

بسم الله الرحمن الرحيم

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

Answer to a Question

### **The *Qa'ida Shari'ah* (principle)**

**The 'Illah (legal reason) revolves with the cause, whether it is present or not**

**To: Rafiq Ahmad Abu Jaafar**

(Translated)

#### **Question:**

**Assalamu Alaykom Wa Rahmatullah Wa Barakatuhu, may Allah bless your efforts and reward you with goodness...**

Our respected Shaykh, I would like to ask about the Shari'ah principle:

"The 'Illah revolves around the cause, whether it is present or not..." the question is: "He (saw) was asked about the permissibility of selling the ripe dates (*ruTab*) for dried dates (*tamr*), the Prophet (saw) said: هَلْ يَنْقُصُ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: هَلْ يَنْقُصُ قَالَ: نَعَمْ، فَقَالَ: فَلَا إِذَنْ «*Do ruTab decrease (become lighter) when they dry?*» They said: yes. He (saw) said: **"then no."** Now if we know the exact amount of shortfall and replaced it, is it permissible to sell it? In other words, if the ripe dates (*ruTab*) weighed one kilo, and when it turns into dried dates (*tamr*) it becomes 900 grams, may we sell 900 grams of dried dates for the price of one kilo of ripe dates? If the answer is no, what is the benefit of in saying that the 'Illah lies in diminution?

#### **Answer:**

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuhu,

In your question, you are referring to what was mentioned in "*The Islamic Personality* Volume 3" under "The Evidences of the 'Illah", and here, I pass on to you what was mentioned in the book in relation to your question:

"As for the 'illah that the evidence proves it by denotation which is called simulation and gesture, and that is of two divisions:

The first: when the verdict is focused on an indicative description (وصف مفهم)...

The second division: when the reasoning is necessitated by the meaning of the expression by its composition not by its construction and this is of five kinds:

First:....

Second:...

Third: If the Legislator mentions together with the verdict a description that if it is not supposed to be for the reasoning it is meaningless to mention it, and the rank of the Legislator is far above that, and usually all that is mentioned of the Shari'ah texts have a legislative consideration. Therefore this description is considered to be an 'illah, and the text is reasoned, that is if the talk is an answer to the question, whether the description came in the place of the question, or that the clarification of the verdict came deviated from the place of the question to something similar to the place of the question. And that is as it was narrated that: هَلْ يَنْقُصُ الرُّطْبُ إِذَا يَبَسَ؟ فَقَالُوا: نَعَمْ، فَقَالَ: فَلَا إِذَنْ «*Do ruTab decrease (become lighter) when they dry?*» They said: yes. He (saw) said: **"then no."** (compiled by al-Dāraqutni). **Thus the association of the verdict to the decrease description in their answer that the *ruTab* decrease when they dry is not**

**uselessly [in vain], but it is inevitable to have a significance. And the association of the answer of the Messenger to the particle *faa'* (ف) in his saying: “فلا إذن” “then no”, and it is one of the reasoning forms, this association denotes that the decrease is an ‘illah for the forbiddance of selling the *rutab* for dates, it came from relating the verdict to the description by the particle *faa'*, and its association with the particle “إذن” “*izthan*” which means: in that case, therefore, consequently, accordingly, hence, etc., in this example description came in the place of the question.** The example of the case where the description is not in the place of the question, as when he (saw) clarifies the verdict he deviates from the place of the question to mentioning a similarity to it, as it is narrated that when the woman al-Khath’amiyah asked him (saw) saying: O Messenger of Allah, my father died, and he didn’t perform the Hajj obligation, if I perform it on his behalf would that be beneficial to him? He (saw) said: «أَرَأَيْتَ لَوْ كَانَ عَلَى أَبِيكَ دَيْنٌ أَكُنْتَ قَاضِيَتَهُ؟ قَالَتْ: نَعَمْ. قَالَ: “فَدَيْنُ اللَّهِ أَحَقُّ بِالْقَضَاءِ» “You see if your father had a loan to pay, would you pay it off for him? She said: yes, he said then the loan of Allah is worthier to be paid.” Ibn Qudaama mentioned it in al-Mughni, the Khath’amiyah asked about the Hajj, and the Prophet (saw) mentioned to her the human debt, so he mentioned to her a similarity of what she asked him about, but he mentioned it making the verdict she asked him about it dependent on it, so the verdict got association of the verdict with a description, which is the debt could never be useless [in vain] but it is inevitable to be for a significance. And since the Messenger (saw) mentioned this description and made the verdict dependent on it, it denotes the reasoning by it, or otherwise mentioning it would be useless.” **End.**

As you can see, this text included the answer to your question in which you said: “If the answer is no, what is the benefit of saying that the ‘Illah lies in diminution?”... Research has shown the benefit of the decrease of ripe dates if they became dried, in the following: **(so the association of the verdict to the decrease description in their answer that the *ruTab* decrease when they dry is not useless, but it is inevitable to have a significance. And the association of the answer of the Messenger to the particle *faa'* (ف) in his saying: “فلا إذن” “then no”, and it is one of the reasoning forms, this association denotes that the decrease is an ‘illah for the forbiddance of selling the *ruTab* for dates, it came from relating the verdict to the description by the particle *faa'*, and its association with the particle “إذن” “*izthan*” which means: in that case, therefore, consequently, accordingly, hence, etc., in this example description came in the place of the question.** So the benefit here is the existence of the ‘Illah, i.e. mentioning the decrease is what indicates the ‘Illah of not selling the ripe dates with dried dates, therefore, it is not befitting for you to ask: “what is the benefit of saying that the ‘Illah lies in the decrease”! This question is a misnomer. Rather, it is as stated in the research, what is the benefit of mentioning the decrease. The conjunction of the provision with the description of the decrease is the one that must be of benefit, namely, that the decrease is a reason to refrain from selling ripe dates by dried dates, otherwise, there would be no benefit in mentioning the decrease... its benefit is the indication of the ‘Illah of abstaining from selling the dates... The Messenger of Allah (saw) was asked about the permissibility of selling the ripe dates (*ruTab*) for dried dates (*tamr*), the Prophet (saw) asked the questioner: do *ruTab* decrease (become lighter) when they dry? When they answered with the affirmative, he (saw) said: “then no”.

As for why it is not correct to make up for the shortfall, as is stated in your question: "If we know the exact amount of shortfall and replaced it, is it permissible to sell it?" In other words, you buy 1lb of ripe dates in conjunction with a pound of dried dates, and then take an increase on the pound of ripe dates, as much as the amount of difference in weight between it and the pound of dried dates, for example, when the pound of ripe dates become dry and thus decrease by 100 grams and you wanted to give a pound of (dried) dates in exchange of a pound of ripe dates with added 100 grams for example... This is not permissible in *riba*-based categories. If you exchange it with the same kind, it is not permissible to take the so-called “*arsh*” (money), ie, on the difference in quality or the difference in characteristics between the two categories of the same kind. This is not permissible in *riba*-based

categories. You should sell the dried dates with a specific price, then buy with this amount ripe dates, the evidence for this is:

أخرج البخاري في صحيحه عن يحيى قال سمعت عُقْبَةَ بْنَ عَبْدِ الْغَافِرِ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ رَضِيَ اللَّهُ عَنْهُ قَالَ: «جَاءَ بِلَالٌ إِلَى النَّبِيِّ ﷺ بِتَمَرٍ بَرْنِي فَقَالَ لَهُ النَّبِيُّ ﷺ مِنْ أَيْنَ هَذَا قَالَ بِلَالٌ كَانَ عِنْدَنَا تَمَرٌ رَدِيٍّ فَبِعْتُ مِنْهُ صَاعَيْنِ بِصَاعٍ لِنُطْعِمَ النَّبِيَّ ﷺ فَقَالَ النَّبِيُّ ﷺ عِنْدَ ذَلِكَ أَوْهٌ أَوْهٌ عَيْنُ الرَّبَا عَيْنُ الرَّبَا لَا تَفْعَلْ وَلَكِنْ إِذَا أَرَدْتَ أَنْ تَشْتَرِيَ فَبِعِ التَّمَرَ بِبَيْعٍ آخَرَ ثُمَّ اشْتَرِهِ» وأخرجه مسلم كذلك.

Al-Bukhari transmitted in his Sahih that Yahya said: I heard 'Uqbah bin Abdul-Ghafir, that he heard Abu Sa'id Al-Khudari (raa) say:

«جَاءَ بِلَالٌ إِلَى النَّبِيِّ ﷺ بِتَمَرٍ بَرْنِي فَقَالَ لَهُ النَّبِيُّ ﷺ مِنْ أَيْنَ هَذَا قَالَ بِلَالٌ كَانَ عِنْدَنَا تَمَرٌ رَدِيٍّ فَبِعْتُ مِنْهُ صَاعَيْنِ بِصَاعٍ لِنُطْعِمَ النَّبِيَّ ﷺ فَقَالَ النَّبِيُّ ﷺ عِنْدَ ذَلِكَ أَوْهٌ أَوْهٌ عَيْنُ الرَّبَا عَيْنُ الرَّبَا لَا تَفْعَلْ وَلَكِنْ إِذَا أَرَدْتَ أَنْ تَشْتَرِيَ فَبِعِ التَّمَرَ بِبَيْعٍ آخَرَ ثُمَّ اشْتَرِهِ»

“Bilal (Allah be pleased with him) came with fine quality of dates. Allah's Messenger (may peace be upon him) said to him: From where (you have brought them)? Bilal said: We had inferior quality of dates and I exchanged two sa'a (of inferior quality) with one sa' (of fine quality) as food for Allah's Apostle (may peace be upon him), whereupon Allah's Messenger (may peace be upon him) said: Woe! Woe! It is in fact usury; therefore, don't do that. But when you intend to buy dates (of superior quality), sell (the inferior quality) in a separate bargain and then buy (the superior quality).” (On the authority of Muslim).

**In conclusion, the benefit of mentioning the decrease is to indicate the 'Illah of abstaining from selling dried dates with ripe dates, because the ripe decreases when it becomes dry... as for the impermissibility of paying the difference or “arsh”, this is because you cannot take the difference in riba-based categories.**

I hope that this was clear, and Allah knows best and is Most Wise.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

06 Jumada Al-Akhir 1439 AH

22/2/2018 CE

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

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/775342982662775/?type=3&theater>

**The link to the answer from the Ameer's page on Google Plus:**

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/Yi4pXDhVb6u>

**The link to the answer from the Ameer's page on Twitter:**

<https://twitter.com/ataabualrashtah/status/968585711933935616>