Fatawa [1:506].

(5) See: Al-Majmu' [6:28].

(6) See: Al-Furu' [3:454].

Evidence for the Second Opinion: Those who argue for the obligation of Zakâh on Salam debts support their position with the following evidence:

First evidence: It is an asset purchased with the intention of trade; therefore, Zakâh is obligatory on it, just like other trade assets, and there is no distinction between specified assets and those described as a liability⁽¹⁾.

Second evidence: The Salam debt is compensation for an asset that the buyer had possession of; thus, the compensation takes the place of the asset regarding the obligation of Zakâh⁽²⁾.

Third evidence: The Salam debt, like other debts, can be assigned, as there is no evidence against its permissibility; therefore, Zakâh is obligatory on it like other debts⁽³⁾.

Preference:

The preferred opinion, and Allah knows best, is the second opinion, which states that Zakâh is obligatory on goods purchased through Salam with the intention of trade, and it is treated like other debts.

It should be noted that the obligation to pay Zakâh on these goods is in principle, while it is subject to the rules of Zakâh on debts, whether it is expected to be repaid or otherwise⁽⁴⁾.

Reasons for preference:

- 1- The principle regarding debts is the obligation of Zakâh, with no distinction between Salam debt and other debts.
- 2- Goods purchased through Salam with the intention of trade are considered growing wealth, as they are bought for less than the current price and are typically sold for profit; thus, Zakâh is obligatory on them.
- 3- The intention of trade applies to both described liabilities and specified goods, with no distinction.

(1) See: Mu'ina Awli al-Noha [3:157].

(2) See: Al-Bahr Al-Ra'iq [2:225].

(3) See: Al-Fatawa Al-Sa'diyya (P. 350).

(4) It has been previously preferred that Zakâh is not obligatory on a loan that is not expected to be repaid, and the Zakâh is assessed after its receipt; the same applies to other debts, including the debt of Salam goods. See: P. 155 of this book.

Impact of intention on the issue:

The intention has two impacts in this matter:

First impact: The disagreement is limited to goods purchased through Salam with the intention of trade; however, there is consensus that Zakâh is not obligatory on goods purchased for personal use.

Second impact: Proponents of the first opinion argue against the obligation of Zakâh on goods purchased through Salam, stating that the intention of trade cannot apply to a described liability. In contrast, proponents of the second opinion believe that the intention of trade can apply to a described liability because the sale occurs on it, just like with specified goods.

Second issue: the impact of intention on zakâh for the debt of Istisnâ' ⁽¹⁾

Issue description:

Is Zakâh obligatory on the goods purchased through Istisnâ' before their receipt?

Clarifying the point of dispute:

- 1- I have not encountered any disagreement regarding the fact that goods purchased through Istisnâ' with the intention of possession or utilization ⁽²⁾ are not subject to Zakâh before their receipt; because Zakâh does not become obligatory after their receipt, it is more appropriate that it is not obligatory while it remains a debt owed by the manufacturer⁽³⁾.
- 2- The majority of the Maliki, Shafi'i, and Hanbali schools do not permit Istisnâ' except in the form of Salam⁽⁴⁾; thus, there is no distinction for

(1) Istisna in Language: The term istisna is derived from the verb "istisna," "to manufacture" meaning to call for the making or creation of something. See: Al-Mukhtasar, Ibn Sidah [3:436], Lisan al-Arab [8:209].

Istisna in Terminology: It is a contract for a sale concerning a liability where manufacturing is a condition. See: Badai al-Sanaye [2:5], Kashaf al-Qina' [3:165].

(2) This is according to the opinion of the majority of jurists regarding the equivalence between goods intended for personal use and those intended for exploitation concerning the non-obligation of Zakâh on their specific items. See:)P. 563(of this book.

(3) See: Al-Nahr al-Fa'iq [1:413], Hashiyat Ibn Abidin [2:260], Al-Ma'ayir al-Shar'iya (P. 479), Research on Contemporary Financial Issues [2:307].

(4) See: Al-Tawdi'h [6:25], Tahir al-Mukhtasar [4:62], Hilyat al-Ulama [4:389], Al-Najm Al-Wahaj [4:257], Al-Furu' [6:147], Kashaf al-Qina' [3:165].

them between Zakâh on Salam debt and Zakâh on Istisnâ' debt.

- 3- Those who permit Istisnâ' with deferred payment of the price or part of it-this is the position of the Hanafi school ⁽¹⁾and the opinion of most contemporary scholars, as it has been issued in a resolution by the International Islamic Fiqh Academy⁽²⁾, and has been adopted in the Shari'ah standard issued regarding Istisnâ' by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)⁽³⁾-differ in their rulings regarding Zakâh on the Istisnâ' goods purchased with the intention of trade before their receipt. There are four opinions on the matter:

Opinions on the issue:

First opinion: Zakâh is not obligatory on the Istisnâ' goods, and if they are received, Zakâh is assessed based on the time of receipt. This is the common view among the Hanafis ⁽⁴⁾and is supported by contemporary scholar Dr. Ahmad Al-Kurdi⁽⁵⁾.

Second opinion: Zakâh is obligatory on the Istisnâ' goods, and the full cost must be included in the Zakâh calculation. This is what the Shari'ah standard issued regarding Zakâh from the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) ⁽⁶⁾prescribes, as well as the guidelines for calculating Zakâh for companies issued by the Kuwaiti Zakâh House⁽⁷⁾.

The Third Opinion: Zakâh is obligatory on the value of the goods, deducting the debt owed to the manufacturer, in cases where the payment is deferred or partially deferred ⁽⁸⁾. Dr. Abdullah bin Hassan holds this opinion

(1) Zafar disagreed and did not permit it. See: Al-Tajrid [5:2712 [, Al-Mabsut]12:138 [, Al-Muhit al-Burhani [4:134].

(2) See: Resolutions and Recommendations of the International Islamic Fiqh Academy, Resolution No. 65 (P. 207).

(3) See: Al-Ma'ayir al-Shar'iya (P. 147).

(4) See: Al-Tajrid [3:1262 [, Al-Jawhara Al-Naira [1:114 [, Hashiyat Ibn Abidin [2:260].

(5) See: Zakâh on the Form of Trade Goods, in the Proceedings of the 7th Symposium on Contemporary Zakâh Issues (P. 197).

(6) See: Al-Ma'ayir al-Shar'iya (P. 479).

(7) See: Guidelines for Calculating Zakâh for Companies (P. 53).

(8) If the value of the goods is 100,000 and their price is 90,000, with the istisna manufacturer having paid 20,000, then Zakâh is obligatory on the manufacturer based on the value, =

Al-Sheikh⁽¹⁾.

Fourth opinion: The Istisnâ' manufacturer is obligated to pay Zakâh on the debt owed to him by the manufacturer, which is the amount he has paid without receiving the equivalent in return, excluding other amounts. This opinion aligns with the view of the Hanafis regarding the obligation of Zakâh on the sold goods before their receipt⁽²⁾, and their assertion that wages are not due by contract but by benefit or possession⁽³⁾. Accordingly, the goods do not become due to the Istisnâ' (manufacturer) merely by the contract but upon payment of the equivalent.

Professor Dr. Yusuf Al-Shubaily ⁽⁴⁾ supports this opinion.

Evidence for the opinions and discussions:

Evidence for the first opinion: Those who argue against the obligation of Zakâh present the following evidence:

First evidence: The Istisnâ' (manufacturer) does not possess the right to dispose of the Istisnâ' goods before receiving them, rendering his ownership incomplete due to the lack of possession, and Zakâh is only obligatory on fully owned property⁽⁵⁾.

Discussion: the Istisnâ' goods can be disposed of before their receipt through assignment or sale to whomever they are owed or others, analogous to Salam debt⁽⁶⁾; thus, ownership is not incomplete before receipt.

Second evidence: Zakâh is obligatory on the manufacturer, not on the Istisnâ' manufacturer, as the goods do not leave the ownership of the manufacturer until they are received by the Istisnâ' manufacturer⁽⁷⁾.

= which is 100,000. From this amount, the debt owed for the price (70,000) is deducted, resulting in Zakâh due on 30,000.

(1) See: Zakâh on Debts and Its Contemporary Applications (P. 456).

(2) See: Al-Muhit Al-Burhani [2:307], Al-Bahr Al-Ra'iq [2:225].

(3) See: Al-Tajrid [7:3580], Al-Hidaya [3:231], Al-Jawhara Al-Naira [1:226].

(4) See: Zakâh on Assets Under Development, in the Proceedings of the 22nd Symposium on Contemporary Zakâh Issues (P. 222).

(5) See: Al-Jawhara Al-Naira [1:114], Al-Bahr Al-Ra'iq [2:225].

(6) See: Majmu' Al-Fatawa [29:506], Sharh Al-Mumt'i [9:91].

(7) See: Zakâh on the Form of Trade Goods, by Al-Kurdi, in the Proceedings of the 7th Symposium on Contemporary Zakâh Issues (P. 197).

Discussion: the goods do leave the ownership of the manufacturer and become a debt owed as soon as payment is made, even if not yet received, similar to other sales.

Evidence for the second opinion: Those who assert that Zakâh is obligatory on the full cost present the following evidence:

First evidence: The *Istisnâ'* contract establishes a debt for each party to the other, where the *Istisnâ'* manufacturer is obligated to pay for the goods, and the manufacturer is obligated to deliver the goods to the *Istisnâ'* manufacturer; thus, each must pay Zakâh on their debt in full if it is Zakatable wealth, like goods purchased for trade⁽¹⁾.

Discussion: debt is not considered due merely by the obligation but by the payment of the equivalent. If it were due solely by obligation, it would equate to selling a debt for another debt, which is prohibited⁽²⁾.

Second evidence: The *Istisnâ'* goods do not have a defined market value before their receipt; therefore, they are assessed based on their cost, which is the price the *Istisnâ'* manufacturer is obligated to pay to the manufacturer⁽³⁾.

Discussion: The *Istisnâ'* goods can indeed be valued like other commodities; however, it may be difficult to evaluate them if they are not finished products and there is no comparable item.

Evidence for the third opinion: Those who argue that Zakâh is obligatory on the *Istisnâ'* goods after deducting the debt owed by the *Istisnâ'* manufacturer to the manufacturer present the following: The goods are purchased with the intention of trade; thus, Zakâh is due on them as trade assets, even if they are a debt owed by the manufacturer. However, it must be considered that the *Istisnâ'* manufacturer is both a creditor and a debtor to the manufacturer, so the debt he owes must be deducted from the debt he is owed, and Zakâh is paid on the excess, if any⁽⁴⁾.

Discussion: The *Istisnâ'* manufacturer being both a creditor and debtor under the same contract implies that delaying the exchanges is not permissible.

(1) See: *Al-Ma'ayir Al-Shar'iya* (P. 479).

(2) See: *Sharh Al-Zarkashi* [4:14], *Kashaf Al-Qina'* [3:304].

(3) See: *Guidelines for Calculating Zakâh on Companies* (P. 53).

(4) See: *Zakâh on Debts and Its Contemporary Applications* (P. 456).

The correct view is that the Istisnâ' manufacturer is a creditor for the amount he has paid and is not indebted to the manufacturer for anything he has not received.

Evidence for the fourth opinion: Those who argue that Zakâh is obligatory on the Istisnâ' manufacturer for the amount owed to him by the manufacturer—the amount he has paid without receiving the equivalent—support their position with the following: The Istisnâ' goods intended for trade are subject to Zakâh even before their receipt, and they are treated similarly to debts. Zakâh on a debt is only obligatory if it is due, and it is only considered due when the equivalent is paid⁽¹⁾.

Preference:

The preferred opinion, and Allah knows best, is the fourth opinion, which states that Zakâh is obligatory on Istisnâ' goods purchased with the intention of trade, specifically for the amount that has been paid but not received in return. If it is possible to assess that amount, otherwise it is valued based on the cost price, and its Zakâh is subject to the rules governing Zakâh on debts, whether it is expected to be repaid or otherwise⁽²⁾.

An example of this is: If someone purchases goods through Istisnâ' for 100,000, pays 30,000 of that, and has not received any of the goods, then he is obligated to pay Zakâh on 30% of the market value of the goods at the time Zakâh is due. If the goods are divisible and he has received 20% of them, he is obligated to pay Zakâh on the excess of the debt owed to him, which would be 10% of their value.

Reasons for preference:

- 1- The strength of the fourth opinion's evidence and its immunity from critique, while other opinions face objections.
- 2- The previous ruling on the obligation of Zakâh on Salam debt⁽³⁾; there is no distinction between the debt of Salam goods and the debt of Is-

(1) See: Zakâh on Assets Under Development, in the Proceedings of the 22nd Symposium on Contemporary Zakâh Issues (P. 222).

(2) It has previously been indicated that Zakâh is not obligatory on a non-repayable loan, and it is subject to the Zakâh year upon receipt; this applies to all debts, including the debt for istisna goods. See: (P. 155) of this book.

(3) See: (P. 593) of this book.

tisnâ' goods, except that in Istisnâ', the payment may be deferred, so only what has been paid is subject to Zakâh.

- 3- The contract of Istisnâ' with delayed exchanges is not considered a sale but rather a promise of sale, and the sale is concluded based on the amount the Istisnâ' manufacturer pays to the manufacturer. Thus, for every installment paid towards the price of the goods, the Istisnâ' manufacturer is entitled to what corresponds to that installment. Therefore, he is only obligated to pay Zakâh on what he has paid but not received.

Impact of intention on the issue:

The impact of intention is evident in that the disagreement in this matter is limited to Istisnâ' goods purchased with the intention of trade before their receipt. In contrast, there is no disagreement regarding the non-obligation of Zakâh on Istisnâ' goods purchased for personal use.

Topic (2): The Impact of Debtor's Intent on the Deduction of Investment and Housing Debts ⁽¹⁾from the Zakâh Base

One of the most complex and urgent contemporary legal issues is the Zakâh on deferred investment and housing debts owed by the accountable person. This is a topic that was not extensively addressed by earlier jurists, as most debts in their time were either immediate or short-term. However, now long-term debts that can extend to twenty, twenty-five years, or more have become widespread. Seminars have been held on this issue, leading to differing opinions and resolutions due to its complexity and various aspects. The majority of contemporary scholars have concluded that debts generally impact the Zakâh base of the debtor, although they differ on other details, as will be discussed.

Issue description:

According to the view that debt has an effect on the Zakâh base in general-which is the opinion of the majority of jurists from the Hanafi, Maliki, and the old Shafi'i schools, as well as the Hanbali school⁽²⁾-should all investment

(1) Investment debts are those taken to finance commercial projects with the intention of earning profit and growing wealth, typically to be repaid in monthly or yearly installments. Housing debts, on the other hand, are those taken from the government or banks, etc., to purchase a home, also typically repaid in monthly or yearly installments. See: Contemporary Zakâh Issues (P. 72), The Impact of Debt on the Zakâh Base (P. 41).

(2) This is contrary to the new position among the Shafi'is and a narration from the Hanbalis, =

and housing debts be deducted from the Zakâh base, whether they are immediate or deferred? What is the impact of the debtor's intention in this matter⁽¹⁾?

Clarifying the point of dispute:

- 1- I have not found any disagreement among contemporary jurists who assert that debt impacts the Zakâh base, particularly that debts taken to finance assets or goods with the intention of trade should be deducted from the Zakâh base if they are immediate⁽²⁾.
- 2- There is a difference of opinion regarding deferred debt: should the entire amount be deducted from the Zakâh base, or only the immediate installment, or should its value be deducted?
- 3- They also disagree about debts taken to finance fixed assets or goods for personal use or investment: should these be deducted from the Zakâh base or not?
- 4- Additionally, they differ on whether, if the debtor has excess personal goods beyond their needs, these should be considered against the debt, meaning that only the value exceeding these goods should be deducted from the Zakâh base or not.

Opinions on the issue:

Contemporary jurists have differing views on this issue, with seven opinions:

First opinion: The entire debt, including the immediate debt and only the immediate portion of the deferred debt, should be deducted from the Zakâh

= which states that debt does not prevent the obligation of Zakâh in general. Refer to: Al-Mabsut [2:160 [, Baday' al-Sanayi' [6:2 [, Al-Kafi fi Fiqh Ahl al-Madina [1:295 [, Al-Tawhid [2:230 [, Al-Hawi al-Kabir [3:309 [, Al-Bayan [3:147 [, Al-Majmu' [5:344 [, Al-Furu' [3:458 [, Al-Insaf [3:24 [, Kashaf al-Qina' [2:175].

- (1) The discussion here is not about whether debt prevents the obligation of Zakâh or not; this is a well-known issue that has been addressed in many studies and theses. Rather, the focus is on the opinions of contemporary scholars regarding how debt affects the Zakâh base, identifying the debts that are impactful versus those that are not, and the mechanism for dealing with installment debts.
- (2) Refer to: Research and Proceedings of the Second Symposium on Contemporary Zakâh Issues (P. 372), Research and Proceedings of the Fourteenth Symposium on Contemporary Zakâh Issues (P. 503), Shari'ah Standards (P. 481), Research and Proceedings of the Nineteenth Symposium on Contemporary Zakâh Issues (P. 27), Research in Contemporary Financial Issues [2:308-309].

base for all investment and housing debts. It should be noted that in the case of debts that financed income-generating assets or trade goods, if the debtor has excess personal goods beyond their needs, these should be counted against the debt, and only the amount exceeding their value should be deducted from the Zakâh base⁽¹⁾.

With this opinion, the decision of the Second Symposium on Contemporary Zakâh Issues was issued⁽²⁾.

Second opinion: The entire current debt and only the current installment of the deferred debt shall be deducted from the Zakâh base for all investment and housing debts without exception. This is one of the two opinions that were addressed in the decision of the Fourteenth Symposium on Contemporary Zakâh Issues⁽³⁾, and it is the opinion of Dr. Al-Siddiq Al-Durair⁽⁴⁾.

Third opinion: The entire current and deferred debts shall be deducted from the Zakâh base for all investment and housing debts, except in cases where the debtor has surplus non-Zakatable assets, which will offset the debt, and only the amount exceeding their value will be deducted from the Zakâh base. This is one of the opinions mentioned in the decision of the Fourteenth Symposium on Contemporary Zakâh Issues⁽⁵⁾, and it is the opinion of Dr. Ahmad Al-Haji Al-Kurdi⁽⁶⁾.

Fourth opinion: The entire current and deferred debts shall be deducted from the Zakâh base for debts that financed assets or commodities with the intention of trade. However, debts that financed assets or commodities in-

(1) For example: If a person has a debt of one hundred thousand riyals and used it to purchase trade goods, and they have an income-generating property valued at one million riyals, the debt will be offset against the property, and it will not be deducted from the Zakâh base. In the same example, if the debt amounts to two million riyals, then one million riyals will be deducted from the Zakâh base, which is the amount exceeding the value of their income-generating property.

(2) See: Research and Proceedings of the Second Symposium on Contemporary Zakâh Issues (P. 372).

(3) See: Research and Proceedings of the Fourteenth Symposium on Contemporary Zakâh Issues (P. 503).

(4) See: The previous reference (P. 138).

(5) See: The previous reference (P. 504).

(6) See: The debt that prevents the obligation of Zakat, Al-Kurdi, in the Research of the Fourteenth Symposium on Contemporary Zakâh Issues (P. 115).

tended for personal use or exploitation (non-Zakâhable) shall not be deducted from the Zakâh base at all. This opinion was adopted in the Shari'ah standards issued regarding Zakâh by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)⁽¹⁾.

Fifth opinion: The current and deferred debts shall be deducted from the Zakâh base after excluding any deferred profits ⁽²⁾for all investment and housing debts, except where the debtor has non-Zakatable assets, which will offset the debt, and only the amount exceeding their value will be deducted from the Zakâh base. This was the choice made by the committee tasked with studying the jurisprudential trends in contemporary debt Zakâh⁽³⁾, which presented its study at the Nineteenth Symposium on Contemporary Zakâh Issues⁽⁴⁾.

Sixth opinion: Both the current debt and deferred debt, after excluding deferred profits, should be deducted from the Zakatable base. This applies to debts incurred to finance assets or goods intended for trade. However, debts incurred to finance non-Zakatable assets should not be deducted from the Zakatable base at all. This opinion was endorsed by the 19th Contemporary Zakâh Issues Symposium ⁽⁵⁾and supported by Dr. Yusuf Al-Shubaili⁽⁶⁾.

Seventh opinion: The entire current debt and only the current installment of deferred debt should be deducted from the Zakatable base. This applies to debts incurred to finance assets or goods intended for trade, while debts incurred to finance non-Zakatable assets should not be deducted from the Zakatable base at all. This is the view of Dr. Majid Al-Faryan⁽⁷⁾.

(1) See: Shari'ah standards (P. 481).

(2) In the case of deferred debt, only the principal and the Zakâh year's profit are deducted, excluding deferred profits. By deferred profits, we mean the profits attributed to the debtor that pertain to the years following the Zakâh year in deferred transactions. See: Guidelines for Calculating Zakâh for Companies (p. 60).

(3) This committee was formed by the decision of the Eighteenth Symposium on Contemporary Zakâh Issues and included a select group of contemporary scholars, including Dr. Abdul Rahman Al-Atram, Dr. Yusuf Al-Shibili, Dr. Issam Abu Al-Nasr, Dr. Issam Al-Anzi, and others. See: Research and Proceedings of the Nineteenth Symposium on Contemporary Zakâh Issues (P. 27).

(4) See: The previous reference (P. 32).

(5) See: The previous reference (P. 217).

(6) See: Research on Contemporary Financial Issues [2:308-309].

(7) See: The Zakâh Base in Contemporary Companies (P. 385).

Evidence for the opinions and discussions:

Evidence for the first opinion: Advocates of this opinion argue that the entire current debt and the current installment of deferred debt should be deducted from the zakatable base, based on the following points:

First evidence: Deferred debt or deferred installments are not immediately demanded from the debtor and do not have to be paid right away. Therefore, they should not be deducted from the zakatable base. On the contrary, the entire current debt or installment due before Zakâh becomes obligatory should be deducted because it is a right that must be fulfilled before Zakâh is due⁽¹⁾.

Discussion: Deferred debt, although not immediately demanded, is still a liability on the debtor's record and could become due in the event of the debtor's death or bankruptcy, where the entire debt would be immediately demanded⁽²⁾.

It was answered in two ways:

First point: The existence of debt as a liability does not necessitate its deduction from the Zakâh base, as the Zakâh base is recalculated every year. Therefore, only the debt that is due in that specific year is deducted, and not for other years⁽³⁾.

Second point: Not accepting the argument that deferred debt becomes due upon death or bankruptcy, as it remains deferred since it is a right for the debtor and their heirs, and thus, it does not lapse⁽⁴⁾.

Second evidence: Zakâh, when a full year passes, becomes a right of Allah that must be paid immediately, and it takes precedence over the deferred rights of humans, which do not require immediate payment, so it should not be deducted from Zakâh⁽⁵⁾.

They also argued that deduction applies to all investment and housing debts because there is no difference between debt used to purchase assets or

(1) See: Al-Bahr Al-Raiq [2:219], "Zakâh on Deferred Investment Debts," by Abu Suleiman, within the research presented at the Second Symposium on Contemporary Zakâh Issues (P. 191).

(2) See: Al-Taj wa Al-Ikleel [3:200].

(3) See: The Zakâh Base in Contemporary Companies (P. 379).

(4) See: Al-Mughni [4:326].

(5) See: Zakâh of the Debtor and its Contemporary Applications (P. 63).

goods with the intention of trade and debt used to purchase assets or goods for personal use. What matters is that the debt is due and must be paid, which would prevent the obligation of Zakâh on the amount owed⁽¹⁾.

Discussion: Debts used to purchase assets or goods with the intention of personal use or exploitation do not result in Zakatable assets, so deducting them from the Zakâh base leads to benefiting from the debt twice — once by acquiring non-Zakatable assets and again by deducting it from the Zakâh base⁽²⁾.

As for the argument that in debts used to finance income-generating assets or trade goods, there is an exception when the debtor possesses non-essential personal assets, which can be offset against the debt and only the excess debt amount can be deducted from the Zakâh base. They argued that non-essential personal assets could be sold to pay off the debt, and offsetting them against the debt and not deducting it from the Zakâh base would be more beneficial to the poor⁽³⁾.

This was countered in three ways:

First point: Zakâh is based on the principle of fairness, and it does not prioritize the benefit of the poor over the wealthy⁽⁴⁾.

Second point: Offsetting debt with non-essential personal assets is difficult to regulate, as determining what exceeds one's needs can be ambiguous and may lead to disputes with companies and institutions from which Zakâh is collected⁽⁵⁾.

Third point: This argument applies to debts used to finance assets or goods with the intention of acquisition, and it is not limited to debts used to finance income-generating assets or trade goods, as you claim.

Evidence for the second opinion: They argue that the entire current debt and the current installment of deferred debt are deducted from the Zakâh base for all investment or housing debts, based on the first three arguments of the first opinion, to which the same objections and responses apply.

(1) See: Proceedings of the Eleventh Contemporary Zakâh Issues Symposium (P. 27).

(2) See: Research on Contemporary Financial Issues [2:313].

(3) See: Al-Durr Al-Thamin (p. 414), Al-Mughni [3:69].

(4) See: Al-Furu' [3:459].

(5) See: Research on Contemporary Financial Issues [2:310].

They further argue that the debt is considered against the Zakatable wealth and is deducted from it, rather than being offset against excess personal assets, as follows:

First evidence: The current debt should not be settled from personal assets when there is available cash of the same type; thus, the debt is set against what can be paid off and deducted from the Zakâh base accordingly⁽¹⁾.

Second evidence: Considering debt against excess personal assets leads to not deducting the debt from the Zakâh base, as every debtor has excess assets beyond their basic needs, making it difficult to determine what constitutes “excess”⁽²⁾.

Evidence for the third opinion: They argue that the entire current and deferred debt is deductible from the Zakâh base, as follows:

First evidence: The deferred debt is a liability that must be settled in the future; hence, it should be deducted from the Zakâh base, just like current debt⁽³⁾.

Discussion: There is a distinction between current and deferred debt. Current debt must be paid before Zakâh is due, as it has matured, while deferred debt does not have the same requirement⁽⁴⁾.

Second evidence: Deferred debt prevents the obligation of Hajj, so it should similarly prevent the obligation of Zakâh⁽⁵⁾.

Discussion: It is not accepted that deferred debt prevents the obligation of Hajj because it is not due until its time has arrived, thus not affecting the ability to perform Hajj⁽⁶⁾.

They also argue that deductions apply to all investment or housing debts based on the third argument of the first opinion, which faces the same objections.

(1) See: Al-Mughni [4:326].

(2) See: Research in Contemporary Financial Issues [2:310], Zakâh Base in Contemporary Companies (P. 385).

(3) See: Badâ'i' al-Şanâ'i' [6:2].

(4) See: Zakâh Base in Contemporary Companies (P. 379).

(5) See: Al-Hawî al-Kabîr [3:310].

(6) See: Al-Hawî al-Kabîr [4:13], Al-Sharḥ Al-Mumti' [7:26].

And they argued that if the debtor has surplus personal property that exceeds their needs, it should be set off against the debt, and only the amount that exceeds its value should be deducted from the Zakâh base, based on the evidence used by the proponents of the first opinion, and the same objections apply to it.

Evidence for the fourth opinion: They argued that the entire current and deferred debt should be deducted from the Zakâh base, based on the evidence from the third opinion, to which the same objections apply.

As for the evidence restricting the deduction from the Zakâh base to debts that financed assets or goods purchased for trade, rather than those acquired for personal use or exploitation, they are as follows:

First evidence: Deductions for debts incurred to purchase non-Zakatable assets lead to double deductions, as those debts were used for items not subject to Zakâh. Therefore, deducting them from Zakâh-liable assets results in a double deduction, which is different from debts used to acquire Zakatable assets, as they are included in the Zakâh base⁽¹⁾.

Second evidence: Deducing the debt from the Zakâh base serves to support the debtor, ensuring that Zakâh is not owed on wealth that is tied to another person's rights. If that wealth was utilized for assets that are not subject to Zakâh, then the principle of solidarity is not fulfilled by subtracting the debtor's debt from their Zakâh base⁽²⁾.

Evidence for the fifth opinion: They argued that both current and deferred debts should be deducted from the Zakâh base after excluding deferred profits, based on the following:

First evidence: Deferred debt does not equal its current amount; for instance, an amount due after a year does not equal the same amount due immediately, as the period affects value. Al-Kasani states: "There is no equality between cash and deferred payments; the tangible item is better than the debt, and the immediate payment is more valuable than the deferred one"⁽³⁾.

(1) See: Research on Contemporary Financial Issues [2:310], Handling Zakâh on Debts, in the Proceedings of the Eighteenth Seminar on Contemporary Zakâh Issues (P. 451), Zakâh Base in Contemporary Companies (p. 386).

(2) See: Research on Contemporary Financial Issues [2:310].

(3) Bada'i al-Sana'i [5:187].

Thus, deducting the entire deferred debt would lead to deducting more than its value, necessitating the deduction of only its current value while excluding deferred profits⁽¹⁾.

Discussion: The total amount of deferred debt is not currently due and does not need to be repaid immediately; therefore, only the portion that has matured and is payable should be deducted from the Zakâh base.

Second evidence: The deferred debt is fully established in the debtor's account; however, the deferred profits may potentially be nullified upon the occurrence of death or bankruptcy, so they should not be deducted from the Zakâh base⁽²⁾.

Discussion: The justification for deducting debt from the Zakâh base is not its establishment in the debtor's account, but rather its maturity and the obligation to settle it before the payment of Zakâh, which is not the case for deferred debt.

Third evidence: Debts are treated similarly to trading assets for merchants; they are assessed in the same way as their goods. Since a merchant's wealth fluctuates between cash, debt, and assets, the valuation of their wealth for Zakâh should adhere to a consistent standard, and the value of deferred debt is determined after excluding the deferred profits⁽³⁾.

It is also argued that the deduction applies to all investment or housing debts, based on the third evidence of the first argument, which faces the same discussion.

Furthermore, it is claimed that if the debtor possesses excess personal goods beyond their needs, these should be set against the debt, and only the amount exceeding their value should be deducted from the Zakâh base, as supported by the first argument's evidence, which also faces the same discussion.

Evidence for the sixth argument: It is argued that both current and deferred debts should be deducted from the Zakâh base after excluding deferred profits, based on the fifth argument's evidence, which also faces the same discussion.

(1) See: Zakâh on Contemporary Debts (P. 89).

(2) See: Research on Contemporary Financial Issues [2:311].

(3) See: Al-Dardir's Brief Commentary and Al-Sawi's Marginalia [1:640], Research on Contemporary Financial Issues [2:311].

It is asserted that the deduction is limited to debts that funded assets or items intended for trade, as opposed to those that funded assets or items for personal use or exploitation (which are not subject to Zakâh), using the fourth argument's evidence to support this claim.

Evidence for the seventh argument: The justification for this argument is that the total current debt and only the current portion of the deferred debt should be deducted from the Zakâh base, which is supported by the first argument's evidence.

It is also argued that the deduction is confined to debts funding assets or items intended for trade, not those that funded assets or items for personal use or exploitation, based on the evidence presented by the proponents of the fourth argument.

Preference:

After contemplating the various opinions, evidence, and discussions, it seems that the most reliable view—Allah knows best—is the seventh argument, which states that the total current debt and the current portion of the deferred debt should be deducted from the Zakâh base in the case of debts that financed assets or items intended for trade. Conversely, debts that financed assets intended for personal use or exploitation (which are not subject to Zakâh) should not be deducted from the Zakâh base at all.

It is important to note that the debtor whose debt amount is deducted from the Zakâh base is the one who is determined to repay the debt. However, a procrastinating debtor is not allowed to deduct it⁽¹⁾; this is because the creditor is not obligated to pay Zakâh on the debt owed by the procrastinator. Therefore, deducting it from the Zakâh base of the debtor would lead to the complete exemption of Zakâh on that wealth.

Reasons for preference:

- 1- It is not correct to equate current and deferred debts in their impact on the Zakâh base, as deferred debts or installments are not demanded from the debtor and do not obligate them to repay, unlike current debts or current installments, which are rights that must be fulfilled before Zakâh is due.

(1) See: Zakâh Issues (P. 69).

- 2- The existence of a deferred debt in the debtor's account does not mean it should be deducted from the Zakâh base; this is because the Zakâh base is renewed every year, and only what is due to others in that specific year should be deducted.
- 3- The assertion that debts are considered against owned assets or items acquired for personal use, if they exceed needs, undermines the claim regarding the impact of debts on the Zakâh base. This is because debtors often have excess owned assets or items, especially in companies that own buildings, vehicles, equipment, and productive assets. Moreover, it is challenging to determine what constitutes excess over original needs.
- 4- Not deducting debts used to purchase non-Zakatable assets or items ensures fairness and does not harm either party—the one paying Zakâh or the one entitled to receive Zakâh. This is because the one paying Zakâh benefits from the fact that what corresponds to that debt is not Zakâh liable, hence negating the need for a deduction, while the recipient benefits from the non-decrease in the Zakâh base.

Impact of intention on the issue:

The impact of intention in this issue is evident in two matters:

- 1- The proponents of the fourth, sixth, and seventh opinions distinguish between debts that are deducted from the Zakâh base and those that are not, based on the intention behind acquiring what those debts were used for. They state that if the debts were used to purchase assets or items with the intention of trade, they should be deducted from the Zakâh base. However, if they were used to purchase non-Zakatable assets or items for personal use or exploitation, they should not be deducted from the Zakâh base. This is the preferred view, as previously mentioned.
- 2- The proponents of the first, third, and fifth opinions believe that assets or items owned for personal use—if they exceed original needs—are considered against the debt, and only the amount exceeding their value should be deducted from the Zakâh base.



Eighth Treatise

The Intention of Counting Taxes and Fees as Part of Zakâh

Topic (1): The Intention of Considering Tax⁽¹⁾ As Zakâh

Issue description: If a person intends, while paying taxes, to consider it as Zakâh for their wealth, is this valid and sufficient in place of Zakâh?

Before discussing the differing opinions on this issue, it is helpful to outline the most notable points of agreement and disagreement between Zakâh and taxes, as these have a bearing on the ruling of the matter:

-
- (1) The term “tax” (ḍarībah) linguistically derives from the root “ḍarb,” which refers to the act of striking something upon something else. It carries various meanings, including “imposition,” as in the verse of Allah: {“**And humiliation was struck upon them**”} [Āl- Imrân: 112]. It is also said, “He imposed the jizyah upon them,” meaning he obligated them to pay it. See: Tahdhīb Al-Lughah [17:12], Al-Gharibayn fī Al-Qur’ān wal-Hadīth [4:1119]. In the terminology of the jurists, a tax is what a person is obligated to pay, such as the jizyah or similar payments, and is given to the authority. See: Al-Muntaqā Sharḥ Al-Muwatta’ [3:219], Al-Ḥawī Al-Kabīr [7:317]. In the hadith, it is reported: “Abū Ṭaybah cupped the Prophet (peace be upon him), and he ordered that he be given one or two ṣā’ of food, and he spoke to his masters to reduce his tax or obligation (ḍarībah).” This hadith is related by al-Bukhārī in his Ṣaḥīḥ, Book of Hiring, Chapter: The Slave’s Tax and the Inspection of Female Slaves’ Taxes, no. 2277, [3:93].

Among the synonyms for the term “tax” used by the jurists are “state duties,” “public functions,” “impositions,” and “tolls.” See: As-Siyāsah Ash-Shar’iyyah (p. 114), Al-Furū’ [7:131]

In contemporary economic terminology, a tax is a non-punitive financial obligation determined by the state, which individuals or legal entities are required to pay without a specific return, assisting the state in fulfilling its economic, social, and political functions. See: Zakât and Taxes, Shabîr (p. 7, 131), The Permissibility of Considering Tax as Zakât, Ṣafiyyah Al-Qaḥṭānī (p. 471).

First: The most notable points of agreement between Zakâh and taxes⁽¹⁾:

- 1- Both are financial obligations that must be paid without a direct return.
- 2- There is no direct material benefit for the payer in either case.
- 3- In principle, both aim to achieve social and economic objectives.

Second: The most notable points of difference between zakâh and taxes⁽²⁾:

- 1- Zakâh is an act of worship legislated by Allah (Glorified and Exalted is He), who has specified the types of wealth on which it is due, whereas taxes are man-made regulations.
- 2- The rulings of Zakâh are fixed, mandatory, and unchanging, in contrast to tax rulings, which are subject to change.
- 3- Zakâh can only be disbursed to the eight categories defined by the Lawgiver, while taxes are allocated to various and changing sectors according to the needs of the state.
- 4- Some forms of Zakâh are collected by the state and then distributed to Muslims according to the specifications of the Lawgiver. On the other hand, taxes are collected by the state universally.
- 5- Zakâh may be paid in cash or in kind, while taxes must be paid to the state in cash only.

Opinions on the issue:

When considering what the jurists have mentioned regarding the ruling of counting what is taken as a tithe on trade⁽³⁾, land tax⁽⁴⁾, or tolls ⁽⁵⁾and similar

(1) See: Zakât and Taxes (p. 101), Nawâzil Az-Zakât (p. 332), The Permissibility of Considering Tax as Zakât (p. 476).

(2) See: Zakât and Taxes (p. 18), Nawâzil Az-Zakât (p. 333), Renewal in Zakât Jurisprudence (p. 140).

(3) The tithe [‘ushr] refers to what is taken from the wealth of traders moving with their goods, and it was originally only taken from non-Muslims. See: An-Nihâyah fî Gharîb al-Ḥadîth [3:239], Al-Muṭṭali‘ (p. 260).

(4) The kharâj is a financial right imposed on land conquered by force, which is then left in the hands of its inhabitants to cultivate. See: Lisân al-‘Arab [2:252], Ad-Durr an-Naqî by Ibn Al-Mubarrad [2:338].

(5) The term makûs is the plural of maks, which refers to levies or deductions, and it commonly refers to the unjust taxation collected by the ruler’s agents during buying and selling. =

payments as Zakâh -which can be compared to contemporary taxes-we find that there are five different opinions on this issue:

First opinion: It is not permissible to count taxes as Zakâh under any circumstances. This is the view of the majority of jurists. It is one opinion in the Ḥanafî school⁽¹⁾, the position of the Mâlikî school⁽²⁾, one view within the Shâfi'î school⁽³⁾, and the correct opinion in the Ḥanbalî school⁽⁴⁾. It was explicitly stated by Shaykh Al-Islâm Ibn Taymiyyah ⁽⁵⁾, and the Permanent Committee for Islamic Research and Fatwâ in Saudi Arabia issued a fatwa in agreement with this view⁽⁶⁾. It was also the decision of the Fourth Symposium on Contemporary Zakâh Issues⁽⁷⁾.

Second Opinion: It is valid to count unjust taxes ⁽⁸⁾as Zakâh, but not other types of taxes. This is the view of Ishâq ibn Râhawayh⁽⁹⁾, one narration from Imâm Aḥmad⁽¹⁰⁾, and has been transmitted from Shaykh Al-Islâm Ibn Taymiyyah⁽¹¹⁾.

Third opinion: It is valid to count taxes as Zakâh if one intends to give them as charity to the recipient. This is the prevalent opinion in the Ḥanafî school⁽¹²⁾.

= See: An-Nihâyah fi Gharîb al-Ḥadîth [4:349], Al-Miṣbâḥ Al-Munîr [2:577], entry]m-k-s].

(1) See: Al-Mabsûṭ [2:180], Al-'Inâyah [2:200], Ḥâshiyat Ibn 'Âbidîn [2:311].

(2) See: At-Tâj wal-Ikleel [3:247], Ash-Sharḥ Al-Kabîr [1:502], Fatḥ Al-'Alî Al-Mâlik [1:164].

(3) See: Rawḍat At-Tâlibîn [2:235], Ḥâshiyat Ash-Shibrâmalisî 'Alâ Nihâyat Al-Muḥtâj [3:140], Ḥâshiyat Al-Jamal 'Alâ Sharḥ Al-Minhâj [2:295].

(4) See: Al-Furû' [4:282], Al-Inṣâf [3:212], Kashshâf Al-Qinâ' [2:266].

(5) He said in Fatâwâ: "What the authorities collect under a name other than Zakât cannot be counted as Zakât, and Allah knows best." See: Majmû' Al-Fatâwâ [25:93]. In the discussion of the second opinion, it will be mentioned that there is a report of him allowing it.

(6) See: Fatâwâ Al-Lajnah Ad-Dâ'imah, First Collection [9:285].

(7) See: Proceedings and Papers of the Fourth Symposium on Contemporary Zakât Issues (p. 194).

(8) This refers to what is taken unjustly without legitimate cause. See: Zakât and Taxes (p. 95).

(9) See: Masâ'il Al-Imâm Aḥmad wa Ishâq [6:2877].

(10) See: Masâ'il Al-Imâm Aḥmad wa Ishâq [6:2877], Al-Furû' [4:282], Al-Inṣâf [3:212].

(11) Burhân ad-Dîn Ibn Al-Qayyim quoted Shaykh Al-Islâm Ibn Taymiyyah as saying: "What the ruler takes under the name of maks may be paid with the intention of Zakât, and Zakât will be waived, even if it is not in its proper form." See: Ikhtiyârât Shaykh Al-Islâm Ibn Taymiyyah (p. 128).

(12) Some limit this to visible wealth only. See: Badâ'i' As-Ṣanâ'i' [2:36], Tabyîn Al-Ḥaqâ'iq [1:274], Khizânat Al-Muftî (p. 898), Al-'Inâyah [2:200].

Fourth opinion: It is valid to count taxes that are taken in place of Zakâh, but not other taxes. This is one view within the Shâfi'î school⁽¹⁾.

Fifth opinion: It is valid to count taxes as Zakâh if they are spent on the designated categories of Zakâh recipients. This is the view of some Shâfi'î scholars⁽²⁾ and was also supported by Dr. Riyâḍ Al-Khalîfî⁽³⁾.

Evidence and discussions:

Evidence for the first opinion: Those who argue that taxes cannot be counted as Zakâh under any circumstances present the following evidence:

First evidence: Taxes are not collected under the name of Zakâh, nor are they taken from all those who are obligated to pay Zakâh, and they are not a substitute for Zakâh. Therefore, it is not valid to pay them with the intention of fulfilling Zakâh⁽⁴⁾.

Second evidence: The Sharî'ah has specified eight categories of Zakâh recipients, and Zakâh cannot be given to others outside these categories. Taxes, however, are not spent on Zakâh recipients, but rather on varying expenditures depending on the state's needs, so they cannot be counted as Zakâh.⁽⁵⁾

Third evidence: Zakâh is a financial act of worship that has specific characteristics and conditions. There are many differences between Zakâh and taxes, so the act of worship must be performed in its correct manner, and it is not valid to count something else as Zakâh⁽⁶⁾.

Evidence for the second opinion:

Those who permit the counting of unjust taxes as Zakâh argue that considering taxes and tolls—which are taken unjustly and wrongfully—as Zakâh is a means of making things easier for people and relieving them of hardship⁽⁷⁾.

(1) See: Al-Mabsûṭ [2:180], Badâ'i' As-Şanâ'i' [2:36], Tabyîn Al-Ḥaḳâ'iq [1:274].

(2) See: Ḥawâshî Ash-Shirwânî 'Alâ Tuḥfat Al-Muḥtâj [3:242], Ḥâshiyat Ash-Shibrâmalisî 'Alâ Nihâyat Al-Muḥtâj [3:140].

(3) See: Renewal in Zakât Jurisprudence (p. 142).

(4) See: Mukhtaşar Al-Fatâwâ Al-Mişriyyah [1:426], Az-Zawâjir 'an Iqtirâf Al-Kabâ'ir [1:303].

(5) See: Khizânat Al-Muftî [p. 898], Ḥâshiyat Ash-Shibrâmalisî 'Alâ Nihâyat Al-Muḥtâj [3:140].

(6) See: Nawâzil Az-Zakâh (p. 340), The Permissibility of Considering Tax as Zakâh (p. 390).

(7) See: Nawâzil Az-Zakâh (p. 338).

Discussion: Zakâh is an act of worship with its own pillars, conditions, and specific recipients. Other payments cannot take its place under the pretext of making things easier or reducing hardship. Ease is allowed only within what the Shari'ah permits and does not contradict⁽¹⁾.

Evidence for the third opinion:

Those who say that it is valid to count taxes as Zakâh if one intends to give them as charity to the tax collector argue that those who take wrongful taxes and tolls deserve Zakâh because, if they were to return what they wrongfully took, they would be left with nothing, thus putting them in the same position as the poor⁽²⁾.

This argument is contested in two ways:

First point: It is not agreed that those who take unjust taxes are deserving of Zakâh, because they often possess wealth and the ability to earn without relying on these taxes⁽³⁾.

Second point: It could also be argued that some taxes are fair and not unjust, and thus not all taxes are oppressive.

Evidence for the fourth opinion:

Those who hold that it is valid to count taxes taken in place of Zakâh (but not other taxes) argue that what the imâm or his deputy collects in place of Zakâh is akin to receiving an equivalent value through *ijtihad* (independent reasoning), and thus can be counted as Zakâh.

Discussion: There is a difference between receiving the equivalent value under the name of Zakâh and collecting taxes or tolls as a substitute for Zakâh. The former is collected under the name of Zakâh and is disbursed to its rightful recipients, while the latter is not.

Evidence for the fifth opinion:

Those who argue that it is valid to count taxes as Zakâh if they are spent on Zakâh recipients contend that such taxes are paid with the intention of Zakâh and are disbursed to the appropriate recipients, so there is no difference be-

(1) See: the previous reference.

(2) See: *Al-Mabsûṭ* [2:180], *Badâ'i' As-Şanâ'i'* [2:36].

(3) See: *Az-Zawâjir 'an Iqtirâf Al-Kabâ'ir* [1:303].

tween them and what is collected in the name of Zakâh ⁽¹⁾.

Discussion: Even if we accept that taxes are spent on Zakâh recipients, paying mandatory taxes with the intention of considering them as Zakâh is a way of protecting one's wealth and benefiting from Zakâh, and this is impermissible⁽²⁾.

Preference: The most correct view—and Allah knows best—is the first opinion: that paying taxes with the intention of Zakâh and considering them as Zakâh is never valid and does not suffice for Zakâh.

Reasons for this conclusion:

- 1- The strength of the evidence supporting the first opinion, and its immunity from valid criticism, compared to the weaker evidence for the other views.
- 2- The imâm or his deputy collects Zakâh on behalf of the rightful recipients, and thus, the payer is absolved of their obligation by giving it to him. However, when the imâm or his deputy collects funds under another name, such as taxes, they are collected on behalf of the state, not as Zakâh, and the imâm is not an intermediary for the payer in distributing it. Therefore, it is not valid to count what is collected under another name as Zakâh.
- 3- Taxes may be either just or unjust. Just taxes cannot be counted as Zakâh because this would contradict the purpose of the ruler, who imposes them to meet the needs of Muslims when Zakâh is insufficient for any reason. Unjust taxes, on the other hand, are typically not spent on Zakâh recipients and thus cannot be counted as Zakâh.
- 4- The jurists have explicitly stated that it is not permissible to count mandatory expenses, such as the maintenance of dependents, as Zakâh, since doing so would protect one's wealth and provide personal benefit from Zakâh⁽³⁾. Taxes are analogous to this, even if they are spent on Zakâh recipients.

(1) See: Ḥawâshî Ash-Shirwânî 'Alâ Tuḥfat Al-Muḥtâj fi Sharḥ Al-Minhâj [3:242].

(2) See: Masâ'il Al-Imâm Aḥmad, narrated by Abû Dâwûd (p. 119), Ash-Sharḥ Al-Mumtî' [6:218].

(3) See: At-Tabsirah [3:966], Al-Ḥawî Al-Kabîr [10:519], Sharḥ Az-Zarkashî [2:429].

Topic (2): The Intention to Count White Land Fees as Zakâh⁽¹⁾

Issue description:

Is it permissible for someone who owns white land, on which Zakâh on trade goods is due, to pay the fees ⁽²⁾for the land with the intention of considering it as Zakâh?

The Fiqh classification of fees on vacant land:

To determine the ruling on the issue, it is necessary to identify the fiqh classification of the fees imposed on vacant land (al-arâḍi al-bayḍâ'). Scholars have differed on this classification, and four main opinions have emerged:

First opinion: It is classified as Zakâh on land. This is the opinion of Shaykh 'Abdullâh b. Manî'⁽³⁾.

Second opinion: It is classified as a fee. This opinion is attributed by Dr. Khâlid al-Muṣliḥ to some scholars⁽⁴⁾, but I could not find anyone who explicitly stated this view.

Third opinion: It is classified as a financial penalty⁽⁵⁾. This is the opinion of Dr. Khâlid al-Muṣliḥ⁽⁶⁾.

(1) Linguistically, "fees" [rusûm] is the plural of rasm, which means a trace or remnant. See: Aṣ-Ṣiḥāḥ [5:1932], Lisân Al-'Arab[12:241], entry for rasm.

(2) The White Land Fees Regulation was issued in Saudi Arabia by Royal Decree No.[M:4] on 12:02:1437H, imposing an annual fee of 2.5% of the land's value on white land, which is defined in the regulation as: "Any undeveloped land designated for residential or mixed residential-commercial use, located within urban boundaries," subject to specific conditions. See: Article 1 of the White Land Fees System issued by Royal Decree No. (M:4), dated 12:02:1437 AH, via the link: <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails>, and the Executive Regulations of the White Land Fees System issued by Cabinet Resolution No. (379) dated 09:08:1439 AH, via <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails:d4ae4834-19->

(3) See: Sabq newspaper via the link: <https://sabq.org/saudia>

(4) See: Al-Ḥulûl al-Muqtarah li-Mushkilat al-Arâḍi al-Bayḍâ' by Dr. Khâlid al-Muṣliḥ, published on Dr. Khâlid al-Muṣliḥ's website via the link: <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/d4ae4834-f19a-48b5-8577-a9a700f21e14/1>

(5) A penalty [gharamah] is something that must be paid as a form of punishment or compensation. See: Mu'jam al-Lughah al-Mu'âṣirah [2:1613] and Mu'jam Lughat al-Fuqahâ' (p. 329).

(6) See: Al-Ḥulûl al-Muqtarah li-Mushkilat al-Arâḍi al-Bayḍâ', published on Dr. Khâlid al-Muṣliḥ's website via the link: <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/d4ae4834-f19a-48b5-8577-a9a700f21e14/1>

Fourth opinion: It is classified as a tax. This is the opinion of Dr. ‘Abdul-‘Azîz al-Hujaylân⁽¹⁾.

The Evidence and discussions regarding the opinions:

Evidence for the first opinion:

Those who argue that it is Zakâh on land base their view on the following evidence:

First evidence: It is collected at the same rate as Zakâh each year, which indicates that in reality, it is Zakâh. Referring to it as a “fee” does not change its actual nature⁽²⁾.

Discussion: The argument that its similarity to Zakâh in terms of the period (ḥawl) and the amount is undermined by the fact that it is not linked to the types of land on which Zakâh is obligatory. It may be taken from land intended for personal use (qinyah) and not from land intended for trade.

Second evidence: There is no justification for collecting it as a fee, since no service is provided in return, nor is there any legitimate Sharī‘ah basis for it except to be Zakâh. ⁽³⁾

Discussion: It is argued that there is no conclusive Sharī‘ah justification for collecting these fees as something other than Zakâh. However, even if this is conceded, it does not mean that they are collected as Zakâh, since they differ from Zakâh in both name and allocation.

Evidence for the second opinion: Those who argue that the fees are a charge (rusûm) base their view on the following evidence: the fees are collected in exchange for the ease of access to services like water and electricity. For this reason, the legislator has called them “fees” and restricted them to land located within urban areas⁽⁴⁾.

Discussion: The proximity or ease of access to services does not justify imposing fees for them, as these services already come with financial costs and are not provided for free. Additionally, taking one-quarter of one-tenth of the land’s value annually is not a reasonable charge for merely facilitating access

(1) See: Iḥtisâb Rusûm al-Arâḍi al-Bayḍâ’ Zakâh (p. 264).

(2) See: Sabq newspaper via the link: <https://sabq.org:saudia>

(3) See: Previous reference.

(4) See: Iḥtisâb Rusûm al-Arâḍi al-Bayḍâ’ Zakâh (p. 263).

to water and electricity services.

Evidence for the third opinion: Those who argue that the fees are a financial penalty (gharamah) base their view on the following evidence: the reason for imposing these fees is to penalize landowners for leaving vacant land undeveloped, which leads to both public and private harms. Since anything taken as a form of punishment or discipline is a penalty, the fees are classified as such⁽¹⁾.

Discussion: There is no law in Saudi Arabia that obligates the development of vacant land in a way that would justify a financial penalty for non-compliance. The purpose of these fees is to encourage development and reduce land monopolization, which does not imply that they are penalties.

Evidence for the fourth opinion:

Those who argue that the fees are a tax (ḍarībah) base their view on the following evidence:

First evidence: The fees are not collected in exchange for a specific service, and they are mandatory rather than optional, which are characteristics of taxes rather than fees⁽²⁾.

Second evidence: The fees are levied based on the amount of wealth and are collected on a recurring basis, which are defining characteristics of taxes⁽³⁾.

Conclusion: The most likely correct opinion, and Allah knows best, is the fourth opinion: that the fees on vacant land should be classified as a tax.

Reasons for the preferred opinion:

- 1- The strength of the evidence supporting the fourth opinion and the absence of any substantial refutation, coupled with the weakness of the arguments for the other opinions.
- 2- Upon examining the rulings concerning the fees on vacant land as stipulated in the system and its executive regulations issued by Cabinet Resolution No. (379), dated 09:08:1437 H⁽⁴⁾, it becomes clear that they

(1) See: Al-Ḥulūl al-Muqtarah li-Mushkilat al-Arâḍi al-Bayḍâ', published via the link: <https://almosleh.com/newar/ar/64457>

(2) See: the previous reference.

(3) See: Iḥtisâb Rusûm al-Arâḍi al-Bayḍâ' Zakâh (p. 263).

(4) See: the executive regulations of the White Land Fees System, issued by Cabinet Resolution =

align with the rulings and characteristics of taxes. They do not correspond to the characteristics of fees, penalties, or Zakâh.

The practical outcome of the disagreement and its impact on the ruling regarding counting white land fees as zakâh:

The practical outcome of this disagreement on the ruling can be observed as follows:

- 1- According to the first opinion—classifying the fees on vacant land as Zakâh on land—it is permissible to pay them with the intention of Zakâh, and doing so suffices in place of paying Zakâh.
- 2- According to the second and third opinions—classifying the fees on vacant land as either fees or financial penalties—it is not permissible to count them as Zakâh, just as other fees and penalties cannot be counted as Zakâh.
- 3- According to the fourth opinion (which is the preferred one)—classifying the fees as a tax—the ruling would follow the existing disagreement on whether taxes can be counted as Zakâh. As previously mentioned, the preferred view is that it is not permissible to count taxes as Zakâh⁽¹⁾.

Furthermore, evidence that supports the impermissibility of counting white land fees as Zakâh is found in Article 11 of the White Land Fees System, which states that the use of these fees is: “Housing projects, connecting public utilities to them, and providing public services in them”⁽²⁾. It is well-known that such uses do not fall under the valid categories for Zakâh expenditure.



= No. (379), dated 09:08:1439 AH, via the link: <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails:d4ae4834-f19>.

(1) See: p. 606 of this book.

(2) See: Article 11 of the White Land Fees System, issued by Royal Decree No. (M:4), dated 12:02:1437 AH, via the link: <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails>.

Ninth Treatise

The Impact of Intention on Zakâh for Public Funds

Topic (1): Zakâh on Non-Invested Public Wealth⁽¹⁾

Issue description:

Is Zakâh obligatory on non-invested public wealth? This refers to funds allocated for providing benefits and services needed by society without aiming at their growth⁽²⁾. What is the impact of intention in this regard?

Ruling on the issue:

The jurists unanimously agree that Zakâh is not obligatory on non-invested public wealth⁽³⁾. Imâm ash-Shâfi‘î says: “If the governor collects fay’ in the form of gold or silver and deposits it in the public treasury, and a full year passes over it, or if it consists of livestock grazing in protected areas and a full

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- (1) Public wealth refers to [wealth allocated for public benefit without being owned by a specific individual or entity, such as funds belonging to the Muslim public treasury or what is referred to today as the public sector]. See: Proceedings and Papers of the Eighth Seminar on Contemporary Zakâh Issues (p. 459). This concept includes state funds, charitable association funds, and other public benefit institutions. The common goals between public wealth and its distribution by the state warrant its return to the state, provided that there is no specific owner or Islamic ruler managing its distribution on behalf of the state. See: Fatâwâ Zakâh al-Amwâl (p. 239); if the wealth is transferred to the state, the rightful Zakâh recipient in the case of an Islamic charitable association is mentioned on p. 42.
- (2) See: Proceedings and Papers of the Thirteenth Seminar on Contemporary Zakâh Issues (p. 493).
- (3) See: Al-Mabsûṭ [3:52], Badâ’i‘ al-Şanâ’i‘ [2:9], Al-Jawhara al-Nayira [1:117], Ḥāshiyat al-Şâwî ‘alâ al-Sharḥ al-Şaghîr [1:651], Ḥāshiyat al-Dustûqî ‘alâ al-Sharḥ al-Kabîr lil-Dardîr [1:487], Al-Umm [2:67], Qawâ‘id al-Aḥkâm fî Maşâliḥ al-Anâm [2:171], Al-Majmû‘ [5:353], Al-Mubdi‘ [2:300], Ma‘ûnat Ulî al-Nuhâ [3:162], Sharḥ Muntahâ al-Irâdât [1:393].

year passes over them, Zakâh is not due on them”⁽¹⁾.

This ruling was affirmed by the resolution of the Eighth Symposium on Contemporary Zakâh Issues⁽²⁾.

Evidence for the issue:

First evidence:

Allah, the Exalted, says: {“Take, [O Muhammad], from their wealth a charity by which you purify them and cause them increase”}⁽³⁾.

The Prophet (peace be upon him) said: “Inform them that Allah has made obligatory upon them a charity taken from their wealthy and returned to their poor”⁽⁴⁾.

Reasoning: The verse and the hadith indicate that Zakâh is only taken from specific individuals who own wealth. Since public wealth does not have a designated owner, Zakâh is not obligatory on it⁽⁵⁾.

Second evidence: Zakâh is an act of worship that requires intention (niyyah) from the one paying it. Intention is not conceivable when paying Zakâh on public wealth, as it is not owned by any specific individual. This indicates that Zakâh is not obligatory on public wealth⁽⁶⁾.

Third evidence: It is not reported from the righteous predecessors (salaf) in the early favored generations, or those who followed them, that Zakâh was taken from public wealth. If it had been obligatory, it would have been transmitted to us⁽⁷⁾.

Fourth evidence: Zakâh is only obligatory on wealth when there is the condition of being rich, which is established by ownership of the Nişâb (mini-

(1) See: Al-Umm [2:67].

(2) See: Proceedings and Papers of the Eighth Seminar on Contemporary Zakâh Issues (p. 459).

(3)] Sûrat At-Tawbah (Repentance): 103]

(4) Previously referenced, see p. 57 of this book.

(5) See: Zakâh on Public Wealth, in Proceedings and Papers of the Eighth Seminar on Contemporary Zakâh Issues (p. 357); Zakâh on State Funds (p. 443).

(6) See: Nawâzil az-Zakâh (p. 251).

(7) See: Zakâh on Public Wealth, by Ash-Sharîf, in Proceedings and Papers of the Eighth Seminar on Contemporary Zakâh Issues (p. 378).

imum amount determining a person's zakatability). This condition does not apply to public wealth, as there is no specific owner⁽¹⁾.

Fifth evidence: Public wealth is analogous to spoils of war (ghanâ'im) before they are distributed. In both cases, the wealth does not have a designated owner, so Zakâh is not obligatory on it⁽²⁾.

Sixth evidence: Public wealth is allocated for expenditure on the interests of Muslims, so there is no need for Zakâh to be obligatory on it⁽³⁾.

Impact of intention on the issue: The role of intention is evident in that one of the evidence for the non-obligation of Zakâh on non-invested public wealth is that Zakâh is an act of worship, and it cannot be performed without intention. Intention must come from the owner or their representative when the owner is unable to make the intention due to being a minor or mentally incapacitated. Since public wealth has no specific owner, the intention for Zakâh cannot be made, thus indicating that it is not obligatory on such wealth.

Topic (2): Zakâh on Invested Public Wealth

Issue description:

Is Zakâh obligatory on invested public wealth, which is managed by institutions or companies wholly or partially owned by the state with the aim of generating profit⁽⁴⁾? And what is the impact of intention in this regard?

Examples of invested public wealth include⁽⁵⁾:

- 1- Government investment deposits ⁽⁶⁾in banks.
- 2- Government investment funds.

(1) See: Zakâh on State Funds (p. 445).

(2) See: The Effect of Ownership on the Obligation of Zakâh (p. 307).

(3) See: Ma'ûnat Ulî an-Nuhâ [3:162].

(4) See: Proceedings and Papers of the Thirteenth Seminar on Contemporary Zakâh Issues (p. 493).

(5) See: Nawâzil az-Zakâh (pp. 253–254); Zakâh on State Funds (p. 446).

(6) Investment deposits refer to deposits placed by their owners in a bank based on an agreement that they cannot withdraw the funds until after a specified period. The owners aim to gain returns, which may be interest in conventional banks or lawful profit in Islamic banks that invest the funds in Sharî'ah-compliant ways without the depositor's involvement. See: Al-Fiqh al-Muyassar [9:94], Al-Mu'âmalât al-Mâliyya: Uşûl wa Mu'âşira]12:307].

- 3- Companies and banks wholly or partially owned by the state.
- 4- The share of the public treasury in joint-stock companies.

Opinions on the issue:

Scholars have differed on this matter and have presented three opinions:

First opinion: Zakâh is not obligatory on invested public wealth in any case. This opinion is derived from the four major schools of thought (madhâhib) based on their general ruling that Zakâh is not obligatory on public wealth, without distinguishing between invested and non-invested wealth ⁽¹⁾.

This was the ruling issued by the International Islamic Fiqh Academy in its fourth session ⁽²⁾, and it was also the opinion of Dr. ‘Abd al-Raḥmân al-Aṭram⁽³⁾ and Dr. ‘Abdullâh al-Ghufaylî⁽⁴⁾.

Second opinion: Zakâh is obligatory on invested public wealth in all cases

This opinion was reported by al-Sarakhsî ⁽⁵⁾ from Muḥammad b. al-Ḥasan al-Shaybânî. In al-Mabsûṭ, it is stated: “He (meaning Muḥammad b. al-Ḥasan) said: If livestock for trade are purchased with revenue from kharâj and a year passes over them, Zakâh is obligatory on them.” ⁽⁶⁾

(1) See: Al-Mabsûṭ [3:52], Badâ’i’ al-Ṣanâ’i’ [2:9], Al-Jawhara al-Nayira [1:117], Ḥāshiyat al-Ṣāwî ‘alâ al-Sharḥ al-Ṣaghîr [1:651], Ḥāshiyat al-Dusûqî ‘alâ al-Sharḥ al-Kabîr lil-Dardîr [1:487], Al-Umm [2:67], Qawâ‘id al-Aḥkâm fî Maṣāliḥ al-Anâm [2:171], Al-Majmû‘ [5:353], Al-Mubdi‘ [2:300], Ma‘ûnat Ulî an-Nuhâ [3:162], Sharḥ Muntahâ al-Irâdât [1:393].

(2) The ruling from the International Islamic Fiqh Academy regarding Zakâh on company shares states: “The portion of shares that are not subject to Zakâh is deducted, including shares owned by the public treasury...” See: Decisions and Recommendations of the International Islamic Fiqh Academy, Decision No. 28 (p. 107).

(3) See: Proceedings and Papers of the Thirteenth Seminar on Contemporary Zakâh Issues (p. 373).

(4) See: Nawâzil az-Zakâh (p. 254).

(5) He is: Muḥammad b. Aḥmad b. Abî Sahl, Abû Bakr al-Sarakhsî, Shams al-A‘imma, one of the prominent Ḥanafî jurists, a scholar in uṣûl, and a well-known debater. He studied under Abû Muḥammad al-Ḥulwânî until he became his most distinguished student, and later became the foremost scholar of his time. He dictated his work al-Mabsûṭ in fiqh while imprisoned in a well in Uzjand, having been jailed for advising certain rulers. Among his works are al-Uṣûl in uṣûl al-fiqh and Sharḥ al-Siyar al-Kabîr. He passed away around 483 AH. For his biography, see: Al-Jawâhir al-Muḍiyya [2:28], Al-A‘lâm [5:315].

(6) Al-Mabsûṭ [3:52].

The Sudanese Zakâh Law ⁽¹⁾and the Executive Regulations for Zakâh Collection in Saudi Arabia ⁽²⁾also adopted this opinion. Among the scholars who held this view are Dr. Muḥammad Na‘îm Yâsîn ⁽³⁾and Dr. Rafîq al-Maşrî ⁽⁴⁾.

Third opinion: Zakâh is not obligatory on invested public wealth unless it is mixed with private wealth in investment companies

This was the ruling issued by the Thirteenth Symposium on Contemporary Zakâh Issues ⁽⁵⁾and the Permanent Committee for Iftâ’ in Saudi Arabia⁽⁶⁾.

Evidence for the opinions and discussions:

Those who argue that Zakâh is not obligatory on invested public wealth in all cases base their view on the following evidence:

First evidence: The previously mentioned evidence indicates that Zakâh is not obligatory on non-invested public wealth⁽⁷⁾, and there is no significant difference between invested and non-invested public wealth that would affect the ruling⁽⁸⁾.

Second evidence: Zakâh is an act of worship that requires intention (niyyah) from the one paying it, and intention is not conceivable when paying Zakâh on invested public wealth because a specific individual does not own it. Therefore, Zakâh is not obligatory on it⁽⁹⁾.

Discussion: The ruler (walî al-amr) or their deputy, whether an institution

(1) See: Article 37 of the Sudanese Zakâh Law (p. 14).

(2) See: Article No. 3 of the Executive Regulations for Zakâh Collection, issued by the General Authority of Zakat, Tax, and Customs, 1445 AH.

(3) See: Proceedings and Papers of the Eighth Seminar on Contemporary Zakâh Issues (p. 433).

(4) See: Ibid. (p. 438).

(5) See: Proceedings and Papers of the Thirteenth Seminar on Contemporary Zakâh Issues (p. 494).

(6) In Fatwa No. 22665, dated 15/04/1424 AH, in response to a question regarding government shares in joint-stock companies, it states: “Companies in which governmental bodies are shareholders are subject to Zakâh on all their Zakâh able assets, because these bodies have independent legal personalities and commercial purposes.” See: Fatâwâ of the Permanent Committee – Volume Three [1:543].

(7) See: p. 618 of this book.

(8) See: Zakâh on State Funds (p. 449).

(9) See: Nawâzil az-Zakâh (p. 251).

or an individual, acts on behalf of the rightful recipients of public wealth, and their intention substitutes for the intention of those beneficiaries, just as the intention of the guardian (walî) of a minor or a mentally incapacitated person stands in place of their own intention⁽¹⁾.

Counterargument: The delegation of intention in paying Zakâh is only valid when there is a specific owner whose intention is impossible—such as someone refusing to pay Zakâh, a minor, or a mentally incapacitated person. However, public wealth does not have a specific owner for the intention to be made on their behalf.

Third evidence: An analogy (qiyâs) is made to non-invested public wealth, where Zakâh is not obligatory. The fact that public wealth is invested does not change its nature as public wealth that is not owned by a specific individual, and thus the reason for not obligating Zakâh still applies⁽²⁾.

Fourth evidence: Zakâh is an act of worship directed toward a natural person, so the fact that the wealth is managed by a legal entity (corporate person) does not influence the obligation of Zakâh⁽³⁾.

Fifth evidence: An analogy is made between invested public wealth and invested Zakâh funds, where Zakâh is not obligatory. The similarity is that both are forms of invested wealth with no specific owner⁽⁴⁾.

Evidence for the second opinion: Those who argue that Zakâh is obligatory on invested public wealth in all cases base their view on the following:

First evidence: The reason for the obligation of Zakâh is that the wealth is productive (nâmi). When wealth is set aside for growth and investment, Zakâh becomes obligatory on it, whether the wealth is public or private⁽⁵⁾.

Discussion: It cannot be accepted that growth (namâ') alone is the cause for Zakâh. Rather, it is a condition, as evidenced by the fact that productive

(1) See: Zakâh on State Funds (p. 445).

(2) See: Zakâh on Public Wealth, by Ash-Sharîf, in Proceedings and Papers of the Eighth Symposium on Contemporary Zakâh Issues (p. 379).

(3) See: Proceedings and Papers of the Thirteenth Symposium on Contemporary Zakâh Issues (p. 374).

(4) See: Zakâh on State Funds (p. 450).

(5) See: Proceedings and Papers of the Eighth Symposium on Contemporary Zakâh Issues (p. 436).

wealth that does not reach the Nişâb (minimum amount determining a person's zakatability) is not subject to Zakâh. A condition does not necessarily lead to the obligation⁽¹⁾.

Second evidence: Invested public wealth is fully owned by the entity managing it on behalf of the rightful beneficiaries, which is either the state or the related fund in its corporate capacity. Therefore, Zakâh is obligatory on it⁽²⁾.

Discussion: It was argued that if a specific individual does not own a legal entity, Zakâh is not obligatory on the wealth it holds. This applies to companies or public funds⁽³⁾.

Third evidence: Imposing Zakâh on public invested wealth achieves justice among traders, as government-owned companies compete with private companies that pay Zakâh. Exempting some investment companies from Zakâh while imposing it on others disturbs economic balance⁽⁴⁾.

Discussion: Zakâh is an act of worship with its own rulings and conditions; it is not merely an economic tool to balance companies. Economic balance can be achieved without the need to impose an act of worship that does not meet its conditions of obligation⁽⁵⁾.

Evidence for the third opinion: Those who argue that Zakâh is not obligatory on public invested wealth unless it is mixed with private wealth in investment companies provide the following evidence:

First evidence: Companies that contain both public and private funds have legal personalities and independent financial liabilities, so their wealth is treated as a single entity, and Zakâh is obligatory on all their wealth, regardless of the identity of the partners owning the wealth⁽⁶⁾.

(1) See: Proceedings and Papers of the Thirteenth Symposium on Contemporary Zakâh Issues (p. 301).

(2) See: Proceedings and Papers of the Eighth Symposium on Contemporary Zakâh Issues (p. 432).

(3) See: Ruling on Zakâh of Public Investment Wealth, Al-Ghufayli (p. 128).

(4) See: Proceedings and Papers of the 13th Symposium on Contemporary Zakâh Issues (p. 371).

(5) See: Ruling on Zakâh of Public Investment Wealth (p. 129); Zakâh on State Funds (p. 453).

(6) See: Zakâh of Legal Entities (p. 242).

Discussion: This evidence is based on the premise that Zakâh is obligatory on the company itself. However, we do not agree with this premise because Zakâh is an act of worship that is only addressed to natural persons, and Zakâh is obligatory on the partners, not the company. If it is established that one of the partners is not liable for Zakâh on their individual wealth, then Zakâh is not obligatory when such wealth is invested in a company.

Second evidence: Public wealth is mixed with private wealth in a single company, so Zakâh is obligatory on both types of wealth because mixing the two makes them like one entity. The mixing affects all types of wealth, based on the general texts indicating its influence⁽¹⁾.

This argument is contested in two ways:

First point: We do not accept that mixing (khaltah) has an effect outside of livestock. Mixing in livestock sometimes results in benefit and sometimes in harm. If it were considered outside of livestock, it would cause pure harm to the wealth owner. Moreover, mixing does not have an effect outside of livestock, as this is the opinion of the majority of scholars ⁽²⁾.

Second point: Among the jurists who considered mixing (khaltah) to have an effect outside of livestock, they stipulated that all partners must be individuals upon whom Zakâh is obligatory⁽³⁾. They also explicitly stated that Zakâh is not obligatory on the share of public wealth or similar types of wealth that are not subject to Zakâh on their own⁽⁴⁾.

Preference: Upon examining the evidence and discussions, it appears that the most likely correct view—Allah knows best—is the first opinion, which holds that Zakâh is not obligatory on publicly invested wealth under any circumstances.

Nevertheless, there is no issue with collecting Zakâh from mixed compa-

(1) See: Proceedings and Papers of the 13th Symposium on Contemporary Zakâh Issues (p. 364).

(2) See: Al-Mabsût [2:153], Al-Muḥîṭ Al-Burhânî [2:302], At-Tafrî' [1:156], Al-Ma'ûnah (p. 407), Al-Bayân [3:226], Al-Majmû' [5:450], Al-Mughnî [2:462], Al-Furû' [4:60], Studies on Contemporary Financial Issues [2:194].

(3) See: The Ruling on Zakâh of Public Sector Institutions' Wealth, included in the research papers of the 13th Symposium on Contemporary Zakâh Issues (p. 308).

(4) See: Al-Majmû' Sharḥ al-Muhadhdhab [5:353], Bidâyat Al-Muḥtāj [1:489].

nies based on the entirety of the company's wealth, including the share of public wealth, when there is a need for this. This is because the recipients of Zakâh have a right to public wealth, and taking the Zakâh portion from the public share in the company and delivering it to them is considered a way of ensuring that rights reach those entitled to them⁽¹⁾.

Reasons for preference:

- 1- The strength of the evidence supporting the first opinion and its immunity from valid objections, coupled with the weakness of the evidence supporting the other views.
- 2- The consensus that Zakâh is not obligatory on non-invested public wealth is based on the rationale that there is no specific owner, and this applies equally to invested public wealth.
- 3- As previously established, Zakâh is not obligatory on companies based on their legal personality; rather, it is obligatory on the individual partners, with the company paying Zakâh on their behalf⁽²⁾. Therefore, there is no justification for the obligation of Zakâh on public wealth if it is invested by a legal entity.
- 4- There is no difference between companies fully owned by the public sector and companies in which the public sector has a share, because mixing (khaltah) does not affect the obligation of Zakâh on wealth that is not subject to Zakâh in the first place.

The impact of intention on the issue:

The impact of intention (niyyah) is evident in that those who support the first opinion argue that Zakâh is not obligatory on public invested wealth because Zakâh is an act of worship that cannot be validly performed without an intention. This intention must come from the owner or their representative in cases where the owner is unable to form the intention due to youth or insanity. Since public wealth does not have a specific owner, it is impossible for the intention to be fulfilled when paying its Zakâh.

On the other hand, proponents of the second and third opinions argue that intention is not influential. They believe that the intention can be made by

(1) See: The Jurisprudence of Estimation in Calculating Company Zakâh (p. 223).

(2) See: p. 484 of this book.

whoever manages the public wealth on behalf of its rightful recipients and that this intention would substitute for theirs. This is analogous to the intention of a guardian standing in for the intention of a child or an insane person.

The correct view is that the requirement of intention indeed influences the ruling in this matter. The delegation of the intention to pay Zakâh is only valid for a specific owner whose intention could not be realized—such as someone refusing to pay Zakâh, or a child, or an insane person. Public wealth, however, does not have a specific owner, so it is not valid to delegate the intention on its behalf. The impossibility of forming the intention is thus evidence that Zakâh is not obligatory.



Tenth Treatise

The Impact of Intention on the Ruling of Investing Zakâh Funds

Issue description:

Is it permissible for the imam or his representative⁽¹⁾ – including government bodies, institutions, or officially designated charitable organizations responsible for collecting and distributing Zakâh – to invest Zakâh funds, or a portion of them, aiming to increase and profit from them? What is the impact of intention in this matter?

Opinions on the issue:

I have not found any explicit opinions from early jurists on this issue except within the Shâfi‘î school. They explicitly stated that it is impermissible for the imam or his deputy to manage Zakâh funds except in cases of necessity, and that they must promptly deliver the funds to those entitled to them. It is mentioned in Al-Muhadhdhab: “It is not permissible for the Zakâh collector or the imam to use the obligatory funds in their possession until they have delivered them to their rightful recipients, as the poor are of sound mind and

(1) Investing Zakâh funds by the imam or his deputy is the case in which contemporary scholars differ. As for investing Zakâh funds by the owner or their agent, I found no disagreement regarding its impermissibility, as it results in delaying the payment of Zakat, and the fatwâ has consistently ruled that it must be paid immediately. See: Investing Zakâh Funds, Shubayr, in Proceedings of the 3rd Symposium on Contemporary Zakâh Issues (p. 25); Ruling on Investing Zakâh Funds, Al-Fawzân (p. 7); Zakâh Issues (p. 497). However, when it comes to investing Zakâh funds by the beneficiaries after receiving them, I found no disagreement regarding its permissibility, as the funds have entered their ownership, making their handling of the money like that of an owner with their wealth. See: Investing Zakâh Funds, Shubayr, in Proceedings of the 3rd Symposium on Contemporary Zakâh Issues (p. 23); Criteria for Considering Intentions in the Investment of Zakâh Funds, Mahmoud Shafi‘î (p. 75).

do not need a guardian. Therefore, it is impermissible to handle their wealth without their permission”⁽¹⁾. This clearly indicates their view that investing Zakâh funds is not permissible.

Contemporary scholars have differed on the issue, offering two opinions:

First opinion: It is impermissible to invest Zakâh funds.

This view was adopted by the Fiqh Council of the Muslim World League in its 15th session⁽²⁾, the Indian Fiqh Academy in its 13th session⁽³⁾, the Permanent Committee for Islamic Research and Fatwâs in Saudi Arabia⁽⁴⁾, and it was chosen by Sheikh Muhammad ibn Sâlih Al- ‘Uthaymîn ⁽⁵⁾ and a group of contemporary scholars⁽⁶⁾.

Second opinion: It is permissible to invest Zakâh funds⁽⁷⁾.

This view was endorsed by the International Islamic Fiqh Academy in its 3rd session⁽⁸⁾, the 3rd Symposium on Contemporary Zakâh Issues⁽⁹⁾, and it was the preference of most researchers⁽¹⁰⁾.

The decision from the 3rd Symposium on Contemporary Zakâh Issues

(1) Al-Muhadhdhab [1:311]; also see: Al-Hâwî Al-Kabîr [3:331], Al-Bayân [3:498].

(2) See: Decisions of the Islamic Fiqh Academy (p. 361).

(3) See: Decisions on Worship Issues, on the website of the Indian Fiqh Academy, via the link: <http://www.ifa-india.org/juristic-decisions:issue-related-to-worship-and-offering-ibadat.html>.

(4) See: Fatwas of the Permanent Committee, First Collection [9:454].

(5) See: Collection of Fatwas and Letters of Ibn ‘Uthaymîn [18:478].

(6) See: Investing Zakâh Funds, ‘Îsâ Shaqrah, in Proceedings of the 3rd Symposium on Contemporary Zakâh Issues (p. 74); Comprehensive Guide to Zakâh on Stocks and Investing Zakâh Funds (p. 141).

(7) Among those who hold this opinion, some allow it unconditionally, others restrict it to specific guidelines, some limit it to the portion allocated to the poor and needy, and others restrict it to the portion for “in the path of Allah.” See: Journal of the International Islamic Fiqh Academy [3:52, 57, 86]; Investing Zakâh Funds, Shubayr (p. 41); Comprehensive Guide to Zakâh on Stocks and Investing Zakâh Funds (p. 145).

(8) See: Decisions and Recommendations of the International Islamic Fiqh Academy, Decision No. 15 (p. 70).

(9) See: Proceedings of the 3rd Symposium on Contemporary Zakâh Issues (p. 317).

(10) See: Investing Zakâh Funds, Shubayr (p. 40); Zakâh Issues (p. 438); Studies on Contemporary Financial Issues [2:444]; Comprehensive Guide to Zakâh on Stocks and Investing Zakâh Funds (p. 144).

outlined several conditions for the permissibility of investing Zakâh funds, which have been adopted by many researchers⁽¹⁾:

- 1- There should be no urgent expenditure needs that require the immediate distribution of Zakâh funds.
- 2- Zakâh funds, like other funds, must be invested through lawful means.
- 3- Measures must be taken to ensure that the invested assets retain their Zakâh status, as well as the revenue from those assets.
- 4- The invested assets must be liquidated (converted into cash "Tas'yîl") promptly if the needs of Zakâh recipients require their distribution.
- 5- Efforts should be made to ensure that the investments in which Zakâh funds are placed are profitable, safe, and can be liquidated when needed.
- 6- The decision to invest Zakâh funds must be made by those appointed by the authority to collect and distribute Zakâh, adhering to the principle of legal representation, and the supervision of investments should be entrusted to those with competence, expertise, and integrity.

Evidence and discussions:

Evidence for the first opinion: The proponents of the opinion prohibiting the investment of Zakâh funds cite several pieces of evidence, the most prominent of which are as follows:

First evidence: It is established that the Prophet (Peace and blessings of Allah upon him) performed the 'Asr prayer and hastened afterward, then entered his house. He soon came out, and when asked about this, he said: "I had left some gold ⁽²⁾for Sadaqah in the house, and did not wish to keep it overnight"⁽³⁾.

(1) See: Proceedings of the 3rd Symposium on Contemporary Zakâh Issues (p. 317); Ruling on Investing Zakâh Funds (p. 44); Zakâh Issues (p. 499); Investing Zakâh Funds, Al-Hujaylân (p. 408).

(2) Tibr: Gold that has not been minted. Once minted into dinars, it is referred to as 'Ayn. The term Tibr is used exclusively for gold, although some scholars also use it for silver. See: As-Sihâh [2: 600], An-Nihâyah Fi Gharib Al-Ĥadîth [1: 179], under the root (T-B-R).

(3) Related by Al-Bukhârî in his Şaḥîḥ, Book of Zakat, Chapter on those who prefer to hasten charity on its day, Hadith no. [1430], [2: 113].

Indication of evidence: The fact that the Prophet (Peace and blessings of Allah upon him) hurried to enter the house after prayer to distribute the Zakâh, which caused astonishment among the Companions (RA), is a clear indication of the obligation to promptly distribute Zakâh. This is because such haste clears one's liability, fulfills the needs of the recipients, avoids delay, and pleases the Lord, Almighty⁽¹⁾.

Second evidence: Investing Zakâh funds leads to delaying their disbursement to those entitled to receive them, which contradicts the view held by the majority of scholars that Zakâh must be given immediately⁽²⁾.

Discussion: It has been argued that the obligation of immediate payment applies to the Zakâh payer, while the Imam or his deputy acts as an agent on behalf of the recipients when collecting it. Therefore, when Zakâh is given to them, immediacy is achieved⁽³⁾.

Counterargument:

The wisdom behind the immediate payment is to meet the needs of the beneficiaries. If it were permissible for the Imam or his deputy to delay the distribution, then it would also be permissible for the Zakâh payer to delay the payment.

Third evidence:

The Imam or his deputy has the authority to collect and distribute Zakâh funds, but he does not have the authority to invest them without the permission of those entitled to receive them. The Sharî'ah grants him the authority to collect and distribute but does not permit him to invest the funds⁽⁴⁾.

Fourth Evidence:

Investing Zakâh funds could expose them to loss, resulting in the deprivation of the recipients' rights⁽⁵⁾.

(1) See: Fath Al-Bârî (3: 299), Tawzîf Amwâl Az-Zakâh by Hawsâwî (p. 497), Ash-Shâmil Fî Zakât Al-As'hum Wa Istithmâr Amwâl Az-Zakâh (p. 147).

(2) See: Tawzîf Az-Zakâh by Âdam Shaykh 'Abdullâh, Journal of the International Islamic Fiqh Academy (3: 53).

(3) See: Istithmâr Amwâl Az-Zakâh by Shubayr (p. 32).

(4) See: Al-Muhadhdhab [1: 311], Al-Bayân [3: 498].

(5) See: Istithmâr Amwâl Az-Zakâh by Shaqrah (p. 65).

This argument is contested in two ways:

First point:

The possibility of loss does not prevent trade, as trade serves the purpose of growing and increasing wealth. Therefore, a person is not prohibited from engaging in trade due to fear of losing their wealth or it falling below the nişâb⁽¹⁾.

Counterargument:

The benefit lies in the immediate delivery of Zakâh funds to those entitled, not in growing or investing it, which exposes it to risks. It is incorrect to compare trade with wealth before Zakâh becomes obligatory to trading with the portion that must be disbursed to the rightful recipients.

Second point:

Investing funds could be subject to economic studies that minimize the risk of loss⁽²⁾.

Counterargument:

No investment is without risk, whether minor or significant. Exposing the wealth of the entitled recipients to such risks without their permission constitutes an infringement on their rights.

Evidence for the second opinion:

Those who support the permissibility of investing Zakâh funds provide several pieces of evidence, the most notable of which are as follows:

First evidence:

The Prophet (Peace and blessings of Allah upon him) and the Rightly Guided Caliphs (RA) used to invest Zakâh funds from livestock and allocate their benefits to the poor. This is supported by the Ḥadīth of the 'Uraynīn, where the Prophet (Peace and blessings of Allah upon him) permitted them to go to the charity camels and drink from their milk and urine⁽³⁾.

(1) See: *Istithmâr Amwâl Az-Zakâh* by Shubayr (p. 33).

(2) See: the previous reference.

(3) Related by Al-Bukhârî in his *Ṣaḥīḥ*, Book of Ablution, Chapter on the Urine of Camels, Livestock, and Sheep and their Pens, Hadith no. (233), (1: 56), and by Muslim in his *Ṣaḥīḥ*, Book of Qasâmah, the Fighters Against Islam, and Legal Retribution, Chapter on the Fighters Against Islam and Apostates, Hadith no. (1671), (3: 1296).

Discussion:

It is disputed that the Prophet (Peace and blessings of Allah upon him) and the Rightly Guided Caliphs (RA) used to invest the Zakâh livestock. Rather, they were simply safeguarding them until they could be distributed to the rightful recipients, and any milk production or offspring was a natural occurrence, not an intentional investment⁽¹⁾.

Second evidence: That the Prophet (peace be upon him) gave him one Dinar so as to buy a sheep for him. `Urwa <sup>(2)</sup>bought two sheep for him with the money. Then he sold one of the sheep for one Dinar, and brought one Dinar and a sheep to the Prophet. On that, the Prophet (peace be upon him) invoked Allah to bless him in his deals. So `Urwa used to gain (from any deal) even if he bought dust.⁽³⁾

Indication of the evidence:

`Urwah (RA) engaged in a trade with someone else's wealth without their permission, and the Prophet (Peace and blessings of Allah upon him) approved of this action. This indicates the permissibility of investing Zakâh funds without the recipients' permission⁽⁴⁾.

This argument is contested in two ways:

First Point: `Urwah (RA) did not handle Zakâh funds but rather the wealth of the Prophet (Peace and blessings of Allah upon him).

Second point: `Urwah (RA) did not invest wealth that was required to be distributed; instead, the Prophet (Peace and blessings of Allah upon him) entrusted him with a purchase. A deal presented itself that fulfilled the Prophet's (Peace and blessings of Allah upon him) intention while also yielding a profit. This differs from investing wealth that is obligated to be distributed to its recipients.

Third evidence:

The analogy of investing Zakâh funds is made to the permissibility of investing the wealth of orphans, as both involve investing someone else's wealth

(1) See: Nawâzil Az-Zakâh (p. 488).

(2) He is `Urwah ibn `Iyâd ibn Abî Al-Ja'd Al-Bâriqî Al-Azdî, a noble Companion. `Umar ibn Al-Khaţţâb (RA) appointed him as a judge in Kūfah. He had seventy horses tied for the cause of Allah (SWT). See: Al-Isti'âb [3: 1065], Usd Al-Ghâbah [3: 524].

(3) Related by Al-Bukhârî in his Şaḥîḥ, Book of Virtues, Hadith no. [1873] [3: 1493].

(4) See: Istithmâr Amwâl Az-Zakâh by Shubayr (p. 40).

without their permission⁽¹⁾.

Discussion:

This analogy is flawed, as Zakâh funds must be immediately distributed to the recipients, unlike orphan funds, which are withheld until they reach maturity. The correct analogy is to compare investing Zakâh funds by the Imam or his deputy to investing the wealth of orphans after they reach maturity without their permission, which is not permissible⁽²⁾.

Fourth evidence:

Allah (SWT) commanded the giving of Zakâh and mentioned its recipients but did not specify a particular method of distribution. This matter is entrusted to the judgment of the Imam or his deputy, so they may use their discretion to invest the funds if they believe it serves the interests of the recipients⁽³⁾.

Discussion:

The Imam or his deputy's authority lies in collecting and distributing Zakâh. The method of distributing it among its categories is left to their judgment. However, there is a difference between exercising judgment in distribution and investing Zakâh funds, as investment exceeds their authority and is not permitted without clear evidence.

Fifth evidence:

Investing Zakâh funds can yield benefits that outweigh potential harms from delays or missed opportunities. This investment contributes to increasing Zakâh funds and securing a permanent financial resource to meet the needs of the recipients, especially considering the scarcity of Zakâh funds and the high demand for them ⁽⁴⁾

Discussion:

The scarcity of Zakâh funds and the high demand from its beneficiaries should motivate the view that Zakâh funds must be disbursed immediately, rather than being retained or partially invested. When needs are abundant, the benefit lies in hastening to meet those needs as much as possible.

(1) See: the previous reference, Shubayr (p. 32).

(2) See: *Ḥukm Istithmâr Amwâl Az-Zakâh* by Al-Fawzân (p. 24).

(3) See: the previous reference (p. 32). (4) See: *Nawâzil Az-Zakâh* (p. 499).

Preference:

The preponderant opinion—Allah knows best—is the first opinion, which holds that it is not permissible to invest Zakâh funds. However, one might argue for permissibility if Zakâh funds exceed the needs of the recipients entirely. Yet, this situation is extremely rare, for if Zakâh funds exceed the needs in one region, they must be transferred to those in need in other regions. It is difficult to imagine a scenario where the world is devoid of Zakâh recipients. As Al-Juwaynī ⁽¹⁾states: “If someone goes to great lengths to imagine ⁽²⁾a scenario where a region is devoid ⁽³⁾of Zakâh recipients, this would break from normal expectations and is hard to envision. However, scholars sometimes propose distant hypothetical scenarios, and their purpose in doing so is to clarify the essence of meanings”⁽⁴⁾.

Reasons for Preferring the First Opinion:

- 1- The strength of the evidence supporting the first opinion, as it is free from any substantial counter-arguments, and the weakness of the second opinion’s evidence, which does not stand up to scrutiny.
- 2- There is no evidence that the Prophet (Peace and blessings of Allah upon him) or the early virtuous generations ever invested Zakâh funds. Had it been permissible, it would have been reported from them. It is well known that investing and growing wealth is not a new or unprecedented concept, so the fact that the early generations did not engage in it is evidence of its impermissibility.
- 3- Zakâh is ordained to meet the needs of Muslims across all regions and

(1) He is ‘Abdul-Malik ibn ‘Abdullâh ibn Yūsuf Al-Juwaynī, known as Imâm Al-Ḥaramayn Abū Al-Ma‘ālī, a prominent Shâfi‘ī scholar and author. He studied under his father and later assumed teaching and issuing legal opinions after him. Many notable scholars attended his lessons, with around 300 people gathering in his sessions. Among his students were leading scholars, and his significant works include *Al-Burhân in Usûl Al-Fiqh*, *Nihâyat Al-Maṭlab in Fiqh*, and *Ghayâth Al-Umam fî Iltiyâth Az-Zulam*. He passed away in the year 478 AH. See his biography in *Siyar A‘lâm An-Nubalâ’* [18: 470] and *Ṭabaqât Ash-Shâfi‘iyyîn* (p. 469).

(2) Meaning: void or empty. See: *As-Sihâḥ* [2: 700], under the root (Sh-Gh-R).

(3) *Al-Khiṭṭah* (with a kasrah): land. See: *As-Sihâḥ* (3: 1123), *Lisân Al-‘Arab* [7: 289], under the root (Kh-T-T).

(4) See: *Ghayâth Al-Umam* (p. 248).

is not confined to the residents of one area. It is hard to imagine a situation where there are no immediate needs anywhere in the world.

- 4- Zakâh is mandated annually to meet both recurring and anticipated needs, and every individual has their specific time to pay Zakâh. This system is designed to address ongoing needs, making it unnecessary to invest Zakâh funds without the recipients' permission.
- 5- Many who favor the permissibility of investment state that the default rule is immediate disbursement, and that investment is only allowed in cases of necessity and when it is clearly beneficial. But what necessity justifies delaying the disbursement? Is it the shortage of Zakâh funds coupled with a large number of recipients? It is well known that if Zakâh funds are limited and the number of beneficiaries is high, the benefit lies in distributing the Zakâh to them, not in delaying its disbursement. It makes no sense to tell someone in need of a small amount of money: "Invest your funds instead of spending them on your essential needs until they increase and grow!"

Impact of intention on the issue:

The role of intention in this issue is evident in the fact that many of those who permit the investment of Zakâh funds stipulate conditions for its permissibility, one of which is the obligation to liquidate investment assets immediately when there is an urgent need ⁽¹⁾

This condition implies that anyone who seeks to invest Zakâh funds must intend to liquidate the investments and promptly distribute the funds to meet urgent needs when they arise. If this intention is not present from the outset, it is impermissible to begin investing Zakâh funds.

This stipulation is sound for those who permit the investment of Zakâh funds. It also applies to the preponderant view, which prohibits investing Zakâh funds unless we imagine a scenario where no recipients are present. In that case, the one investing Zakâh funds must intend to halt the investment, liquidate the Zakâh assets, and distribute them to the recipients as soon as they appear.

(1) See: Research and Proceedings of the Third Symposium on Contemporary Zakâh Issues (p. 317), *Ḥukm Istithmâr Amwâl Az-Zakâh* (p. 44), *Nawâzil Az-Zakâh* (p. 499), *Istithmâr Amwâl Az-Zakâh* by Al-Ḥujaylân (p. 408).

Conclusion

I praise Allah, the Almighty, for granting me the completion of this book titled: ***“Intention in Zakâh and Its Contemporary Issues”***. I ask Him for acceptance, guidance, and success, and I hope this book achieves its objectives and benefits others. I will conclude with the key findings I have reached, followed by recommendations and suggestions, which are as follows:

First: Key Findings

The main findings of the research can be summarized as follows:

- 1- Intention is the will to do something and the purpose for it, whether it is within one's capability or beyond it.
- 2- The intention issued by those legally responsible is divided into two types: the intention to carry out something, aim for it and determine it, and the intention of sincerity to Allah Almighty and orientation towards Him. The first intention is usually meant when dealing with subsidiary rulings.
- 3- Intention has five general conditions: the eligibility of the one intender, being decisive about it, not doing anything that contradicts it, being free from what falsifies it, and having full knowledge with what is intended.
- 4- Zakâh is a term for a specific amount of wealth prescribed by Shari'ah, taken from specific wealth or body, for specific categories in a specific manner.
- 5- Zakâh has four pillars. First: the Zakâh payer, and Islam and freedom are conditions for its obligation on him, and intention is a condition for the validity of its performance. Second: the wealth on which Zakâh is paid, and it has four conditions: complete ownership, growth, reaching the *Nisâb* (minimum amount determining a person's zakatability), and the passing of a full *Hawl* (Zakâh year). Third: The Zakâh beneficiaries and they must be from the eight categories. Fourth: the wealth given out, and

for the validity of Zakâh, it must be given ownership to the deserving person, and it must be of the same type of wealth on which Zakâh was obligatory according to the majority.

- 6- There is no disagreement among Fiqh scholars on the obligation of Zakâh on livestock owned with the intention of milking and breeding if they are grazing. The preponderant view is that Zakâh is not obligatory on fodder-fed animals.
- 7- The preponderant view is that Zakâh is obligatory on grazing animals owned with the intention of fattening for consumption.
- 8- The preponderant view is that Zakâh is not obligatory on livestock owned with the intention of work.
- 9- The preponderant view is that livestock owned with the intention of trade are subject to Zakâh as goods-stocked for trade.
- 10- Zakâh on the asset itself is obligatory on grazing livestock owned with the intention of selling their offspring.
- 11- The preponderant view is that Zakâh is not obligatory on livestock owned with the intention of renting them out or entering them in competitions for prizes.
- 12- The preponderant view is that Zakâh is obligatory on grazing animals owned without the intention or knowledge of their owner.
- 13- The preponderant view is that the Zakâh year for grazing animals is not interrupted merely by the intention to use them; rather, actual use must occur.
- 14- The preponderant view is that intention is not a condition for the validity of grazing. So, if animals graze without their owner's intention, Zakâh is still obligatory on them.
- 15- There is no disagreement that the mere intention to graze has no effect unless accompanied by action.
- 16- The preponderant view is that the intention to fodder-feed is not a condition. So, if animals are fed sufficient fodder without their owner's intention, the Zakâh year is interrupted and the obligation of Zakâh on them falls.

- 17- The preponderant view is that the Zakâh on grazing animals does not fall merely by the intention to fodder-feed or stop grazing.
- 18- The preponderant view is that grazing is not interrupted by minimal fodder-feeding, even with the intention to stop it.
- 19- The preponderant view is that Zakâh is not obligatory on usurped livestock if they were grazing and the usurper fodder-fed them. What influences the ruling on this issue is that the usurper's action is not legally considered, not the absence of the owner's intention to fodder-feed, because the preponderant view is that the intention to fodder-feed is not a condition for its ruling to be established.
- 20- The preponderant view is that Zakâh is not obligatory on usurped livestock if they were fodder-fed and the usurper made them graze. What influences the ruling on this issue is that the usurper's action is not legally considered, not the absence of the owner's intention to graze, because the preponderant view is that the intention to graze is not a condition for its ruling to be established.
- 21- The preponderant view is that Zakâh on livestock is not waived if the owner destroys them after a *Hawl* (Zakâh year) has passed and before it is possible to pay their Zakâh, whether he intended to evade Zakâh or not.
- 22- The preponderant view is that mixing livestock does not affect Zakâh when owners' intentions differ, such as if one intends milking and breeding while another intends use or trade, and vice versa.
- 23- The preponderant view is that the intention to mix or combine livestock with others' livestock is not a condition for it to be considered. If livestock mixes with others without the owner's knowledge or intention, the mixing is valid and its effects apply.
- 24- The preponderant view is that Zakâh is obligatory on all measurable and storable crops and fruits, and nothing else. The intention to grow the land with crops has no effect on negating or obligating Zakâh.
- 25- The preponderant view regarding the Zakâh on agricultural land owned with the intention of trade is that Zakâh of one-tenth is obligatory on the crops and fruits, and Zakâh of trade is obligatory on the land and

plantations.

- 26- The preponderant view is that Zakâh is absolutely obligatory on those who intend to benefit from what grows on their land without cultivation, whether the seeds are owned by the landowner or not.
- 27- The preponderant view is that Zakâh is obligatory on what grows on permissible land without intending to cultivate it if the seeds are owned by those who intend to benefit from it; otherwise, it is not obligatory.
- 28- The preponderant view is that the Zakâh year is not interrupted at all when exchanging one currency for another, whether the exchange is intended for trade or not.
- 29- The preponderant view regarding a debt gifted after a year has passed is that its Zakâh is obligatory on the giver, and he pays it from other sources unless he intended at the time of gifting to pay its Zakâh from it.
- 30- The preponderant view is that Zakâh on a loan is obligatory on the lender every year even if not received, if the loan is due - based on the view that delaying it is valid and binding - and repayment is expected from a wealthy, willing payer. If it is deferred or repayment is not expected, its Zakâh is not obligatory until it is due and can be received, starting a new Zakâh year then. The intention of kindness and charity does not affect the obligation of Zakâh on the loan.
- 31- There is no disagreement that Zakâh is not obligatory on jewelry made from gems and minerals other than gold and silver, whether owned with the intention of permissible or forbidden use, or rental, unless owned for trade, then it is subject to trade Zakâh if conditions are met.
- 32- The preponderant view is that Zakâh is obligatory on jewelry owned with the intention of permissible use.
- 33- There is no disagreement on the obligation of Zakâh on gold and silver jewelry owned with the intention of forbidden use or lending or renting to those who use it in a forbidden manner.
- 34- There is no disagreement on the obligation of Zakâh on jewelry owned with the intention of trade.
- 35- The preponderant view is that Zakâh is obligatory on jewelry owned

- with the intention of hoarding or saving for expenses or for future use.
- 36- The preponderant view is that Zakâh is obligatory on jewelry owned with the intention of renting.
- 37- The preponderant view is that Zakâh is obligatory on jewelry owned without intention.
- 38- The preponderant view, regarding the opinion which stipulates Zakâh is not obligatory on jewelry owned for use, is that Zakâh is not obligatory on broken jewelry if the owner intends to repair it. If he intends not to repair it or has no intention, Zakâh is obligatory.
- 39- The preponderant view, regarding the opinion which stipulates Zakâh is not obligatory on jewelry owned for use, is that Zakâh is obligatory on shattered jewelry that can only be repaired by recasting.
- 40- The preponderant view is that jewelry transitions from permissible use to trade merely by the intention of trade.
- 41- The preponderant view is that an intention arising after owning jewelry is like an intention concurrent with ownership in its effect on the ruling.
- 42- There is no disagreement that goods owned with the intention of trade through pure exchange, such as buying and renting, are subject to trade Zakâh.
- 43- The preponderant view is that goods acquired through impure exchange are subject to Zakâh if trade was intended at the time of contract.
- 44- The preponderant view is that trade Zakâh is obligatory on goods intended for trade absolutely, even if owned without the owner's action.
- 45- The preponderant view, regarding goods which turn from personal use to trade, is that they become subject to Zakâh merely by the intention of trade.
- 46- The preponderant view is that goods transition from trade to personal use and their Zakâh year (*Hawl*) is interrupted by changing the intention from trade to personal use, unless this is not intended to evade Zakâh.
- 47- The Malikites agree that if a trader owns goods intending to manage them; then intends to hold them, he transitions from the ruling of management to holding goods merely by intention.

- 48- The preponderant view, based on the Malikites' distinction between a holding trader and a managing trader, is that the intention of management transitions from the ruling of holding to the ruling of management merely by itself.
- 49- The preponderant view is that one who owns goods intending management and others intending trade, each type is given its ruling in Zakâh even if their values differ.
- 50- The preponderant view is that Zakâh is obligatory on goods bought with the intention of trade using goods for personal use.
- 51- The preponderant view is that what the *Mudârib* buys with *Mudârabah* money intending personal use, if he is permitted to buy it actually or legally, it is not for trade and Zakâh is not obligatory on it. If he is not permitted - which is the default in *Mudârabah* - it is for trade and Zakâh is obligatory on it.
- 52- The preponderant view is that the owner is not obligated to pay Zakâh on usurped goods if the usurper trades with them, even if the owner intended to trade with them.
- 53- The preponderant view is that intention is a condition for the validity of paying Zakâh, so Zakâh does not suffice without intention.
- 54- The preponderant view is that verbalizing the intention of paying Zakâh is not prescribed, but rather a forbidden innovation.
- 55- The preponderant view is that if one intends general charity when giving out wealth, it does not suffice for Zakâh.
- 56- The preponderant view is that if one gives out wealth intending charity of wealth without intending to pay Zakâh or obligatory charity on wealth, it does not suffice for Zakâh.
- 57- If one intends to pay Zakâh, when giving out wealth, without intending obligation, it suffices for Zakâh.
- 58- What is considered in performing acts of worship is what the heart intends, not what the tongue utters. So, if one intends Zakâh but utters something else, his intention is valid and what he gives out suffices for Zakâh.
- 59- If one gives out wealth with an intention hesitating between Zakâh and

other forms of charity or gift, it does not suffice for Zakâh.

- 60- The preponderant view is that the intention of paying Zakâh conditioned on the default, like the safety of wealth, is valid, unlike the intention of paying Zakâh conditioned on what is contrary to the default, like the death of the inheritor, which is not valid.
- 61- The preponderant view is that paying Zakâh with a shared intention between Zakâh and voluntary charity is not valid.
- 62- There is no disagreement on the validity of intention concurrent with paying Zakâh.
- 63- The preponderant view is that advancing the intention before giving out is valid if it is associated with setting aside Zakâh money, even if time extends. If not associated with setting aside Zakâh money, advancing it before giving out is valid for a short time customarily.
- 64- If one gives money to a Zakâh beneficiary with an intention other than Zakâh, it is not valid to change his intention afterwards to Zakâh.
- 65- The preponderant view is that delaying the intention of paying Zakâh after giving it out is not valid. If one gives money to a Zakâh beneficiary or his money falls into the beneficiary's hands without the intention of Zakâh, then he intends Zakâh, his intention is not valid and it does not suffice for Zakâh.
- 66- The preponderant view is that what is given to the ruler or his deputy voluntarily without the intention of Zakâh does not suffice for Zakâh.
- 67- The preponderant view is that if one refrains from paying Zakâh and the ruler or his deputy takes it forcibly, it suffices outwardly so it is not taken from him again, but it does not suffice inwardly, so it is not waived between him and Allah Almighty.
- 68- The preponderant view is that if one refrains from paying Zakâh and the ruler takes it forcibly without intending Zakâh when giving it to beneficiaries, it suffices for the owner outwardly but not inwardly.
- 69- The preponderant view is that specifying the wealth being paid as Zakâh is not required when paying Zakâh in any case.
- 70- The preponderant view is that it is not valid to spend Zakâh after paying

- it on wealth other than what was specified by intention, even if both types of wealth are of the same kind.
- 71- The preponderant view is that if the owner sets aside wealth to be paid as Zakâh and intends to pay it as Zakâh, it does not become specified and he can pay something else instead.
- 72- The preponderant view is that if the specified wealth for Zakâh is destroyed before the beneficiaries receive it, Zakâh is not waived, whether the destruction was due to the owner's negligence or another reason.
- 73- The preponderant view is that the Zakâh beneficiary is not specified by intention in any case, and it is permissible to give the Zakâh to someone else before the intended beneficiary receives it.
- 74- The preponderant view is that, for a prisoner who can manage his wealth himself or by appointing someone to manage it on his behalf; and for a missing person who has an agent for his wealth, Zakâh is obligatory on his wealth absolutely. On the other side, if he is completely cut off from his wealth and cannot manage it himself or through an agent, Zakâh is not obligatory on his hidden wealth but is obligatory on his apparent wealth because it grows by itself.
- 75- The preponderant view is that it is legitimate for the ruler or his deputy to take Zakâh from the wealth of a prisoner or missing person if it is impossible to reach them. In this case, the intention of the ruler or his deputy takes the place of their intention.
- 76- The intention to pay Zakâh on absent wealth is valid when it is definite and the absent wealth is specified, or when it is definite without specifying the wealth.
- 77- The intention of Zakâh on absent wealth is not valid when hesitating between Zakâh and voluntary charity.
- 78- For someone who has two types of wealth, absent and present, and pays Zakâh with an intention hesitating between them, the preponderant view is that the intention is valid and the Zakâh suffices for one of the two types of wealth. The payer can apply it to whichever he wishes and remains responsible for the Zakâh of the other.
- 79- The preponderant view is that it is valid to condition the intention of

Zakâh on absent wealth on its safety absolutely, or on its safety. Otherwise, this type of charity can be considered as voluntary charity.

- 80- If the payer intends that what he is paying is Zakâh on his absent wealth if it is safe, and if it is destroyed then it is on the present wealth, his intention is valid and the Zakâh applies to the absent wealth if it is safe, otherwise to the present wealth.
- 81- The preponderant view is that the payment by the possessor of unlawful wealth does not suffice for the owner's payment if the possessor pays the Zakâh himself. But if the ruler or his deputy takes it from him, it suffices for the owner because the ruler's intention takes the place of his intention.
- 82- The preponderant view is that the intention to pay Zakâh is obligatory on the foolish person. If he does not intend, the Zakâh is not valid for him. The guardian should inform him that he will pay Zakâh on his wealth so that the intention comes from him, or authorize him to pay Zakâh on his wealth himself.
- 83- The preponderant view is that Zakâh is obligatory on the wealth of minors and the insane, and their guardian's intention takes the place of their intention.
- 84- The preponderant view is that the intention to pay Zakâh from a discerning child is not valid in any case, whether the guardian authorizes him for the intention or not.
- 85- The preponderant view when appointing an agent to pay Zakâh from the principal's wealth is that the intention is obligatory on the principal alone, and it should be associated with giving to the agent or come after it and before the payment.
- 86- The preponderant view is that the agent's intention is required if he pays the Zakâh from his own wealth on behalf of the principal.
- 87- The preponderant view is that if the principal intends after appointing the agent and shortly before the agent pays, his intention is valid and suffices for Zakâh if the beneficiary is eligible for it.
- 88- The preponderant view is that if the principal (the one who appoints the agent) intends (to pay Zakâh) after the agency contract- and shortly

before the agent's distribution (of the Zakâh), then his intention is valid and that suffices for the Zakâh, if the beneficiary is entitled to it or deserves it.

- 89- The preponderant view is that when the intentions of the principal and the agent differ in paying Zakâh, the principal's intention is considered. If he intended Zakâh, what is paid suffices for it; otherwise, it does not suffice for Zakâh.
- 90- The preponderant view is that it is best for the Zakâh payer to distribute his Zakâh himself.
- 91- The preponderant view is that it is permissible to appoint a non-Muslim to pay Zakâh, provided that the beneficiary is specified, so that his role is limited to merely delivering the wealth. It is preferable not to inform him that it is Zakâh or charity so that he does not feel superior to the deserving Muslim.
- 92- The preponderant view is that the payment of Zakâh by one of the partners on behalf of the others without their permission does not suffice for them, and his intention does not suffice for their intention.
- 93- The preponderant view is that it is not permissible to pay obligatory maintenance enforced by the ruler with the intention of paying Zakâh.
- 94- 94- The preponderant view is that it is not permissible to give what is given on holidays and occasions with the intention of Zakâh if it involves preserving the payer's wealth or warding off blame from him.
- 95- The preponderant view is that Zakâh is not waived for one who gives all his wealth or all the *Nisâb* in charity after a year without intending to pay Zakâh.
- 96- The preponderant view is that Zakâh on the part given in charity is not waived for one who gives some of his wealth in charity after a year without intending to pay Zakâh.
- 97- The preponderant view is that Zakâh is not waived by death and must be paid from the entire estate of the deceased, whether he willed it or not, and the intention of his executor or heirs takes the place of his intention.
- 98- There is no disagreement on the permissibility of paying Zakâh for an-

other person if they permit it, whether the Zakâh is paid from the wealth of the one on whom it is obligatory or from the wealth of the representative, and the responsible person's permission for this is coupled with their intention.

- 99- The preponderant view is that paying Zakâh on another's wealth without their permission does not suffice for them in any case, whether the payment is from the payer's wealth or from the wealth of the one on whom Zakâh is obligatory, and whether the one on whom Zakâh is obligatory approves it or not, due to the lack of the condition of intention existence.
- 100- The preponderant view is that one who pays Zakâh for another with their permission has the right to seek reimbursement, unless there was an intention to donate, whether he intended to seek reimbursement or was unaware of his intention.
- 101- The preponderant view is that Zakâh is not obligatory on wealth vowed for charity, but if it is considered obligatory, then giving the vowed wealth in charity does not suffice for its Zakâh whether Zakâh was intended or not.
- 102- The preponderant view is that referring the Zakâh beneficiary or collector to the debtor with the intention of paying Zakâh is not valid and does not suffice for paying Zakâh.
- 103- The preponderant view is that it is valid for the depositor to order the depositor, if they are eligible for Zakâh, to take from the deposit with the intention of paying Zakâh.
- 104- The preponderant view is that Zakâh is not obligatory on the finder of lost property in any case, and a new Zakâh year starts from the day he takes possession of it.
- 105- Fiqh scholars agree that the finder is not obligated to pay Zakâh on lost property if he does not announce it, nor is he obligated for the year of announcement if he announces it.
- 106- The preponderant view is that Zakâh on lost property is obligatory on the finder if he takes ownership of it absolutely, whether he has its equivalent value or not.
- 107- The preponderant view is that lost property enters the finder's owner-

- ship and its Zakâh year begins as soon as the announcement year passes, without need for intention to own, verbal declaration of choice, or disposal of the lost property.
- 108- The preponderant view is that it Is permissible to hasten Zakâh payment before a year passes.
- 109- Scholars unanimously agree that for zakatable wealth other than goods-stocked for trade, it Is not valid to hasten their Zakâh before reaching the *Nisâb*.
- 110- The preponderant view is that it Is not valid to pay wealth for goods-stocked for trade that have not reached the *Nisâb* with the intention of their Zakâh if they reach it.
- 111- The preponderant view is that it Is not valid to hasten Zakâh on expected increase above the *Nisâb* in any case.
- 112- The preponderant view is that it Is not permissible to count the excess of what is paid as Zakâh for the coming year in any case.
- 113- The preponderant view is that it Is not valid to intend to transfer what is paid to another *Nisâb* if the specified *Nisâb* is destroyed after hastening its Zakâh and before its year (*Hawl*) is complete.
- 114- The preponderant view is that it Is not valid for the heir to intend to count what the deceased paid as hastened Zakâh for his own Zakâh.
- 115- The preponderant view is that it Is forbidden to dispose of wealth with the intention of evading Zakâh, and Zakâh is not waived by this.
- 116- The preponderant view is that if one buys real estate or goods with a *Nisâb* he has with the intention of evading Zakâh, he must pay Zakâh on that *Nisâb* absolutely when its year is complete. Then in the second year and after, if he has no purpose in owning those goods except evading Zakâh, he must pay Zakâh on their value. If he uses them or rents them out but intended when owning them to evade Zakâh, he does not have to pay Zakâh on their value.
- 117- The preponderant view is that if one intends to evade Zakâh by keeping his wealth as a debt owed to him, he must pay Zakâh on that debt absolutely - whatever its type - for every year even if he does not receive it.

- 118- The preponderant view is that it is permissible for the Zakâh collector to take from it even if he intended to volunteer his work.
- 119- The preponderant view is that if someone who incurred debt to reconcile between parties pays what they owe from their own money with the intention of reclaiming it from Zakâh funds, they should be given from Zakâh.
- 120- The preponderant view is that if someone borrowed with the intention of sinning and spent what they borrowed on sin, they should be given from the share of those in debt, provided they repent and their repentance appears genuine.
- 121- The preponderant view is that if someone borrowed with the intention of expanding their spending and taking from Zakâh, they should not be given from the share of those in debt unless they repent and their repentance appears genuine.
- 122- The preponderant view is that absolving a debtor from their debt or part of it with the intention of paying Zakâh from one's present wealth suffices for Zakâh, provided the debt is expected to be repaid. If the debt is not expected to be repaid, it does not suffice for Zakâh.
- 123- The preponderant view is that if someone has a debt owed to them and they absolve the debtor from part of it with the intention of paying Zakâh for that debt, it suffices for their Zakâh.
- 124- The preponderant view is that if someone has a debt owed to them by a person eligible for Zakâh, and they absolve them from it or part of it intending to pay Zakâh for another debt they own, it suffices, provided the absolved debt is equal to or higher than the debt being paid Zakâh for in terms of likelihood of repayment.
- 125- The preponderant view is that if someone has a debt on which Zakâh is due and the debtor is eligible for Zakâh, and they absolve them from the entire debt intending it as their Zakâh, it suffices.
- 126- The preponderant view is that it is valid to pay Zakâh to the creditor if there is no condition to reclaim it from them for the debt, no collusion, and no intention to do so. If any of these three things exist, it is not valid. However, an exception should be made if the wealth being paid as Zakâh

is the same debt owed by the eligible person or another debt equal to or less than it in financial value. In this case, paying Zakâh to the creditor is valid unconditionally.

- 127- The preponderant view is that a traveler with the intention of sinning should not be given from the share of the wayfarer unless they repent.
- 128- The preponderant view is that giving Zakâh exclusively to relatives is disliked if others are in greater need. If someone does this, they have gone against what is preferable, but it still suffices. If relatives and others are equal in need, relatives take precedence.
- 129- The preponderant view is that it is valid for an employer to pay their Zakâh to their private employee if they are eligible for it, provided they do not intend to achieve a benefit for themselves. If they intend this, it is forbidden and does not suffice.
- 130- The preponderant view is that it is permissible to reclaim Zakâh from the beneficiary if it becomes apparent they were not eligible for it, if it is still in their possession unconditionally, and likewise if it has been spent but they knew it was Zakâh when receiving it. If they were unaware, there is no recourse against them.
- 131- The preponderant view is that if someone pays their Zakâh to someone they think is ineligible, but who turns out to be eligible, it does not suffice.
- 132- The preponderant view is that it is permissible to delay paying Zakâh with the intention of giving it to those in greater need, or to relatives or neighbors, provided the delay is for a short period. A short period can be estimated as not exceeding one month, as this is considered a short time relative to absolute time. The permissibility should be conditioned on there being no harm from this delay to the present eligible beneficiary.
- 133- The preponderant view is that it is not valid to pay *Zakâtul-Fitr* on behalf of another person without their intention, absolutely.
- 134- The preponderant view is that a non-Muslim is not obligated to pay *Zakâtul-Fitr* for Muslims whose maintenance they are responsible for.
- 135- The preponderant view is that it is not permissible for a Zakâh institution to pay *Zakâtul-Fitr* with expected amounts before receiving them

from the Zakâh payers.

- 136- The preponderant view is that the shareholder's intention is considered and influential in how their shares are subject to Zakâh. Shareholders, according to their intention, are divided into: trading shareholders, investing shareholders, and waiting shareholders. The trading shareholder pays Zakâh on their shares and profits as goods-stocked for trade at their market value on the day the *Hawl* (Zakâh year) completes. The investing shareholder pays Zakâh on what corresponds to their shares from the company's Zakâh base when the *Hawl* completes. The waiting shareholder must pay Zakâh like an investor during savings years, paying on what corresponds to their shares from the Zakâh base. When they sell their shares, they pay Zakâh on the price that exceeds what corresponds to their shares from zakatable assets in the year of sale, if the price reaches the *Nisâb* and the *Hawl* of its principal is complete.
- 137- The preponderant view is that the trading shareholder may deduct from the amount due on them what the company has paid out in proportion to the number of days they owned the share relative to the rest of the year, if the amount due on the trading shareholder is more than what the company paid out. If the amount due on the trading shareholder is less than what the company paid out, the preponderant view is that it is not valid for them to count the excess as Zakâh for other wealth or as an advance payment of Zakâh; rather, it falls as voluntary charity.
- 138- The criterion for distinguishing between investing shareholders, trading shareholders, and waiting shareholders is: Anyone who does not intend to profit from the price difference between buying and selling is an investing shareholder. Anyone who turns over their money in shares by buying and selling in the short term is a trading shareholder. Anyone who intends to profit from the price difference between buying and selling, and holds onto their shares until their value increases in the long term, and does not sell at a loss except out of necessity, is a waiting shareholder.
- 139- If a trading shareholder changes their intention during the year to waiting or investing, their Zakâh year is interrupted, and they pay Zakâh on their shares according to the category they intended, unless this is done

to evade Zakâh. If an investing or waiting shareholder changes their intention to trading in shares, they transition to the ruling of Zakâh for trading shareholders and begin a new Zakâh year for this. If a waiting shareholder changes their intention to investing, they transition to the ruling of Zakâh for investing shareholders, unless this is done to evade Zakâh. If an investing shareholder changes their intention to waiting for shares, intending to hold them until their price rises and then sell them to profit from the price difference, they transition to the ruling of waiting shareholders.

- 140- The preponderant view is that Zakâh on shares of joint-stock companies is obligatory on the shareholders, and it is valid for the company to pay it on their behalf.
- 141- The shareholder must intend to pay Zakâh if the company management pays it on their behalf, and their intention is realized if they know the company pays Zakâh on their shares and they are satisfied with this.
- 142- The preponderant view is that someone waiting to sell goods is not obligated to pay Zakâh on their value every year, but rather pays Zakâh on their price when sold for one year.
- 143- The preponderant view regarding real estate owned with the intention of preserving wealth is to differentiate between those who cannot find a better means to preserve their wealth than buying real estate, who are not obligated to pay Zakâh, and those who can find safer means to preserve their wealth than buying real estate, such as depositing in a current account, who must pay Zakâh on the real estate as a waiting trader would, unless they are trading in real estate by turning over their money in it through buying and selling for profit, in which case their actions contradict their intention and they must value their real estate and pay Zakâh on its value when their Zakâh year is complete.
- 144- The notion of preserving wealth through stocks is not feasible; stocks are a means of investment. Those who intend to preserve their wealth place it in savings vehicles like current accounts, not investment instruments.
- 145- The preponderant view is that the obligation of Zakâh on goods is limited to what is intended to be sold for the purpose of trade, seeking profit and earning.

- 146- If goods are owned with the intention of trade, Zakâh on goods-stocked for trade is obligatory on them, even if their owner later intends to sell them to get rid of them or to buy an alternative commodity without intending profit and earning from that sale.
- 147- If goods are owned with the intention of personal use, then their owner intends to sell them for the purpose of profit and another purpose of selling, such as disposal or need for cash, the original purpose of the sale is considered and the secondary purpose is disregarded.
- 148- Zakâh is not obligatory on real estate and other goods owned without intention.
- 149- The preponderant view is that shares inherited by their owner without their knowledge and intention are subject to Zakâh when they become aware of them for the past years. If they received them without their knowledge, such as if they entered their investment portfolio without their knowledge, they pay Zakâh on them when they become aware of them, otherwise they pay Zakâh when they receive them, and they pay Zakâh on them as an investor would.
- 150- Zakâh on goods-stocked for trade is not obligatory on shares owned with an intention wavering between trade and investment, nor on real estate and other goods owned with an intention wavering between trade and personal use.
- 151- It is emphasized to consider indications to determine the intention of those known for frequent wavering and rarely maintaining a specific intention, especially if they assert the intention of trade and their Zakâh year begins, then wavering occurs after that and it is their habit to waver frequently. For such a person, their wavering is disregarded.
- 152- Scholars agree that if one's original intention in owning goods was to trade in them, and they intended along with that to use them or benefit from them until selling them, this does not affect the intention of trade, and they must pay Zakâh on those goods as Zakâh on goods-stocked for trade.
- 153- The preponderant view is that if one's original intention in owning shares was to benefit from their annual returns, and in owning other goods was

to use them or benefit from them, and they intended along with that to sell them if they found profit or intended to sell them seeking profit when their need for them ends, Zakâh on goods-stocked for trade is not obligatory on them unless they resolve to sell them seeking profit and their need for keeping them has ended.

- 154- The preponderant view is that whoever owns shares and intends to donate their profits must pay Zakâh on them and their profits, and the mere intention to donate has no effect on the obligation of Zakâh.
- 155- The preponderant view is that for shares suspended from trading, the Zakâh year for trade is interrupted, and their owner takes the ruling of an investing shareholder. When the suspension is lifted and the owner intends to return to trading and turning them over by buying and selling, they begin a new Zakâh year (*Hawl*) from that intention.
- 156- The preponderant view is that companies or institutions working in real estate development, which often own properties under construction and others completed and offered for sale during the year, must pay Zakâh on the value of properties under construction or development every year, valued according to their state at the completion of the Zakâh year. As for those who own a single project under construction and do not intend to sell it until completion, which takes more than a year, they are not obligated to pay Zakâh on the value of their property but rather pay Zakâh on its price when sold for one year.
- 157- For those whose original intention in owning goods was to trade by selling them for profit, and they intended along with that to lease them until selling, Zakâh on goods-stocked for trade is obligatory on them, and the intention to lease has no effect on the obligation of trade Zakâh.
- 158- The preponderant view is that the Zakâh on investment fund units differs according to the intention of owning them, and they are subject to Zakâh like shares.
- 159- What is considered in calculating the Zakâh base for equity funds is the intention of the fund manager, whether they intend to trade, wait, or invest in the shares. The intention of the unit owner regarding the fund's assets is not considered in calculating the Zakâh base, but their intention in owning the units is considered in how to pay Zakâh on them.

- 160- The preponderant view is that units of traded index funds are subject to Zakâh on goods-stocked for trade if owned with the intention of trading them. They are subject to Zakâh as a waiting shareholder if owned with the intention of waiting, and if owned with the intention of investment, they are subject to Zakâh according to what corresponds to them from the fund's Zakâh base.
- 161- The preponderant view is that the obligation of Zakâh in the takaful insurance pool differs according to the nature of the pool. If the participants have ownership in its funds such that what remains is distributed to them and not carried forward to subsequent years, and if the pool were liquidated for any reason, its funds would be distributed to them and not go to any other entity, then Zakâh is obligatory on them in it, and the pool management can pay it on their behalf like joint-stock companies. However, if the participants' relationship with the pool's funds is merely obtaining insurance coverage, and the surplus is not distributed to them, and if the pool were liquidated its funds would go to a charitable entity or the like, then there is no Zakâh on it.
- 162- After research, I have not found a disagreement that intangible rights are not among the assets on which Zakâh is obligatory merely by owning them, and that if they are exploited, Zakâh is obligatory on them as on other exploited assets.
- 163- The preponderant view is that if intangible rights are prepared for sale seeking profit, then Zakâh on goods-stocked for trade is obligatory on them.
- 164- The preponderant view is that sukuk owned with the intention of trading are subject to Zakâh on goods-stocked for trade, sukuk owned with the intention of waiting are subject to Zakâh as a waiting shareholder would pay on their shares, and sukuk owned with the intention of investment and obtaining returns only without profiting from their price differences are subject to Zakâh according to what they represent in assets, which differs according to their type.
- 165- The preponderant view is that Zakâh is not obligatory on the assets of exploited properties, and that their yield is treated as newly acquired wealth.

- 166- The preponderant view is that animals owned with the intention of keeping them and profiting from their yield and offspring are not subject to Zakâh on their actual selves, and their yield is subject to Zakâh on goods-stocked for trade.
- 167- The finance lease contract may lead to sale, so it combines the intention of leasing currently and the intention of trading by selling in the future. The preponderant view is that each should be given its ruling, so the rent of assets leased through finance lease is subject to Zakâh as newly acquired wealth, and when the sale and transfer of ownership occur, the entire price is subject to Zakâh for one year.
- 168- The preponderant view is that factories taken with the intention of production are not subject to Zakâh on their fixed assets of real estate, machinery, equipment, and the like.
- 169- The preponderant view is that raw materials prepared for manufacturing and construction, if a year passes while they are in their state, are subject to Zakâh on goods-stocked for trade, due to the realization of the intention of trade in them.
- 170- The preponderant view, according to the opinion that Zakâh is obligatory on the tangible assets of income-generating properties, is that Zakâh is not obligatory on what has combined the intention of *Qunyah* (i.e., acquisition for personal use) and *Istighlâl* (i.e., income-generation), if the original intention and the motivation for ownership was personal use. However, Zakâh is obligatory if the original intention and the motivation for ownership was income-generation.
- 171- The preponderant view is that Zakâh is obligatory on goods purchased through forward contracts (*Salam*) with the intention of trade. This is the basic principle, and the Zakâh on these goods follows the rulings for Zakâh on debts in terms of whether repayment is expected or not.
- 172- The preponderant view is that Zakâh is obligatory on goods ordered through manufacturing contracts (*Istisnâ`*) purchased with the intention of trade, for the portion of the price that has been paid but the goods not yet received. This portion should be valued at cost price, if possible, otherwise estimated. Its Zakâh follows the rulings for Zakâh on debts in terms of whether repayment is expected or not.

- 173- The preponderant view regarding deducting investment and housing debts from the Zakâh base is that the full amount of due debts and only the currently due installment of deferred debts should be deducted. This applies to debts that financed assets or goods intended for trade. Debts that financed assets intended for *Qunyah* (i.e., acquisition for personal use) or non-Zakatable commercial *Istighlâl* (i.e., income-generation) should not be deducted from the Zakâh base at all.
- 174- The preponderant view is that paying taxes with the intention of Zakâh and counting it as Zakâh is not valid or sufficient in any case.
- 175- The preponderant view is that fees on undeveloped land should be classified as taxes, and therefore cannot be counted as Zakâh.
- 176- Scholars agree that non-invested public funds are not subject to Zakâh.
- 177- The preponderant view is that Zakâh is not obligatory on invested public funds in any case. However, there is no issue with collecting Zakâh from mixed companies on all the company's funds, including the public fund portion, when there is a need for this. This is because Zakâh beneficiaries have a right to public funds, so taking the Zakâh amount from the public fund's share in the company and giving it to them is considered delivering a right to its deserving beneficiaries.
- 178- The preferred view is that investing Zakâh funds is not permissible, except in the hypothetical case where there are no eligible beneficiaries on earth. In that case, the investor of Zakâh funds must intend to stop the investment, liquidate the Zakâh funds, and distribute them to eligible beneficiaries as soon as they are found.

Second: Recommendations

Based on my research, I propose the following recommendations:

- 1- The researchers focus on the concept of intention (*Niyyah*) and its effects on jurisprudential issues.
- 2- Urging universities and research centers to dedicate efforts to studying the Shari'ah and accounting aspects related to contemporary Zakâh issues.
- 3- The financial brokerage firms provide notifications to applicants purchasing shares in companies that pay Zakâh, indicating that the company pays

Zakâh on those shares. This will ensure that the applicant is informed, which aids in fulfilling their intention.

- 4- The companies disclose the Zakâh amount paid per share, facilitating shareholders - whether traders or investors - in determining their Zakâh obligations.
- 5- The accountants specializing in Zakâh collaborate to design a tool for calculating the Zakâh of shareholders whose companies pay Zakâh, allowing them to accurately determine the amount paid based on the number of days they held the shares relative to the rest of the year.
- 6- Urging the investment fund management companies to proactively announce the required Zakâh amount for the funds they manage, based on the standards outlined in this thesis.
- 7- Establishing guidelines to determine the intentions of company and financial institution management regarding their ownership of shares or properties, relying on available evidence to facilitate the collection of Zakâh.

In conclusion, I ask Allah, the Almighty, to make this work sincere for His noble face, to benefit others through it, and to forgive me for any shortcomings or mistakes. Praise be to Allah, by whose blessings good deeds are completed. May peace and blessings be upon our Prophet Muhammad, his household, and all his companions.



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