

the jurisprudence rule (the fall of the branch with dropping of the origin: practical jurisprudential study

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The Jurisprudence Rule (The Fall of the Branch with Dropping of the Origin: Practical Jurisprudential Study

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Abstract

Jurisprudence has many rules, countless branches and applications which are scattered in various chapters. It is characterized by its brevity in its form and general in its meaning, so that it is a common vessel for many branches and different issues. Here, its importance shows the urgent need of the jurist... The rule (if the origin is dropped, the branch falls) has many theoretical connections to the origins, and this rule has rules which are closed to it in meaning and content. It also has applications in various sections and issues of Islamic jurisprudence.

1. Introduction

Jurisprudence is considered as a scale that tackle every issue according to our first teacher, and our master Muhammad (Peace and blessings be upon him), and his successors after him who are the most eminent scholars, and the Companions and the Followers (may God be pleased with them) all the way to the later scholars. They were entrusted with the performance of this honorable task in order to derive legal rulings through diligence because perceptions and understandings differ and vary. It is self-evident that the jurisprudence and the branches differ with agreement on reaching one goal. It is the realization of the aims of the legislator from establishing the Sharia from the beginning, as Imam Al-Shatibi says that Sharia is “bringing interests and warding off evils” through these provisions.

It is necessary that efforts are directed to another work that organizes this wealth, and collects it in safe. It is possible for the diligent jurist to become familiar with the dispersal of the rulings because he does not need to know it. Here, the idea of jurisprudence is originated and developed until it reached us today in the form of an independent science of its own which is the science of “jurisprudence rules”. The majority of these rules which come in a concise basic form are nothing but an idea that unites many issues and branches of jurisprudence that are united by a common destiny. A lot of antiquities and branches do not encompass all the chapters of jurisprudence.

The jurisprudence rule “If the origin is dropped, the branch falls” is one of the important rules that is worthy of study, and it is chosen it to be the subject of the study.

2. Statement of the Content of the Rule and Related Words and their Legitimacy

2.1. Definition of Dropping linguistically and idiomatically.

1- Dropping in language is 'fall', 'fell', 'falling', 'fallen'. The word “fall” comes with several meanings, including:

a-It means to fall: Someone says: The ball fell from my hand. In the hadith on the authority of Anas bin Malik; he said: (The Messenger of God (peace be upon him) fell off a horse and his right part was scratched); meaning 'fall'. The saying of Allah (the Most High): (Did they not fall into sedition...); meaning: they fell into hypocrisy and polytheism.

b-It means stumble and slip: Suwaid bin Abi Kahil said:

-How they hope for my falling after the head has been crowned graying and bald.

c- It is mentioned in the Hijaz: meaning error in speech.

It is said: He fell in his words, if he erred, and so did he fall in his words. There are many meanings that are too long to be listed.

2- Dropping as terminology: The jurists use the word 'fall' in several meanings:

a-meaning the duty is lifted from the involved, that is, the person is charged, and this assignment has been raised for one of the reasons. For example:

The fall of the mandate of fasting that made up for the insane because it was a missed fasting in the event that the mandate fell due to a deficiency. So, it was not necessary to spend it as it was missed in the case of childhood as well as the fall of the mandate to pray for a menstruating woman is to do fasting and not the prayer.

She said: Are you Ahruriya? I said: I am not Ahruriya, but I am asking. She said: We used to menstruate during the time of the Messenger of God (Peace be upon him), so we were commanded to make up the fasting, but we were not ordered to make up the prayers.

b-meaning the termination of the claim for the right: it is that the person is claiming the right, and for some reason this claim ends, for example the fall of the vow against the people of the locality if he claims against one of the others.

Bin Abidin (may God have mercy on him) said: “If the guardian claims against one of them, it is a release from him to the people of the camp, and the allotment falls on them.

c-in the sense of not being obligatory: that is: not demanding the ruling at all, for example: the fall of mourning for the clerical woman whose husband died according to the Hanafiya school, as well as the dropping of zakat on the unworthy camels.

d-meaning the lapse of entitlement, that is, the person was deserving of something and for some reason this entitlement was dropped, for example: the mother's custody of her son was dropped due to her travel, or her husband. Al-Kamal bin Al-Hammam (may God have mercy on him) “and

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whoever marries of those who have the right of custody, this drops her right because of what the Prophet (P.B.U.H.) said: (You have more right to him as long as you do not remarry).

2.2. The Words Related to Dropping

1-Discharge: Discharge, according to the jurists, is the waiver of a person's right in the hands of another, and this is according to those who consider the discharge from the debt as a pure waiver. As for the one who considers it ownership, he says: It is the debtor's ownership of what he owes.

Bin Al-Sama'ani mediated and said: It is the ownership of the acquittal, a waiver of the acquittal of bin Al-Ibra', but it is ownership considering that the religion is money. It is money in the right of the one who owes the debt on a specific person, it is a projection not an exoneration. However, bin Abdulsalam from the Maliki school considers discharge more general. He says at the beginning of the Book of Reconciliation that projection is in the eye, and discharge is more general than it because it is in the appointee and other things. The exoneration from the debt consists of two types: the exoneration of catching and interpolation, and exoneration of discharging. Exoneration of interpolation is the decision of receipt.

As for the discharge of dropping, what is meant in our research is: "One absolves the other by dropping he full right of the other, or deducting an amount from his obligation".

In the callowness of bin Hajar Al-Kubra, in the chapter on the guarantee, the words of discharge - after their systems – are, in the implication of bin Hajar's callowness... on the authority of the boy and bin Yunus, the expressions of ablution are nine ablution... , I was cured and I fell, so I fell, I left, or I was terrified, or I was lost... I let myself be possessed, I was concluded.

Exoneration and dropping meet in that each of them is in contract by which the right is lifted by its owner and relinquished, but exoneration is more general and broader than exoneration because exoneration is a type of abolition that came in the shadows and the similarities for Al-Siyuti: exoneration is a drop or ownership? According to:

Recurrence is different in the branches including the debtor to clear himself. It is correct to say that the dropping is the most correct.

2- Compromise, in language, is a reconciliation, aligning, and peace.

Compromise legally is a contract that requires the cessation of conflict and its opponents.

Dropping may come within the conciliation contract even if it does not explicitly stipulate the termination and discharge, and the dropping considered within the conciliation does not mean the dropping of the same right in relation to the conciliation with denial, but rather it means the dropping of the right to claim it. The same right remains constant as it is. If the reconciliation is based on taking the allowance, then the reconciliation is a compensation, not a forfeit, for the abolition deals with the right only. As for the reconciliation, it may be based on the forfeiture, an increase, or the forfeiture of some right.

3- Pardon

Pardon in language means whoever pardoned, pardons, pardoner; it is pardon, which is the one who transcends the sin and leaves the punishment. It has several meanings, such as miscarriage and etc. Allah said: (...and pardon us...).

Pardon for the charity of horses and slaves means leaving to take its zakat the Almighty Allah said: (... and those who pardon people ...), means those who leave their grievances not to ask them for it. So, the pardon that is used in abandoning the right is equal. The pardon for its release is more general due to its multiple uses.

4- Ownership

Ownership in the language is the source of the possession of a thing if it is his property. The verb is 'own' which means the possession of a thing as containing it to tyrannize it.

Ownership as a terms is the transfer of the property and its removal to another owner whether the movable is in kind as in the sale, and its benefit as in the lease, whether it is for consideration, or without compensation such as gift. Ownership in its generality separates from forfeiture in its generality, since it is removal and transfer to the owner. While the forfeiture is a removal and not a transfer, it is not to the owner, but they may combine in the discharge of the debt according to those who consider it ownership to its owner. Some Hanafi and Shafi' jurists, therefore, stipulate acceptance.

Ownership place: Ownership is related to the place of an appraised owner property, and it may relate to a predetermined location such as the acquisition of the usufructs of merchandise, or the usufructs of objects in leasing and lending, for their estimated benefits are related to assessed ownership. Owning objects may be a rent, or they may be without compensation, such as a gift and charity. The ownership of a benefit may be a rent, such as a lease, and it may be without compensation, such as a loan.

2.3. Definition of the Origin and Type

The origin in language is what a thing is built upon.

The origin as terminology is given by meaning.

Evidence: The origin is the evidence as the jurists say that the principle in the obligation of Hajj is the Qur'an, the Sunnah and the consensus. In Quran, Allah says: (...To God is the pilgrimage to the House). And the original, it is everything that others depend on and build upon, insofar as it builds upon and branches off, and from those meanings are:

1- Evidence versus signified.

2- The general rule.

Second: The branch is linguistic; it is everything that is built on the original.

idiomatically: the jurists used the word in three meanings:

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a-The branch is in the sense of the child, and the corresponding origin in the meaning of the father.

b-The branch meaning measured: It is one of the pillars of measurement in contrast to the original, and it is the measure against it.

c-The branch in the sense of the jurisprudential issue is branching from it as comprehensive origin.

Sheikh Al-Abadi (may God have mercy on him) organizes their meaning by saying:

The origin of everything is ridden from everything that is above it, and its branches on which it builds a sense, like a cup, a wall or a meaning. The one that combines these elements in this rule is the relationship of obligation or imperative. Obligation is a relationship of dependence that each sign of dependence is a transition from a stronger party to a party that is not overpowered. Everything that happens to the stronger party happens to the other party which is less than a force of its kind, and the stronger party here is the origin and the other is the branch.

This jurisprudential rule is equivalent to the logician saying “It means the most general necessitates the negation of the most specific.” The most general, according to the logician, is the universal whose meaning does not preclude its multiplicity whether it is found in existence as plural as a human being or one as the sun or not in the existence. As for the most specific, according to the localities, is the partial that denotes a specific one, such as the noun.

2.4. The Legitimacy of Dropping

It is not possible to cover the abolition with a single mandated ruling, such as a mandate or obligation, for example, because other mandated provisions are presented in eye right. The mandated provisions that are known to drop are obligatory, like the fall of preemption if the intercessor asks to take some and leave the rest of the sale. The dropping of retribution is on the offender when some heirs pardon, and the divorce of the master after waiting if he refuses to pay. It may be delegated, such as forfeiting the property of the goods by divorce when the woman is not pardoning retribution.

Dropping the right by freeing, the Prophet (peace and blessings be upon him) said: ((Whoever frees a believing slave, God will free every one of them as freed from Hellfire, to the extent that he may be freed in the commissary). Such as the dropping of the intercessor's right to take preemption, and it may be hated, such as divorce without a need. He may be deprived, such as forfeiting the rights to which the right of others is related, such as forfeiting the divorced person's right to the waiting period of the divorced woman. This is one of the common rights. If a person has a mandate to forfeit his right, he does not have a mandate to forfeit the right of others as well as in dropping the rights in kind, such as dropping the heir's right to inheritance. Likewise, if the right is a subjective description, such as dropping the guardianship of the father or grandfather over the young and many other things.

3. The Jurisprudential Applications of the Rule (If the Origin is dropped, the Branch falls)

3.1. The Applications of the Rule in Worship

The issue: The ruling on one who enters Arafat flying in its air and does not stand on the ground:

Firstly, the image of the issue: if he flew in its air, i.e., Arafat, it would not suffice as it is known that standing is to be on the ground, if he stands in the air and his image is not in an airplane, for example, his standing is valid or not?

Secondly, standing: (the language) of inhabiting, it is said that the animal stood; it stood standing, and standing up; it sedated.

The idiomatic meaning does not depart from the linguistic meaning and the connection in passing is against standing. The day he recognized him is a great day in which the pilgrims perform standing in Arafah. So, it is the pillar of Hajj that depends on his missed Hajj being invalid.

Thirdly, liberating the subject of dispute: The jurists differ in this regard into two opinions:

The first view: The Hanafis, some of the Malikis, the Shafi'is, and the Hanbalis, the Zaydis, and the Imamis have all agreed that it is permissible to stand in the air of Arafat, and they used the following as evidence:

1-On the authority of Urwa bin Mudhars, he said: I came to the Prophet (P.B.U.H.) while he was in the position of a gathering, and I said, "Oh, Messenger of God, I came to you from my hilly mountain. The Prophet said "Whoever prays the morning prayer with us in congregation, and has come to Arafat before that day or night, then he has made up his pilgrimage and completed his pilgrimage".

The point of evidence: His saying (P.B.U.H.) is "Arafat has come" is general, and the Prophet did not explain the description of coming. So, it remains general.

Al-Kasani said: "Whenever she came to her at an hour of this time, he performs the obligation of standing whether he is aware of it, ignorant and asleep, awake, awake, unconscious, standing by it, passing by while walking on an animal, or being carried because he did the required amount which is his attainment, and the principle is what we narrated on the authority of the Prophet that he said, "Whoever stops at Arafat has completed his pilgrimage, and walking does not involve a pause, and whether he intended to stop when standing or not".

Al-Sarakhsi said that "Whoever stops in Arafat before the sun has passed the meridian, it is not permissible for him, and whoever stops after the sun has passed the meridian or the night of sacrifice before the splitting of dawn, or he passes through it, knowing it or not, it is acceptable".

Al-Hattab said: "No one is required to stand standing. Rather, it is the universe in Arafat. So, what was sufficient for him whether he was standing, sitting, walking or riding, and how he did not imagine. He said after him that the duty of standing is the universe in any way it is".

Bin Qudamah said that "Whatever happened in Arafat while he is sane, he is sane, standing, sitting, riding or sleeping".

2- The jurisprudential rule states that "The air is subordinate to the decision". The passage of a pilgrim through its air is like its passage through its land. Al-Sharwani said that he differentiates between one who flew in the air where his standing was not valid, and one who stood on the branches entering the sanctuary. So, it is clear that he is stable himself on an object in the air. Arafah

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is similar to the one standing on this land, but it was reported from our Sheikh Al-Allamah Al-Shubari in the footnotes of Tahrir that the settlement is, i.e. the branch and flying in the absence of health, I say, even if the two images are true to download his air to the status of his land, it is not far away as Al-Shibramelsi said, and he is valid and supports what was passed from the footnote regarding the validity of flying in pursuit.

The second opinion is the Shafi'is, some of the Malikis, and Al-Shawkani from the Zaydiyyah show that it is not permissible to stand in the air of Arafat, but rather it is necessary to stand on a part of the land according to the following:

First: On the authority of Jaber (may God be pleased with him), he said that the Messenger of God Muhammad (Peace and blessings be upon him) said: "I sacrificed here, and all of Mina is a slaughter. So, they slaughtered in your travels, I stood here, and all of Arafah is a stop. I stood here, and collection all is a stop".

Significance: His saying (P.B.U.H.) "I stood here, and all of Arafah is a standing position" is an indication of the statement of the land of Arafat and its boundaries, and that no other is acceptable.

It is answered: The saying of the Prophet (Peace and blessings be upon him) is: "All of 'Arafah is a standing place" is possible by which he does not mean only the earth, but the whole earth and the sky are standing.

Second: Analogy with prostration just as the worshiper must connect his prostration on the ground, and likewise the present in Arafah must be connected to the ground directly.

Third: What is built on the principle (if the origin falls, the branch falls) and accordingly, the works of the jurisprudence rule are here in the matter.

3.2. Applications of the Rule in Transactions

First: The meaning of branches in sales: The branches of the sale are included in its name, so that the branch connected or separate is included in the sale with its origin without explicit mention. This is because the sale contract requires it as if the branch is part of the parts of the sale, such as the sale of the house in which the kitchen is included. For example, the sale of the cabinet includes the drawers, or because custom is strict in entering these branches in the origin of the contract without mentioning. The meaning of the subordination of the branch to its origin is its entry into the contract, that is, it does not have a share in the price.

Second: There is no disagreement among the jurists in general that the contract over the thing sold entails things that follow it because the name of the thing sold includes it, because it cannot be separated from it, or because people have become acquainted with its subordination to its origin in the sales contract.

Third: Branches of sale according to the jurists are:

1- Branches of sales, according to the Hanafis and Malikis are:

I brought together the Hanafis and the Malikis because of the closeness between them in their view of the issue. The Hanafis controlled the branches of sale according to the following rules:

a-All is covered by the name of the thing sold, the building and the keys are included in the sale of the house as well as the height and weight if he sells it within its limits because the house is a name for what is indicated by the borders and the height thereof, as well as the building.

b-What was connected to a decision: stable locks and wheels are included in its sale just as dry trees which are included in the sale of land because it is in the honor of plucking.

c-What was in the ruling of a part of the parts of the sale, it is not acceptable to be separated from it because the purpose of purchase indicates the sale without mentioning. For example, if a lock is sold, his key is entered.

d-Everything happened by custom is one of the contents of the sale, it is not one of its contents, its parts, or it is connected and stable accessories, but the custom is in progress. The custom depends on the sale. Olives selling includes olive trees.

e-The Hanafis excludes from the dependents what are rights and the utilities of the sale. So, they are not included only by mentioning it. Bin Abidin said that Shade, road, drinking and watering enter the sale. The order of the way, drinking and watering does not include in its sale (meaning the house) because it goes outside the limits. So, they are included only by mentioning them.

Fourth: The issue is based on the rule: The issue is a branch of the rule “if the origin falls, the branch falls.” In reality, there are several issues which are included in the rules under the mother rule “if the original falls, the branch falls.” Perhaps, it is the strongest of the issues in the rule in which it appears clearly that the branch has no rule. So, it does not enter with its sale in the contract without an explicit mention or a share of the price. If the branch is missed for any reason, it does not affect the validity of the contract, and does not reduce the price as long as the original is.

4. Conclusions

The most prominent results are:

1- There are many jurisprudential rules under which there are countless branches and jurisprudential applications that we find scattered in the various chapters of jurisprudence.

2- Rule (If the origin falls, the branch falls) is one of the non-major universal rules classified by some jurists which are found in the books of jurisprudence; principles and rules. If it is not mentioned in its form, it may be mentioned in the formulas of the rules falling within it, or the reference comes in the context of talking about an issue related to the origin and the branch.

3- The general meaning of the rule (if the origin falls, the branch falls) and the rules that included within it are all about the concept of the branch and its effects or judgment.

4-The rule is different in the Malikis with evidence of its being in an interrogative form (Does the branch include the rule of the original?), while it was mentioned in the Hanafi and Shafi'i in the declarative form (the branch drops the original). It was mentioned by the Maliki in the form (the branch enters what does not independently enter).

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5- Applications of the rule in transactions are chosen as examples.

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