

# Judgment Against An Absent Person In Islamic Jurisprudence

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## **Abstract**

This research dealt with the topic of “judgment on the absent in Islamic jurisprudence”, following the inductive, analytical, and comparative method. The study revealed the great importance that God has attached to the individual and society and that is through the jurisprudence rulings deduced from the legal texts, from which the validity of these rulings for every time and place is shown. The provisions relating to the absence of the Judicial Council are clear evidence of the consistency of Islamic jurisprudence with reality and with the requirements of the individual and society.

The study concluded that the jurists differed in the ruling on the occurrence of the absentee’s judgment on more than one opinion. After considering and thinking about those sayings and opinions, it has been more likely for me to say that it is permissible to Judge the absent, according to the conditions laid down by these scholars.

**Keywords:** Jurisprudence, Absent, Islamic ruling, Judge

## **Introduction**

In the name of God, praise be to God, prayer, and peace be upon the Messenger of Allah, and I bear witness that there is no god but Allah, alone without partner, and I bear witness that our master Muhammad is his servant and Messenger,

The validity of Islamic jurisprudence, including legislation and rulings for every time and place, is one of the most important characteristics that distinguish it from other man-made laws and regulations. This, in turn, reveals the extent of its flexibility, which makes him able to absorb emerging issues and problems that are existed in any society or individual’s life in particular.

Among these legislations and rulings is what is related to the issue of judgment on the absent in

Islamic jurisprudence, which is a topic of great importance, as it relates to the aspect of human rights, especially in the cases and circumstances in which one of the parties to the case is absent. It is commonly known that people wander the earth in search of livelihood, or because of natural disasters, or wars and battles, and they separate from each other, and all of this sometimes leads to the loss of rights.

Thus, we needed to reveal the position of Islamic jurisprudence on the issue of judging the absent, so that the value of these rulings would become clear to us. In turn, it shows us the greatness of Islam, which considers justice one of the highest demands of the human soul, and that the noble Islamic laws’ interest in the matter of justice is the best evidence of this.

### **First: Research Significance**

The significance of this research is represented in the following:

1. Islamic jurisprudence is one of the important legal arts that develop in the student the faculty of deduction and investigation.
2. Carrying out a specialized scientific study through which we reveal the position of Islamic jurisprudence on the issue of judging the absent.
3. There are rights entailed by the individual, whether for him or upon him, especially those who are absent from their homeland, they must be clarified as well as clarify the opinion of Islamic law concerning it.

### **Second: Research problem**

The research problem is represented in the following questions:

1. To what extent does Islamic law concern the individual regarding the judicial rulings?
2. Does Islamic jurisprudence concern with the issue of eliminating the absent?
3. Does Islamic law preserve rights and protect them from abuse, especially in the absence of one of the case parties?
4. Did the jurists address the statement of the rulings related to the issue of judging the absent?

### **Third: Research aims**

1. To clarify the efforts of scholars and jurists among them in particular, regarding the judiciary and the consequent rulings.
2. To detect the sources of Islamic jurisprudence in the aspects related to the legal judiciary.

3. To draft a scientific article on the provisions of judging the absent through the Islamic jurisprudence.

### **Fourth: Research Methodology:**

In this study, the researcher followed more than one approved method to achieve the aims of the research:

1. The inductive approach: is represented in tracing the issues related to the subject from the books of Islamic jurisprudence, and also through the approved books concerned with these issues.
2. The comparative approach: by balancing, comparing, and favoring the opinions of the jurists if possible.
3. The Analytical Approach: it is through looking at the particulars of the subject, coordinating and arranging them, and getting the most correct one as much as possible.

### **Fifth: Previous studies**

There are various studies related to this topic, including:

#### **1- A study entitled "The Judgment of the absent in Islamic Jurisprudence"**

The researcher: Abdel Aziz Ali Suleiman Al-Hati; it is a doctoral thesis submitted to Al-Neelain University in Sudan, in 2008 AD. The researcher expanded on addressing the subject. But this study is based on addressing the issue of judging the absent directly without branching it.

#### **2- A research entitled "The Judgment of the absent in Islamic Jurisprudence"**

The researcher is Dr. Raed Ghalib Ghaeb. This research is presented to the Journal of the College of Islamic Sciences, University of Baghdad, No. 47, 9/29/2016. The researcher has studied the concept of the judiciary, its legality and the limit

of absence, and the rights that entail. As for my study, it expanded on explaining the opinions and trends of the jurists in judging the absent, as well as clarifying the responsibility of the absence if he attends.

### **Eighth: Research plan**

The research is divided into an introduction, three issues, and a conclusion, as follows:

- **Introduction:** It includes the significance of the topic, the study problem, the study's objectives, the researcher's methodology, previous studies, and the detailed plan.
- **The first issue:** is the concept of the judiciary and its legitimacy, which includes:
  - First: Defining the judiciary in terms of language
  - Second: Defining the judiciary idiomatically
  - Third: Evidence for the legality of the judiciary

**The second issue:** Are the concept of absence and the opinions of scholars regarding the judging of the absentee came as follows:

- First: Defining absence in terms of language
- Second: Defining absence idiomatically
- Third: The opinions and attitudes of the jurists in the judgment of the absent

- **The third issue:** the specific period of absence

- **Conclusion:** It contains the most important results.

### **The first issue**

#### **The concept and legitimacy of the judiciary**

### **First: Defining the judiciary in terms of language:**

The scholars are interested in the matter of language and clarifying the meanings of the vocabulary in defining the meaning judiciary in Arabic. They showed that it is derived from the triple verb "judge" It is said that someone is claimed means ask a person to judge him. A man of judgment is a quick in judgment, which is in religion and government. He became a judge; the Sultan made him a judge.

Among the meanings of the judiciary are also judgment and adjudication. It is said: He judged between the two litigants, he judged against him, and he judged for him; thus, he is a judge. God commands, which means compulsion. This is clarified in his truth saying in Al-Quran {Your Lord has ordered you to worship none except Him} [Al-Isra': 23]. It also comes in the sense of informing as in his saying, Glory be to him {And we decreed for the Children of Israel in the Book}[Al-Isra': 4]

It is said: He has fulfilled his need, and he has fulfilled it<sup>(1)</sup>

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<sup>(1)</sup> Al-Fayrouzabadi, Majd Al-Din Abu Taher Muhammad bin Yaqoub (D: 817 AH), the surrounding dictionary. Investigation: Heritage Office at Al-Resala institution. Supervised by: Muhammad Al-Arksusi, Published by: Al-Resala institution, Beirut - Lebanon, 8th edition, 2005 AD, vol. 1, p. 1325

See: Academy of the Arabic language in Cairo, Al-Mu'jam Al-Wasit, Ibrahim Mustafa, Ahmed Al-Z Hamed Abdel-Qader, Muhammad Al-Najjar, published: Dar Al-Da'wah, Volume 2, pg. 724.

### **Second: Defining the judiciary idiomatically:**

Scholars and jurists differed in defining the meaning of the judiciary due to their different religious views, and this difference is represented in terms and expressions without substance. The following are some of these definitions:

1 - The Hanafis defined the judiciary as an obligatory statement that comes from a general mandate. In the language, it has another meaning as if he obliged him to rule and told him with it.<sup>1</sup>

They also said that the judiciary is obligatory, the separation of disputes and conflict resolution<sup>2</sup>

3- The Malikis' definition of the judiciary: Ibn Rushd said that the reality of the judiciary is to inform about a legal ruling as a matter of obligation. Ibn Arafa defined<sup>3</sup> Judiciary as an attribute of judgment, which necessitates the one who describes it to influence its legal ruling, even if by modification or defamation, not in the general interests of Muslims. So, arbitration, the mandate of the police and its sisters, and the Imamate will come out<sup>4</sup>

3- Shafi defined the judiciary as it is the next mandate, the ruling that results from it, or the obligation of the one who is obligated to rule by the Islamic law, so casuistry came out. The holly book, the Sunnah, and consensus are its base.<sup>5</sup>

4- Hanbalis defined the judiciary as it is the clarification of the legal rulings and making them mandatory as well as resolving conflicts. It is a community duty because the affairs of the people cannot be straightened without it, and the Imam must appoint a judge in every province

because he cannot initiate disputes in all countries by himself<sup>6</sup>

### The Chosen definition

It has become clear how the followers of denominations differed in defining the meaning of the judiciary. They do not have the same opinion, but the contemplator of these meanings, despite their differences, finds that they are very close. The definition to which I am inclined is the view of the Malikis, as was stated by Ibn Rushd in what Ibn Farhoun quoted from him by saying: "The reality of the judiciary is to inform about a legal ruling by the way of obligation".<sup>7</sup>

The judge ruled means the truth is committed to its people, and the evidence of that is the Almighty's saying: {And when we decreed (Solomon's) death} [Saba: 14], meaning we have made it obligatory and we have imposed it upon him.<sup>8</sup>

### Third: Evidence for the legality of the judiciary

The judiciary is one of the issues related to the matter of people and all of creation, and almost no society is free of disputes and quarrels. The judiciary's role is to resolve such conflicts so that chaos does not prevail among people. For that, we must stand on a piece of clear legal evidence that shows the opinion of the legislator regarding the judiciary and its legitimacy, and this is mentioned in the Noble Qur'an and the honorable Sunnah, as the following:

#### First: The Holy Qur'an evidence:

God Almighty said in his dear book {But no, by your Lord, they will not believe you until they make you the judge regarding the disagreement

between them, then, they will not find in themselves any discomfort concerning your verdict, and will surrender to you in full submission} [An-Nisa: 65].

In the noble verse, there is a clear indication of the legitimacy of the judiciary, as God Almighty Himself swore in this holy verse: that no one believes until he judges the Messenger, may God bless him and grant him peace, in all matters. So what he has ruled is the truth that must be obeyed, inwardly and outwardly. That is why he said: (then, they will not find in themselves any discomfort concerning your verdict and will surrender to you in full submission) i.e., if they judge you, they obey you inwardly, and they do not find in themselves any embarrassment about what you have judged, and they submit to it outwardly and inwardly, so they submit to that completely without objection or argument (or dispute).<sup>9</sup>

From the evidence is also the saying of God Almighty (And judge among them in accordance to that which Allah has sent down and do not be led by their desires. Take heed lest they should turn you away from a part of that which Allah has sent to you. If they reject your judgment, know that Allah wants to scourge them for some of their sins. Many of the people are wrongdoers.) [Al-Ma'idah: 49].

He means by saying: "And judge among them in accordance to that which Allah has sent down," By the judgment of God that He revealed to you, O Muhammad, in His Mighty Book. (1)<sup>10</sup>

## **Second: Evidence from the Sunnah**

'Amr bin 'Al-'As (May Allah be pleased with him) said:

I heard the Messenger of Allah, peace be upon him saying, "When a judge utilizes his skill of judgment and comes to a right decision, he will have a double reward, but when he uses his judgment and commits a mistake, he will have a single reward."<sup>11</sup>

In this noble Hadith, there is a clear indication of the legitimacy of the judiciary and arbitration between people, as stated in the Sunnah of the Messenger of God, may God's prayers and peace be upon him.

As for his saying: "When a judge utilizes his skill of judgment." The analogy is to say: If he strives, then judge, because judgment is later than jurisprudence. But the meaning of "judgment": if he wants to rule, then he is right. <sup>12</sup>

## **The second issue**

### **The absence's concept and scholars' opinions on judging the absent**

#### **First: The definition of absence in language terms:**

Absence is derived from the participle noun "miss" learn by heart, and absenteeism. It is unlike witness and attended. Someone is absent, meaning go far. Someone is absent from his country, that is: he traveled. The sun has set means it is hidden from the eye. Does the thing in the thing mean to hide in it? It is said: that the matter is absent from him, meaning: it is hidden

<sup>13</sup>

#### **Second: Defining absence idiomatically**

The scholars use many intended expression to define the meaning of the absent, but they have the same meaning. Then, the absentee is the defendant who refuses to attend the judgment session at the time of pleading because of his absence. Then, it is permissible for the judge to

rule him, because he was not able to attend and be asked by the judge.

### **Third: Opinions and Attitudes of Jurists in judging the absent**

The jurists differed in many sub-issues in which it is necessary to state the opinion of the Islamic law. Their difference was nothing but an increase in knowledge and piety because the clarified issue is related to the legal ruling that results in the actions of the attendants. Judgment on the absent, who did not attend the judicial council whether he was excused or not, is among the various topics that the jurists have expanded on and deduced their ruling from the legal texts.

This is one of the issues in the principles of jurisprudence among people, which needs to be studied and researched by jurists, and I will explain the scholars' point of view on this issue as follows:

**First:** Those who forbid and prevent the occurrence of judging the absent and their proof of that is the following:

Those who hold this view believe that it is not permissible for the judge to rule on one party of the parties of the case, who is the defendant until he attends the Judicial Council. So, the judge can hear his statements to defend himself with the evidence and argument he possesses or to send someone to represent him in the event of his absence for some circumstance.

Hanafis believed in this; they see that a court of judgment in which the case is not heard except before the judge, just as the testimony is not heard except in front of him, including the presence of the opponent, so the claim and the evidence is not heard except against a present opponent unless the plaintiff requests a written judgment letter for the ruling, the judge answers it to him, and he writes to the judge who is absent in his country of

what he heard of the lawsuit and testimony in order to judge him.<sup>14</sup>

This is what Imam al-Zayla'i al-Hanafi - may God have mercy on him - stipulated when he said: "A person who is absent is not judged unless someone who takes his place, such as an agent and a trustee, is present, or what he claims against the absentee will be a reason for what he claims against the present, like someone who claims that he bought it from someone who is absent."<sup>15</sup>

This is what Shurayh al-Qadi said, and it is also narrated on the authority of Imam Ahmad - may God have mercy on them all.<sup>16</sup> Moreover, this is what Ibn al-Majishun said.<sup>17</sup>

### **Evidence of this approach's followers**

- 1- The scholars stated that it is not permissible to judge one of the two opponents before hearing the words of the other. Judging the claimant during the defendant absence, judging one of the two opponents before hearing his words was forbidden. Because the judge is commanded to judge the truth, God Almighty said 'David, We have made you a caliph in Earth. Judge with justice among people and do not yield to your own preference in case it should lead you from the Path of Allah. Surely, a terrible punishment awaits those who stray from the Path of Allah, because they forget the Day of Reckoning. {SAD: 26} [\[1\]](#)
- 2- What was reported on the authority of Ali - may God be pleased with him - that he said: The Prophet - may God's prayers and peace be upon him - sent me to Yemen as a judge, and I said: You will send me to a people when I am young and I have no knowledge of the judiciary? He placed his hand on my chest and said: "God has established you, if the two opponents come to you, do not judge for the



first until you hear from the other, this makes the judgment more appropriate.<sup>18</sup>

What is understood from the noble Hadith is that he - may God's prayers and peace be upon him - commanded Ali, may God be pleased with him, not to judge between two people in a dispute until he hears from them both, since it is not permissible for the one who is in charge of the judiciary to judge between people without fulfilling that condition.

Among the evidence to which the Hanafis and those who followed their approach regarding the inadmissibility of ruling on the absent are: Umm Salamah (May Allah be pleased with her) reported: Messenger of Allah peace be upon him said, "Verily, I am only a human and the claimants bring to me (their disputes); perhaps some of them are more eloquent than others. I judge according to what I hear from them). So, he whom I, by my judgment, (give the undue share) out of the right of a Muslim, I, give him a portion of (Hell) Fire".<sup>19</sup>

Among the things that can be deduced from the noble Hadith: that the Prophet - may God's prayers and peace be upon him - when he said: "I judge according to what I hear from them" is evidence that whoever is in charge of the judiciary in a matter that he must hear from the two disputing parties. The judiciary for the absent is contrary to the fact that one of the parties to the case does not have a presence in the Judicial Council.

**Second:** Those who say that it is permissible to judge the absent, and their evidence for that is as the following:

A society is hardly devoid of disputes and rivalries among people, so if one of them claims a right over another and this third party is absent, or in hiding, or refraining from attending the judicial council, then those who hold this view say that it is permissible for the judge to rule on this absent person if the conditions arising from the case are fulfilled.

This is the view of the Malikis<sup>20</sup>, Shafi'is<sup>21</sup> and Hanbalis<sup>22</sup> in one of the two narrations about them, and with it, Ibn Hazm Al-Zahiri said as he stated in his book Al-Muhalla.<sup>23</sup>

The proponents of this approach have justified that the correctness of what they said is that the matter in that is due to the conditions and circumstances surrounding the case and is not judging the absence for his release and also the acceptance of the ruling on him depends on the availability of the necessary conditions. If a man claims that he is absent from the ruling council entitled to a claim, and if there is no evidence with the claimant for what he claimed, the ruler will not hear his claim because there is no benefit in hearing it, and if he had evidence of what he claimed, he looked at the defendant. If he is absent from the country, the ruler must hear the case against him as well as the evidence. Likewise, if the defendant attended the judicial council, then he denied it, and when the plaintiff wanted to establish evidence against him, the defendant stood up and fled, the judge should hear the evidence against him. If the plaintiff is present in the country, absent from the ruling council, and not abstaining from attending, then it is not permissible to hear the case and the evidence without his presence, and this is what the Shafi'is followed as well as those who agree with them.<sup>24</sup>

### Evidence of this approach's followers

The followers of this approach said that it is permissible to judge the absent, referring to many legal evidence as the following:

- 1- Hind (bint `Utba) said to the Prophet (peace be upon him) "Abu Sufyan is a miserly man and I need to take some money of his wealth." The Prophet (peace be upon him) said, "Take reasonably what is sufficient for you and your children "<sup>25</sup>

Those who said that it is permissible to judge the absent supported their opinion based on this noble Hadith. They used what the Prophet, may God bless him and grant him peace, did with Hind bint `Utba as evidence, where it was declared to her that it is permissible to take money from her husband, and she was ruled to do so if her husband was absent from the council in which the ruling was made. They considered this act of him, may God's prayers and peace be upon him, explicit evidence for the adherents of this direction to be victorious over, in what they went to by saying that it is permissible to judge the one who is absent from the Judicial Council.

What makes the matter more clear is that Imam al-Bukhari - may God have mercy on him - placed the hadith in a chapter called "Judgment against an absent person." The jurisprudence of Al-Bukhari in his work is considered one of the aspects of the significance deduced from the noble hadith, to confirm by his action the statement that it is permissible to judge the absent.

But despite this reasoning, we find some scholars who do not accept it, such as Imam al-Aini - may God have mercy on him. When explaining this hadith, he said: "There is no correspondence

between the translation and the hadith of the chapter, because there is no ruling in it on the absent, because Abu Sufyan was present in the country. Also, the hadith is a question and an answer, not a ruling, because the ruling has conditions."<sup>26</sup>

Among those who objected to this inference deduced from the hadith is Imam al-Nawawi, when he explained the hadith, he said: "It is not correct to infer this hadith for the issue, because this case was in Mecca, and Abu Sufyan was present there, and the condition for judging the absent is that he should be absent from the country or hidden, impossible to attend, and this condition did not exist in Abu Sufyan, so there is no judgment on absent, rather it is a fatwa"<sup>27</sup>

They also cited the hadith Narrated by Anas bin Malik: Some people from the tribes of `Ukl and `Uraina came to Allah's Messenger (peace be upon him) and embraced Islam and said, "O Allah's Messenger (peace be upon him)! We are owners of livestock and have never been farmers," and they found the climate of Medina unsuitable for them. So Allah's Messenger (peace be upon him) ordered that they be given some camels and a shepherd, and ordered them to go out with those camels and drink their milk and urine. So they set out, but when they reached a place called Al-Harra, they reverted to disbelief after their conversion to Islam, killed the shepherd, and drove away the camels. When this news reached the Prophet (peace be upon him) he sent in their pursuit (and they were caught and brought). The Prophet (peace be upon him) ordered that their eyes be branded with heated iron bars and their hands are cut off, and they were left at Al-Harra till they died in that state."<sup>28</sup> The connotation deduced from the aforementioned noble hadith is represented in the action of the Prophet - may God's prayers and



peace be upon him - when he judged them in their absence, as he sent their request, and appending the appropriate sentence that is consistent with the crime they committed.

This was confirmed by Imam Ibn Hazm - may God have mercy on him - when he said: "it was authentically reported from the Messenger of God - may God's prayers and peace be upon him - the judgment on the absent, as it was judged on the Arabs who killed the shepherds. Their eyes were closed and they fled, so he followed them - while they were hidden - until they were caught, and he took revenge on them."<sup>29</sup>

- 2- Among the evidence is also what was reported from a group of the Companions in the Sahih about them, Ibn Hazm said in the context of his response to the Hanafis: "The Sahih on the authority of Umar and Othman - may God be pleased with them - is their statement of the judgment of the absent that if the truth was true before it - and it is not true of any of the Companions to the contrary."

God Almighty says: "Stand out firmly for justice, as witnesses to Allâh" { An-Nisâ, 135 }; the Almighty did not specify the present from the absent. This is also what is mentioned in the Almighty's saying: (give your witnessing before Allah)" { AT-TALAQ, 2 }. The Almighty did not specify the present from the absent, so it is correct to judge the absent as it is on the present.<sup>30</sup>

Some scholars wondered how the judge would do with someone who attended among the people of justice who testified with him that a person, who was absent from the Judicial Council, had killed another person intentionally or by mistake, or he took land illegally, Or he divorced his wife three times. So he does not pay attention to all of that and remains in his possession the forbidden money and he didn't judge him because of his

absence, so this is from cooperating in sin and transgression.<sup>31</sup>

### **The preference between the two approaches**

After considering, studying, and standing on the opinions of scholars on the issue of judging the absent from the judiciary council at the time of pleading, it was found that the issue is based in two directions. The followers of the first direction went on to say that it is not permissible to judge the absent, while the followers of the second direction went on to say that it is permissible to judge the absent with specific conditions, such as if the opponent can't be present at the time of the session.

What I am inclined to from among these two schools of thought is the second opinion, which is the permissibility of judging the absent based on the conditions mentioned by the specialists because of many reasons represented in the following:

- 1- The Hanafis and those who agreed with them in saying that it is not permissible to judge on the absent have contradicted their statements. On the one hand, they have permitted the ruling for a divorced woman that maintenance is required for her from her absent husband. They also went on to say that it is permissible to judge the absent. This is an apparent contradiction from them, and it does not necessitate that it be evidence of the non-acceptability of judging the absent.
- 2- The authentic hadith that was mentioned in the story of Hind bint Utbah when the Prophet - may God's prayers and peace be upon him - decided for her to take from her husband's money despite his absence when the ruling was made. This evidence is clear, although it was rejected

by those who claimed that it is not permissible to pass judgment on the absent because Abu Sufyan did not meet the conditions required for absence considered by the scholars. However, Ibn Hajar said: "What appears to me is that Al-Bukhari did not intend that Hind's story was a decree against Abu Sufyan while he was absent. In the assembly and authorized her to take from his money without his permission as much as it is sufficient, this was a kind of judiciary on the absent, so whoever prevented him needs to answer this »<sup>32</sup>

With this, Ibn Hajar responds to those who refused to consider the hadith as evidence in judging the absence, because Abu Sufyan did not fulfill the conditions of absence. For this reason, al-Bukhari was aware of this matter and he declared the title of the chapter, where he called it "judging on the absent."

- 3- The conditions of people today in which such issues abound, due to their moving from their country to another country for work, or something else. Also, the outbreak of wars and conflicts often leads to the absence of people from each other, despite the existence of conflict between them, which makes the ruling on this issue consistent with reality and with the purposes of Islamic law, which is based on the preservation of people's rights. Therefore, it was necessary to make a judgment on the absentee if the conditions set by the scholars are met.
- 4- The evidence presented by the one who permitted the judgment on the absent is more correct and reliable, and it is also sounder in terms of the absence of opposition between them.

## The third issue

### The specific period of absence

The principle in litigation is the presence of both parties to the case before the Judicial Council and their submission before the judge to defend themselves and give them enough opportunity to achieve this. However, in some cases of the judiciary, one of the parties to the case may be absent from attending the judicial council, and this absentee is either within the country in which the judicial council is located, or outside it as if he is traveling to another country far from this judicial council.

If one of the parties to the case was absent from the Judicial Council in the same country, the judge sent him to attend by notification, and in this case, he must attend and answer the judge or send someone to represent him by way of power of attorney, and he is obliged to attend the litigation session, otherwise, he will be judged by the plaintiff's evidence. But, if this absent "defendant" is outside the country in which the court is located, and he cannot attend the session, then the jurists, in this case, have statements and opinions that must be clarified and examined, especially concerning the period for which he is considered in sentencing this absentee.

**The first opinion:** The Maliki held that the ruling on the absence is in three categories:

- **The first section:** The near absentee: It is near absence over the day, two days, and three days. This is written to him and he is excused for every right, either he entrusted him, or he came, and if he did not do it, a judgment was passed on him in the debt and his money from the original and others was sold on him. In the entitlement of honors, animals, assets, and all things of divorce, manumission, and so on, he was not cited

as an argument for any of that because there is no excuse for him.<sup>33</sup>

- The second section: The moderate absentee: It is on the journey of ten days and the like, this is judged except maturity in the quarter and assets of debts, animals, and offers, and it is hoped that he will argue with that.
- The third section: The distant absentee, interrupted absence, such as the distance between Mecca and Africa, and Medina, Andalusia, and Khorasan. This is to be judged in everything from debts, animals, honors, profits, and assets, and it is hoped that he will have the evidence for that.<sup>34</sup>
- **The second opinion:** What the Shafi held, and they have two opinions on the matter: they can be summarized as follows:
  - **The first saying:** absent is defined for them by the distance of infection, and this has been confirmed by more than one of their scholars, so it is more correct for the judge to define absent from the distance of infection only. It is the distance from which he returns early to his place at night so that if he leaves his house in the morning he can return to it at night. .<sup>35</sup>  
This does not cause hardship for him.
  - The second saying: the absent who is heard evidence and judged from a distance.

It is the distance from which he does not return early to his place at night and this distance are called the shortening distance. So, his evidence is not heard, and he is judged without his presence.<sup>36</sup>

The third opinion: The duration of the absence is determined by the distance of shortening the prayer:

This is what the Hanbalis said, so the principle according to them is that if he claims against a present person, the evidence will not be heard until he attends, because his saying can be heard, and he did not judge before hearing it, like the presence of the assembly, and absent is considered to be a shortening distance; Because it is absent on which judgments are built. If the opponent in the country refuses to attend the judge, and it is not possible to do so, then he will be judged. So, if he had not been judged, he would make abstinence and concealment a way of wasting rights, and his judgment would be the rule of the absent.<sup>37</sup>

But if he is absent from the assembly, or the country, without shortening the distance, which is not impossible, neither the case nor the evidence is heard until he attends. As a present in the assembly, if he refuses to attend, he did not attack him in his home, and the evidence was heard and a judgment was passed.<sup>38</sup> So, he may not be judged with the possibility of his presence.

### The preference

What I am inclined to in this issue is to take the view held by the Hanbalis regarding the limitation of absence by shortening the distance. This is because shortening causes hardship and embarrassment, and with it, there is an excuse for some legal rulings. Also, because the Malikis made a distinction between absence, which is related to the appeal in issues of divorce and lineage, and the case in matters of trade, this is a distinction whose validity is not clear to me.

### Conclusion

The most important findings are represented in the following:

1. The reality of the judiciary is to inform about a legal ruling by way of obligation.
2. The judiciary is a legitimate matter, and its legitimacy is in the Noble Qur'an, the honorable Sunnah, and consensus, as well as in the frankly reasonable.
3. The jurists differed in the ruling on the occurrence of the judiciary in the absence of more than one opinion and opinion.
4. It was more likely for me to say that it is permissible to judge the absent, according to the conditions set by the jurists.
5. The movement of people in countries has become more than it was before, given the circumstances related to work or the frequent outbreak of wars and natural disasters, and this requires taking the issue of judging the absent into consideration for necessity.
6. There is a specific period that the jurists said to consider the occurrence of the absentee's judgment, during which it is determined how he is considered absent from the Judicial Council.