

Al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat-Taqaaseem al-Badee'ah an-Naafi'ah.

The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations

Foundations 7

**By Sh. 'Abdur Rahmaan ibn Naasir As-Sa'di (rahimahullaah)
(d. 1376 A.H./1956 C.E.)**

Discussion based upon:

- 1-Sh. Ibn Sa'di's original explanation
- 2-Our Sh. Muhammad ibn Saalih Al-'Uthaimen's Commentary, and
- 3-Full explanation by our Sh. (Dr.) Sami ibn Muhammad As-Sghair (summer 1427 A.H./2006 C.E.)

**Prepared by
Saleh As-Saleh**

Transcribed by

Br. Abu Abdullaah al-Amreeki, *Jazaahullaahu Khairan*,
from live duroos in Paltalk's "[Understanding Islam 1](#)" room.

Text edited by sis Umm Ahmad al-Kanadiyyah, *Jazaahaallaahu Khairan*.

Basic Rulings and Foundations of Fiqh-7

All Praise is due to Allaah, and may the *salaah* and *salaam* be on Prophet Muhammad, his household, the noble companions and those who follow them until the Day of Resurrection. This is a continuation of the explanation of *The Basic Rulings and Principles of Fiqh – The Beneficial, Eloquent Classifications and Differentiations* by Imam ‘Abd ar-Rahman ibn Naasir as-Sa’di (*rahimahullaah*).

Foundation seven is entitled:

***Takleef* (legal maturity) is a condition for the obligation of acts of worship, and *tamyeez* (the age of distinction) is a condition for the validity of acts of worship, except for Hajj and Umrah, which are valid from someone who is not *mumayez* (one who has not reached the age of distinction, i.e. a child). In transactions, *rushd* (maturity of intellect, rectitude of actions, and good management of affairs) is a condition. In donations, possession is a condition.**

This *qaeda* (foundation) comprises the conditions for the obligation of the physical acts of worship; the acts of worship pertaining to finances do not fall under this obligation.

Takleef

Takleef is comprised of two parts, namely *al-bulough* (attainment of the age of puberty) and *al-‘aql* (maturity of intellect, sanity).

Takleef is a condition since it is known that for an act of worship to be accepted, there must be proper intention. Intention is not something that can be imagined from neither someone who is *majnoon* (insane) nor someone who is below the age of distinction. Therefore, it is clear why *takleef* is a condition for the physical acts of worship. This is a great mercy from Allaah (ﷻ: *subhaanallaahu wa ta’aalaa*) upon His slaves, as He (ﷻ) only makes them legally responsible at the age of puberty and maturity of intellect.

Validity of the Acts of Worship

With respect to acts of worship done by someone who has the ability to distinguish, then the condition of validity has been fulfilled; thus, such acts of worship are valid from him. However, if the acts are done by someone who is unable to distinguish, then they are not valid, except in the case of a child performing Hajj or Umrah. Regarding Hajj and Umrah, there is a textual proof that exempts the child, specifically the *hadeeth* from Ibn ‘Abbas (رضي الله عنه: *radiyallaahu ‘anhu*) who reported:

“A woman lifted up her child and said: ‘O Messenger of Allaah, would the child be credited with having performed the Hajj?’ Thereupon he said: ‘Yes, and there would be a reward for you.’”¹

This ruling regarding the validity of Hajj and Umrah for the child is not applicable to the insane for two reasons. First, the cited evidence only applies to the child. Second, although the child has not yet reached the age of distinction, it is anticipated his intellect will develop later. As for the insane, that is not anticipated, so his condition stays as it was in terms of the ruling.

Requirements on the Child Performing Hajj or Umrah

When the child does Hajj or Umrah, his *wali* (guardian) will do that which he is unable to do himself. In some instances, the child’s presence at specific places or during certain times is required. In other cases, his presence is not a condition. Examples of actions the *wali* must do in the presence of the child include *tawaaf* (circulating the *ka’aba*) and *as-sa’ee* between Safa and Marwah.

Instances where the *wali* can do the rituals of Hajj or Umrah on behalf of the child in his absence include, *ramul-jmar* (casting of the pebbles). The presence of the child is not conditional in this case. Even the presence of those other than the child is not required if they are legally fit to designate others to perform these acts.

Acts that the child must do himself include *al-waqoofu bi ‘Arafaah* (staying in ‘Arafaah) as well as spending the night in Muzdalifah.

Regarding the intention of the guardian, he only intends to assume *ihraam* on behalf of the child and enter the ritual; he cannot intend to make Hajj or Umrah on the child’s behalf. There is a distinction between the two. If the *wali* intends to perform Hajj on the child’s behalf, he will be a full delegate, and this is not the case. Entering *ihraam* on behalf of the child is sufficient.

Rulings Regarding the Acts of Worship for the Insane

With respect to the one who is insane, the physical acts of worship are not obligated upon him. Similarly, the physical acts of worship are not valid from him because he does not have the mental capacity for intention.

Rulings Regarding the Acts of Worship for the Child who has Reached the Age of Distinction

Concerning the child who has reached the age of distinction (i.e. *tamyeez*), he is to be commanded to perform those acts of worship which he is able to do, even though they are not obligated upon him. This is done in order to teach him to abide by the rulings and to train him, enabling him to become accustomed to these acts of worship. These instructions to perform the acts of worship will prepare him for the legal and moral responsibility when he reaches puberty, allowing his affair to be easy and so he will, by the Permission of Allaah (ﷻ), continue on what he was established upon

¹ Reported in *Saheeh Muslim* (English translation no. 3091, 3092, and 3093, book 7)

The child should also be commanded to know what is *haraam* and what is *halaal*. This will further allow him to train himself on that.

Opinions Regarding what Constitutes a Child of Distinction

There are two opinions concerning what constitutes a child of distinction. **The first opinion** is held by most of the scholars and classifies the child of distinction as one who has reached the age of seven.

The second opinion is that the child of distinction is the one who understands when he is addressed and can respond appropriately. An example of this would be if someone knocks at the door asking if his father is home, the child understands what that means and responds correctly. And generally this develops around the age of seven.

Financial Acts of Worship

The previous sections discussed the conditions for the physical acts of worship. For example, there is an exemption from acts of worship relating to *takleef*. However, the financial acts of worship, such as *zakaah* and the obligatory spending are required for all, including the elderly, the child, the sane and the insane; this is due to the fact that the proofs relating to this matter are general. Therefore, if someone who is insane has wealth, *zakaah* is due on it. Similarly, a child can inherit even if he has not reached the level of distinction. In addition, if that child has a poor mother or father, he must spend on them from his wealth.

Opinions Regarding Expiations from Children

There is a difference of opinion regarding the obligation of the *kafaarah* (expiation) from children; this is related to the ruling regarding the *kafaarah* itself. One opinion is that the *kafaaraat* (expiations) are from the stipulated rulings. Therefore, since they are stipulative in nature, they cover all, including the child, elderly, etc.

The other opinion is that the expiations are from *al-ahkam al-takleefiyyah* (the rulings that are dependent upon *takleef*). As such, those who take by this opinion assert that the expiations are not required from the child. This is stronger opinion because the *kafaarah* are meant to be a shielding from sins, and we know the child has no sins.

Example: If a child was able to take his father's car and struck a man with it, killing him, then it is clear that the blood money is obligated, either from the child or his relatives. However, the requirement of expiation depends upon the two opinions regarding the nature of expiations. If the *kafaarah* are considered to be from the stipulated rulings, then the expiation is required from the child. However, if you take from the other opinion that the *kafaarah* are *takleef* dependent, then there is no expiation, and this is the closer opinion.

Attainment of the Age of Puberty

A child's attainment of the age of puberty is determined in multiple ways. First, one has reached the age of puberty if semen is excreted while awake or asleep. The

second indication is completion of fifteen years of age. Third, a child has attained puberty if pubic hair grows on the body. These three are common to boys and girls. There is an additional sign of puberty specific to females, which is menstruation.

Transactions

Before one is qualified to engage in financial transactions, the person must fulfill three conditions, namely he must be *baaligh* (post-pubescent), sane, and have good management of affairs. These three conditions are known as *rushd*. Regarding *rushd*, Allaah (ﷻ) says (in the translation of the meaning):

﴿And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgment (*rushd*) in them, release their property to them﴾ Surah an-Nisa' (4:6)

Therefore, the orphans must reach the age of puberty and have sound judgment before their wealth can be turned over. If the guardian doubts the orphan's judgment, he should test whether the orphan is able to handle affairs properly. For instance, the *wali* could give the orphan a portion of his wealth. If out of ten transactions the orphan does well in eight and fails in two, this shows sound judgment. As such, the guardian should give the orphan his property.

Thus, puberty, maturity of intellect, and good management of affairs constitute the condition for the validity of transactions. If one is missing, then the transaction becomes invalid and is not to be executed.

The scholars exempted the requirement of *rushd* for financial transactions in one case, specifically *al-waseeyah* (bequeaths); they said bequeaths are valid from a child. This is because there is no harm upon the child in the case of bequeaths, as the *waseeyah* is executed after death. This is not the case if the child makes a *waqf* (endowment), since the execution of the endowment is immediate.

Example: If a child bequeaths \$100,000 to be executed after his death and he needs money later in his life, then he can take from this wealth as bequeaths can be retracted. This does not apply in the case of a *waqf*.

Rulings Regarding Donations and Spending the Wealth of the Orphan

Donations entail exerting wealth, not seeking a return. Examples of donations include: granting something to someone, charity, an endowment, freeing a slave, etc. In addition to maturity of intellect, attainment of puberty, and sound judgment, the donor must possess the wealth, in order for his donation to be valid.

Similarly, the donation from the one that is in charge of an endowment or the guardian of the wealth of the orphan is invalid because they do not possess this money; they are merely guardians of something that belongs to other than them. We know from the textual proof where Allaah (ﷻ) stated (in the translation of the meaning):

﴿And come not near to the orphan's property, except to improve it﴾

Surah an-An'am (6:152)

Therefore, one can only improve the orphan's wealth and make it more beneficial. As such, specific situations arise when dealing with the wealth of the orphan:

First, if there exists a business that is good and one that is better, than the guardian must use the orphan's wealth in the business that is better.

Second, if the guardian knows that a transaction is a losing one, it is forbidden to engage the wealth of the orphan in it.

Third, if the guardian is wavering on a specific transaction (i.e. he is not sure if it will improve the wealth or not), it is forbidden to engage the orphan's wealth since preserving the wealth is the safest course of action.

Fourth, if a transaction will most likely improve the wealth of the orphan, then he may engage in it.

Conclusion:

The seventh foundation in Imam 'Abd ar-Rahman ibn Naasir as-Sa'di's book, *al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat-Taqaaseem al-Badee'ah an-Naafi'ah* (The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations), is entitled:

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Saleh As-Slaeh
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