

القواعد والأصول الجامعة والفروق والتقسيم البديعة والنافعة
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

القاعدة -13 Foundation -13

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مبنية على شروح الشيخ عبد الرحمن بن ناصر السعدي
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1-Sh. Ibn Sa'di's original explanation

2-Our Sh. Muhammad ibn Saalih Al-'Uthaimeen's Commentary, and

3-Full explanation by our Sh. (Dr.) Sami ibn Muhammad As-Sghair (summer
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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Basic Rulings and Foundations of Fiqh-13

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 Imaam ‘Abd ar-Rahman bin Naasir as-Sa’di (رحمه الله : *rahimahullaah*).

Foundation thirteen is entitled:

“الإتلاف يستوي فيه المتعمد، والجاهل، والناسي”

The liability for destruction holds likewise whether it is done by a deliberate, ignorant, or forgetful person.

This foundation relates to matters that are not the rights of Allaah (ﷻ : *subhaanallaahu wa ta’aalaa*); it is comprehensive and covers the destruction of souls, property, and rights. Therefore, whoever destroys something unjustly is held liable regardless of whether he did it deliberately, due to ignorance, or out of forgetfulness. Moreover, the preponderating opinion is that if the destruction was deliberate, then the person is not only liable but sinful; however, if it was unintentional, then there is only liability. Concerning compulsion, liability is equally on the person compelled as well as the compeller. This is because the compelled person is the one that initiated the destruction while the compeller made him do that. Also if someone is compelled to kill a person legally forbidden to be killed then both, the compeller and the compelled, are liable. In these cases, compulsion is not an excuse to take away the right of the human. If someone says: I know that if I do not kill the intended person, myself would be killed? The answer: do you have the right to preserve yourself by destroying others? That is why if the compeller does not execute his threat upon you, then we do not waive that you be killed as entailed by sharee'ah. In other situations, however, if the compeller is so strong such that he pushes the compelled against the intended person causing the latter's death then only the compeller is liable. The compelled in this case is like a tool.

Liability for Hunting Game While in *Ihraam*

Regarding the rights of Allaah (ﷻ), there is no liability upon the ignorant or the forgetful person. Similarly, there is no liability upon the one compelled. This holds even regarding the most stringent liabilities such as the hunting of game while in the state of *ihraam* for Hajj or ‘*Umrah*. A majority of the scholars hold the opinion that there is a penalty upon the person that hunted during *ihraam* irrespective of whether it was done due to forgetfulness or out of ignorance. However, the correct opinion is that the penalty applies only to the deliberate killing of the game because the verse in the *Qur’aan* is explicit. Allaah (ﷻ) said:

[يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرْمٌ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِّثْلُ مَا قَتَلَ مِنَ النَّعَمِ]

﴿O you who believe! Kill not game while you are in a state of *Ihraam* for Hajj or 'Umrah (pilgrimage), and whosoever of you kills it intentionally, the penalty is an offering, brought to the *Ka'bah*﴾ Surah al-Ma'idah (5:95)

The condition set up in this *ayah* was that it was done “intentionally.” Therefore, there is no liability or sin on the person that hunted because of ignorance or forgetfulness.

Examples:

- 1) Someone hunted a rabbit while in *ihraam* forgetting it was forbidden. There is nothing upon him because he did not do that deliberately.
- 2) A person hunted an animal while in *ihraam* because he thought it was not from the forbidden game. Later, it became clear it was not permissible to hunt this type of animal. There is no sin or liability on him because he did it out of ignorance.

Destruction Caused by Animals

The person is liable for destruction caused by grazing animals or animals under his disposal and management. This includes a herd of animals that is taken to a pasture or a leashed animal that is known to be aggressive and ferocious that may become loose amongst the people. Thus, if someone's animal causes harm, then he is liable for this transgression.

Examples:

- 1) A shepherd grazes his cattle close to something that these animals would normally destroy; he would be liable if his animals subsequently caused damage. The evidence for this is the saying of the Prophet (ﷺ : *sallallaahu 'alayhi wa sallam*):

“كَالرَّاعِي يَرْعَى حَوْلَ الْحِمَى يُوشِكُ أَنْ يَرْتَعَ فِيهِ”

“Like the shepherd who pastures around a sanctuary all but grazing therein.”¹

- 2) Someone owns a herd of cattle, and he takes them out at night to feed. If these animals were to destroy some farmland, then the responsibility is on the shepherd because the norm is that the shepherds keep their animals in at night while the farmers are asleep. If this were to occur during the day, then the liability would be on the farmer.
- 3) A shepherd pastures his sheep or camels close to a farm and later neglects them; he is held liable for the damage they cause.

¹ Agreed upon. Reported from an-Nu'man bin Bashir (رضي الله عنه : *radiyallaahu 'anhu*) in *Saheeh al-Bukhaari* (English translation vol. 1, *hadeeth* no. 52) and *Saheeh Muslim* (English translation no. 3882, book 10).

- 4) A person owns a ferocious dog that gets loose and harms people. The owner is liable for the damage his dog caused.

Unintentional Killing of Another Person

It is known that two things are required from someone who kills a person by mistake. The first is the blood money (*diyah* - دية), and the other is expiation. The *diyah* is the right of the human that was killed while the expiation is the right of Allaah (ﷻ). Therefore, the unintentional killing is an exception to this foundation because while the murder was not deliberate, the person is still liable for the rights of Allaah. This is for two reasons.

- 1) Greatness of the Matter - The greatest type of soul that can be destroyed is that of a human so it is necessary to be cautious. If there was no expiation, then a person may transgress the limits and deliberately kill someone only to subsequently claim it was unintentional.
- 2) Possibility of Negligence

Conclusion

The thirteenth foundation in Imaam ‘Abd ar-Rahman bin 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:

The liability for destruction holds likewise whether it is done by a deliberate, ignorant, or forgetful person.

This foundation distinguishes between the liability relating to the rights of the creation and the rights of Allaah (ﷻ).

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.