

## The Importance of Mutual Consent in Social Relationships under the *Shariáh*

Ramizah Wan Muhammad<sup>1</sup> & Puteri Nemie Jahn Kassim<sup>2</sup>

### Abstract

Consent is recognized under Islamic Law as a necessary element in any social relationship (*mu`amalat*) between individuals. The importance of mutual consent between parties is regarded as predominant in various economic and non-economic activities, including business transactions, marriage contracts, punishment of criminal offenders and even for those seeking medical treatment. Thus, the requirement for mutual consent is indispensable in any transaction, without which the contract will be declared as null and void and ultimately, carries no legal effect. This is based on Qur'anic verse which states: "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent" (4:29). The Prophet Muhammad has also been reported to have said: "Sale is but based on mutual consent". These evidences clearly depict that all transactions must be based on free willingness of parties involved and the principles governing consent under the *Shariáh* have three basic elements, which are, (i) Intention (*Niyyah*); (ii) Will (*Irādah*); and (iii) Choice (*Ikhtiyār*). Consent is regarded as an indispensable element which must be obtained prior to any procedure of medical treatment. A doctor is under a duty to obtain consent from his patient beginning from the stage of informing the material risks to the patient until the completion of the medical treatment. Once consent has been obtained in accordance with the demands of the *Shariáh*, then only the medical treatment will be considered to have been legally performed.

### Introduction

Human beings, undoubtedly, will always encounter certain transactions with another person whether in business or non-business matters. Starting from the break of dawn until he goes to bed, a *Muslim* involves himself with many kinds of transactions involving rights and responsibilities of another fellow man. In other words, one cannot say that he lives in this world only for himself and his whole life does not concern any other person except himself. Though this statement can be considered true in relation to a person's accountability for his own sins, it is not the case where the issue involves the life of *Muslim* and his responsibilities towards another. As the saying goes, 'no man is an island', *Islam* stressed on the importance of having a good and well established society. Thus, in making this into reality, *Islam* comes with a system to guide its followers in maintaining this social order and helps them to solve any disputes involving the rights and responsibilities between each and every members of the society. *Islam* encourages its followers to maintain good relationship with His creator and His creations which termed in *Arabic* as (حبلنا لله وحبلنا الناس). To maintain good connection with *Allah* is to exercise *Allah's* rights such as establishing prayers, almsgiving (*zakat*), performing *hajj* (pilgrimage), fasting and other good deed. The same goes with His creations; one must be able to perform the rights of others that are due upon him in order to maintain a good social contact with the society at large. *Islam*, as a comprehensive religion and a complete way of life has given us many guidelines pertaining to rights and responsibilities of a *Muslim* towards one another. One of them includes the doctrine of consent in *Islam*.

As *Allah S.W.T.* said in *Surah Al-Nur* verse 27, "O you, who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded".<sup>3</sup> This verse shows that, seeking permission or consent is very important even to the extent of seeking consent to enter one's house. Mutual consent between parties is considered to be indispensable in any transaction, whether it is pertaining to a business or social contract.

<sup>1</sup> Department of Islamic Law, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Email: ramizah@iium.edu.my.

<sup>2</sup> Department of Civil Law, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Email: nemie@iium.edu.my.

<sup>3</sup> Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an*. (Amana Pubns, 2004). *Al-Nur* (24): 27.

Without the element of consent, the contract will be declared as null and void and ultimately, carries no legal effect. This is based on *Qur'anic* verse which states: "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent."<sup>4</sup> The Prophet *Muhammad* has also been reported to have said: "Sale is but based on mutual consent". These evidences clearly depict that all transactions must be based on free willingness of parties involved and the principles governing consent under the *Shari'ah* has three basic elements, that is, (i) Intention (*Niyyah*); (ii) Will (*Iradah*); and (iii) Choice (*Ikhtiyar*). Particularly, for those seeking medical treatment, consent is regarded as an indispensable element which must be obtained prior to any medical procedure. A doctor is under a duty to obtain consent from his patient beginning from the stage of informing the material risks to the patient until the completion of the medical treatment. Once consent has been obtained in accordance with the demands of the *Shari'ah*, then only the medical treatment will be considered to have been legally performed.

### **The Concept of Consent in Islam**

*Islam* regards one's freewill and consent as something paramount and of important element, so much so that in a transaction involving more than one person, consent has been regarded as one of the most important ingredient to render such transaction as a valid one and legally enforceable. In circumstances where consent is absent, such transaction may become invalid and it may lead to the other party being disable from enforcing his rights. Some examples of these could be seen in matters concerning business transaction, marriage, application of *dijah*<sup>5</sup> and in certain contemporary medical issues. *Islamic* law of contract has a wider application as compared to civil law of contract. Contract is defined as the obligation and engagement of two contracting parties with reference to a particular matter.<sup>6</sup> This definition is adapted from article 103 and 104 of the *Mejelle*, an Ottoman civil code which was adopted by the ottoman jurists in the mid-nineteenth century. In other words, there must exist elements of offer and acceptance – which connotes the idea of consent between both parties before they entered into a contract. A *Muslim* cannot conclude a contract with another *Muslim* without his freewill and similarly a person cannot be said to have accept an offer if he has not consented to the terms of the contract.

The *Qur'an* even emphasized the sanctity of a contract by commanding the *Muslims* to fulfill their obligations as mentioned in *Surah al-Ma'idah* verse 1: "O ye who believe! Fulfill (all) obligations."<sup>7</sup> In Iran for instance, according to Article 183 of Iranian Civil Code 1927 (as amended 1983) a contract is defined as an agreement between two or more persons concerning certain subjects to which they consent to. This article has incorporated the element of consent in *Islamic* law of contract and signifies that consent of a person is an important element in validating the contract. However, despite the fact that *Islam* recognizes and acknowledges a person's freewill to enter into a contract or do any kind of transactions between them, no contract can be validly concluded if it is contradicting with *Shari'ah* principles. This idea is in contrary to the doctrine of freedom of contract from the perspective of civil law in the sense that *Muslims* are not given total freedom to choose the forms and contents of their agreements. For example, contract involving interest or *riba* is strictly prohibited in *Islam*.

Thus, even though both parties have consented to the contract, it is still considered as void and illegal in *Islam* as it is contrary with the principles of *Shari'ah*. In the Holy *Qur'an*, *Allah S.W.T* stated to the effect, "Those who consume interest cannot stand [on the Day of Resurrection] except as one stands that is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah S.W.T. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein."<sup>8</sup>

Besides that, in *Islamic* law of marriage, *Islam* put forwards four conditions before rendering a marriage to be valid, namely: there must be a bride and bridegroom, mutual consent of the bride and bridegroom to enter into the marriage contract, the bride's guardian permission and the marriage take place in the presence of two witnesses.<sup>9</sup> For the purpose of our discussion, only two elements will be stressed upon: mutual consent of the bride and bridegroom to enter into the marriage contract and the bride's guardian permission.

<sup>4</sup> Ibid. (4): 29.

<sup>5</sup> Refers to blood-money which is paid as a compensation to the victim or his family for murder or wounds caused by the offender.

<sup>6</sup> Turkey, *The Medjellè or Ottoman Civil Law* (London: Stevens and Sons Ltd, 1895). Article 103 and 104.

<sup>7</sup> Ali, *The Meaning of the Holy Qu'ran. Al-Ma'idah* (5):1.

<sup>8</sup> Ibid. (2):275.

<sup>9</sup> Salih ibn Fawzan ibn 'Abd Allah Fawzan, *A Summary of Islamic Jurisprudence = Al-Mulakhkhas Al-fiqhi, Vol. 2* (Riyadh, Saudi Arabia: al-Maiman Publishing House, 2012).

In relation to the former, a mutual consent between the bride and the groom must be obtained and it must be given out of their own freewill. The parties cannot be forced to enter into the marriage contract. Based on a *hadith* reported by *Abu Hurairah*:

*"A previously married woman should not be given in marriage except after consulting her, and a virgin should not be given in marriage except after her permission."*<sup>10</sup>

Based on the above-mentioned *hadith*, it is now clear that the element of consent is vital when the issue concerning to the validity of marriage is brought upon. Invalid marriage may bring catastrophe to the family institution as there is a lack of mutual consent between the parties and as such, consent from the bride and the groom must be properly obtained so as to ensure the marriage is stand as a valid one in the eyes of law.

Subsequently, in addition to requirement of consent from both of the bride and groom, the permission from the bride's guardian must also be obtained. This is based on the *hadith* of the Prophet : "No marriage (is valid) without (the permission of) a guardian."<sup>11</sup>

Consequently, if a woman gives herself in marriage without the permission of her guardian, the marriage will be considered as invalid as well. An invalid marriage will lead to an illegal sexual intercourse which may attract many other bad consequences. The element of consent is not only crucial in respect of business contract and marriage; it is also undoubtedly essential in law relating to *diyah*. *Diyah* is the money paid by the offender to the victim or his legal representative as legal compensation and the concept and legality of *diyah* can be traced back to the Holy *Qur'an* where *Allāh S.W.T.* said to the effect:

*"Never should a believer kill a believer; but (if it so happens) by mistake, (Compensation is due): If one (so) kills a believer, it is ordained that he should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely."*<sup>12</sup>

In a *hadith*, it was recorded from the Prophet that: "he whose relative is murdered has to choose one of two ways; either to accept the *diyah* (blood money) or execute the *qisas*."<sup>13</sup>

The above provisions from *Qur'an* and *Sunnah* are clearly connotes that *diyah* is obligatory upon the offender. However, the family is given an option either to execute *qisas* or received *diyah* from the offender or his family. The important element in this issue is, the consent of the family whether execute *qisas* or accept *diyah* instead. *Islam* thus recognized the consent of the family as a substantial element to be considered before deciding the punishment. The issue of consent in medical practice has become a major point of discussion from the *Islamic* point of view. A *Muslim* is expected to act upon the purview of the Holy *Qur'an* and the *Sunnah* of Prophet *Muhammad* . The same applies when we are dealing with medical practice and procedure.

For instance, with regard to the issue of using contraception<sup>14</sup> and birth control<sup>15</sup>, there is no direct rule from the Holy *Qur'an* with regards to the use of contraception.<sup>16</sup> Nevertheless, the Holy *Qur'an* has mentioned about infanticide where *Allāh S.W.T.* through various places in the Holy *Qur'an* said: "Kill not your children for fear of want: We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin."<sup>17</sup>

Further, *Allāh S.W.T.* stated to the effect, "Kill not your children on a plea of want; - We provide sustenance for you and for them;"<sup>18</sup>As pointed above, these verses deal with the issue of infanticide. Though the idea of infanticide among others is to control the family size, it should be noted that there is a major difference between this practice and contraception. The former involves with the killing of human being but the latter is not as no human soul has come into existence yet. There are several *hadith* where Prophet *Muhammad* discusses about the issue of consent. In one incident, the Prophet was reported to know about the practice of 'azl (coitus interruptus) and he did not condemn it. It was narrated that *Jabir ibn 'Abd-Allaah* said: We used to practice 'azl during the time of Prophet *Muhammad* when the Holy *Qur'an* was being revealed.<sup>19</sup>

<sup>10</sup> Ibid.5.

<sup>11</sup> Ibid.

<sup>12</sup> Ali, *The Meaning of the Holy Qu'ran. Al-Nisa'* (4): 92.

<sup>13</sup> Salih ibn Fawzan ibn 'Abd Allah Fawzan, *A Summary of Islamic Jurisprudence = Al-Mulakkkhas Al-fiqhi*, Vol. 2 (Riyadh, Saudi Arabia: Al Maiman Publishing House, 2012) p. 551.

<sup>14</sup> Contraception refers to the use of any of various methods intended to prevent a woman becoming pregnant.

<sup>15</sup> *Cambridge Advanced Learner's Dictionary & Thesaurus* © (Cambridge University Press, n.d.).

<sup>16</sup> Jamila Hussain, *Islamic Law and Society: An Introduction* (Sydney: The Federation Press, 1999). P.119-133.

<sup>17</sup> Ali, *The Meaning of the Holy Qu'ran. Al-Isra'* (17):31.

<sup>18</sup> Ibid. (6):151.

<sup>19</sup> Muhammad Al-Bukhari, *Sahih Al-Bukhari, Dar Ul-Hadith*, 1978. 5208, 5209. Book 67, Hadith 142.

According to *Sheikh al-Islam Ibn Taymiyah*, some of the scholars regarded the practice of 'azl as *haram* (forbidden), but the view of the four imams is that it is permissible with the wife's permission.<sup>20</sup> Thus, if a man intended to practice 'azl, his wife must agree for such practice, as this practice will deprive her from bearing children and experience sexual satisfaction.<sup>21</sup>

With regards to the issue of abortion, which involves the killing of a fetus, the scholars of the *Maliki*, *Hanbali* and *Shafii* schools generally oppose such practice. Whereas the *Hanafi* school would permit it, if the procedure is done within the first 120 days of pregnancy period, provided that there is valid danger or potential risk that might occur to the mother's life or even to the baby if he born.<sup>22</sup> An adverse inference from this is that, abortion is strictly prohibited, and even if the pregnant woman consented to such abortion, it is still considered as illegal, until and unless exceptional circumstances stated above occurred.

Euthanasia or mercy killing has also become one of the controversial issues nowadays, not only from the *Islamic* point of view, but also from the Western's. *Muslims* treat life as a sacred and they believe that the right to take life only lies in the domain of *Allah S.W.T*. The same goes to the issue of committing suicide. *Allah S.W.T* has specifically forbids suicide when He said: "Do not kill yourselves; indeed, *Allah S.W.T* is merciful to you."<sup>23</sup> Prophet ﷺ was also reported in several *hadith* condemning such act. In one narration, it was narrated that *Jundub ibn Abdullah* said: The Messenger of *Allah* said: "Amongst the nations before you there was a man who got a wound, and growing impatient (with its pain), he took a knife and cut his hand with it and the blood did not stop till he died. *Allah* said, 'My Slave hurried to bring death upon himself so I have forbidden him (to enter) Paradise."<sup>24</sup>

Thus, the practice of euthanasia though it is permitted by the law in certain countries, is not allowed in *Islam* and considered to be a major sin. The commission of such practicing will amount to transgression of *Allah's* right. From the above discussions, it is clear that *Islam* takes a middle course in defining the element of consent in *Muslims* daily life. Consent and freewill of a person plays a significant role in some transactions so much so that the absence of it renders the transaction to be nulled and void. Nevertheless, in certain transactions, having consent from the parties involved does not render it to be valid if the commission of such transactions is clearly against the *Shari'ah* such as euthanasia or suicide. Thus, *Islam* does not give total freedom to its followers and one must always act based on the provisions in the Holy *Qur'an* and *Sunnah* as his guidance.

In this paper, our major discussion will be around the doctrine of informed consent and its role and effects surrounding the relationship between doctors and patients. This issue is of utmost important and relevant towards our current development of medical and health law. The civil law on informed consent is quite developed and established, thus we are of the view that the same attention should be given for this doctrine to be discussed from the *Islamic* perspective.

### **Requirement of a legally valid consent under the Shari'ah**

Consent is when one does something voluntarily without being forced or coerced to do the act. Generally, to constitute a legally valid consent, *Muslim* jurists identified three important elements that need to be fulfilled. They are as follows:

#### **1. Intention (Niyah)**

Intention is the fundamental principle of all acts. One cannot complete an act should there be no intention in their hearts and minds. The importance of intention has been emphasized by the Prophet ﷺ through one famous hadith narrated by *Caliph Umar Al-Khattab*: "The deeds are considered by the intentions, and a person will get the reward according to his intention."<sup>25</sup>

The concept of intention in *Islam* is so significant to certain extent that, if one sets his intention to commit a good deed, he is rewarded for having such intention even though the act has not been done yet or for some reasons, cannot be done. However, if one sets evil intention such as to commit crime, he will not be sinned or punished for making such intention until the commission of the crime take place.

<sup>20</sup> Ibnu Taimiyah, "Majmu 'ah Al-Fatawa Shaikh Al-Islam," *Riyadh: Matabi 'Riyadh* 32, no. 110 (1963).

<sup>21</sup> *Ibid.* at 10.

<sup>22</sup> *Ibid.*

<sup>23</sup> Ali, *The Meaning of the Holy Qu'ran*. (4): 29

<sup>24</sup> *Ibid.* at 19 Book 60, Hadith 130.

<sup>25</sup> *Ibid.* 6689, Book 83, Hadith 66.

Intention, as defined by *Imam al Ghazali*, *al Nawawi* and *Ibd Abd al Salaamis'qasd'* which means purpose, aim, goal or objective. Other scholars like *Al Baydawi* and *Ibn Nujaym* have further elaborated that intention is the purpose of doing something in which the ultimate aim is, to obey *Allāh S.W.T* and to be close to Him. The expression of the heart to have such intention is fundamentally to manifest benefits and to suppress the harms whether immediate or deferred. In *Shari'ah*, intention is regarded as the will to do something in search for the pleasure of *Allāh S.W.T*.

## 2. Freewill (*Iradah*)

When one has the intention to do an act then he has the power of doing and executing the acts. Freewill is a sub-component of intention in which its pre requisite is that, there should be an intention. In simpler words, no intention, no will. *Al Asfahani*, said that, will is the force composed of desire, need and hope to commit such act. It is an inclination of one's soul to do something with the ability to execute it. In other words, when one has the *iradah*, he would make the efforts in pursuit of his intention.

## 3. Choice (*Khiyar*)

Choice is the preference made when one is encountered with more than one option. Choice can also be meant as a decision. In the *Quran*, *Allāh S.W.T* has said to the effect that "We indeed preferred the Children of *Bani Israel* to all of the worlds (during the time of Prophet *Musa*) with knowledge.<sup>26</sup> This verse is about how *Allāh S.W.T* has decided to choose children of *Bani Israel* and save them from the cruelty of Pharaoh. In another verse *Allāh S.W.T* says "And your Lord creates whatsoever He wills and chooses, no choice do they have in the matter."<sup>27</sup>

There was a lengthy discussion on choice by *Muslim* jurists. The first one is by *al Bazdawi* where he says that *Ikhtiyar* signifies intending an undecided matter which is between existence and non-existence and within the capacity of a person to perform it and later he made his choice by giving preference to one decision over the other. *Ibn Abidin* has given a very simple meaning that is to intend something and want it. The *jumhur* (majority) of jurists defined *Ikhtiyar* as to intend to do something over anything else with 'pure will'. Pure will is the opposite word of coercion. Coercion is inherently incompatible with the word consent. Generally, a contract cannot be materialized without one's choice and consent.

The *Hanafi* jurist on the other hand, holds a different view about the validity of a contract which was concluded with coercion. According to *Hanafi* jurists, there are four elements of a valid contract which are; having contractual capacity; sound mind, attaining the age of majority and mutual consent between the contractual parties. They define consent and choice as two different things; consent is *ridha* while choice is *ikhtiyar*.

### ***The Need for Informed Consent in Doctor- Patient Relationships under the Shari'ah***

It is clear that there is a duty established by the *Shari'ah* requiring the doctor to explain advice and inform his patient in every stages of a medical treatment. Among the duties of the doctor are as follows.<sup>28</sup> The above duty arises based on the medical contract between two parties; the doctor and the patient. On top of the contractual relationship, there is another element of the relationship which is considered to be significant and of important value; the patient's trust upon his doctor. When a patient allows his doctor to perform medical procedure on his body, he has demonstrated a great value of trust and at this juncture, it is important to have a set of rules in order to prevent any abuses. Again, the element of consent plays an essential role as the patient's life may be at risk should the medical procedure being performed on him. At the same time if there are any complaints made by the patient to his doctor on certain medical issues are considered as permissible and justified. According to ***Abu Abdul Rahman Al-Soqli*** that: all the complaints are bad deeds except for three; a learner complaint to a pious man with knowledge of the disease of his understanding, a pupil complaint to his teacher of his disease of heart and a patient complaint to a doctor of disease of body. Thus, the doctor is obliged to explain his understanding after knowing the disease, and inform him of what the patient is obliged to do in order to preserve his life.

Furthermore, one has to remember the purpose of the contract made between the patient and the doctor. It goes without saying that a contract is concluded with the aim to accommodate the interest of both parties. On top of that, it aims to protect the rights of both parties. The patient's main interest is to be cured from the sickness and the doctor's on the other hand is to exercise his duty, to save one's life and to try his best to ensure that the patient can live as a normal human being again.

<sup>26</sup> Ali, *The Meaning of the Holy Qu'ran*. (44): 32.

<sup>27</sup> Ibid. (28): 68.

<sup>28</sup> Dr. Salamah Abdul Fattah Hulaibah, *Ahkam A'qd Al-'I'aj Baina Al-Fiqh Al-Islami Wa Al-Qanun Al-Madani Al-Misri Wa Al-Faransa* (Iskandariah: Darul Jami'ah Al-Jadidah Li Al-Nashri, 2009). page 239-242.

Besides that, for a consent to be regarded as an informed consent, the doctor must first discuss and engages with his patient and he must explain to the patient about the procedure that he is going to do in a reasonable manner. He is not expected to explain in detail and a reasonable doctor will avoid from using medical jargon. The purpose of this session is to create a room for an open-discussion that allows the patient to raise any issue or question pertaining to his illness and the doctor is expected to be honest, responsible and transparent in the session.

The doctor-patient's relationship should be surrounded with leniency, forbearance, and patience between them and they should talk in a manner that will not hurt each other's feelings. It is important for a doctor to sit together with his patient and get to know him. A doctor should be able to make his patient feel comfortable with him and ready to share everything about his sickness and feeling. Consequently, the doctor is obliged to hasten the treatment so that he could save the patient's life.<sup>29</sup> Meanwhile, the patient is obliged to follow the doctor's instructions and his failure will render him to be sinful.<sup>30</sup> The *Shari'ah* emphasizes on the importance of having good characters and ethics and also to demonstrate good *akhlak* (manner) among people. The Prophet ﷺ was reported to have said: "*The most perfect believer in respect of faith is he who is best of them in manners*"<sup>31</sup>

The attributes of telling the truth, reminding each other, leniency and other positive virtues are the characteristics of a believer. Among the ethical principles that a doctor must possess are as follows:

### 1. Giving advice to the patient<sup>32</sup>

*Islam* encourages its followers to give advice to one another as it is a form of reminder to each other and an expression of love to one another. *Allāh* said in the Holy *Qur'an*: "*And remind, for indeed, the reminder benefits the believers*"<sup>33</sup> The advice and information given by a doctor to his patient is vital because it is an advice given by a trained person who has the sufficient knowledge about the matter. On top of that, it is a matter of fact that not many people are familiar with medical jargons, procedures and treatments especially when it involves with taking prescriptions relating to the illness. The importance of giving advice and the responsibilities of *Muslims* to advice one another have been emphasized by several *Quranic* verses and *hadith* and it can be seen from the following examples:

#### i) The Holy *Qur'an*

Allāh S.W.T stated to the effect "And cooperate in righteousness and piety, but do not cooperate in sin and aggression." Al-Imam Al-Tabari, in his book, *Tafsir Al-Tabari* explained the above verse to be: "to cooperate among yourselves in fulfilling the commandments of Allāh and not to cooperate among yourselves in sinning and leaving of what is commanded by Allah to do it and do not exaggerate of what is limited by Allāh in your religion and what is obliged for yourselves and others."

Besides that, Al-Infusion commenting this verse said that: "to cooperate in righteousness is forgiveness and do not cooperate in sin and aggression means revenge or the word righteousness here means doing something of what is commanded and piety means abstaining from doing what is forbidden by Allāh while sin means omitting from doing what is commanded and last but not least, aggression means committing what is prohibited"

b) Allāh S.W.T says that: "There is not upon the weak or upon the ill or upon those who do not find anything to spend any discomfort when they are sincere to Allāh S.W.T and His Messenger. There is not upon the doers of good any cause [for blame]. And Allah swt is Forgiving and Merciful."

In the above-mentioned verse, Allāh S.W.T classified a group of individuals as good people because they are sincere to Allāh S.W.T and His messenger. They could not participate in the war expedition with the Prophet ﷺ for valid reasons. Allāh S.W.T accepts their excuses and they were not punished and humiliated due to their state of disabilities. Thus there is no situation of the doctor who has no disability and contacted with the patient in giving the help and advice, is not he obliged to do it from the first place?

<sup>29</sup> Ibid. 139.

<sup>30</sup> Ibnu Al-Qayyim Al-Jauziyyah, *I'laam Al-Muqi'ien Min Rabbi Al-A'lamin*, vol. 3 (Cairo: Darul Al-Kutub Al-Ilmiah, 2002). P. 91.

<sup>31</sup> Abu Dawud, *Sunan Abu Dawud* (Sh. Muhammad Ashraf, 1984). 4682, Book 42, Hadith 87.

<sup>32</sup> Dr. Salamah Abdul Fattah Hulaibah, *Ahkam A'qd Al-'I'aj Baina Al-Fiqh Al-Islami Wa Al-Qanun Al-Madani Al-Misri Wa Al-Faransa*. page 243-248.

<sup>33</sup> Ali, *The Meaning of the Holy Qu'ran*.(51): 55.

Al-Sa'di commenting this verse said that: "if a servant does a good deed of what he is capable of, he will not be accountable for things that are out of his capability and this is a blessing for him gives benefit in a sense that whosoever does good thing to others by himself or his property and the like, later the subsequence of his good deed is loss or infliction of harm he is not liable because he is a good person and there is no way of the good people (to incur liability) which shows also that the person who is not the doer of good is the doer of bad deed like the exaggerate person, he will be liable.

The above-mentioned verses from the Holy Qur'an demonstrate that, when a doctor helps a patient by giving him medical advice or prescribing him with appropriate prescriptions, he falls under the group of people of whom Allāh S.W.T mentioned "And cooperate in righteousness and piety". In other words, we can say that if a doctor decides not to help the sick or refusing to give treatment to those who are in need, he is actually incorporating himself in sin and aggression. From another perspective, when a doctor makes any medical decision that is based on the sources and evidences laid before him, he is said to be making an *ijihad*. If his *ijihad* is correct he will get two rewards and if it turns out to be wrong, he will get one reward. This is based on a hadith where the Prophet ﷺ said: "If a judge passes judgment and strives to reach the right conclusion and gets it right, he will have two rewards; if he strives to reach the right conclusion but gets it wrong, he will still have one reward."

## ii) Hadith

There are many *hadiths* which encourage *Muslims* to give advices and remind other fellow *Muslim* especially in time of necessity. For instance, we can see from the following narrations:

i) *Hadith* narrated by **Ma'qal bin Yasir** which the Prophet ﷺ says:  
*"Any governor in charge of Muslim subjects who dies while acting dishonestly towards them will be excluded by Allāh S.W.T. from Paradise."*<sup>34</sup>

It goes without saying that a person will always look for a doctor when he is not feeling well. When he walks in to a hospital, he is expecting for the doctor's care and attention besides to render him advices relating to his illness. When the doctor agrees to render his service, this will trigger a contract between the two parties and thus the doctor is obliged to advice and assists his patient as long as his action is not contrary to the *Shari'ah*. *Islam* is a comprehensive religion and it does not restrict its followers to help each other only in matters of religion and rituals. The scope is much wider than that and it encompasses all matters including transactions between mankind. When a patient engages his doctor, he is placing himself under the care of the doctor and as a result, the doctor is expecting to treat him as what is reasonably expected by the law. If, as a result of his negligence, the patient's condition getting worse or dies, the doctor could be liable and punished by the law. Interestingly, this goes in line with the above-mentioned hadith.

ii) *Hadith* narrated by **Jarir bin Abdullah** who said that:

*"I gave the pledge of allegiance to Allah's Apostle for to offer prayers perfectly, to pay Zakat regularly, and to give good advice to every Muslim"*<sup>35</sup>

The context of advice in the above *hadith* is general in nature. It can be advice relating to the religion and other worldly matters. Thus, this includes the scope of advice rendered by a doctor to his patient. As a knowledgeable person in his field, a doctor is trusted and envisaged to provide his patient with related information so as to help him to get better and healthier. In another *Hadith*, it was narrated from 'Aisha R.A. that the Prophet ﷺ heard some sounds and said:

*"What is this noise?" They said: "Palm trees that are being pollinated." He said: If they did not do that it would be better." So they did not pollinate them that year, and the dates did not mature properly. They mentioned that to the Prophet ﷺ and he said: "If it is one of the matters of your religion, then refer to me."*<sup>36</sup>

In other words, the Prophet ﷺ is saying that, one need to ask advice from the rightful person. If the matter involves *Islamic* rulings, then people need to refer it to the Prophet ﷺ. However, if it is worldly matters such as agriculture, medicine or construction, we should ask from the experts who know the field better than others. Thus, if it relates to medical and medication, a doctor is the most rightful person to render advice and prescribe medication.

<sup>34</sup> Sahih Al-Bukhari, "Kitab Al-Ahkam, Vol. 6," in *Sahih Al-Bukhari* (Beirut: Dar al kutub, 2003), 2614. Hadith no. 6731. Sahih Muslim, "Kitab Al-Iman, Vol.1, Hadith. 142," in *Sahih Muslim* (Darussalam, Riyadh, 2007), 25. Hadith no. 142

<sup>35</sup> Ibid. p.75, hadith no. 56.

<sup>36</sup> Ibn Majah and Imām Muhammad bin Yazeed Al-Qazwini, "Sunan Ibn Mājah Vol. 3,(translated by Al-Khattab N. and Edited by Zubair „Ali Za" I, HAT)" (Riyadh, Saudi Arabia: Darussalam, 2007). Book 16, Hadith 2471.

Muhammad bin Muhammad Al-A'bdari has made an interesting analogy regarding a bilateral contract. He uses the example of the relationship between a contractor (employee) and a client (employer) to explain his analogy. In a contractor-client relationship, the contractor will provide relevant advice and expertise in constructing a building, and in return, the client will need to pay for the services rendered to him.

When the job is done, the client needs to pay as what both parties have agreed before they conclude the contract and if the job is incomplete, he is not obliged to pay the contractor.<sup>37</sup> From this, we understand that it is an obligation of the employee to be sincere in rendering his advice and service to the other party that he engaged to. If the employee is lack of experience and knowledge, his advice might give adverse consequence and it could harm the other party. Essentially, we can understand the above analogy in several different ways:

Firstly, the contract between the contractor (employee) and the client (employer) shows that, consent is an essential ingredient towards the manifestation of the contract whereby, the employee agrees to get the work done and the employer agrees to provide payment upon the completion of the work. Thus, from the medical point of view, we understand that a doctor acts as the 'employee' who provides services to the 'employer' i.e. the patient. Subsequently, the patient will have to pay for the services rendered by the doctor upon the completion of his services.

Secondly, another issue that we can take into consideration upon the signing of the contract is the issue of *akhlaq* (morality). Both parties are expected to demonstrate the best manner to each other. A doctor is expected to advise his patient the most beautiful manner. This is important especially if his patient is not used to medical jargons and has limited knowledge about his illness. A layman is not capable of understanding the medical procedures or any consequences that he might be facing because of the illness that he is suffering from. However, his 'employee' i.e. doctor knows and understands his situation and his needs. It is the duty of the doctor to advise and explain to him the relevant information relating to his disease.

Thirdly, when a doctor gives advice to his patient, he must equip himself with current practice and latest information. He must possess a sound knowledge and valid medical practice so much so that, the knowledge must be in line with latest development of medical practice. This is very paramount as it involves human life and minor mistake may lead to death. The Prophet ﷺ was reported to have said: *"there should be no harming nor reciprocating harm, whoever harms Allah S.W.T. will harm him and whoever hardens someone Allah will harden him"*<sup>38</sup>.

Al-Buhuti says: *"the best manufacture is sewing and each of what he advises in it is a good cause the advice is obligatory in the transaction as well as in other transactions and leaving the fraud"*<sup>39</sup>

## 2) Leniency and Tolerance Towards Patient<sup>40</sup>

The duties of a doctor are not only confined to cure and relieve the patients from their pain and suffering, but on top of that, a doctor is also encouraged to be lenient and tolerant towards his patient. *Islam* emboldens doctor to show kindness and benevolence to his patients while treating them. Kind words heal one's soul and vice versa. Undoubtedly, this can help to improve the patient's emotional and psychological conditions and eventually, it may cure his illness.

Besides that, a doctor is encouraging to be more empathetic towards his patients since he is deemed to have better insights on patients' emotional state of mind. In other words, a doctor must always be compassionate towards his patients and motivate them to never give up upon life. Furthermore, he must always remind his patients that illness is a means of expiation of sins and inspire them to be positive and believe that *Allah* is the one who causes disease and He is the one who will cure. Interestingly, there are many *Qur'anic* verses as well as *Hadiths* related to the above discussions:

### 1) The Holy *Qur'an*

- i) *Allah S.W.T* says: "So by mercy from *Allah* [O Muhammad], you were lenient with them. And if you had been rude [in speech] and harsh in heart, they would have disbanded from about you.

<sup>37</sup> Muhammad bin Muhammad Al-A'bdari, "Al-Madkhal," *Dar Al Fikr, Beirut* 4 (1981): 195-96.

<sup>38</sup> Abu Ubaidillah Al-Hakim Al-Nisaburi, "Al-Mustadrak Ala Al-Sahihain, Kitab Al-Buyu'," *Kitab Al-Buyu'*(19) 2 (2007): 66. Dar al Uthmaniyyah, Amman.

<sup>39</sup> Mansur ibnu Yunus Al-Buhuti, *Kashaful Qona* (Beirut: Nasyru Darul Al-Fikri, 1981). volume 6, p.214

<sup>40</sup> Dr. Salamah Abdul Fattah Hulaibah, *Ahkam A'qd Al-I'raj Baina Al-Fiqh Al-Islami Wa Al-Qanun Al-Madani Al-Misri Wa Al-Faransa*. p. 249-256.



ii) So pardon them and ask forgiveness for them and consult them in the matter. And when you have decided, then rely upon *Allāh S.W.T.* Indeed, *Allāh S.W.T.* loves those who rely [upon Him]"<sup>41</sup>

In his book, *Al-Tafsir Al-Kabir*, Al-Imam Al-Razin explaining on the above-mentioned verse said that: when the *Muslims* came back home after they lost in the battle of *Uhud*, the Prophet ﷺ did not treat them with harsh words. Instead, the Prophet ﷺ uttered kind and comforting words to them and showed them kindness. They were forgiven by *Allāh S.W.T.* and He increased in them His blessings.<sup>42</sup> *Allāh S.W.T.* stated to the effect: "Hold to forgiveness; command what is right; But turn away from the ignorant."<sup>43</sup> *Al-Imam Al-Baidhawi* commented in his book, *Tafsir Al-Baidhawi* that: take what is easy for you to forgive a human's conduct and take what is easy to gain forgiveness and turn away from the ignorant and do not be with them nor resemble them with their conducts.<sup>44</sup>

The notion of the above verses is that *Allāh S.W.T.* compliments His messenger and those who are with him as His symbols (*syi'ar*) and way of life. Islam encourages and teaches its followers to be kind and uphold moral virtues throughout their daily life. Undoubtedly, judging from the nature of their daily works which involves interaction with different levels of people, the doctors are expected to adopt a good practice of conduct and to demonstrate a noble character. On top of that, as we have discussed previously, sickness is a trial sent by *Allāh S.W.T.* to certain people and we should be kind to them. As *Al-Khatib Al-Syarbaini* highlighted in his book, it is recommendatory to be lenient to the learner and to the patient.<sup>45</sup>

## 2) Hadith

There are many circumstances where the Prophet *Muhammad* ﷺ encourages the *Muslims* to demonstrate leniency and compassion towards others including non-*Muslims*. We can see from the following narrations:

i) *Hadith* narrated by *Aishah R.A.*, the wife of the Prophet *Muhammad* ﷺ where she said:

*The Jews used to greet the Prophet ﷺ by saying, "As-Samu 'Alaika (i.e., death be upon you), so I understood what they said, and I said to them, "As-Samu 'alaikum wal-la'na (i.e. Death and Allāh's Curse be upon you)." The Prophet ﷺ said, "Be gentle and calm, O 'Aisha, as Allāh likes gentleness in all affairs."*

*I said, "O Allāh 's Prophet! Didn't you hear what they said?" He said, "Didn't you hear me answering them back by saying, 'Alaikum (i.e., the same be upon you)?"<sup>46</sup>*

This *hadith* shows the advantage of leniency and the Prophet's encouragement to be easy upon other people. In the above-mentioned *hadith*, the Prophet ﷺ advises his wife to be calm and not to make supplication against the *Jews* even though they talked bad about the Prophet ﷺ. Compassion or leniency is one of the values taught by the Prophet *Muhammad* ﷺ to his followers. Thus, a *Muslim* doctor is also encouraged to apply the value of leniency and compassion in his line of work especially when it comes to sick person.

ii) In another narration by *Aishah R.A.*, the Prophet ﷺ was reported to have said "*Whenever forbearance is added to something, it adorns it; and whenever it is withdrawn from something, it leaves it defective.*"<sup>47</sup>

Al-Imam Al Nawawi, in commenting this *hadith* said that when one practices forbearance, it will result to a fruitful outcomes advantage of leniency. He also explained this *hadith* to be a form of encouragement to the *Muslims* to demonstrate good moral conduct and avoid being harsh to other people.<sup>48</sup> It is worth to mention what *Ibnu Qudamah* said in his book. He mentioned that it is recommended to be kind towards patients especially by person who has gentleness in him and the one who is knowledgeable. This group of people can be a good company as they can always remind the patients to have faith and always make repentance to *Allāh*.<sup>49</sup> Based on the above discussions, it is clear that, a doctor should be compassionate and lenient to his patient. He should avoid himself from being harsh towards them. If leniency is required in every single matter, then he should not be giving excuses in not doing it as Prophet *Muhammad* ﷺ himself encourages *Muslims* to be lenient and go easy upon others.

<sup>41</sup> Ali, *The Meaning of the Holy Qu'ran. surah al- Imran* (3) :159.

<sup>42</sup> Al-Imam Al-Razi, *Al-Tafsir Al-Kabir Vol. 9* (Beirut: Darul Kutub Al-Ilmiah, 1988). p.50.

<sup>43</sup> Ali, *The Meaning of the Holy Qu'ran. al-A'raf* (7): 159

<sup>44</sup> Abdullah ibn Umar al Baidawi, *Tafsir Al-Baidhawi* (Kuala Lumpur: Khazanah Fatoniyaah, 2010). p 84.

<sup>45</sup> Al-Khatib Al-Syarbaini, *Mughni Al-Muhtaj Vol. 4* (Beirut: Nasyrul Darul Al-Fikri, 2006). p.210.

<sup>46</sup> Sahih Al-Bukhari, "Kitab Istitabah Al-Murtadin Wa Al-Mua'diniin Wa Qitalihim, Vol. 6, Hadith No. 6528," in *Sahih Al-Bukhari* (Beirut: Darul Ibnu Kathir, 1986), 2538.

<sup>47</sup> Sahih Muslim, "Kitab Al-Bir Wa Al-Silah Wa Al-Adab, Vol. 4," in *Sahih Muslim* (Beirut: Darul Ihya Al-Turath Al-Arabi, 2007), 2004.

<sup>48</sup> An-Nawawi, *Syarhu Al-Nawawi Ala Sahih Muslim, Vol. 16* (Beirut: Darul Ihya Al-Turath Al-Arabi, 1995). p. 145

<sup>49</sup> Ibnu Qudamah, *Al-Mughni, Vol. 2* (Jordan: Bait al afkar, 2004). p. 160.

A good *Muslim* doctor will always strive to help his patients through many ways such as, by giving them advice and be honest in treating them. It is wrong for a doctor to give false hope to his patients and it is necessary, he should disclose to them the truth about their conditions.

In addition, Sheikh Al-Asfahanin quoting Al-Sheikh Al-Ansari said that, the obligation of a doctor to provide medical treatment begins when the patient or his next of kin comes to him to seek for treatment and consultation. It is a *fardhu kifayah* upon the doctor to provide such treatment or consultation.<sup>50</sup> *Fardhu Kifayah* is defined as:

*"a communal obligation in Muslim legal doctrine. In juxtaposition to fard al-ayn, fard al-kifayah is a legal obligation that must be discharged by the Muslim community as a whole, such as military struggle; if enough members in the Muslim community discharge the obligation, the remaining Muslims are freed from the responsibility before God. However, if a communal obligation is not sufficiently discharged, then every individual Muslim must act to address the deficiency. In recent Islamic literature, this terminology is used to discuss social responsibility, such as feeding the hungry, commanding good, and forbidding evil".*<sup>51</sup>

Thus, under *fardhu kifayah*, a doctor is entitled to be given remuneration in consideration of the services provided by him to his patients. In addition, among the obligations of a doctor includes the obligation to disclose the medicine to the relatives of the patient in order to achieve its treatment.<sup>52</sup> It is clear that both scholars recognize the obligations and duties of a doctor to treat his patients and to prescribe them with relevant medications. Since he is entitled for remuneration, he is expected to offer the best treatment and relevant skill upon the patients.

### Conclusion

Among the miracles of al *Qur'an* and *Shari'ah* as a whole is its universality in every place, at any time and with any person. *Islam* has designed the best way of life to all mankind. The *Shari'ah* encompasses numerous matters. It does not merely an assemblage of "do's" and "don'ts", nor just a fraction of criminal laws prescribing punishments for certain crimes. It encompasses the totality of men's life. Thus, among the matters governed by *Shari'ah* is medical treatment and the issues surrounding it. *Islam* acknowledges the role of a doctor in the society. A doctor enjoys a good status in the society as he is seen to be a helping hand to every single person in the society.

Thus, there are some rules and regulations set by the *Shari'ah* to govern the doctor-patient relationship. As we have discussed previously, it is the duty of a doctor to give explanations or information to his patients relating to their sickness. In addition, it is one of the rights of the patients to be fully informed about his sickness and to be given a certain level of discretion to exercise his right to make an informed consent.<sup>53</sup> Various medical procedures carry the intervention of a body of someone who will face them, by which the legality of intervention of the body of a person is dependent on the outcome of such procedure – good or bad. *Allāh* permits any means to achieve this interest as long as it is not jeopardizing the *Shari'ah*. Due to this right, he disposes this right according to what his wish, in accordance with the pleasure of *Allāh* S.W.T. When the owner of the body has the right, the views of the scholars are significant.

The patient can only give his consent when he is still conscious and being informed of his condition. However, if he falls unconscious, the doctor may perform any relevant treatment without the patient's consent in order to save his life.<sup>54</sup> In conclusion, medical consent is an important element to medical treatment as it involves the intervention of the right of human being and the right of *Allāh* S.W.T. The consent given from a patient is considered as *Amanah* which must be observed accordingly by the doctors. The consequence of a valid medical consent in *Islamic* law can also affect the liability of a doctor in the medical operation. Thus the liability of such doctor in such treatment is determined by whether the medical consent is validly given by the patient or not.

<sup>50</sup> Dr. Salamah Abdul Fattah Hulaibah, *Ahkam A'qd Al-I'raj Baina Al-Fiqh Al-Islami Wa Al-Qanun Al-Madani Al-Misri Wa Al-Faransa*. (Iskandariah: Dar al Jami'ah al Jadidah, 2009) p.256.

<sup>51</sup> Fard Al-Kifayah, "In The Oxford Dictionary of Islam, Ed. John L. Esposito," *Oxford Islamic Studies Online*, accessed January 13, 2016, <http://www.oxfordislamicstudies.com/article/opr/t125/e625>.

<sup>52</sup> Ibid. N 56.

<sup>53</sup> Hani bin Abdillah bin Muhammad bin Jabir, "Al-Iznu Fi Ijra' Al-Amaliyyah Al-Tibbiyyah Wa Ahkamuhu Wa Atharuhu (Master Thesis)" n.d., [elibrary.medi.u.edu.my/books/SDL2203.pdf](http://elibrary.medi.u.edu.my/books/SDL2203.pdf) (PDF version), page 2.

<sup>54</sup> Prof. Dr. Abdul Fattah Muhammad Idris and Prof. Dr. Majdah Mahmud Ahmad Hiza, "Al-Iznu Fi Al-A'maliyyat Al-Jarahiyyah Al-Musta'jalah," in *19th Conference of the Islamic Fiqh State Council of the Organization of the Islamic Conference* (UAE, 2007), 2, <http://www.islamtoday.net/bohooth/services/saveart-86-109755.htm>. p.2.

**Bibliography**

- Al-Buhuti, Mansur ibnu Yunus. *Kashaful Qona*. Beirut: Nasyru Darul Al-Fikri, 1981.
- Al-Bukhari, Muhammad. *Sahih Al-Bukhari*. Dar Ul-Hadith, 1978.
- Al-Bukhari, Sahih. "Kitab Al-Ahkam , Vol. 6." In *Sahih Al-Bukhari*, 2614. Beirut: Dar al kutub, 2003.
- . "Kitab Istitabah Al-Murtadin Wa Al-Mua'diniin Wa Qitalihim, Vol. 6, Hadith No. 6528." In *Sahih Al-Bukhari*, 2538. Beirut: Darul Ibnu Kathir, 1986.
- Ali, Abdullah Yusuf. *The Meaning of the Holy Qu'ran*. Amana Pubns, 2004.
- Al-Jauziyyah, Ibnu Al-Qayyim. *I'laam Al-Muqi'ien Min Rabbi Al-A'lamin*. Vol. 3. Cairo: Darul Al-Kutub Al-Ilmiah, 2002.
- Al-Kifayah, Fard. "In The Oxford Dictionary of Islam, Ed. John L. Esposito." *Oxford Islamic Studies Online*. Accessed January 13, 2016. <http://www.oxfordislamicstudies.com/article/opr/t125/e625>.
- Al-Nifsi, Abu Barakaat Abdullah. *Tafsir Al-Nifsi*. Cairo: Maktabah Gharib, 1984.
- Al-Nisaburi, Abu Ubaidillah Al-Hakim. "Al-Mustadrak Ala Al-Sahihain, Kitab Al-Buyu'." *Kitab Al-Buyu'*(19) 2 (2007): 66.
- Al-Qazwini, Ibn Majah and Imâm Muhammad bin Yazeed. "Sunan Ibn Mâjah Vol. 3,(translated by Al-Khattab N. and Edited by Zubair „Ali Za" I, HAT)." Riyadh, Saudi Arabia: Darussalam, 2007.
- Al-Razi, Al-Imam. *Al-Tafsir Al-Kabir* Vol. 9. Beirut: Darul Kutub Al-Ilmiah, 1988.
- Al-Syarbaini, Al-Khatib. *Mughni Al-Muhtaj* Vol. 4. Beirut: Nasyrul Darul Al-Fikri, 2006.
- Al-Tabari, Muhammad bin Jarir bin Yazid bin Khalid. *Tafsir Al-Tabari*,Beirut. Beirut: Nasyrul Darul Al-Fikri, 1984.
- An-Nawawi. *Syarhu Al-Nawawi Ala Sahih Muslim*, Vol. 16. Beirut: Darul Ihya Al-Turath Al-Arabi, 1995.
- As-Suyuthi, Jalaludin. "Sunan An-Nasa'i, Juz Ke-5." Beirut: Dar al-Fikr, 1930.
- Baidawi, Abdullah ibn Umar al. *Tafsir Al-Baidhawi*. Kuala Lumpur: Khazanah fatoniyaah, 2010. Cambridge Advanced Learner's Dictionary & Thesaurus ©. Cambridge University Press, n.d.
- Dawud, Abu. *Sunan Abu Dawud*. Sh. Muhammad Ashraf, 1984.
- Dr. Salamah Abdul Fattah Hulaibah. *Ahkam A'qd Al-I'laaj Baina Al-Fiqh Al-Islami Wa Al-Qanun Al-Madani Al-Misri Wa Al-Faransa*. Iskandariah: Darul Jami'ah Al-Jadidah Li Al-Nashri, 2009.
- Fawzan, Salih ibn Fawzan ibn 'Abd Allah. *A Summary of Islamic Jurisprudence = Al-Mulakhkhas Al-fiqhi*,Vol. 2. Riyadh, Saudi Arabia: al-Maiman Publishing House, 2012.
- . *A Summary of Islamic Jurisprudence = Al-Mulakhkhas Al-fiqhi*,Vol. 2. Riyadh, Saudi Arabia: Al Maiman Publishing House, 2012.
- Hani bin Abdillah bin Muhammad bin Jabir. "Al-Iznu Fi Ijra' Al-Amaliyyah Al-Tibbiyyah Wa Ahkamuhu Wa Atharuhu (Master Thesis)," n.d. [elibrary.medi.u.edu.my/books/SDL2203.pdf](http://elibrary.medi.u.edu.my/books/SDL2203.pdf) (PDF version).
- Hiza, Prof. Dr. Abdul Fattah Muhammad Idris and Prof. Dr. Majdah Mahmud Ahmad. "Al-Iznu Fi Al-A'maliyyat Al-Jarahiyyah Al-Musta'jalah." In 19th Conference of the Islamic Fiqh State Council of the Organization of the Islamic Conference, 2. UAE, 2007.
- <http://www.islamtoday.net/bohooth/services/saveart-86-109755.htm>.
- Hussain, Jamila. *Islamic Law and Society: An Introduction*. Sydney: The federation press, 1999.
- Ibnu Taimiyah. "Majmu 'ah Al-Fatawa Shaikh Al-Islam." Riyadh: Matabi 'Riyadh 32, no. 110 (1963).
- Muhammad bin Muhammad Al-A'bdari. "Al-Madkhal." *Dar Al Fikr*, Beirut 4 (1981): 195–96.
- Muslim, Imam. *Sahih Muslim*. Sh. Muhammad Ashraf, 1980.
- Muslim, Sahih. "Kitab Al-Bir Wa Al-Silah Wa Al-Adab, Vol. 4." In *Sahih Muslim*, 2004. Beirut: Darul Ihya Al-Turath Al-Arabi, 2007.
- . "Kitab Al-Iman, Vol.1, Hadith. 142." In *Sahih Muslim*, 25. Darussalam, Riyadh, 2007.
- Oudamah, Ibnu. *Al-Mughni*, Vol. 2. Jordan: Bait al afkar, 2004.
- Turkey. *The Medjellè or Ottoman Civil Law*. London: Stevens and Sons Ltd, 1895.