

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

Series of Questions Addressed to Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Facebook Page (Fiqhi)

Answer to Question:

Answers in Usool AlFiqh

To: Zahed Taleb Na'eem

(Translated)

Question:

Bismillahi Ar-Rahman Ar-Raheem, Assalamu Alaikum wa Rahmatullahi wa Barakatuh,

Subject: Questions in Usool AlFiqh

First: It was mentioned in the book of *The Islamic Personality vol. III*, page 182 (Arabic edition) "The requirement denotation is that which the required matter in it is denoted from the meanings of the expressions by being a condition for the denoted meaning correspondently".

And it was mentioned in the same book page 44: "In sum, the thing required to fulfill a wajib [obligation] is itself wajib, either by the same address which establishes the original wajib or by another address. This is irrespective of whether this thing is a sabab [legal cause] – that whose presence necessitates the presence (of the hukm) and whose absence necessitates its absence – or a shart [legal condition] – that whose absence necessitates the absence (of the hukm) but whose presence necessitates neither its presence nor absence. It is also irrespective of whether the sabab is legal [shar'i] like the required tense in relation to the obligatory emancipation (of a slave) ..."

There are two issues that confuse me:

First: Why was the shart [legal condition] mentioned without the sabab [legal cause], even though the required tense is a sabab in relation to the obligatory emancipation, and it appears to me that the tense is obligatory in terms of the requirement denotation?

Second: Why was corresponding denotation (المطابقة) was mentioned without inclusion denotation (النصنن)?

Second: It was mentioned the book of *The Islamic Personality Vol. III*, page 239 (Arabic edition): "So what is general in everything sane and others like the interrogative particle (أَيُّ) (any, anyone, whoever, whichever, whatever, etc.), like your saying: "أَيُّ رَجُلٍ جَاءَ" "which man came", "أَيُّ ثَوْبٍ لَبَسْتَهُ" "what dress have you put on". And thus is the nouns: (كُلُّ) (every), (جَمِيع) (all), and the relative pronoun (الَّذِينَ) : (these who, those who, etc.), (الَّذِي) (these who, those who, for female etc.) and the likes".

But I did not come across an example that illustrates the use of (الَّذِينَ) for the insane.

Third: It was mentioned in the book of *The Islamic Personality Vol. III*, page 240 (Arabic edition): "As for the generality which is affirmed by the inference, the guideline of it is relating the verdict to the quality by the succession and causation particle (فَاء) like His (SWT) saying: ﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا...﴾ "As to the thief, male or female, cut off his or her hands..." [Al- Maa'idah: 38], and like: the intoxicant got forbidden for the drunkenness, etc."

1. It was mentioned in the same book, page 238 (Arabic edition): "or it can be affirmed to us by inferring from the transference, i.e. like knowing that the exception (الاستثناء) can enter the definite plural (الجمع المَعْرَف), from what had been transferred to us that the exception is taking out some of what the expression includes. Although this is an inference, it is a mental knowledge, since it had been transferred to us that the exception is taking out some of what the expression includes, so we understood that the definite plural is for the generality."

And it was difficult for me to solve the issue, as the book on page 238 dealt with the general rules of inference and controlled them with the quality that the verdict will relate to on page 240.

2. Why did he mention (like: the intoxicant got forbidden for the drunkenness) even though the guideline is relating the verdict to the quality by the succession and causation particle?

3. It was mentioned in the same book on page 191 (Arabic edition): “One of them is: making the verdict dependent on the quality indicates reasoning (العِلِّيَّة), i.e. the quality becomes a reason (عِلَّة) for that verdict, for example the saum [fasting] is 'illah for the obligation of the zakaat of the sheep, then the verdict gets banished for the banishment of that quality, because the reasoned verdict banishes for the banishment of its reason ('illah)”.

And it was mentioned in the book of Concepts of Hizb ut Tahrir, page 35 (Arabic edition): “The divine rules related to ‘ibadat, morals, food-stuffs, and clothing cannot be reasoned by ‘illah (legal reason). The Messenger (saw) said; «حرمت الخمر لعينها» **“Wine (khamr) was forbidden for itself.”** However, the Ahkam Shara’iah related to transactions and penal code are reasoned by an ‘illah. This is because the Hukm Shar’ai in these matters are built upon an ‘illah, which is the reason for legislating the rule.”.

So, is intoxication the ‘illah (reason) for the prohibition of wine, and if it is, how can we reconcile it with what is mentioned in the book of Concepts?

Pardon me for taking long, May Allah bless you and guide your steps.

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

The first question:

Regarding requirement denotation, and the thing required to fulfill a wajib [obligation] is itself wajib... we answered it on March 30, 2019, and I hope that you got it well and that you are well, with Allah’s permission.

Other questions:

I have seen the research on the topic of the generality (al 'umoom) and the ways to affirm the generality, and this is the answer to the questions that you mentioned in your question:

1- With regard to (the relative pronoun (الَّذِينَ) (these who, those who, etc.), and (اللَّاتِي) (these who, those who, for female)), yes it benefits the generality in relation to the sane (plural) and not to the sane and the insane (singular), except in the case of placing the insane in the place of the sane. According to the Explanation of Alfiyya of ibn Malik by Al-Hazmi about the pronoun (الَّذِينَ): “And the origin in it is to be used for the sane, i.e. people of understanding, but the insane may be placed in the place of the sane and so the pronoun (الَّذِينَ) "these who, those who" is used for them. The Almighty said: ﴿إِنَّ الَّذِينَ تَدْعُونَ مِنْ دُونِ اللَّهِ عِبَادٌ أَمْثَلُكُمْ﴾ **“Indeed, those you [polytheists] call upon besides Allah are servants like you.”** [Al-A'raf: 194], thus, the idols were placed, when they worshiped them, in the place of the sane, i.e. people of understanding, and therefore He (swt) used the noun of the sane to refer to them in His saying: ﴿أَلَمْ يَأْتِ الْبَنَاتِ أَهْلَهُنَّ مِنْ دُونِ اللَّهِ بِشَيْءٍ يَدْعُونَهُمْ﴾ **“Do they have feet by which they walk?”** [Al-A'raf: 195]”. **End.** However, in other than this case, the pronouns (الَّذِينَ) (these who, those who, etc.), and (اللَّاتِي) (these who, those who, for female)” are generally used for the sane.

Thus, some terms which are general for the sane or for the insane may be used in both of them in certain cases other than the original use, but this does not remove them from the origin of their use, such as those mentioned earlier, so they remain in the general sense of the sane and their description do not change as a result of that situation by placing the insane in the place of the sane.

For example, the particle (ما) (what, whatever...) is for the insane, as we mentioned in the discussion of the generality, so it can prevail the sane as well as a matter of outbalancing, such as if most of the addressees are from the insane ... when Allah Ta'ala sent down His saying: ﴿إِنَّكُمْ وَمَا تَعْبُدُونَ مِنْ دُونِ اللَّهِ حَصَبُ جَهَنَّمَ﴾ **“Verily you, (disbelievers), and whatever you worship without Allah, are (but) fuel for Hell...”** [Al-Anbiya: 98], Ibn al Zab'ari said (to the polytheists): I can defeat Muhammad for you saying: O Muhammad, isn't this from among what Allah sent down to you ﴿إِنَّكُمْ وَمَا تَعْبُدُونَ مِنْ دُونِ اللَّهِ حَصَبُ جَهَنَّمَ أَنْتُمْ لَهَا وَارِدُونَ﴾ **“Verily you, (disbelievers), and whatever you worship other than Allah, are (but) fuel for Hell, (surely) you will enter it”?** He (swt) said: yes, he said: "then here are the Christians, they worship 'Isa, and the Jews worship 'Uzair, and Banou Tameem worship the Angels, will those go to hell"? He inferred the generality from the word (ما) (what, whatever...) and the Prophet (saw) didn't deny that of him, but there came down the saying of Allah Ta'ala not denying his saying, but specifying it by His Ta'ala's saying: ﴿إِنَّ الَّذِينَ سَبَقَتْ لَهُمْ مِنَّا الْحُسْنَىٰ أُولَٰئِكَ عَنْهَا مُبْعَدُونَ﴾ **“Those for whom the Good (promise) from Us has gone before, will be removed far from it (hell)”** [Al-Anbiya: 101], but this particular case does not change the origin of the use of the word (ما) (what, whatever...) but remains for the insane.

Thus, the pronouns (الَّذِينَ) (these who, those who, etc.), and (اللَّاتِي) (these who, those who, for female) the origin of its use remains in general for the sane, and this is not affected by this situation (placing the insane in the place of the sane).

However, what is used for the sane and the insane is (الَّذِي) (who, which, that) and (الَّتِي) (who, which, that, for female)... and because this singular expression is general in the sane and insane ones, while the plural expression (الَّذِينَ) (these who, those who, etc.), and (اللَّاتِي) (these who, those who, for female) is less general, for they are only the sane, so this plural (الَّذِينَ) and (اللَّاتِي) is called an unreal plural.

2- As for your question about the definite particle (ال) (the), the affirmation for the generality of (ال) (the) does not come by inferring from the transference, as stated in the first paragraph of “Ways to Affirm the Generality of the Expression”, in the following text: “The generality of the expression is affirmed to us either through the transference that the Arabs had composed this expression for the generality, or used it for the generality, or it can be affirmed to us by inferring from the transference, i.e. like knowing that the exception (الاستثناء) can enter the definite plural (الجمع المُعَرَّف), from what had been transferred to us that the exception is taking out some of what the expression includes. Although this is an inference, it is a mental knowledge, since it had been transferred to us that the exception is taking out some of what the expression includes, so we understood that the definite plural is for the generality.” End.

This is not accurate; rather, the definite particle (ال) (the) other than of (ال العهد) (al al 'ahd) benefits the generality from the language composition, as stated in the third paragraph of the chapter “Ways to Affirm the Generality of the Expression” in the *Islamic Personality vol. III*, in the following text: “The generality affirmed by the transference is either benefited from the language composition, or it is benefited from the use of the people of the language. The generality benefited from the composition of the language has two situations: one of them is where the expression is general by itself without a need for any indication (qareenah), the second is where its generality is benefited from the composition of the language but by an indication...

As for the generality which is benefited from the indication, the indication could be for the affirmation or for the negation of the generality. The indications of affirmation are: the definite particle (ال) (the) and the genitive construction (الإضافة) that they enter the collective noun like: "العبيد" "The servants" and "عبيدي" "My servants" and they enter the generic noun like His Ta'ala's saying: ﴿...وَلَا تَقْرَبُوا الزَّوْجَىٰ﴾ **“Nor come near the adultery...”** [Israa': 32], and His saying: ﴿...فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ...﴾ **“...then let those beware who withstand the Messenger's order...”** [An-Nur: 63]. If the definite particle and the genitive construction

enter the individual generic nouns (اسم الجنس المُفْرَد) they prevail the individuals, and if they enter the collective nouns they prevail the collectives, because the definite particle (أل) and the genitive construction prevail the individual and the collective nouns which they enter..." It is clear from that the definite particle (أل) benefits the generality linguistically and not by inference.

It also came in Al-Bahr Al-Muheet:

[... Second: the generality is benefited linguistically and not by composition, rather it is by the indication (qareenah), either through affirmation such as (لَامِ التَّعْرِيفِ) the laam of the definite article other than of (ال العهد) (al al 'ahd). The laam of the definite article benefits a generic noun if they enter the collective nouns or the individual generic nouns (اسم الجنس المُفْرَد) and plural added to these two, like عِبْدِي أَحْرَارٌ my servant are free, and "عِبْدِي حُرٌّ" my servant is free, or through banishment, which is indefinite noun in the context of negation ...

3 - As for your third question about the generality which is affirmed by the inference, where it is mentioned in the book "As for the generality which is affirmed by the inference, the guideline of it is relating the verdict to the quality by the succession and causation particle (فاء) like His (swt) saying: ﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا...﴾ "As to the thief, male or female, cut off his or her hands..." [Al- Maa'idah: 38], and like: the intoxicant got forbidden for the drunkenness, etc." End.

This definition of the generality which is affirmed by the inference (the guideline of it is relating the verdict to the quality) is correct, and the aforementioned guideline is a kind of reasoning (illah), meaning we are confined to one type of illah, which is (relating the verdict to the quality by the succession and causation particle (فاء)), but some of the Usooli scholars consider all types of the illah, and not only by the succession and causation particle (فاء), and they represent in this generality every illah whether it includes the fulfillment of the succession and causation particle (فاء) or not. As for us, we were satisfied with this type of reasoning (illah), as we mentioned above, but the given example (the intoxicant got forbidden for the drunkenness) is incorrect in two ways:

First, it is not an example of this kind of illah (relating the verdict to the quality by the succession and causation particle (فاء)).

Second, it mentioned the intoxication as a reason for the prohibition of wine, and it is not adopted by us, so we adopt that wine is not reasoned, but rather wine (khamr) was forbidden for itself.

In conclusion, we will correct these three points, with the permission of Allah.

The final conclusion, I thank you for your accurate understanding, and I appreciate your perseverance and your diligence, and I ask Allah to increase your knowledge and understanding ...

Your brother,

Ata Bin Khalil Abu Al-Rashtah

4th Muharram 1442 AH

23/08/2020 CE

The link to the answer from the Ameer's Facebook page:

https://web.facebook.com/HT.AtaabuAlrashtah/posts/2725810314331642?_tn_ =K-R-R