



قواعد ووسائل حل تنازع القوانين في الشريعة الإسلامية والقانون

السوداني (دراسة مقارنة)

Rules and Means of Resolving Conflict of Laws in Islamic Sharia and Sudanese Law (A Comparative Study)

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8-Rules and Means of Resolving Conflict of Laws in Islamic Sharia and Sudanese Law

ملخص البحث

هدفت الدراسة إلى الكشف عن قواعد ووسائل حل تنازع القوانين في الشريعة الإسلامية والقانون السوداني "دراسة مقارنة". واستخدمت الدراسة المنهج الاستقرائي. واشتملت الدراسة على مقدمة، عدة مباحث، وخاتمة. أشار المبحث الأول إلى: قواعد الإسناد كقاعدة لحل التنازع بين قانون أكثر من دولة ووسائلها، واحتوت على ثلاثة مطالب وهي على الترتيب: التعريف بقواعد الإسناد وخصائصها، أركان قواعد الإسناد، وأداة قاعدة الإسناد في حل التنازع بين أكثر من قانون دولة. وكشف المبحث الثاني عن: قواعد الإسناد في المنازعات ذات العنصر الأجنبي في الشريعة الإسلامية، وتضمن أربعة مطالب وهي على الترتيب: المقصود بالأجنبي في الشريعة الإسلامية، القانون الواجب التطبيق في الشريعة الإسلامية من حيث موضوع النزاع، القانون الواجب التطبيق في الشريعة الإسلامية من حيث جنسية الأشخاص، والقانون الواجب التطبيق في الشريعة الإسلامية بالنسبة لما يتعلق بمحل نشوء الالتزام ووجوده ومحل الاتفاق على تنفيذه. وتطرق المبحث الثالث إلى: القانون الواجب التطبيق في النظام القانون السوداني، وتضمن عدة مطالب؛ الأجنبي في قانون النظام السوداني، القانون الواجب التطبيق في النظام القانون السوداني على المنازعات ذات العنصر الأجنبي، والموضوعات التي يخضع فيها الأجنبي للقضاء السوداني.

الكلمات المفتاحية :

تنازع القوانين، الشريعة الإسلامية، القانون السوداني

Introduction

The issue of conflict of laws is one of the ancient and modern issues. It is an ancient idea known to all laws, and the conflict is connected to more than one law, each of which provides different conflicting or even compatible solutions due to the coexistence of humans and societies due to economic or social conditions. This results in the differences between these legislations in dealing with this problem, between those who are tolerant of foreigners on their land and those who cling to their sovereignty over their territory without taking that into account or tolerating that foreigner; its regulation came relatively recently, through the establishment of national rules called conflict of laws rules. Islamic law has known this problem, but it has provided the most beautiful examples of its solution, and its jurists have remained the same in endorsing it and clarifying it with explanation and clarification. Taking a middle position between those who cling to their sovereignty and those who place the foreign element in a better position than their citizens, adopting a unique method of dealing with it through its texts and provisions is unprecedented in contemporary favorable legislation. Therefore, this study establishes how the wise Sharia dealt with this critical problem.

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Research problem

1. There needs to be more clarity on the legitimate and legal basis from which the Sudanese legal system began regulating the rules for resolving disputes between the laws of more than one country related to the dispute.
2. It was knowing the consistency of the rules stipulated in the Sudanese Civil Transactions Law 1984 AD, in the issue of regulating the rules and means of resolving conflicts between the law of more than one state connected to the conflict and offering conflicting solutions, in addition to the fact that its provisions were mentioned scattered among the folds of the Islamic jurisprudence books.

Research objectives

This research aims to establish the legitimate and legal basis from which the Sudanese legal system must start regulating the rules and means of resolving conflicts between the laws of more than one country related to the dispute at hand so that the vision becomes clear. To be consistent with Islamic law on this issue, I also wanted to collect it and gather its parts in one Book that would be easy to refer to. To this end, the research aimed to shed light and identify:

1. A means of resolving disputes related to the law of more than one country in Islamic Sharia and the Sudanese legal system.
2. How does wise Sharia deal with the issue of the conflict being related to the law of more than one country and the circumstances in which Islamic Sharia allowed the application of a foreign law due to its suitability and connection to the dispute?
3. The extent to which there are rules of attribution in Islamic law and the extent to which these rules are used in resolving disputes arising from the connection of more than one law to the dispute at hand, such as referral and delegation.
4. The extent to which the conflict of laws rules in the Sudanese Civil Transactions Law 1984 conforms to the rules established by Islamic law to solve the problem of conflict and competition of laws.
5. The foreigner in the Sudanese legal system and Islamic law.

Research Importance

The importance of addressing this topic came in its attempt to contribute to establishing an issue with a critical dimension related to Muslims and others who do not permanently reside within the borders of the Islamic State or do not hold the citizenship of the Islamic State regarding financial and personal matters.

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Research Methodology

In the hope of arriving at scientific facts, the researcher follows the inductive method based on arriving at the whole through details. For this purpose, we will use a statement of what the jurists of Islamic Sharia and its schools of thought say, for the truth is no more than what they say and what is applied in the Sudanese legal system.

Previous studies

I have not found a previous study on this subject with this title that is concerned with establishing the rules and means of resolving disputes arising from the connection of the dispute with more than one law, especially in the Sudanese legal system; it deals with what is applied regarding the conflict of laws in Sudanese law and compares it to the situation in Islamic law, as Dr. Abdul Karim Zaidan stated in his valuable Book, Rulings of the Dhimmi and the Trustees in the House of Islam. He dealt with this topic from a jurisprudential perspective, comparing it with what is applied in some Arab countries, Sudan not being among them. In addition, he should have addressed the means of attribution rules in resolving and resolving disputes arising from the connection of the dispute with more than one law; this study came to fill that gap, benefiting from that valuable Book on the

jurisprudential side. Dr. Ramzi Muhammad Ali Darz also addressed this topic in his valuable Book, The Idea of Conflict of Laws in Islamic Jurisprudence; his treatment of the subject was limited to the aspect of Islamic jurisprudence only, without comparing it to what is applied in Islamic countries. This study focused on the method of the rule of attribution and its tools, such as referral and delegation, in resolving conflicts of laws while comparing that to what is applied in Islamic jurisprudence and the Sudanese legal system.

Research parts

For the researcher's research to express the need, I decided that it should consist of an introduction that included a prelude to the topic; then, I discussed the objectives of the research, its problem, its methodology, and its plan, which came in three sections. Investigations and demands were conducted within it, and then it was concluded with a conclusion that contained the most critical findings reached by the researcher and the recommendations he deems as follows:

The first topic: the rules of attribution as a basis for resolving the conflict between the law of more than one state and its means in three claims as follows:

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The first requirement is defining the rules of attribution and their characteristics.

The second requirement is the pillars of the attribution rules.

The third requirement is the attribution rule tool in resolving conflicts between more than one state law.

The second topic: The attribution rules in disputes with a foreign element in Islamic law, under which four requirements were made as follows:

The first requirement: What is meant by a foreigner in Islamic law?

The second requirement is the applicable law in Islamic law in terms of the subject of the dispute.

The third requirement is the applicable law in Islamic law regarding the nationality of persons.

Fourth requirement: The applicable law in Islamic Sharia is about where the obligation arises, its existence, and the place of agreement to implement it.

The third topic: The applicable law in the Sudanese law system and the issues in which the foreigner is subject to the Sudanese judiciary; it included three requirements as follows:

The first requirement is the foreigner in Sudanese law and legal system.

The second requirement: The law applicable in the Sudanese law system to disputes with a foreign element.

The third requirement is that the foreigner is subject to the Sudanese judiciary.

A conclusion contains the researcher's most critical findings and the most important recommendations he deems appropriate. So, I ask God for success, help, and guidance in achieving the goal.

The first topic

Attribution rules as a basis for resolving conflicts between the law of more than one state and its means

This research defines the rules of attribution as a legal term with a specific meaning. It then explains its elements, pillars, and characteristics and its known means of resolving conflicts of laws related to the dispute, which provide conflicting solutions. This method is known as referral and uses the tools of conditioning and delegation.

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The first requirement

Definition of the attribution rule and its characteristics

Private international law jurists have yet to agree on a specific definition of the attribution rules. Still, through the various definitions, it is possible to identify the most critical elements of the attribution rule on which the precise definition can be based. For example, attribution rules are defined as: (the legal rule that guides the judge to the law applicable to legal centers with a foreign element)¹ Moreover, a more explicit definition of the attribution rule considers its source and function. He defines it as: (A positive legal rule of a technical nature that applies to international and private relations. It becomes the most appropriate law to regulate that relationship when multiple laws apply)². It can also be defined as the legal rules that guide the judge to the law applicable to legal centers with a foreign element)³.

The idea of attribution rules is based on the lack of correlation between judicial jurisdiction and legislative jurisdiction to reconcile two considerations:

1 Notes on private international law, Mansour Mustafa Mansour, p. 13.

2 The science of the rule of conflict and choice between laws, Ahmed Abdel Karim Salama, p. 97.

3 Conflict of Laws, Hisham Sadiq, p. 6.

The first consideration is the desire of states to adhere to their sovereignty and demonstrate it by subjecting a dispute with a foreign element to the jurisdiction of the state whenever it comes into contact with it in any way.

The second consideration is the consideration of achieving justice by subjecting the dispute involving a foreign element to the laws closest to it, or the most appropriate, as a result, and effect of the established recognition of the foreigner's rights outside the scope of his country to which he belongs by nationality. Hence, the task of the attribution rules is to find a solution to the problem of conflict and competition between laws because each is related to the conflict on the one hand. However, in most cases, these rules are the rules of a state's internal law. However, it was initially prescribed only to govern internal private relations, which makes the rules of attribution insufficient in fulfilling its mission of achieving the most significant degree of fairness by subjecting the conflict to the law of a country related to the conflict that it deems most appropriate, so jurisprudence and judiciary tended to gradually abandon it and try to find solutions and other means as appropriate, such as creating substantive rules for private international disputes that respond to their nature, unlike the rules of internal law, which usually respond to peremptory rules. Therefore, the rules of

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attribution are no longer the only means of resolving the problem of conflict and competition. Another method has emerged based on establishing objective rules that directly solve disputes involving a foreign element. Another method also appeared to conclude a treaty with substantive rules applicable to private legal centers containing a foreign element, such as the Czech Law on International Trade in 1963 AD. Technology transfer contracts are mentioned in the Egyptian Commercial Law of 1999, such as treaties governing issues such as air and sea transport, bills of exchange, checks, and documentary credits.

In France, for example, the judiciary has tended to create objective national rules for international disputes with a foreign element, such as acknowledging the arbitration clause contained in an international contract despite the invalidity of this clause if included in an internal contract and also acknowledging the validity of monetary protection terms that aim to protect against the risks of changing the currency price, as well as the condition of payment in gold, whenever these conditions are included in an international contract.¹

Through the advanced definitions, it is possible to extract the essential characteristics of these rules, which are:

¹ Conflict of laws, previous reference, p. 13.

1. They are indicative rules, not substantive rules, whose mission is limited to guiding the judge to the most appropriate laws related to the dispute and his choice of application to the legal relationship; these rules do not in themselves provide a direct solution to the conflict, its role is limited only to referring to the relevant law, which in turn undertakes this task, it can also refer to more than one law at the same time, referring to the jurisdiction of national law and foreign law to avoid the presence of a legal vacuum, which is called double reference rules.¹.
2. They are internal (national) rules that flow from national sources. In contrast, the national legal system in each country regulates legal relations with a foreign element and selects the most appropriate laws related to them through a technical means called attribution rules; the judge only has to refer to his national law to guide him to the law applicable to the dispute.².
3. The function of the attribution rules is to compare more than one state law related to the dispute or issue at hand in some way and to choose the most appropriate among them to come up with a solution to the problem resulting from this competition process.

1 Consider the position of the judge in adjudicating private international disputes, Hossam Fathi Abdel Latif, p. 21.

2 The idea of conflict of laws in Islamic jurisprudence, Ramzi Muhammad Ali Daraz, p. 97

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4. There is only room for its application if the dispute relates to a matter of private law unrelated to state sovereignty, especially on matters of money and personal status.¹
5. Its implementation requires the presence of a foreign element in the dispute, whether in the parties themselves, in the place, or in the relationship.²
6. A foreigner is defined in private international law as everything that does not belong to the state by its nationality, place of existence, or origin or whose subject is customarily considered an international subject.

The second requirement

The pillars of attribution rules and their elements

It is clear from the analysis of the attribution rules that they are composed of three elements that constitute the pillars of the attribution rule:

1. The assigned idea.
2. Support officer.
3. The law was assigned to him.

¹ Provisions of Private International Law, Okasha Abdel-Al, p. 67

² Lectures on Private International Law, Osama Muhammad Othman, p. 14

First: the assigned idea

It is an issue or group of issues subject to a rule-governed by national law.¹ The national legal system enumerates images, cases, or legal centers similar in description or nature, interconnected and connected as a single idea. It is more appropriate to be subject to one standard or one law, such as the Sudanese legal system restricting personal status issues.² Such as the conditions for the validity of marriage, divorce, divorcing, separation, guardianship, wardship, guardianship, and the protection of interdicted persons and absentees because they are linked or connected to one idea, which is the legal status of a person by his particular characteristic and his relationship with his family as a member of it, or his collection of issues of inheritance and wills as additional actions after death³. The bottom line is that the national legal system classifies relationships that include a foreign element into different

1 Center for Foreigners between Sharia and International Law, Badr al-Din Abdel Moneim Shawqi, p. 275.

2 Consider Article 16 of the Civil Transactions Law 1984 AD (1). The civil status of persons and their eligibility shall be governed by the law of the country they belong to by their nationality. However, in financial transactions concluded in the Republic of Sudan and their effects therein, if one of the parties is a foreigner who lacks legal capacity and the lack of legal capacity is due to a hidden reason that is not easy for the other party to discover, then this reason does not affect his legal capacity.

3 Article 10/9/11 of the Civil Transactions Law 1984 AD (The law of the inheritor, the legatee, or the person from whom the disposition was issued at the time of his death applies to inheritance, wills, and all other dispositions added after death.

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categories, each of which is called an assigned idea, including close or interconnected legal centers.¹

Second: Support officer

The support officer is the standard chosen by the national legal system in a country to be the reliable guide in choosing the most appropriate law to govern the assigned idea.² The standard relied upon in solving the problem of competition and conflict between more than one law is appropriate to govern the assigned idea and is usually derived from one of the elements of the relationship, such as the nationality of the person, his place of residence, or the location of the thing and its place of existence.³

In most cases, the rule of attribution includes one control, but that does not prevent the establishment of more than one other control as a precaution or duplication so that it can be resorted to if certain conditions are not met that would enable the introduction of the previous control as in Article 13/1 of the Civil Transactions Law 1984.⁴ The purpose of placing a reserve

1 Consider the principles of private international law, Maher Al-Rawi, p. 44.

2 Consider the conflict of laws by Hisham Sadiq, p. 11.

3 See private international law, Ibrahim Ahmed Ibrahim, p. 35.

4 Article 113 Civil Transactions 1984 (13) (a) The state's law in which the contracting parties have a common domicile shall apply to them if they take a domicile. If they differ, the state's law in which the contract was concluded shall apply unless the contracting parties agree otherwise.

officer may be to allow the parties to choose the most appropriate law to resolve the dispute.¹

Third: The law assigned to it

It is the law to which the rule of the idea is attributed, that is, the law that is entrusted with providing objective solutions to the problem or the legal position, so it is called a law attributed to it because the rule of attribution entrusts it with providing a solution to the problem or the legal position as it is the best and most appropriate.

Once the best law to solve the legal problem is determined, the problem of resolving the conflict between different laws has ended. However, another problem could arise on the horizon, which is what is meant by the most appropriate rules of foreign law. Is it its objective and referential rules that can attribute the ruling to another foreign law or return it to the same law that referred it? Or should we be satisfied with only the substantive rules and exclude the attributive rules, that is, avoiding referral to another law so that we do not enter into a vicious circle of referrals, known as a referral, which must be discussed in the third requirement?

¹ Article 1/13 Civil Transactions 1984 AD (unless the contracting parties agree otherwise).

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The third requirement

The rule of reference tool in resolving conflicts between more than one state law

The rules of attribution refer to the most appropriate laws related to the dispute in the eyes of the legal system, as it is the closest or most closely related to the dispute that includes a foreign element, and the attribution officer determines the extent of those appropriate.

Referral is considered the primary means of resolving the advanced conflict problem, so it must be stated in this requirement. Referral is defined as: (an idea that requires the application of the rules of attribution in the relevant foreign law by the legal relationship following the national rules of attribution whenever they differ with the latter and the conflict is negative between them)¹The essence of the problem here is when the national reference rule refers to foreign law and grants it jurisdiction by a legal relationship, then, in turn, he refers to the jurisdiction of the law of another country as being more appropriate in his view by the relationship, and so on until we find ourselves in a vicious circle of referrals that may not end until the referral is made to a foreign law that is rejected and does

¹ Private International Law, Ezzedine Abdullah, p. 14

not give jurisdiction to the law of a foreign country. The problem of referral only arises among jurists of private international law.¹. Unless the rules of attribution are not unified in the laws of the assignee and the assignee, the referral is divided into a negative and a positive referral, depending on the type of conflict. If the conflict is negative, the referral is called an unfavorable referral; if the referral is positive, it is called a positive one.

Positive referral consists of determining the rule of attribution in foreign and national law, the jurisdiction of one law. At the same time, the negative conflict is represented in determining the rule of attribution in national and foreign law, and the negative conflict of jurisdiction is represented by the law of a third country, which the rules of attribution in that law may refer to the law of a fourth country, and so on.². Regardless of the position of the supporters of referral, their arguments and evidence, and those opposed to it, their arguments and evidence, adopting the theory of referral depends on the position of the national legal system on it. The Sudanese legal system, for example, refuses to

1 In this regard, he looks at the conflict of laws and the conflict of international jurisdiction, Muhammad Al-Mabrouk, p. 70, as well as private international law, Izz al-Din Abdullah, previous reference, p. 614, the conflict of laws, Ali Sadiq, previous reference, p. 165, as well as the idea of conflict of laws in Islamic jurisprudence, previous reference, p. 173.

2 Consider the conflict of laws in private international law, principles, and solutions, Hassan Al-Hindawi, p. 72.

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adopt the referral theory.¹. The national judge must refer to the substantive rules in foreign law and ignore the rules of attribution therein, which means killing the referral in its infancy. To this end, the laws take a more advanced step if the foreign law is authorized to determine the Sharia or the applicable law in referring to the law of a country with multiple laws, called delegation.². It uses the conditioning method to determine the nature of the issue over which the laws are disputed. To place it within the scope of a range of legal issues that the legislator designated with a rule of attribution, the Sudanese legal system chose for this adaptation to be done by the Sudanese judge.³.

1 Article 16 of the Civil Transactions Law 1984 AD) (1) If it is determined that a foreign law is applicable, only its internal provisions shall be applied, not those related to private international law.

2 Article 15 of the Civil Transactions Law 1984 AD (If it appears from the provisions contained in the previous articles that the law to be applied is the law of a specific country in which there are multiple laws, then the internal law of that country is the one that decides which law of it must be applied).

3 Article 10 of the Civil Transactions Law 1984 AD: This law is the reference in adjusting civil relations when it is required to determine the type of these relations where the laws conflict to know which law should be applied among them.

The second topic

The applicable law in disputes with a foreign element in Islamic law

This requirement addresses an explanation of what is meant by the term foreign in Islamic law and an explanation of how Islamic law has dealt with a dispute connection that includes a foreign element, whether that element is the opponents themselves or the place of origin of the obligation, or its implementation, or the domicile of the opponents, or the domicile of the disputed thing in four claims as follows:

The first requirement

What is meant by a foreigner in Islamic law

The word foreigner is mentioned in Islamic law in many places and with different meanings, such as the foreigner in travel and Hajj, which means anyone who is not related to a relative or a husband, and the foreigner to a woman, that is, the one who is not one of her mahrams and the foreigner in custody, meaning everyone who is not of a mahram relative or by lineage concerning the one in custody.¹ Moreover, in washing the dead,

¹ Islamic Sharia jurists disagreed on a specific definition of the Islamic State. Some divide the world into Dar al-Harb and Dar al-Islam, according to Islam. It is: (a name for the place that is under the control of Muslims and the sign of that is that Muslims are safe there). See the excellent biography of al-Sarkhasi (3/81), also known as Dar

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the will, and other topics of Islamic jurisprudence. But what is essential here in this research is what is foreign to the Islamic State without going into the definition of the Islamic State.¹. Concerning the parties to the dispute, its subject matter, or the location of the disputed thing. Therefore, this requirement deals with determining the intended meaning of foreign in the field of research, and it is the science of the conflict and competition of laws related to the legal dispute or the legal status in terms of the persons, i.e., the parties to the dispute.

To clarify the meaning of foreigner, here we highlight the people within the Islamic State's borders, whether permanently or temporarily. These people can be divided into three categories:

The first category is those who profess their religion and believe in the obligatory nature of Islam's doctrines, laws, and rulings and its abrogation of all the laws that preceded it, whether or not they reside within the state's territorial borders. These people are

al-Islam (Dar al-Islam is the abode in which the rituals of Islam appear, and nothing else appears except with covenant and security from the blameworthy and trustworthy) Al-Azhar explanation.

1 Consider the explanation of that collection, Sharh al-Muhadhdhab al-Nawawi (15/35), and Gamal Abdel Nasser's Encyclopedia of Islamic Jurisprudence (3/121) for an idea. Conflict of laws in Islamic jurisprudence, previous reference, p. 233, Provisions relating to foreigners in Islamic jurisprudence, Adel Tawfiq Khaled, p. 6 (5-571-572), the author of Fath al-Aziz says: "It is not a condition of Dar al-Islam that there be Muslims in it, rather it is sufficient that it is in the hands of the Muslim Imam." Fath al-Aziz (14/8), and all the countries of Islam are in the status of one state, even if their countries are multiple and their rulers differ.

called Muslims and are not considered foreigners, regardless of their place of residence.

The second category is those who permanently reside within the territorial borders of the Islamic State but do not adhere to its religion and do not believe in the compulsory nature of its beliefs, laws, and rulings. There has been disagreement over whether they are considered citizens of the Islamic State because they do not enjoy the same rights as Muslims and are not bound by the same obligations that Muslims are bound to, such as the tax, zakat, the prohibition of alcohol, pork, and incestuous marriage. They are considered citizens of the Islamic State. The Islamic State takes it upon itself to protect them and respect their beliefs as long as they pay the tax and do not break their obligation in a way that invalidates the contract of Dhimma. In my opinion, the second opinion is more likely due to the generality of the hadiths of the Prophet, may God bless him and grant him peace: On the authority of Buraydah, on the authority of his father, he said: Whenever the Messenger of God, may God bless him and grant him peace, appointed a commander over an army or a company, he would advise him among his own to fear God and be good to those who were with him among the Muslims then he said, "Fight in the name of God in the path of God, fight those who disbelieve in God... So, tell them that they

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will be like the Bedouins of the Muslims, and the judgment of God that applies to the believer will apply to them.¹. The Messenger of God, may God bless him and grant him peace, said: If they accept the dhimma contract, inform them that they have what the Muslims have and owe².

The third category is those who do not reside permanently in the Islamic State, do not adhere to its religion, and do not believe in the compulsory nature of its beliefs, laws, and rulings but rather reside temporarily. They are called those who have settled, and these people are considered foreigners to the Islamic State.³.

The fourth category consists of those who do not reside permanently or temporarily in the Islamic State, do not adhere to its religion, and do not believe in the compulsory nature of its beliefs, laws, and rulings. There is no dispute as to whether they are considered foreigners to the Islamic State.⁴. Accordingly, Muslims, regardless of their naturalized nationality or place of

1 Sahih Muslim Muslim bin Al-Hajjaj Abu Al-Hussein Al-Qushayri Al-Naysaburi, publishing house: Arab Heritage Revival House, Beirut, edited by: Muhammad Fouad Abdel-Baqi (3/1358), Hadith No. (1731). Chapter: The Imam's command over the missionaries and his advice to them about the etiquette of invasion and other things (2565), from the hadith of Buraidah on the authority of his father, may God be pleased with him.

2 Al-Kasani mentioned this hadith, which is not mentioned in the well-known modern books of jurisprudence. However, many traces of it were mentioned, looking at the treatment of non-Muslims in Islamic society, Ador Al-Ghali Al-Dhahabi, p. 91.

3 In this regard, look at Bada'i' al-Sana' al-Kasani, p. (7/159), al-Muhadhdhab, al-Shirazi, p. (2/281), Effects of War in the Islamic State, and Heba al-Zuhayli, p. 208, The Islamic State and Its Pillars, Abd al-Samad Ahmad, p. 101.

4 Boredoms, befalls, and desires, Ibn Hazm Al-Andalusi, p. 4.

residence, and the Dhimmis are included in them, are the subjects of the Islamic State, as are everything found in the territory of the Islamic State. The origin of Islamic law is that it is not a personal law that applies only to Muslims. Still, instead, it is a regional law, and this does not contradict that it is a general divine law that must be applied to all human beings whenever it is possible to apply it, and because its application in Dar al-Islam is possible, due to the generality of its jurisdiction over all citizens and things without regard to their religion in Dar al-Islam, hence the description of Islamic law as territorial, stated in Bada'i' al-Sana'i¹. The basic principle of the laws is that they are the general right of all people, except that if it is not possible to implement them in the land of war due to lack of guardianship, and it is possible in the land of Islam, then it is necessary to implement them there. It was stated in the book Differences of Jurists by Al-Tabari that if a Muslim drinks alcohol in the land of war or commits adultery and then returns to us after leaving for the land of Islam, the punishment will not be imposed on him)², Islam is a religion and a state.

1 Al-Kasani, a previous reference (2/311, and it was mentioned in Al-Sarkhi as an explanation of the opinion of Imam Abu Hanifa and Muhammad (And if the trustworthy person sold them the dirham for two dirhams in cash or credit), or he pledged allegiance to them for wine, pork, and dead meat, there is nothing wrong with that according to Abu Hanifa and Muhammad, and none of that is permissible according to the words of Abu Yusuf), the original known as Al-Mabsoot, (10/92)

2 In this regard, see the difference of jurists by Al-Tabari, p. 85.

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The second requirement

The applicable law in Islamic Sharia in terms of the subject of the dispute

The rules relating to ruling between non-Muslims were initially built on the principle of commanding us to leave them and the religion they profess, which Muslim jurists derived from some verses and which are also among the rulings of Islam prescribed for non-Muslims, especially foreigners who do not hold the citizenship of the Islamic State, he listed them as follows:

First, the Hanafi doctrine¹

¹ Look at that in Al-Mabsoot Al-Sarkhasi, a previous reference (5/138), look at that in Al-Bahr Al-Raiq in Sharh Kanz Al-Daqa'iq Al-Zai'li (3/1222) and Al-Jassas said (Our companions differed among themselves regarding their marriages, and Abu Hanifa said that they adhere to their rulings and there is no objection to them unless they are satisfied with our rulings. If both spouses agree to it, they are subject to our rulings, and if one of them agrees, he does not object to them; if they all agree, we will hold them to the rules of Islam, except for marriage without witnesses and marriage during the waiting period, in which case there is no distinction between them. The same applies if they convert to Islam) It also came (Chapter on ruling between the People of the Book. God Almighty said: (And if they come to you, judge between them or turn away from them.) The apparent meaning of this requires two meanings, one of which is abandoning them and rulings without objection to them. The second is choosing between ruling and turning away if they reach us. The predecessors differed as to whether this rule remains. Some of them said: If they reach us, the ruler wishes to rule between them, and if he wishes, he turns away from them and returns them to their religion. Others say that the choice is abrogated, so when they come to us, we will rule between them without a choice. So whoever took the choice when they came to us, Al-Hasan, Al-Sha'bi, and Ibrahim, a narration and a narration on the authority of Al-Hasan, were separated between the People of the Book and their ruler. Moreover, apply what is in your Book if they come to you. Sufyan bin Hussein narrated on the authority of Al-Hakam, on the authority of Mujahid, on the authority of Ibn Abbas, who said: Two verses were abrogated from Surat Al-Ma'idah, the verse on necklaces, and the Almighty said: (So judge between them or turn away from them). The Messenger, may God bless him and grant him peace, had the choice whether he wished to rule between them or to turn away from them and refer them to their rulings. Moreover, they judge

between them according to what God has revealed and do not follow their desires, so the Messenger, may God bless him and grant him peace, ordered that he judge between them according to what God revealed in his Book. Uthman Ata' al-Khorasani narrated on the authority of Ibn Abbas in his saying: If they come to you, then you may judge between them or turn away from them." He said, abrogated by his saying: "And judge between them according to what God has revealed." Saeed bin Jubayr narrated on the authority of al-Hakam on the authority of Mujahid: (And if they come to you, then judge between them or turn away from them.) His copy said: (And judge between them according to what God has revealed. Sufyan narrated on the authority of al-Suddi and the authority of Ikrimah. Abu Bakr said so these people mentioned that his saying: (And to judge between them according to what God has revealed) abrogating the choice mentioned in the Almighty's saying: (If they come to you, judge between them or turn away from them.) It is known that this cannot be said through opinion because knowledge of the dates of the revelation of the verse is not attained through opinion and ijtiḥad but rather through circumstantial reasoning. No one who proves choice has said that the verse about choice was revealed after the Almighty's saying: And to judge between them according to what God revealed, and that the option abrogated it. Rather, their doctrines regarding the option were narrated from them without mentioning the abrogation, so His saying proved the abrogation of the option: And to judge between them according to what God has revealed, as a narration from the mention of abrogating the choice, and what indicates the abrogation of the choice is his saying: And whoever does not rule according to what God has revealed, those are the disbelievers.) Verses, and whoever turned away from them, then the incident in which they disputed was not judged according to what God revealed, and we do not know of anyone who said that in these verses, and whoever did not judge according to what God revealed) Abrogated except for what is narrated on the authority of Mujahid. Mansour narrated it on the authority of Al-Hakam on the authority of Mujahid. He says, "And whoever does not judge by what God has revealed." He abrogated it, then you may judge between them or turn away from them. Sufyan bin Hussein narrated on the authority of Al-Hakam on the authority of Mujahid that the saying of God Almighty: "If they come to you, then judge between them or turn away from them," is abrogated by God Almighty's saying. Moreover, to judge between them according to what God has revealed. God Almighty may say that if they come to you, judge between them or turn away. Before the obligation was concluded for them and they came under the provisions of Islam with the jizya, when God ordered the jizya to be taken from them and the provisions of Islam were applied to them, He commanded them to judge between them according to what God revealed. Thus, the ruling of both verses is established for the choice regarding the people of the covenant who have no dhimma and are not subject to the rulings of the Muslims, such as the people of war if we make peace with them, and the obligation to rule according to what God has revealed regarding the people of the Dhimma to whom the rulings of the Muslims apply. Evidence of this has been narrated on the authority of Ibn Abbas. Muhammad ibn Ishaq narrated on the authority of Dawud ibn al-Husayn, on the authority of Ikrimah, on the authority of Ibn Abbas, that the verse in Surat Al-Ma'idah is the saying of God Almighty: So judge between them or turn away from them. It was revealed that there was blood money between the Banu Qurayza and the Banu al-Nadir. This is because the Banu al-Nadir had the honor of paying full blood money, and the Banu Qurayza paid half the blood money, so they referred to the Messenger of God. May God bless him and grant him peace. So, God revealed that to them, so the Messenger of God, may God's prayers and peace be upon him, led them to the truth and made the blood money equal. It is known that Banu Qurayza and Banu al-Nadir never had a dhimma, and the Prophet, may God's prayers and peace be upon him, evacuated Banu al-Nadir and killed Banu Qurayza. If they had been protected, he would not have

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Non-Muslims, just like Muslims, are subject to all the provisions of Islam, except for the issue of marriage and the related ban on dowry, ownership of a pig, and the waiting period. However, regarding the subject matter, foreign law will not be applied except regarding the validity or invalidity of marriage and the related dowry, divorce, and waiting period.

Maliki doctrine¹

It is necessary to rule on non-Muslims, whoever they are and whatever the subject of the dispute is, by the rule of Islam and by what is ruled upon a Muslim whenever the ruler chooses to rule between them, and that there is no room for the application of foreign law.

Shafi'i and Hanbali doctrine²:

evacuated them or killed them. Rather, there was a covenant and a truce between him and them, but they broke it. So, Ibn Abbas reported that the verse of choice was revealed regarding them, so it is permissible for its ruling to remain in the people of war among the people of the covenant. The ruling of the other verse regarding the obligation to judge between them according to what God Almighty has revealed is established in the case of the people of the Dhimmah, so there is no abrogation of it, and this is a permissible interpretation, were it not for what was narrated from the predecessors regarding the abrogation of the option by the other verse.) Ahkam, Al-Qur'an by Al-Jassas, (2/436), (4/87-89) and he said in response to his disagreement with someone who exaggerated in his statement according to Al-Kasani (And as for his saying that they, by their protection, adhered to the provisions of Islam, then yes...)

1 Look at Al-Mudawwana Al-Kubra, previous reference, (4/162) and (8/97), and also look at Al-Qurtubi, previous reference (2/97).

2 Consider the mother's previous reference (4/192), which states: (And if it were assumed that the people of a city were among the People of the Book and they offered us the jizyah, we would not have to fight them if they gave us the jizyah and that our ruling should be applied. Furthermore, if they said, "We will give it to you, and your ruling does not apply to us," we would not be obliged to accept it from you because God Almighty said: until they

It is the ruling between them according to the rule of Islam in every right that the two adversaries disputed before the Muslim judge. Of course, the Muslim judge does not have the right to rule other than the rules of Islam, as God Almighty says: (And if you judge, judge with justice between them. Verily, Allâh loves those who act justly)¹ Except concerning their dealings in terms of alcohol and pork, they agree to marry them whenever it is permissible and whenever they plead before a Muslim judge. The rule of the chain of transmission brings together financial transactions in wine and pork and the transactions involved in them as a chain of transmission to which Islamic law is applied within the limits of the scope considered by the doctrines of the Dhahiris, Zaidis, and Imamis.² It is the obligation to judge non-

willingly give the jizyah while humbled. I have not heard anyone disagree with the fact that the rule of Islam is superior to the rule of polytheism and applies to children. The same applies to the mother. Previous reference (5/225), (7/85). For this, look at Al-Majmu' according to Sharh Al-Muhadhdhab, a previous reference (2/273). For this, look at Al-Ashbah wa Al-Naza'ir (4/211). For this, look at Zad al-Mustaqni' (8/535). For this, look at Sharh Muntaha al-Iradat, (743/2). For this, look at Kashshaf al-Qina', a previous reference (1/731-732). See Al-Mughni, previous reference (8/553).

1 Surat Al-Ma'idah, verse 42.

2 Look at Al-Muhalla (19/362), (10/201), (9425) in which it says: (The rule of Islam judges the Jews, Christians, and Magians in everything, whether they are satisfied or displeased, and it is not permissible to return them to the rule of their religion or their rulings at all. Moreover, the Almighty said: (They like to) listen to falsehood, to devour anything forbidden. So, if they come to you (O Muhammad, peace be upon him), either judge between them or turn away from them. If you turn away from them, they cannot hurt you in the least. Furthermore, if you judge, judge with justice between them. Verily, Allâh loves those who act justly. So, I said, "Abrogated." The Almighty's saying was abrogated by His Almighty's saying: "And to judge between them according to what God has revealed." For this, look at Sharh Al-Azhar, a previous reference (2/268), and look at Al-Bahr Al-Zakhar for that (5/366). It stated: "Whenever they plead with us, it is necessary to establish the ruling that is legally established because the opposite is a ruling other than what God has revealed." It also stated on page 368: (Or if a

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Muslims the same way Muslims are judged. It is not permissible to return them to their religion, except that their divorce does not occur because the law does not stipulate its occurrence. If they ask us for a fatwa, we will not give them a fatwa except according to our law. The idea supported here is the divorce of non-Muslims only, to whom Islamic law will be applied within the limits of the extent it has considered. These are the sayings of ancient jurists.¹This is what some contemporaries said.². From the people of Islam, all of them are clear that the law that must be applied to non-Muslims is the provisions of Islamic Sharia and that non-Muslims are exactly like Muslims, except for some rulings, such as marriage to incest or marriage during the waiting period, or without witnesses, and their actions regarding wine and pork are at issue among scholars. The Sudanese legal system

non-Muslim person comes to court against us, for example, then the judge is fine with the ruling unless he rules according to the rule of Islam, according to the Almighty's saying: "...And if you judge, judge with justice between them. Verily, Allāh loves those who act justly.)

1 Abu Jaafar al-Tusi said in his Book Al-Khilafa that he is Muhammad bin Mansur al-Tusi, nicknamed Abu Jaafar. He was initially from Tus, lived in Baghdad, and died there. Ahmad praised him if he wished; he ruled among them, and if he wished, he left them. If two warriors from other than the people of Baghdad plead with us and die there, Ahmad ibn Hanbal will praise him as a gift for the saints and classes of the pure (2/389). (If the people of the Torah and the people of the Gospel come to him and refer to him for judgment, then he is a dhimma. The ruler does not need to rule among them unanimously because the Imam does not need to push some of them against another, unlike the people of Dhimma. Moreover, because the people of the Dhimmah are more sacred than them, they live in the abode of Islam for eternity.) Al-Khalaf (2/392) and Ibn Taymiyyah say: (The matter here is to rule according to what God has revealed when he rules), Majma' al-Fatawa (28/197).

2 See Abdul Karim Zaidan, previous reference, pp. 588-595, and Ramzi Muhammad Ali Daraz, previous reference, pp. 280-281, Abdullah Mustafa Al-Maraghi, previous reference, p. 57.

did not consider any of the advanced opinions. It will also appear from the statement of his position in the third section when he dealt with disputes in which one of the parties was non-Muslim regarding his nationality, domicile, or even the place where the obligation arose or was implemented. In my opinion, the opinion of the Malikis, Zaidis, and Dhahiris is preferred due to the generality of the many verses mentioned in the Holy Qur'an that indicate the rulings that must be applied to disputes with a foreign element in the Islamic state. Moreover, from that is the Almighty's saying: (Whoever does not judge according to what Allah has revealed, it is they who are the disbelievers.)¹. (Those who do not judge according to what Allah has revealed are the wrongdoers.)²³ (Let the people of the Injeel (Gospel) judge by what Allâh has revealed therein. Moreover, whosoever does not judge by what Allâh has revealed (then) such (people) are the Fâsiqûn [the rebellious, i.e., disobedient (of a lesser degree)] to

1 Surat Al-Ma'idah, verse 44

2 Surah Al-Ma'idah, verse 45.

3 Abd al-Razzaq said, on the authority of al-Thawri, on the authority of Zakariya, (And whoever does not judge by what God has revealed, those are the disbelievers.) He said to the Muslims, and Abu al-Sifr said, on the authority of al-Sha'bi, he said this regarding the Muslims. It also came in it (and whoever does not rule by what God has revealed - those are the disbelievers) because they denied the ruling of God intentionally, stubbornly, and intentionally, and He said here it is they who the wrongdoers are) because they did not do justice to the oppressed from the oppressor in the matter in which God commanded justice and equality between everyone. Hence, they disagreed, wronged, and transgressed against each other. Look at this from the interpretation of the Great Qur'an, ((2/61-62)).

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Allâh.)¹. And the Almighty said: (And We have sent down to you (O Muhammad peace be upon him) the Book (this Qur'ân) in truth, confirming the Scripture that came before it and Muhaymin (trustworthy in highness and a witness) over it (old Scriptures)[2]. So, judge among them by what Allâh has revealed, and follow not their vain desires, diverging away from the truth that has come to you. We have prescribed a law and a straightforward way to each of you. If Allâh had willed, He would have made you one nation, but that (He) may test you in what He has given you, so compete in good deeds. The return of you (all) is to Allâh; then He will inform you about that in which you used to differ.)². Imam al-Tabari said³. In interpreting the Almighty's saying: (So judge among them by what Allâh has revealed, and follow not their vain desires). That is, judge, O Muhammad, between the People of the Book and the polytheists in everything, they have come to you for judgment with the rule of Islam.) And the author of Al-Manar said⁴. Accordingly,

1 Surah Al-Ma'idah, verse 47.

2 Surat Al-Ma'idah verse 48.

3 In this regard, look at Jami' al-Bayan on the interpretation of verses in the Qur'an, Muhammad ibn Jarir (6/243) and Imam Ibn Kathir agreed with him, previous reference, (2666), (61/2 - 66). Likewise, al-Razi looks at al-Tafsir al-Kabir or Keys to the Unseen. (11/12), and Al-Qurtubi looks at this in Al-Jami' li Ahkam Al-Qur'an (1686-190).

4 Muhammad bin Jarir bin Yazid bin Kathir bin Ghalib Abu Jaafar al-Tabari al-Amli al-Baghdadi, the Imam and scholar, is the author of great works and famous interpretations. He was born in the year two hundred and twenty-four. He took jurisprudence from al-Zafarani and al-Rabi' al-Murad. He was born in Tabaristan. He began to seek knowledge at the age of six and became the Imam of interpreters. He left his great interpretation that

Muslim rulers do not need to judge foreigners in their countries if they refer to us for judgment. Rather, they have the choice of whether to rule or not. As for the people of the Dhimmah, it is obligatory to rule between them if they refer to us for judgment. These verses and the like indicate ruling according to what God has revealed, whether the ruling is between Muslims or non-Muslims, and this is what the commentators have decided.¹ The scholars of interpretation have stated that what is meant by ruling by what God has revealed is to rule by the Holy Qur'an and the revelation that God Almighty revealed to His Messenger, may God bless him and grant him peace, and that ruling by justice means ruling with justice that you commanded, O Muhammad, may God bless him and grant him peace, that is, by what was included in the Holy Qur'an and stated in Al-Kashshaf². Turning away is what the Almighty says: (Then they will turn away after that.) meaning they will turn away from the rule of God. Al-

comprehensively compiled the provisions of the Qur'an, and it is the first complete interpretation, as considered by the father of history, because his Book was not written like it. It is called The Beginning and the End. See the Shafi'i Tabaqat (1/100) for this matter.

1 He is Muhammad Rashid Reda (1865 AH - 1935 AH). He was born in Al-Qalamani, Lebanon. He is an Islamic religious scholar. He is the owner of Al-Manar magazine in Cairo. He is a student of Muhammad Abdo. His most famous works are Al-Manar magazine and the interpretation of the Holy Qur'an known as Tafsir Al-Manar.

2 In this regard, look at Tafsir Al-Manar, Muhammad Rashid Reda, p. 399. It says in Tafsir Al-Maraghi (Judge between them according to what God has revealed, and do not follow their desires by listening to them and accepting their words, even if it is for interest such as reconciling their hearts and attracting them to Islam, the path of falsehood cannot reach the truth) Tafsir Al-Maraghi, (6/132).

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Tabari said¹. In the Almighty's saying (With what God has revealed), that is, within the limits of God, Al-Qurtubi said². That is, by the rule of God that He revealed. Ibn al-Arabi said: Alqaset is justice, which is the rule of Islam³. The jurists agreed with them on the necessity of ruling between foreign non-Muslims) according to the rule of Islam, with some exceptions that can reconcile the advanced opinions on issues of the validity of marriage and the consequent dowry, waiting period, divorce, and dealings in wine and pigs whenever they plead to us. The rule of leaving non-Muslims and other rulings they follow must be understood in light of the previous opinions. It is not intended to apply their laws (foreign law) to them. If they refer to us for judgment, even if their laws follow what Islam brought in implementing His Almighty command: (And if you judge, judge with justice between them. Verily, Allâh loves those who act justly.)⁴. ¹ God Almighty has commanded us to rule by what was

1 See Al-Razi, a previous reference, p. 337/11, and Al-Qurtubi, a previous reference (6/53).

2 The Exploration of the Realities of the Revelation and the Sources of Sayings in the Faces of Interpretation (1/667) for the rulings of the Qur'an, the Remembrance and the conditions of the dead (Tadhkirat al-Qurtubi), and the Remembrance in the Best Remembrances and the Approximation of the Book of Introduction, looking at the classes of interpreters in this regard, (1/110-112)

3 Al-Qurtubi, previous reference, (6/212).

4 Rulings of the Qur'an Abu Bakr Muhammad bin Abdullah bin Al-Arabi (2/127) (And he said the seventh issue: How did the Prophet implement the ruling among them regarding a Jew who had committed adultery?) The scholars' answers differed regarding this, based on three opinions:

revealed, and He did not command us to rule by what was not revealed, even if it is following our law when non-Muslims plead with us.

The third requirement

The first: He ruled among them according to the ruling of Islam, and that if the People of the Book, whoever among them commits adultery and gets married is subject to stoning, the Imam will judge them accordingly, and Islam does not stipulate that there should be a marriage.

The second is the ruling of the Prophet according to the law of Moses, peace be upon him, and the testimony of the Jews. If we legislated it, it was legislated for us, so it is necessary to act upon it until, may God's prayers and peace be upon him, he provides evidence for abandoning it. We have explained that in the principles of jurisprudence and in our previous sayings, and it is the correct doctrine and the truth in the evidence, as previously mentioned.

Third, the Prophet, peace and blessings of God be upon him, ruled between them because the punishments were not revealed, and the ruler today does not rule by the rule of the Torah, as he said in the Book of Muhammad.

1 It was stated in Ahkam al-Qur'an by Al-Qurtubi (74/2): "God, Blessed and Most High, said to His Prophet (may God bless him and grant him peace) regarding the People of the Book: ((They like to) listen to falsehood, to devour anything forbidden. So, if they come to you (O Muhammad, peace be upon him), either judge between them or turn away from them. If you turn away from them, they cannot hurt you in the least. Moreover, if you judge, judge with justice between them. Verily, Allāh loves those who act justly.). Al-Shafi'i said: In this verse, there is an explanation, and God knows best: that God Almighty gave His Prophet (may God's prayers and peace be upon him) the choice to judge between them.

Furthermore, to turn away from them and it follows from this: If he rules - that he judges between them with fairness and justice: the ruling - of God, which was sent down to his Prophet (may God bless him and grant him peace): the pure, truthful, most recent news. A covenant with God (Glory be to Him). God Almighty said: And so, judge (you O Muhammad, peace be upon him) among them by what Allāh has revealed and follow not their vain desires, (By ruling according to what God has revealed to him). He said: And I heard the most reliable of the people of knowledge saying about the words of God Almighty: And to judge between them according to what God has revealed: If you judge, not determined to judge. Then he continued his speech until he said: I am Ibrahim bin Saad, on the authority of Ibn Shihab, on the authority of Ubayd Allah bin Abdullah bin Utba, on the authority of Ibn Abbas, that he said: How do you ask the People of the Book?

Moreover, your Book, which God sent down to a prophetess (may God bless him and grant him peace), is the most recent of the rabbis; you read it purely: Didn't God give you a choice in His Book? Because they distorted the Book of God Almighty, changed it, and wrote a book with their own hands. They said: (This is from God, that they may buy it for a small price.?! Does not the knowledge that has come to you forbid you from questioning them? By God, we have never seen a man among them: O I ask you about what God has revealed to you.) It was stated in the provisions of the Qur'an by Al-Jassas (Chapter on judgment between the People of the Book.

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The applicable law in Islamic Sharia in terms of the nationality of persons

This requirement discusses the cases in which the Islamic legal system allows the application of foreign law according to the parties to the legal relationship, so a distinction must be made between the two assumptions.

The first assumption: One of the parties to the dispute must be a Muslim

In this case, Islamic law is concerned with ruling on the dispute as long as one of the disputants is a Muslim. The general guardianship here is established by Islamic law. Whether the subject of the case is a marriage or something else, and whether he pleads with us or not, and whether he is a plaintiff or a defendant, to provide justice to the Muslim if he is wronged and to redress his injustice if he is an aggressor¹.

¹ For this, look at Al-Muhadhdhab, a previous reference (273/2). For this, look at Al-Mughni, a previous reference (29/10). For this, look at Abd al-Karim Zidane, a previous reference, p. 462. In this regard, see Al-Zarqani's explanation of Muwatta' of Imam Malik (3/386). Abu Jaafar said in his Book Al-Khilafa: "If a non-Muslim pleads with a Muslim or a trustworthy person pleads with a Muslim, the judge must rule between them according to what God has revealed, according to the Almighty's saying: And so judge (you O Muhammad, peace be upon him) among them by what Allāh has revealed and follow not their vain desires, and other generalities that indicate the necessity of repelling injustice, adjudicating with justice, enjoining what is right and forbidding what is wrong) Al-Disagreement, previous reference, (393/2).

As for the second assumption:

It is because the lawsuit is between non-Muslims; that is, there is no Muslim in the lawsuit. Here, the jurists differed.¹ Concerning

¹ Al-Qurtubi narrated this dispute as follows: (Is it obligatory for us to judge between them if they plead with us, according to the words of Al-Shafi'i, and if the dispute is linked to a Muslim, the ruling must be made), Al-Mahdawi said: The scholars unanimously agreed that the ruler is to rule between a Muslim and a non-Muslim. However, they differed regarding the non-Muslims, so some held that the verse was decisive and that the ruler was fine. This was narrated on the authority of Al-Nakha'i, Al-Sha'bi, and others. This is the doctrine of Malik, Al-Shafi'i, and others, except for what was narrated by the authority of Malik regarding abandoning the imposition of the punishment on the People of the Book regarding adultery. If a Muslim commits adultery with a Kitab, there is a punishment for it, and there is no punishment for it. If the two adulterers were dhimmis, then there is no punishment for them. This is the doctrine of Abu Hanifa, Muhammad ibn Al-Hasan, and others. The authority of Abu Hanifa also narrated it. He said, "They will be flogged and not stoned." Al-Shafi'i, Abu Yusuf, Abu Thawr, and others said that the punishment should be imposed on them if they are satisfied with our ruling. Ibn Khuwayz from Dad said, "The imam should not be sent to them if they are hostile toward each other." The opponent does not attend his council unless it is related to injustices from which corruption spreads, such as murder, looting of homes, and the like. As for debts, divorce, and other transactions, he does not judge between them except after mutual agreement, and the choice is made for him not to rule and return them to their rulers. Suppose the ruling between them is ruled by the rule of Islam, forcing them to rule the Muslims in areas where corruption is widespread. In that case, it is not the corruption we promised them, and it is obligatory to cut off corruption from them, from them, and others because that is the preservation of their money and their blood. Perhaps this is in their religion, and corruption will spread among us, and that is why we have prevented them from selling alcohol openly or from showing adultery and other filth so that they will not corrupt the foolish Muslims. As for the ruling regarding what is specific to their religion, such as divorce, adultery, and other things, it does not obligate them to follow our religion, and ruling between them in that way harms their rulers and changes their religion, and this is not the case with debts and transactions, because they contain a facet of injustices and cutting off corruption, and God knows best. There is a second saying in verse, which is what was also narrated on the authority of Omar bin Abdul Aziz and Al-Nakha'i, that the Almighty's saying abrogates the choice mentioned in verse: And so judge (you O Muhammad peace be upon him) among them by what Allāh has revealed and follow not their vain desires, And that the ruler has to judge between them, and this is the doctrine of Ata' al-Khurasani, Abu Hanifa, his companions and others. It was narrated on the authority of Ikrimah that he said, "If they come to you, then you shall judge between them or turn away from them." Another verse is abrogated by the Almighty's saying: And so, judge (you O Muhammad peace be upon him) among them by what Allāh has revealed and follow not their vain desires, Mujahid said that only two verses were abrogated from the table: "So judge between them or turn away from them." I abrogated them for the Almighty's saying: "And so judge (you O Muhammad peace be upon him) among them by what Allāh has revealed and follow not their vain desires, And the Almighty's saying: "O you who believe! Violate not the sanctity of the Symbols of Allāh, nor the Sacred Month, nor the animals brought for

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the extent to which Islamic law is applied in adjudicating this dispute, their disagreement was as follows:

Hanafi doctrine¹ In this regard, Hanafi jurists distinguish between marriage and related issues.² As for disputes in matters other than

sacrifice, nor the garlanded people or animals." I abrogated it. "So, kill the polytheists wherever you find them." Al-Zuhri said, "The Sunnah has passed for the People of the Book to return their rights and inheritances to the people of their religion unless they come desiring the rule of God. He rules between them according to the Book of God." Al-Samarqandi said, "And this saying agrees with Abu Hanifa's saying that he does not rule between them unless they agree with our ruling." Al-Nahhas said about the abrogator, and the one to whom the abrogation was made, the Almighty's saying: "And if they come to you, then judge between them or turn away from them" is abrogated because it was only revealed when the Prophet came to Medina, and the Jews therein that day were numerous, and it was more appropriate for them to refer to their rulings. When Islam became strong, God Almighty revealed, "And judge between them according to what God has revealed," Ibn Abbas, Mujahid, Ikrimah, Al-Zuhri, Omar bin Abdul Aziz, and Al-Suddi said. It is the correct opinion of Al-Shafi'i. He said in the Book of the Jizyah. He has no choice if they refer to him for judgment, according to God Almighty's words, until they pay the tax out of hand and are submissive. Al-Nahhas said, "This is one of the most correct arguments because if the meaning of his saying, 'And they are submissive, is that the rulings of the Muslims should be applied to them, then they must not be subjected to their rulings.'" Tafsir al-Qurtubi, previous reference (184/6-186).

1 In this regard, look at Al-Kasani, a previous reference (2/461). In this regard, look at Ahmad bin Ali Al-Razi Al-Jassas Abu Bakr, previous reference (2/530). In this regard, look at a research entitled "Islamic Judiciary: Can They Judge Among Non-Muslims?" On Personal Status Matters, Journal of Law and Economics, Second Year, Issue Six, Ahmed Abdel Salam, Honorary, March 1931, p. 484.

2 It was mentioned in Al-Jasas, a previous reference (4/91-90). Another narration was narrated on the authority of Ibn Abbas and on the authority of Al-Hasan, Mujahid, and Al-Zuhri, revealing what is theirs. It is permissible for them to dispose of it. Anything other than that is subject to our rulings, according to the Almighty's saying: And to judge between them according to what God has revealed; it was narrated on the authority of the Prophet that he wrote to the people of Najran: Either you must abandon usury, or you must authorize war from God and His Messenger. So, the Prophet, may God's prayers and peace be upon him, made them prohibit usury and prevent them from it, like the Muslims. God said: And [for] their taking of usury while forbidden from it, and their unjustly consuming the people's wealth.

Moreover, we have prepared a painful punishment for the disbelievers among them. So, he informed them that they are forbidden from usury and consuming wealth unjustly, as God Almighty said: O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. Moreover, do not kill yourselves [or one another]. Indeed, Allāh is to you ever Merciful. So, he agreed between them and the Muslims in prohibiting usury and corrupt and prohibited contracts, and God Almighty said: (They like to) listen to falsehood, to devour anything forbidden. We have mentioned the doctrine of our companions regarding contracts

marriage, Imam Abu Hanifa () stipulated that to rule between non-Muslims, the two opponents must plead to the Muslim judge of their choice, meaning that he required the consent of the two opponents to refer to the Muslim judge and submit to his ruling.

As for disputes in matters other than marriage, Imam Abu Hanifa stipulated that to rule between non-Muslims, the two opponents must plead to the Muslim judge of their choice, meaning that he required the consent of the two opponents to refer to the Muslim judge and submit to his ruling. Abu Yusuf, Muhammad, and Zafar believe it is not a condition for the jurisdiction of Islamic law to rule on a dispute that the two adversaries plead to prove the jurisdiction of Islamic law. Whenever one of the opponents comes to the Muslim judge, his consent extends beyond the consent of the other opponent, as if one of them converted to Islam.¹

of transactions and trade, and the limits of the people of Dhimma and Muslims in them are the same. However, they are not stoned because they are not married, and Malik Al-Hakim said, "Unless they dispute with him, he decides that he will rule between them according to the rule of Islam, or he will turn away from them, then he will not judge between them." This is also his saying regarding contracts, inheritances, etc.). Regarding the issues of marriage, such as dowry, waiting period, sanctity of place, and divorce, non-Muslims are on par with Muslims in their submission to Islamic law without the need for them to agree to plead before a Muslim judge and to be satisfied with the ruling of Islamic law.

¹ See Al-Kasani, previous reference, (2/461). For this, look at Al-Zarqani's explanation of Muwatta Malik, a previous reference (3/388). For this, look at Al-Mughni, a previous reference (3/195) (10*99). It was mentioned in the third part: (It is obligatory to judge them by God's ruling, whether the subject of the case is a marriage or something else, and whether they plead to us or not.)

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Maliki and Hanbali doctrine:

According to them, the consent of the plaintiff and the defendant is required to plead before the Muslim judge, i.e., the consent of both opponents. According to Islamic law, whether the opponents are from one sect or different sects, there is no difference between a marriage and another, and jurisdiction is not established according to Islamic law except after the adversaries plead to it. This is in the case of covenanters. As for the non-Muslims, judicial jurisdiction is established according to Islamic law without the need for the consent of the adversaries or their pleading to it.

Shafi'i doctrine:

If the two parties to the case are civilians or warlike people, that is, not settled in the territory of the Islamic State, then to establish jurisdiction for Islamic law, it is required that the two non-Muslim opponents plead to it, satisfied with its ruling, and the judge has the choice to decide between them if they plead to him. These are the opinions of Muslim jurists regarding the extent of Islamic Sharia's jurisdiction to rule disputes with a foreign element and to determine the extent to which its parties are subject to the jurisdiction of Islamic Sharia. All of them are

explicit in ruling between non-Muslims according to Islamic Sharia within the limits considered by Islamic Sharia itself.

The third requirement

The rules of attribution in Islamic law regarding the place of origin of the obligation, its existence, or the agreement to implement it

This requirement deals with the event that the obligation arises, is located, or is implemented outside the borders of the Islamic State, or the agreement is made to implement it within the borders of the Islamic State, even if it arises outside it. The matter here does not exceed two assumptions:

First assumption: The obligation arose, was implemented, or was agreed to be implemented within the borders of the Islamic State. The general rule here is that a non-Muslim is treated as a Muslim as long as the obligation arose, was implemented, or was agreed to be implemented within the borders of the Islamic State. There is no difference between the two parties to the obligation being citizens of the Islamic State and foreigners, or between foreign citizens of the Islamic State, or even if the subject of the obligation is considered an international matter. This rule is

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agreed upon among the jurists of Islamic Sharia. The Hanafi scholars have stated that the person who is in charge of the land of Islam is in the same position as the non-Muslim in transactions once he enters the Islamic state. By entering the Islamic state, he has committed himself to the rules of Islam and is bound by them against his will as long as he is in the land of Islam.¹ The Shafi'is, Hanbalis, Zaidis, and Imami Shiites say the same². The infidels are addressed by the branches of Sharia law and transactions, especially since finances are a part of it, just like Muslims are in matters of worldly rulings because the purpose of transactions is to achieve worldly interests. They need them like Muslims. It was stated in *Kashf al-Asrar* by Al-Bazdawi: (For this reason, the infidel is eligible for rulings that are not intended for the sake of God, such as transactions and punishments such as punishments and retaliation, because he is qualified to perform them, since the purpose of the transactions is the interests of this world, and they are more suitable for the affairs of this world than the Muslims because they preferred this world over the afterlife.³ It was also stated in *Al-Waseet fi Usul al-Hanafiyyah*: (The jurists unanimously agreed that the infidels are addressed by the rulings on transactions and punishments in terms of the belief

1 See in that *Al-Mabsoot*, (10/84), *Sharh Al-Sir Al-Kabir*, (1/207) (3/303), *Al-Jasas*, (2/436), *Al-Kasani*, (6/81).

2 See the *Survival Ship* (2/126).

3 *Kashf Al-Asrar* by Al-Yazardawy, (4/1362).

that they are from God and the existence of their being fulfilled on them in this world.)¹ The Malikis also stated it because the doctrine addressed them with the branches of Sharia law.² As also stated by the Hanbalis: (The infidels are addressed by the branches of Islam, according to the more correct of the two opinions)³ Moreover, among the Imami Shiites, the branches of Sharia indeed address them.)⁴ The only exception to this is their dealings with wine, pork, and sexual intercourse, as mentioned above, and the person who is safe in these matters is like a non-Muslim.

The second assumption is that the obligation arises, is implemented, or is located outside the borders of the Islamic State but has effects within the borders of the Islamic State. This assumption is disputed by the Hanafi, Maliki, and Dhahiri schools, along with the Shafi'i Hanbali, Zaidi, and Imami Shiites. The Hanafi believe that there are no consequences for obligations that arise outside the borders of the Islamic State, even if it was agreed to implement them within the borders of the Islamic State. It is not permissible for judges in the Islamic State to decide on it or issue rulings on it to one of the opponents, even if only on an

1 Al-Waseet fi Usul al-Hanafiyah, p. 91.

2 Al-Sharh Al-Kabir, previous reference, (4/78).

3 Introduction to the doctrine of Imam Ahmad ibn Hanbal, p. 58.

4 Sharh al-Nil (8/540) also stated in Jawahir al-Kalam fi Jurisprudence of the Imami Shiites: (And the doctrine is based on their sharing with us in the branches).

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occasional or urgent basis, due to the lack of jurisdiction of the Islamic State over these obligations, whether it takes place between the Muslim citizens of the Islamic State (the dhimmis) or between the citizens of the Islamic State and the citizens of foreign countries (militaries). It was stated in *Al-Durr Al-Mukhtar*: (If he repays a debt by selling or a loan or one of them usurps its owner and it comes out to us, we will not judge anyone for anything, because he had not adhered to the ruling of Islam in the past.¹. It was mentioned in *Al-Umm* by Al-Shafi'i (Abu Hanifa, may God be pleased with him: If a Muslim entered the war zone safely and sold a dirham for two dirhams, there would be no problem with that because the rulings of Islam do not apply to them². In *Al-Mughni*, Abu Hanifa said usury does not apply between a Muslim and a warrior in a land of war. On his authority, there are two Muslims who converted to Islam in a land of war; there is no usury between them³. Imam Malik said in *Al-Mudawwana*: "No merchant shall enter their country as there are provisions of polytheism upon him⁴. In *Al-Muhallāli* by Ibn Hazm, trade to a land of war is not permissible if its rulings are

1 *Al-Durr Al-Mukhtar* from *Hashiyat Radd Al-Muhtar*, previous reference, (4/342), and *Al-Kasani*, previous reference (7/132-133).

2 *Al-um*, previous reference, (7/326).

3 *Al-Mughni*, previous reference, (4/381)

4 *The Great Blog* by Imam Malik bin Anas, publishing house: Dar Sader, Beirut (5/10).

war-related and apply to trade¹. And in Al-Fawakih Al-Dawani fi Ahl al-Dhimma: (They only pay the tax where our rulings reach them². As for the Shafi’is³ Hanbali⁴ Yazidi⁵ And the Imami Shiites⁶. The Muslim judge must rule in any dispute that arises outside the borders of the Muslim state. Still, according to the provisions of Islam, the covenant requires that it be fulfilled as long as it does not violate a Sharia ruling.

1 Al-Mahli, previous reference, (7/349).

2 See Al-Fawakih Al-Dawani on the message of Ibn Abi Zaid Al-Qayrawani, Ahmad Al-Maliki (1/464).

3 See Al-Muhadhdhab, previous reference (2/281).

4 See Al-Munghi, previous reference (8/458-382-483).

5 Consider this disagreement by Al-Tusi, previous reference (3/333).

6 In this regard, see Sea Al-Zakhar’s previous reference (5/408). Also, Fath al-Aziz, (16/111).

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The third topic

The applicable law in the Sudanese legal system and the topics in which the foreigner is subject to the Sudanese judiciary

This requirement deals with what "foreigner" means in the Sudanese legal system. It also explains how the Sudanese legal system dealt with the issue of the conflict being connected to more than one state's law, each of which provides solutions that are consistent or conflicting with each other; it also shows the cases in which the foreigner is subject to the Sudanese judiciary, and explains the cases in which the Sudanese legal system refuses to rule between non-Sudanese in three claims as follows:

The first requirement

The foreigner in Sudanese law and legal system

In the Sudanese legal system, a foreigner is defined as a non-Sudanese¹. Whatever his religion or country of origin, and even if he resides in Sudan permanently or temporarily, as long as his residency is not old and dates back to 1956 AD. It is noted that

1 Article 3/1 Interpretations of the Sudanese Nationality Law 1994 AD In this law, unless the context requires another meaning: "foreigner" means any non-Sudanese person).

the Sudanese legal system did not include a definition of the Sudanese by definition. Still, a definition of the Sudanese came by drawing, that is, by effect.¹ A Sudanese is anyone who is not a foreigner. The Nationality Law of 1994 divided nationality into two parts: nationality by birth and nationality by naturalization, and specified the persons to whom nationality was granted by birth. Which are²:

1- Persons born in Sudan if they meet several conditions:

A/ The birth of the person or the birth of his father in Sudan, and the word "father" includes the mother of the person born outside of a legal relationship or whose paternity has not been acknowledged³.

1 Alrasem Aal'aathar, I looked at the house drawings, and the drawings showed an engraved book in which the food was sealed. The plural is Al-Rawasim Al-Rawasim, and it is mentioned in poetry: Qarha Rusum, that is, with the face of the mare, and the she-camel of Rusum, which is Tarsam Raseem, and she is the one who influences the matter due to the intensity of her treading. This can be seen in Tahdheeb Al-Lughah Al-Munajjid, (12/293).

2 Article 4 of the Sudanese Nationality Law 1994 AD ((1) About persons born before the entry into force of this law, the person shall be Sudanese by birth if he meets the following conditions: -

- (a) If he has obtained Sudanese nationality by birth.
- (b) (First) that he was born in Sudan.
(Second) When this law comes into effect, he must reside in Sudan, and he or his paternal descendants have been there since the first of January 1956 AD.
- (c) If the person and his family were not born in Sudan, that person may submit a request to the Minister to grant him Sudanese citizenship by birth when he fulfills the requirements of Paragraph (B) (Second).
(2) A person born after the entry into force of this law shall be Sudanese by birth at the time of his birth.
(3) A person born to Sudanese parents by naturalization shall be Sudanese by birth if the parents had acquired Sudanese nationality by naturalization before his birth.

3 Article 3/2 Interpretations of the Sudanese Nationality Law 1994 AD.

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B/He is a resident of Sudan, and he or his paternal descendants have been residing there since the first of January 1956 AD.

C/ Granting Sudanese citizenship by birth by decision of the Sudanese Minister of Interior, even if the person and his father were not born in Sudan.

D/ Birth to Sudanese parents, even if their nationality was not by birth. It is noted here that the Sudanese legal system did not limit the granting of Sudanese nationality by birth or what is called original nationality by right of blood from the male parent only because the word "father" here is general and is not restricted to a specific gender, as the system itself did when it required residency on the father's side for a specific period. It also included the male and female parents, as stated in Article 3/2, Interpretations of the Sudanese Nationality Law of 1994: (Includes the mother of a person born outside of a legal relationship or whose paternity has not been acknowledged. Therefore, it is more appropriate to include the birth father in a legal relationship, as long as the Sudanese legal system has granted original nationality by birth to the child born to a Sudanese mother, even if it results from an illegal relationship, the same applies to someone of unknown parentage who was granted Sudanese nationality even though his parents are unknown, so what about someone whose parents are known and

hold Sudanese nationality. That parent's paternal ascendants resided in Sudan on the date stipulated by the 1994 Nationality Law.

2. A minor who is found or is found abandoned by unknown parents¹. This paragraph is due to the Sudanese legal system granting original nationality by birth to a minor of unknown parentage until he reaches the age of majority²This is one of the advantages of the Sudanese legal system in that it shows its human dimension. Still, it is criticized for not clarifying the fate of the nationality of a minor of unknown parentage after he reaches the age of majority. Should it be forfeited? Or is it withdrawn? Or does he still have unknown parents? The Sudanese legal system has specified cases of withdrawal and revocation of nationality and does not include minors reaching the age of majority. The person whose parents are unknown will continue to enjoy it until it is withdrawn from him or dropped by his will or by a decision of the Sudanese Ministry of Interior.³. The basic principle is that what was remains as it was unless there is evidence to the contrary⁴.

1 Article 5 of the Sudanese Nationality Law 1994 AD.

2 Article 3/3 Interpretations of the Sudanese Nationality Law 1994 AD (meaning a person who has reached the age of majority if he has completed 18 years and has total legal capacity if he is of sound mind).

3 Refer to Articles 10-11 of the Sudanese Nationality Law of 1994.

4 Article 5/e of the Sudanese Evidence Law 1994 AD. (The principle of what is proven by time remains as it was for a reasonable time, and the environment is the one that claims its disappearance or transformation.)

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As for citizenship by naturalization, or what is called emergency or subsequent citizenship, the law grants it to the foreigner after the fulfillment of specific conditions, which are¹

- A- Complete eligibility, i.e., reaching the age of eighteen
- B- Residence in Sudan for five years or more
- C- Not being convicted or sentenced for a crime is prejudicial to honor and honesty.
- D- Take the oath of loyalty as stated in the law.
- E- Attain adulthood.

Citizenship may also be granted by naturalization to any foreigner, even if he is not a resident of Sudan, by a decision of the President of the Republic without these conditions being met.² Or for foreign women married to a husband who holds Sudanese nationality by birth or naturalization³. It would have been better to restrict the President of the Republic's authority to grant citizenship with controls and restrictions, at least requiring the performance of beneficial service for the country, the most

1 Refer to Article 7 of the Sudanese Nationality Law of 1994.

2 Please refer to Article 9 of the Sudanese Nationality Law of 1994.

33 Article 8 of the Sudanese Nationality Law 1994 (The Minister may grant a certificate of Sudanese nationality by naturalization to any foreign woman who applies in the prescribed form and proves to the Minister that she:

- (a) To be the wife of a Sudanese man by the provisions of the laws of Sudan.
- (b) She has resided in Sudan with her Sudanese husband for at least two years from the date of applying, provided that the President of the Republic may, upon the recommendation of the Minister, exempt her from the provisions of this paragraph if she has resided in Sudan with her Sudanese husband for at least two years immediately before the date of submitting that application.

potent manifestation of loyalty, so as not to misuse it, because some countries have misused this naturalization to change the demographic composition of their local communities, the state grants its nationality here without being bound by the conditions for naturalization stipulated in its laws, as if they provided excellent services to the state or brought great benefit to the country or were significant or exceptional.

The second requirement

The law applicable in the Sudanese legal system to disputes with a foreign element

Sudanese law addresses the issue of conflict of laws by establishing attribution rules that refer to the solution to the foreign law most appropriate to the conflict and uses several controls for attribution, such as domicile, place of existence or origin, and the nature of the conflict. Therefore, this requirement requires clarifying it to extrapolate from the position of the Sudanese legal system without going into its explanation, analysis, or comment. The study aims to clarify the position of the Sudanese legal system and extrapolate it by dividing it into several groups.

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The Sudanese legal system adopts a referral system to the foreign or national law most appropriate for the dispute in its assessment through referral rules included in the Sudanese Civil Transactions Law of 1984 AD. For this purpose, several tools and methods are used, including referral, delegation, and adaptation¹It can be extrapolated as follows:

The first group is nationality as a measure of legislative jurisdiction. The law applies to the nationality of the opponents or one of them. When it is impossible to determine it for unknown or multiple persons, the court is responsible for determining the law that must be applied to them²However, Sudanese law must be applied for persons who are simultaneously proven to have Sudanese nationality and the nationality of another foreign country.³; likewise, the law of the state to which they belong under their nationality applies to the civil status of persons and their eligibility concerning financial transactions concluded in the Republic of Sudan and their effects therein⁴However, suppose one of the parties is a foreigner who needs more legal capacity, and the lack of legal capacity is due to

1 Consider the provisions of Article 10/15/16-1 of the Civil Transactions Law of 1984.

2 Consider the provisions of Article 14 of the Civil Transactions Law of 1984.

3 Consider the provisions of Article 14 of the Civil Transactions Law of 1984.

4 Consider the provisions of Article 111 of the Civil Transactions Law of 1984.

a hidden reason that is not easy for the other party to discover. In that case, this reason does not affect his legal capacity.¹

The second group, The domicile, is a measure of legislative jurisdiction. The legal system for foreign legal persons, including companies, associations, institutions, and others, is governed by the country's law in which these persons have their actual main center of management. If it carries out its main activity in Sudan, Sudanese law will apply²; as for marriage and its validity, it depends on the objective conditions stipulated in the law of each spouse³; a marriage between two foreigners or between a foreigner and a Sudanese is considered valid in terms of form if it is concluded following the conditions of the country in which it took place or if the conditions stipulated in the law of each spouse are taken into account⁴. The law of the state to which the husband belongs at the time of concluding the contract applies to the effects resulting from the marriage contract, including the effect regarding money.⁵. The law of the state to which the husband belongs at the time of divorce also applies to divorce, and the law of the state to which the husband belongs at the time of filing the lawsuit also applies to divorce and separation;

1 Consider the provisions of Article 2/11 of the Civil Transactions Law of 1984.

2 Consider the provisions of Article 2/11 of the Civil Transactions Law of 1984.

3 Consider the provisions of Article 11/3 of the Civil Transactions Law of 1984.

4 Consider the provisions of Article 11/7 of the Civil Transactions Law of 1984.

5 Consider the provisions of Article 11/5 of the Civil Transactions Law of 1984.

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however, if one of the spouses is Sudanese at the time of the marriage, Sudanese law alone applies, except for the requirement of eligibility for marriage.¹ The law of the country to which the debtor belongs and the nationality of the debtor shall be applied regarding the obligation to provide alimony among relatives.²

The third group is the place of money as a control for legislative jurisdiction. It applies to issues of inheritance, wills, and all other dispositions added after death, as the law of the inheritor and the legatee or the person from whom the disposition was made at the time of his death applies to them.³ As for the form of the will, the law of the testator at the time of making the will or the law of the country in which it was made, as well as the ruling on the form of all other dispositions added after death, is what governs the issue of the validity of the form.⁴ As for issues of possession, ownership, and other fundamental rights, the law of the location of the property whose possession or ownership is disputed applies.⁵ The same applies to contracts concluded about real estate. Concerning movable property, the law of the region in which it is located shall apply to it when the cause that led to the

1 Consider the provisions of Article 11/2 of the Civil Transactions Law of 1984.

2 Consider the provisions of Article 11/8 of the Civil Transactions Law of 1984.

3 Consider the provisions of Article 11/6 of the Civil Transactions Law of 1984.

4 Consider the provisions of Article 11/9 of the Civil Transactions Law of 1984.

5 Consider the provisions of Article 1/10 of the Civil Transactions Law of 1984.

acquisition or loss of possession, ownership, or other fundamental rights occurred.

Regarding contractual obligations, Sudanese law refers their ruling to the law of the state in which the common domicile of the contracting parties is located. If they share a domicile, if they differ, the law of the state in which the contract was concluded shall apply. All this unless the contracting parties agree otherwise¹. Sudanese law also refers to the ruling on all contracts concluded between living people about their form and the law of the country where they were concluded. It may also be referred to the law that applies to its substantive provisions. It may also be subject to the law of the domicile of the contracting parties or their common national law.². The law of the country where the act creating the obligation occurred applies to non-contractual obligations.³. As for the obligations arising from the harmful act and the facts constituting it that occur abroad and are lawful in Sudan, even if they are considered unlawful in the country in which they occurred⁴.

Fourth group: The nature of the dispute as a control for legislative jurisdiction about lawsuit procedures. The rules of

1 Consider the provisions of Article 13/A of the Civil Transactions Law of 1984.

2 Consider the provisions of Article 13/C of the Civil Transactions Law of 1984.

3 Consider the provisions of Article 14/A of the Civil Transactions Law of 1984.

4 Consider the provisions of Article 14/B of the Civil Transactions Law of 1984.

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jurisdiction and litigation procedures are subject to the law of the country where the lawsuit is filed or the procedures are initiated.¹. However, in the absence of a text in the Civil Transactions Law of 1984 AD, the principles of private international law are applied concerning conflict of laws situations among developed nations. Suppose a text in a private law or an international treaty is in force in Sudan. In that case, it takes precedence over the previous provisions established by the Sudanese legal system in the Civil Transactions Law of 1984²and provided that it does not conflict with the provisions of Islamic Sharia, public order, or morals in Sudan³As for conflict resolution tools, the legal system takes referrals close to the first degree, in addition to adaptation and delegation; if it is decided that foreign law is applicable, only its internal provisions shall be applied, not those relating to private international law⁴If it appears from the provisions contained in the previous articles that the law to be applied is the law of a specific country in which there are many laws, it is the internal law of that country that decides which law of must be applied⁵. Regarding adaptation, the Civil Transactions Law of 1984 is the reference

1 Consider the provisions of Article 15 of the Civil Transactions Law of 1984.

2 The provisions of Article 12 of the Civil Transactions Law of 1984 shall be considered.

3 The provisions of Article 16/1 of the Civil Transactions Law of 1984 shall be considered.

4 Consider the provisions of Article 16/2 of the Civil Transactions Law of 1984.

5 Consider the provisions of Article 15 of the Civil Transactions Law of 1984.

for adjusting civil relations when it is required to determine the type of relations in a case where there is a conflict of laws¹. Then, determine the support officer to know the law that must be applied to it.

This means that the Sudanese legal system did not consider the opinion of the majority of Islamic Sharia jurists, who referred to it as resolving issues of conflict and competition between the law of more than one country that included a foreign element of the substantive rules in Islamic Sharia itself. With an explanatory memorandum for the Civil Transactions Law of 1984, which included the rules for conflict of laws in the Sudanese legal system, it is easier to determine the school from which the rules for resolving conflict of laws were derived.

The third requirement

Subjects in which the foreigner is subject to the Sudanese judiciary

This requirement includes a statement of the cases and topics in which the foreigner is subject to the Sudanese judiciary. The Sudanese judiciary is responsible for examining them to clarify

¹ Consider the provisions of Article 10 of the Civil Transactions Law of 1984

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and determine a position and to facilitate comparison of what is stated in it with what has been decided by Islamic Sharia jurists without going into its explanation, analysis, and criticism because it is not explicitly intended in this study. The Civil Procedures Act 1983 specified the topics to which non-Sudanese, whether Muslim or non-Muslim, are subject. These topics can be divided into several groups as follows:

The first group: Good performance of justice as an officer of judicial jurisdiction in the following cases:

1. If the defendant holds Sudanese citizenship, a lawsuit may be filed against him before the Sudanese judiciary unless the subject of the lawsuit relates to a property outside Sudan¹.
2. The foreigner who has a domicile or place of residence in Sudan, except for lawsuits related to real estate outside Sudan²
3. Lawsuits related to real estate or a house located in Sudan are filed against a foreigner who has no domicile or place of residence, as well as lawsuits related to obligations that arose, were implemented, or were due to be implemented in Sudan or related to bankruptcy for months, or to acts that occurred in Sudan.³

1 Consider the provisions of Article 7 of the Civil Procedure Code of 1983.

2 Consider the provisions of Article 8 of the Civil Procedure Code of 1983.

3 Consider the provisions of Article 4 of the Civil Procedure Code of 1983

4. Disputes related to personal status issues may be brought against a foreigner even if he does not have a domicile or place of residence in Sudan in the following cases.¹
- A. Disputes related to a request for marriage, divorce, or separation annulment. A domicile in Sudan at the time the lawsuit is filed, and for the husband to have a domicile there if the husband has abandoned his wife and made his domicile abroad after the reason for the annulment, divorce, or separation has arisen, or he has been deported from Sudan.
 - B. Tendencies related to requesting alimony for a child residing in Sudan or one of the parents or the wife if they have a domicile there.
 - C. Tendencies related to a small lineage residing in Sudan or to deprive, limit, stop, or restore guardianship over oneself.
 - D. Disputes related to a personal status issue, whether the plaintiff is Sudanese or a foreigner, if the defendant does not have a known domicile abroad, or Sudanese law are the ones that must be applied in the case.
 - E. Disputes related to issues of guardianship over money when the minor or the person required to be quarantined has a domicile or place of residence in Sudan, or Sudan is the last domicile or place of residence of the person required to be quarantined.

¹ Consider the provisions of Article 10 of the Civil Procedure Code of 1983.

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5. If there are multiple foreign defendants and any of them has a domicile or place of residence in Sudan.¹.
6. Disputes related to inheritance and legacies when Sudan was the last home of the deceased, the inheritor was Sudanese, or all or some of the estate's funds were in Sudan.².

The second group is the adversarial logic as a determinant of judicial jurisdiction if the defendant explicitly or implicitly accepts the jurisdiction of the Sudanese courts, even if the subject of the case is not within their jurisdiction. The Sudanese courts may not decide that the court lacks jurisdiction on its initiative.³. The court is also competent to consider preliminary issues and requests incidental to the original lawsuit. It is also competent to decide on every request related to that lawsuit, and the proper conduct of justice requires that it be considered side by side with the subject matter of the lawsuit⁴. It is understood that the Sudanese legal system has taken into account the opinion of the public mentioned above regarding the actions of citizens of the Islamic State (whether Muslim or non-Muslim). Likewise, the

1 The provisions of Article 11 of the Civil Procedure Code of 1983 are considered

2 In this regard, the provisions of Article 12 of the Civil Procedure Code of 1983 are considered

3 Consider the provisions of Article 13 of the Civil Procedure Code of 1983.

4 Article 15 of the Civil Procedure Code of 1983 AD.

warlike foreigner and the trustworthy person have their effects wherever they occur or take place¹

This also means that the Sudanese legal system takes the opinion of the majority of Hanafi scholars (Abu et al.) that Islamic Sharia is not a condition for jurisdiction in the case of a dispute in which one of the parties is a foreigner. The two opponents pleaded to establish jurisdiction according to Islamic law. Jurisdiction was established whenever one of the opponents came to the Muslim judge. Therefore, his consent goes beyond the consent of the other opponent, as if one of them converted to Islam.² It is also the case that non-Sudanese abstain from ruling in situations other than those mentioned above, and this abstention has no reference based on Islamic law because its conditions differ from the conditions explained by Islamic Sharia jurists in interpreting the Almighty's saying: (They like to) listen to falsehood, to devour anything forbidden. So if they come to you (O Muhammad peace upon him), either judge between them or turn away from them. If you turn away from them, they cannot hurt you in the least. Moreover, if you judge, judge with justice between them. Verily, Allâh loves those who act justly.³. Refusing to rule between non-Muslims is stated in Islamic law if

1 See page (23) of the research.

2 See page (21) of the research.

3 Surat Al-Ma'idah verse 42.

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the opponents are not Muslims, even if they are non-Muslims, according to a dispute between jurists, and not because the money or the place where the obligation arises or is implemented is outside the borders of the state.

Conclusion

First, the most important results

The study reached the following results:

1. It is clear from what was discussed in the previous claims that Islamic law dealt with legal issues and legal centers, considered topics of international law. The issue of (conflict of laws) has objective rules derived from Islamic law itself. No attribution rules have been established for it that would refer them to foreign laws, considering it is the most suitable for ruling the ideas attributed to it, to establish objective rulings that resolve the dispute and end the dispute, regardless of the difference in the nationality of the opponents, their place of residence, or the place where the obligation arose or the agreement to implement it.
2. Islamic law is a general law for all human beings that must be applied to everyone, regardless of their location or nationality, as long as its application is possible within the borders of the Islamic State and if some cases concern foreigners in the Islamic State (Al-Mustaminun), or even non-foreigners (dhimmis) require consideration of their religious belief, as Islamic law itself takes this into account without any obligation or courtesy.¹

¹ Consider the rulings on the dhimmis and believers in Dar al-Islam, Abdul Karim Zaidan, p. 593.

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3. Islamic Sharia recognizes only the Sharia or law within the limits mentioned above considered by Islamic Sharia, which indicates its generality to all people if it is impossible to implement it due to the lack of guardianship. In contrast, Islamic law came with objective rules that govern matters of personal status for non-Muslims and did not stipulate the rules of referral or attribute the same as any other law, which is what is called in modern systems a conflict of laws, whether this conflict is internal, or internationally, in governing matters of personal status for non-Muslims, it is based on the unity of the law applied to its territories, in contrast to statutory laws, which establish rules of reference to indicate the law applicable to issues with a religious element. The rule of abandoning non-Muslims and what they owe is not a rule of attribution that takes into account the non-Muslim's religious belief or obliges the Muslim judge to give their laws room to rule the relationship in question. It means nothing more than that the Muslim judge will not challenge them regarding what they owe unless they plead to him; in this case, the ruling will be based on the provisions of Islamic Sharia and within the extent that Islam has taken into account in the issues of the validity of marriage, its differences, and the actions that take place on their part regarding wine and pork. In all cases, the rule mentioned above is nothing but a jurisprudential rule and

needs to be agreed upon by most schools of Islamic jurisprudence. It must be understood in light of the advanced opinions and previous discussion, which does not indicate the obligation or even permissibility of applying the laws of a foreign country.

4. The Sudanese legal system also converges with the public's opinion regarding the actions of citizens of the Islamic State (Muslims or non-Muslims). Likewise, the military foreigner and the trustworthy person have their effects wherever they occur or take place. The direction of the Sudanese legal system is also similar to the direction of the majority of jurists mentioned above in that the actions of citizens of the Islamic State (whether Muslim or non-Muslim, as well as the military foreigner and the foreigner) have their effects wherever they occur or take place.

Secondly, the most important recommendations

1. Reviewing the conflict of laws provisions contained in the Civil Transactions Law of 1984 AD so that the law is consistent with Islamic Sharia, primarily since it was issued after the Law of Judgments Principles of 1983 AD, especially in the rules of attribution and referral, ideas attributed, controls on attribution, and the laws attributed to them.

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2. In-depth study of the position of Islamic Sharia on legal topics and issues and not rushing to transfer provisions of foreign laws that intersect with Islamic Sharia in fundamental matters.
3. The President of the Republic's authority to grant citizenship by naturalization is limited to the availability of conditions and controls, the most important of which is performing beneficial service for the country because this is one of the strongest manifestations of loyalty to the nation and country and ensuring the extent of the foreigner's integration into the social fabric, and that granting that nationality does not lead to changing the demographic nature of the country, the state's respect for the conditions for granting citizenship preserves the granted citizenship's actual value that is globally mobile because it reflects citizenship in both its factual and legal aspects.