

Lessons From al-Hajjawi's Classic Manual Of Hanbali Fiqh

Zad al-Mustaqni`

These pages are part of a series of lessons from al-Hajjawi's classic manual of Hanbali fiqh, with notes taken from al-Buhuti's commentary *al-Raud al-Murbi`* and other sources. Questions concerning these lessons to hanbali@yahogroups.com will, in sha Allah, will be answered on the Hanbali list (<http://groups.yahoo.com/group/hanbali>).

These lessons have undergone a dramatic change in format. Something noticeable without opening the file is that format is Adobe PDF instead of HTML. This, in sha Allah, frees me of the hassles of worrying about HTML formatting and various incompatibilities, as well as giving more control over format and transliteration. Once the file is opened, one of the more noticeable changes is the lack of Arabic. But the most striking change is the notation format.

The basic text from *Zad al-Mustaqni`* is the default, plain text. The text that is indented,

like this this this and this and all of this and wouldn't you say this and that quick
brown fox who just jumped out the window chasing the yellow dog

are comments. Unless stated otherwise, the comments are from al-Buyuti's *al-Raud al-Murbi`*. Other comments tend to be marked with (musa: ...) unless it is absolutely obvious. I have added marginalia: marginalia on the left are the things one is likely to need quick access to while reading the lessons; those on the right are for oddities, such as ruling mentioned in one place that should have been mentioned elsewhere or must be cross-referenced.

This drastic change, in sha Allah, makes it easier to read the basic text and just the basic text. It is sometimes repetitive, but I have done what I can to reduce this when possible. Another benefit with this format is that I can take more liberties when adding comments since I am less bound by the original structure and word order. The major drawback is that in blocks of commentary it is not always easy to differentiate the basic text from the commentary.

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I JIHAD AND NON-MUSLIM CITIZENS

(1.0)JIHAD

[The word 'jihad' is the gerund of *jahad*. Its meaning in the linguistic sense is: to exceed in killing one's enemies. Its meaning in the legal sense is: fighting non-Muslims.

(musa: Note the difference heres: killing/ one's enemy, versus fighting / non-Muslims. Death is the goal and result of the first, while it is neither in the second. It is important that we understand the traditional definitions and concepts so we can be conscious of the attempts to “modernize,” “re-formulate,” or if you will: “recycle,” Islam.)]

(i.0.1)When and how it is obligatory

It is a group obligation. It is obligatory when one is present at the scene, an enemy is present in his land, or the Imam calls out to go to war.

[It is a group obligation. If enough come forward to fulfill the needs, the obligation falls from the rest; if not, they all sin. It becomes a stressed sunna [*sunna mu'akkada*] when a sufficient number fulfills the need.

Doing it is the best of all voluntary actions, followed by funding it.

It is obligatory when:

- (1) one is present at the scene
- (2) an enemy is present in his land
- (3) he is needed
- (4) or the Imam calls out to go to war one has no excuse not to comply.]

(i.0.1)When

A complete *ribat* is 40 days. If both of his parents are Muslims he does not voluntarily make jihad without the permission of them both.

[A complete *ribat* is for 40 days. *Ribat* is manning a post for jihad, in order to strengthen/ defend the Muslims. The shortest duration is one hour. The most superior *ribat* is the most dangerous. If it offensive to move one's family where there is danger.

If on or both of his parents are free Muslims, he does not voluntarily make jihad without the permission from them both. Their permission is not considered for obligatory jihad, nor is the permission of a grandfather and grandmother. One may not volunteer for jihad while owing something to another human being that he cannot fulfill, unless he receives permission, puts up secured collateral, or secures a wealthy guarantor.]

(i.0.3)The Imam and following him

The Imam inspects his army when setting out. He turns back deserters and rumor-spreaders. He may give rewards in its beginning amounting to one-quarter after the fifth, and when returning of one third after the fifth.

The army is obliged to obey him and be patient with him. It is not permissible to campaign except with by permission - unless the enemy surprises them and they fear their rage.

[The Imam must inspect his army when setting out. He turns back

- (1) anyone unfit for fighting, including men and horses,
- (2) deserters and rumor-spreaders,
- (3) anyone who reports our news or spreads dissension among us.

He may give rewards that of up to one quarter after the fifth of the spoil upon entering the enemy lands, and up to one third when returning. The remaining spoils are distributed among the army.

The army is obliged to obey the Imam, to advise him, and be patient with him. It is not permissible to forage or gather wood without his permission, nor to campaign unless the enemy surprises them and fear their rage.

It is permissible to attack non-Muslims at night, to use catapults against them even if a child or the like is unintentionally killed.

It is not permissible to kill:

- immature males
- women
- hermaphrodites
- monks
- old, decrepit men
- the blind

who have no interest in fighting, have not fought, and do not incite others to fight.

(*Ghayat al-Muntaha*: And [Ibn Qudama writes] in *al-Mughni*: “and slaves and farmers”. And if they [the above] are used as a human shield, they are fired upon with the intention of hitting the combatants. This is not done if they use Muslims as a shield, unless we fear for ourselves, and in that case one aims for the non-Muslims, and a Muslim is killed only a *kaffarah* is needed.

A non-Muslim woman is fired upon if she insults the Muslims, or exposes her nakedness to them – in which case it is permissible to gaze at her private parts in order to aim. The same applies to those who collect arrows for them [so their archers can fire upon us], and bring them water. During battle, a Muslim may kill someone such as his father or son.

It is obligatory – in *al-Iqna`*: permissible – to destroy their books [of revelation] that have changed.

It is offensive to [cut off and] transport a head or launch it from a catapult unless there is benefit in doing so, and it is unlawful to accept from them money as ransom for the head; It is unlawful to torture and to mutilate them, even if they mutilate us. (*Ghayat al-Muntaha*, 1:448))

The people mentioned above are slaves if they are captured.

A captive is judged a Muslim if he is immature and captured alone or with one of his parents, or if one of the parents of an immature captive entered Islam or died in our lands. The case of immature captives applies to someone who reached maturity while insane.

(*Dalil al-Tilib*: Immature children of non-Muslims are judged to be Muslim when one of three things is present: (1) one of the parents enters Islam, (2) one of the parents having been executed within Dar al-Islam, (3) his being captured by a Muslim, without his parents. (via *Nail al-Ma'arib*, 1:322-23))]

(i.0.4) Booty

Booty [*ghanima*] is owned through it being confiscated within Dar al-Harb. Booty belongs to whoever participated in the battle who is from the people of fighting. The fifth is extracted, and then the rest of the booty is divided. Foot soldiers get one share, and cavalry three: one for himself and two for his horse. Scout parties share in it in what the army looted, and the army shares in what the scouts looted. [When] someone pilfers from the booty, all of his baggage is burned except for his weapons, Qur'an, and anything alive.

[Booty is owned through confiscation in Dar al-Harb. Booty [*ghanima*] is what was forcibly taken from a combatant by means of fighting. Booty belongs to whoever participated in the battle who is from the people of fighting whether or not they fought.

The fifth is extracted after taking out the *salb* [someone who kills one of the enemy is entitled to his personal belongings] for those who killed [the enemy during battle] and wages, and then the rest of the booty is divided.

(musa: As for this fifth, it itself is divided into five shares. The first share is for Allah and His Messenger (Allah bless him and give him peace), which is used for the general welfare of the Muslims, the same as *fay* (see below). The second share is for Banu Hashim and Banu Mutallab [Dhawi l-Qurba], each and every one; males receive a portion twice that of females. The third share is for poor orphans; an orphan is anyone who has no father and is still immature. The fourth share is for the needy, each and every one. The fifth and final share is for wayfarers (see _ in Zakat) (based on *Nail al-Ma'arib*, 1:324-25)).

Salb	
"The Fifth"	
1	1. Allah and His Messenger (Allah bless him and give him peace)
	2. Banu Hashim and Banu l-Muttalib
	3. Poor orphans
	4. The Needy
	5. Wayfarers
<= 1/4	Rewards, upon entering (optional)
<= 1/3	Rewards, upon exiting (optional)
2	For the army
3	
4	
5	
5	
Ghanima Distribution In A Nutshell	

Foot soldiers – even non-Muslim - get one share. Cavalry get up to three: one for himself, and two for his horse if it is an Arabian or one if it is not. (musa: the shares for cavalry is specific to horses. No additional share is given for camels and elephants.) Scout parties share in what the army looted, and the army shares in what the scouts looted.

If someone pilfers from the booty, all of his baggage must be burned except for his weapons, Qur'an, and anything alive.]

(*Nail al-Ma'arib*: It is offensive to veil one's face from the nose down [*talathum*] while fighting. There is no harm in wearing something distinctive, like an ostrich feather, especially if one is brave. (*Ghayat al-Muntaha*, 1:458; *Kashf al-Mukhaddarat*, 1:347; *Nail al-Ma'arib*, 2:324. *Nail al-Ma'arib* and some prints of *Ghayat al-Muntaha* have "wear a turban", but it appears to be a mistake, as verified in other books.)

(i.0.5)Land

If Muslims take possession of land through fighting, the Imam chooses between dividing it, making it an endowment for the Muslims, and imposing an eternal tariff taken from whoever possesses it. The final authority for the tariff and *jizya* is the Imam's *ijtihad*. Whoever is incapable of developing land is forced to rent it out or relinquish ownership. This land can be inherited.

The following are *fay* for the Muslims: property taken from a polytheist, like the *jizya*, the tax of one tenth; what they leave out of panic; and the fifth of a fifth of the booty. It is used for the general welfare of the Muslims.

[If Muslims take possession of and through force [lit., though the sword], the Imam chooses between

- (1) dividing it
- (2) making it an endowment for the Muslims
- (3) and imposing an eternal tariff [*khuraj*] taken from whoever possesses the land, whether a Muslim or non-Muslim subject. This tariff is yearly rent for the land.

The final authority for the amount of the tariff and *jizya* is the Imam's *ijtihad*.

Whoever is incapable of developing the land on which such a tariff is imposed is forced to rent out the land or relinquish his ownership. Ownership of this this land can be passed through inheritance.

Fay -
property
taken from
polytheists

The following are *fay* for the Muslims:

- (1) Property taken by right or without fighting from a polytheist (meaning: a non-Muslim), such as the *jizya*, the tax of one tenth imposed on non-Muslims
- (2) What they leave behind when they flee out of panic
- (3) The fifth of a fifth portion from the booty (musa: the portion for Allah Most High and His Messenger (Allah bless him and give him peace)

This *fay* is use for the general welfare of the Muslims - not just those who fought – in order of importance, for things like building dams, ta`zil nahr, building aqueducts, and wages – such as judges. Whatever remains is divided between the Muslims, rich and poor.

(musa: In short, it funds infrastructure. Many books list manning defenses as the most important.)

(*Nail al-Ma'arib* adds that the one tenth tax imposed on trade is for those who come from hostile lands, while a tax of one twentieth is imposed on non-Muslim citizens of the Islamic state. (See *Nail al-Ma'arib* 1:325))]

(1.1)SECTION

[not in the matn, concerning agreements and pacts]

(1.2)THE CONTRACT FOR NON-MUSLIM CITIZENS AND ITS RULINGS

[The meaning of “contract for non-Muslim citizens” [*`aqd al-dhimma*] is consenting [*iqrar*] that some non-Muslims remain non-Muslim on the condition that they pay the *jiza* and adhere to the rulings of Islam.

(musa: al-Buhuti and others indicate that the above is the legal sense of the word. As for its linguistic sense, it includes security [*aman*], guarantee [*daman*], and contract [*`ahd*]. It comes from usage such as *adhamma lahu `ahdan* – meaning “he made him a contract”. (see *Kashshaf al-Qina`*, 3:116) This, in sha Allah, puts things in a little bit better perspective.

I refer to “Ahl al-Dhimma” as “non-Muslim citizens of the Islamic state”. The term “citizen” is quite tentative.])

(i.2.1)Who does not pay it

The contract with non-Muslim citizens [*`adq ahl al-dhimma*] does not take effect except with: Majus, People of the Book, and whoever follows them. It does not take effect except from the imam or his deputy. No *jizya* is imposed on: immature males, women, slaves, the poor and those incapable of paying it.

Ahl al-
kitab: who
are they

[A contract of non-Muslim citizenship does not take affect and is not valid except with:

- (1) Majus
- (2) People of the Book, Jews and Christian in all their different denominations
- (3) Whoever follows one of the above by adhering to the Torah or Evangel

(musa: al-Buhuti notes that it is not accepted from people claiming to follow the scrolls of Ibrahim, Shith, or the Psalms of Dawud (peace be upon them) since these scrolls contained parables and sermons, not Divine Legislation.

He also notes that a contract becomes null and void if it is made made with a group claiming to be from Ahl al-Kitab and it then becomes apparent that they worship idols.

Ahl al-
Kitab:
conversion
pre- and
post- Islam

And he also notes that anyone who was not of Ahl al-Kitab and entered one of those three religions before the Messenger (Allah bless him and give him peace) was appointed a prophet is considered part of them, even if they entered after their revelation had been changed. The same applies for those outside of Ahl al-Kitab who entered one of these religions after the beginning of the final prophecy. (see *Kashshaf al-Qina`*, 3:118)

This last point is very important when it comes to marriage. Is a Korean Christian, for example, considered part of Ahl al-Kitab? According to this, they

Marriage: Ahl
al-Kitab

are. But according to the Shafi`is they are not. So record this in the out-of-place ruling index.)

The contract is not complete and binding unless it is with the Imam or his deputy.

No *jizya* is imposed on on:

- (1) immature males
- (2) woman
- (3) the insane
- (4) the chronically ill
- (5) the blind
- (6) old men
- (7) hermaphrodites
- (8) slaves
- (9) the poor and those incapable of paying it

(i.2.2)Paying it

When someone becomes subject to paying the *jizya*, it is taken from him at the end of the year. Whenever they perform their obligations, it is obligatory to accept it and it is unlawful to fight them. They are humiliated when taking it from them; they are made to stand a long time and it is snatched out of their hands.

[When someone becomes subject to it, it is taken from him at the end of the year, according to the proportion of the year for which they were qualified.

Whenever they perform what is obligatory upon, them it is obligatory to accept it from them and it is unlawful to fight them. They are subservient/humiliated when taking it from them; they are made to stand a long time and it is obligatory that it be snatched out of their hands, it is not accepted for them to send it.

(Musa: this, I think, warrants a bit of research. At the beginning of this chapter in *Kashshaf al-Qina`* he quotes the relevant Quranic verse and gives an opinion it means complying to Islam.)]

(i.2.3)The Rulings of non-Muslim Subjects

The Imam is obliged to hold them accountable to the rulings of Islam concerning life, property, and reputation, and to enforce penalties on them for what they believe to be unlawful but not what they believe to be lawful. They are required to differentiate themselves from the Muslims. They can ride, but not a horse, and not with a saddle - rather they use a packsaddle.

It is not permissible: to put them in the center of assemblies, to stand for them, to initiate greeting them with "*al-salam*."

They are prevented from building new churches, synagogues, and restoring what falls to ruin – even if unjustly; building higher than a Muslim, thought not from equaling the height; publicly displaying wine, pigs, bells, and making their books audible

If a Christian converts to Judaism or a Jew to Christianity it is not affirmed; the only thing accepted from him is Islam or his religion.

[The Imam is obliged to hold them accountable to the rulings of Islam concerning life, property, and reputation, and to enforce penalties on them for what they believe to be unlawful, like fornication, but not what they believe to be lawful, like wine.

They are required to differentiate from the Muslims.

(musa: This particular issue is often used to prove that Islam is racist and barbaric. The argument itself is silly, but thanks to stories of racial persecution in Nazi Germany it elicits the desired response: visions of Stars of David, ghettos, emaciation, concentration camps, mass graves, and death. Now while these people are busy stirring up trouble for Muslims, they leave out of their history lessons the bits about Europe in the beginning of the 20th century and the

Southern US up until the 70s. Likewise, as they leave out everything about the only Apartheid state around today. And amazing how so much is said about the “institutionalize racism of Islam”, while so little is said about the Hindu caste system or what Judaism has to say about non-Jews. At worst, Islam has a skeleton in the closet that today is merely theoretical. What is this compared to a clear and present, ongoing racism and genocide? Our “crime” is not turning our religion into a freak show and charging entrance fees, and then blackmailing people for making fun of the freaks – even if they did not attend.)

They can ride animals, but not horses, and without a saddle - rather they use a packsaddle.

It is not permissible:

- (1) to put them in the center of assemblies,
- (2) to stand for them,
- (3) to initiate greeting them with “*al-salam.*”

They are prevented from:

- (1) building new churches, synagogues, and congregation-areas to pray in our abode, and rebuilding what falls to ruin - even if it falls to ruin unjustly,
- (2) making a building higher than a Muslim building, whether or not it touches, as long as he is considered his neighbor. Though they but are not prevented from equaling the height of the Muslim's building. If they buy a building that higher than a Muslim's building, it is not destroyed.

(musa: the idea that business of non-Muslim citizens could be take away though a simple complaint to the governor is pure garbage. Amazing how these people who hate Islam and the jizya so much never face one very simple fact: these people chose to stay, they chose to pay, and they continued doing it for centuries. The successful businessmen were in the best position to leave, and yet they stayed behind. Why was that, if not because of the political and economic freedoms, and the protection and justice that they received under Muslim rule?)

- (3) publicly displaying wine, pigs, bells, making their books audible, and raising their voices in lamenting the dead, reciting Qur'an, eating and drinking in public during daytime during Ramadhan).
- (4) entering a Mosque, even if a Muslim gives him permissions

(musa: al-Buhuti mentions that the opinion in *al-Sharh al-Kabir* is that they may enter if a Muslim gives permission. But al-Buhuti responds to the evidence. A Dhimmi may enter the mosque if he was hired to work within the mosque. (see *Kashshaf al-Qina`*, 3:137))

(musa: al-Buhuti mentions that if Ahl al-Kitab agree to pay the jizya or the land tariff from within their own lands – and I assume this means without there having been any fighting or threat thereof – then none of the above conditions apply since they are not under Muslim rule, the offer is accepted and none of the above restrictions apply. The difference between them and Ahl al-Dhimma is that Ahl al-Dhimma are within Dar al-Islam. (see *Kashshaf al-Qina`*, 3:134))

If a Christian converts to Judaism or a Jew to Christianity, it is not affirmed since he changed to an invalid religion whose invalidity which he has affirmed invalid, similar to apostasy. The only thing accepted from him is Islam or his own religion.]

(i.2.4)Section. Concerning Contract Breakers

A non-Muslim subject breaks his contract if he refuses to give the *jizya* or to adhere to the rule of Islam; assaults a Muslim by killing, fornication, highway robbery, spying, or aids a spy; or say something evil about: Allah, His Messenger (Allah bless him and his family and give him peace)

or his book. But [this does] not [break] the contract of his women or children – though his life and property are lawful.

[A non-Muslim subject breaks his contract if he:

- (1) refuses to give the *jizya*, be subservient, or to adhere to the rule of Islam;
- (2) fights us;
- (3) assaults a Muslim by: killing, fornicating a female Muslim and by analogy - homosexuality, highway robbery, spying, or aids a spy;
- (4) says something evil about Allah, His Messenger (Allah bless him and his family and give him peace), his book, or his religion

– but not the contract of his women or children – and his life and property are lawful.]