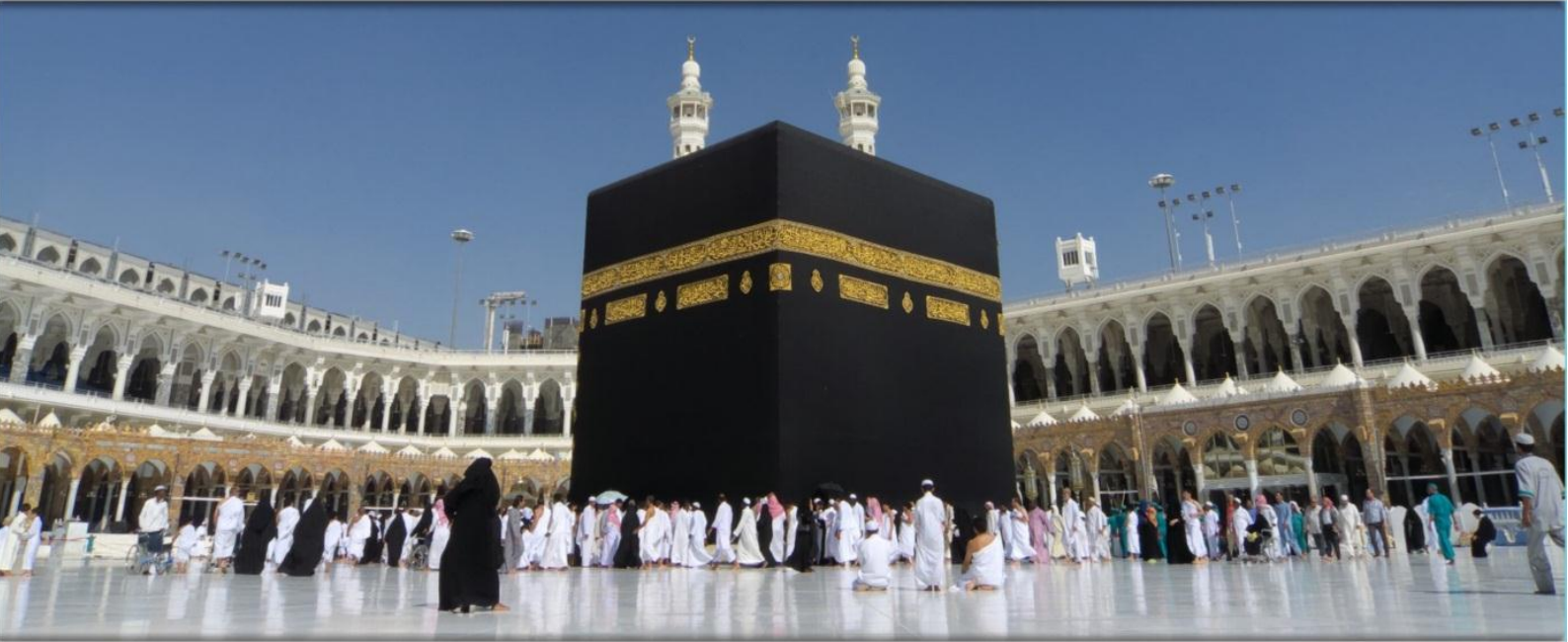


E-BOOK

THE GAME OF THE HARAM



Maḥmūd Ibn Aḥmad al Dosary (PhD)

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INTRODUCTION

Verily all praise is for Allah, we praise Him, seek His help and forgiveness, and we seek refuge in Allah from the evil of ourselves and from the sinfulness of our actions. Whosoever Allah guides, then none can misguide him, and whosoever Allah misguides, there can be no guide for him. I testify that there is no deity except Allah alone and I testify that Muḥammad is His servant and messenger.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ حَقَّ تُقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنتُمْ مُسْلِمُونَ

“O you who have believed, fear Allah as He should be feared and do not die except as Muslims (in submission to Him)” Surat ‘Āli ‘Imrān (Family of ‘Imrān), verse 102.

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۗ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۗ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

“O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer.” Surat An-Nisā' (The Women), verse 1.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا ﴿٧٠﴾ يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ ۗ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا عَظِيمًا ﴿٧١﴾

“O you who have believed, fear Allah and speak words of appropriate justice. He will then amend for you your deeds and forgive you your sins. And whoever obeys Allah and His Messenger has certainly gained a signal victory” Surat Al-'Aḥzāb (The Combined Forces), verses 70 – 71.



Certainly the best of speeches is the Book of Allah and the finest guidance is the guidance of Muḥammad, may the peace and blessings of Allah be upon him. The most evil affair is a newly invented matter in religion and every newly invented matter is innovation (*bid'a*), and every innovation is misguidance and all misguidance is in the Hellfire.

In one of the most desolate and arid places of Earth, in a rocky and stony land surrounded everywhere by the desert, with no plantations and no water; a place that lacks everything that gives life and prosperity, Allah chose Mecca The Honoured to become His safe Sanctuary, the heart and capital of the World, the unique city on the face of the planet that acquired sanctity by a divine order and a Lordly decree to shine radiantly over all cities.

The will of Allah Most High chose for Mecca this barren land in spite of His power, exalted be He, to make it a gorgeous verdant garden with luxuriant vegetation, full of flowers, warbling birds and babbling streams. He made it a sign of His power and a miracle; Allah Most High said:

أَوَلَمْ يَرَوْا أَنَّا جَعَلْنَا حَرَمًا ءَامِنًا وَيُتَخَطَّفُ النَّاسُ مِنْ حَوْلِهِمْ

“Have they not seen that We made (Mecca) a safe Sanctuary, while people are being taken away all around them?” Surat al-‘Ankabūt (The Spider): 67.

And Allah Most High said:

أَوَلَمْ نُمَكِّنْ لَهُمْ حَرَمًا ءَامِنًا يُجْبَىٰ إِلَيْهِ ثَمَرَاتُ كُلِّ شَيْءٍ رِّزْقًا مِّن لَّدُنَّا

“Have We not established for them a safe Sanctuary to which are brought the fruits of all things as provision from Us?” Surat Al-Qaṣaṣ (The Stories): 57.

Mecca the Honoured is particular compared to all other cities on the planet; cities and lands are favoured, according to human habits, for their resources and the wealth Allah bestowed upon them; some lands are preferred thanks to their mineral resources, some for their oil resources, other for their agriculture or water or any other material perishable assets.



But the criterion of differentiation of the Holy Land that singles it out is not a material one: religion is the basis of its distinction from all other lands and countries; it is the Holy Land of Allah, on it lies the Honourable Ka'ba, the sacred and glorified places, it is the qibla (direction) of the Muslims, in it takes place the greatest gathering of people on Earth to worship Allah Most High by accomplishing the Hajj and 'Umra.

For this reason, Mecca holds a great and elevated status in the hearts of all the Muslims of the planet; a station stemming from this religious eminence bestowed by Allah. There is no doubt that what distinguishes a nation from another, what raises one above others is the scale of the exaltation of its sanctity, its bond to its History, its persistence in sticking to its authenticity and its development from its past towards its present and future. This is why ancient and modern Muslims have granted the Holy Land a great interest, dedicated to it volumes and devoted to it their times.

It is with my deep love for the Holy Land and my firm belief in the greatness of our religion and our convictions that I decided to write this book which I entitled "The Holy Land: Description – Names – Virtues – Specificities – Rules" for it to become a comprehensive reference; hoping it to be pleasant to read; I gathered in it what is related to the Holy Land as descriptions, virtues, specificities and rules linked to it. This book came into being with the help of Allah Most High, combining the splendour of sight, ease of reading and the charm of writing on this great and deep subject.

Our Lord creates what He wills and He chooses:

It is according to the perfection of His power, His wisdom and knowledge that Allah Most High prefers, distinguishes, specifies and chooses between His creatures. Allah has His preference between angels, prophets and human beings. He preferred some periods of times above others as He preferred some places above others; for instance He preferred the Firdaws amongst all the Heavens.

If you gaze at Creation you would see this divine choice and grant indicating His lordliness, exalted be He, His oneness and the perfection of His wisdom, knowledge and power; He is Allah, there is no god but Him and no one creates as He creates, no one chooses as He chooses, no one directs all things as He does. These choices and arrangements noticed in this World are amongst the greatest signs of His



lordliness and the most obvious evidence of His oneness and of the characteristics of His perfection and the sincerity of His messengers.¹

No one creates as He creates, no one chooses as He chooses and no one directs all things as He does; Allah Most High said:

وَرَبُّكَ يَخْلُقُ مَا يَشَاءُ وَيَخْتَارُ

“And your Lord creates what He wills and He chooses” Surat Al-Qaṣaṣ (The Stories): 68.

Amongst the places that received this grace and greatness is Mecca the Honoured, the land of the Revelation and the cradle of the message where lays a house for which the hearts and souls are craving, is it not the Ancient House.²

Amongst the signs of its preference: Allah Most High informed us that Mecca is the Mother of Cities; all the cities are linked to it, they are its followers, it is their central axis and origin. Therefore, there cannot be any city equivalent to it; it is similar to the Fātiḥa: the Prophet (s) said of it that it was the Mother of the Qur’ān; this is why it is second to none in all the divine books.³

Importance of the subject and method:

The importance of this book lies in its own nature: a comprehensive study of the Holy Land and what is relevant as history, virtues, specificities and rules based on sharia-authenticated sources approved by the standards of well-versed and eminent people in jurisprudence; regardless of what became famous concerning the Holy Land such as false ḥadīths, false events or false information linked to it. Therefore, the method of this book is based on the method of the people of ḥadīth whereas authenticity of information is the fundamental condition for being quoted in the text. This is the guideline followed, based on the prevailing opinion in Islamic jurisprudence: presenting evidence from the Qur’ān and the Sunna, sometimes with the addition of companions’ statements and reasoning, evidence of the consensus if there is one, and quoting rules, wisdoms and benefits derived from said evidence. I avoided delving into too many details (except for important matters) or mentioning

¹ Zād al-ma’ād, Ibn al-Qayyim (42/1).

² See: Bayt Allah al-ḥarām al-Ka’ba, Muḥammad Ibn ‘Abd Allah Shabbāla p. 7.

³ Zād al-ma’ād, (49 – 50/1).



contradictions in order to ward off boredom, to make prevailing opinions more clear in the minds and to make the book easier and more comfortable for the dear reader.

This book is intended for all categories of Muslims ranging from the diligent student assiduous in the quest of knowledge to the uninitiated reader considering the easiness of the method, the fluency of the style and the distance taken from blameworthy controversy or sterile arguments.

Maḥmūd Ibn Aḥmad al Dosary (PhD).

Dosary33@hotmail.com

www.drdosary.com

Dammam S. B.: 2779

Zip code: 31461



Section I:

The Game Of The Haram

Part I: Defining the game

Allah Most High forbade killing the game inside the Haram in His word, exalted be He:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرْمٌ ۗ

“O you who have believed, do not kill wild game while you are in the state of *ihrām*”
Surat al-Mā’ida – The Table spread: 95. Then, what is the meaning of killing game here?

The meaning of the game in the verse refers to three points:

The first one: The game has to be *ḥalāl* food.

Imam Aḥmad (m) said: Expiation is for the game that is legal to eat.⁴

The second one: The game has to be wild.

No divergence between the ulama that beasts which are not wild like the cattle, horses, chicken, etc. can be slaughtered or eaten by the muḥrim if they are not wild as they are bred for that. This has been reported by Ibn Ḥazm⁵, Ibn Qudāma⁶, Ibn Ḥajar and others.

⁴ *Al-Mughnī* (266/3).

⁵ See: *Marātib al-ijmā’* (p. 44).

⁶ See: *al-Mughnī* (267/3).



Ibn Hajar (m) said: They agreed that the game here only means what is lawful as food from wild beasts and that nothing permits one to kill it.⁷

The third one: The game has to be game from the land not game from the sea.

Allah Most High said:

أَحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَّعًا لَكُمْ وَلِلسَّيَّارَةِ ۗ

“Lawful to you is game from the sea and its food as provision for you and the travellers” Surat al-Mā’ida: 96.

Ibn al-‘Arabī (m) said: When Allah Most High said: “O you who have believed, do not kill wild game while you are in the state of iḥrām” (Surat al-Mā’ida – The Table spread: 95) it concerned all kind of game, from land and sea; then His word came, exalted be He: “Lawful to you is game from the sea” (Surat al-Mā’ida: 96). He then gave His absolute permission concerning game from the sea and He forbade game from the land for the people in the state of iḥrām. This differentiation and distinction indicates that the interdiction does not encompass game from the sea.⁸

There is a unanimous consensus between the ulama about the permission for the muḥrim concerning game from the sea; this was reported by Ibn al-Mundhir⁹, Ibn Ḥazm¹⁰, Ibn Qudāma¹¹, etc.

Part II: The rule on the game of the Ḥaram

They ulama reached a consensus on the interdiction to hunt the game of the Ḥaram for everyone, muḥrim or not.¹²

Evidence:

1. Ibn ‘Abbās (r2) narrated: The Messenger of Allah (s) said on the Day of the Conquest of Mecca: **Verily Allah made this city sacred, its thorny shrubs are not to be cut neither its game disturbed**^{13...14}

⁷ *Fath al-Bārī* (21/4).

⁸ *Aḥkām al-Qur’ān* (175/2).

⁹ See: *al-Ijmā’* (p. 51).

¹⁰ See: *Marātib al-ijmā’* (p. 44).

¹¹ See: *al-Mughnī* (270/3).

¹² See: *Sharḥ an-Nawawī ‘alā Ṣaḥīḥ Muslim* (125/9); *al-Mughnī* (344/3); *l’lām as-sājid bi-aḥkām al-masājid* (p. 154).



2. Abū Hurayra (r) narrated: When Allah granted His Messenger (s) victory over Mecca, he stood (to deliver an address) among the people, he praised Allah and glorified Him, and then he said: ... **its game should not be disturbed.**¹⁵

Significance: Here is a statement about the interdiction to hunt the game of the Haram for everybody, muḥrim or not.

3. ‘Ikrima, the servant of Ibn ‘Abbās (r2), said: Do you know what disturbing the game means? It means driving it out of the shade to occupy its place.¹⁶

Words of scholars on the matter:

1. **An-Nawawī (m)** said: The ulama said: When the Prophet (s) spoke about disturbing the game it means harming it; as, if disturbing it is forbidden, consequently harming it comes even first.¹⁷
2. **Ibn al-Qayyim (m)** said: It cannot be moved from its place, as it is a respected animal in this place; as it was first there it has priority.¹⁸
3. **Al-Muḥibb aṭ-Ṭabarī (m)** said: No divergence: If one moved it without harm, there is no penalty; but it is a sin as he violated an interdiction. If he harmed it by moving it from its place, there is a penalty.¹⁹

Evidence of the Consensus:

Many scholars related a consensus over the interdiction to hunt the game of the Haram for everyone (muḥrim or not); among them: Ibn al-Mundhir, Ibn Ḥazm, an-Nawawī, Ibn Qudāma²⁰, etc.

1. **Ibn al-Mundhir (m)** said: They unanimously agreed that hunting the game of the Haram is forbidden, in the state of iḥrām or not.²¹
2. **Ibn Ḥazm (m)** said: They unanimously agreed that, inside the Sanctuary of Mecca, hunting the game of the land that is legal as food is forbidden.²²

¹³ Disturbed: not even moved from its place; he did not mean to kill them; i.e. driving it out of the shade to occupy its place. See: *Tafsīr gharīb mā fī aṣ-Ṣaḥīḥayn al-Bukhārī wa Muslim*, Muḥammad Ibn Abī Naṣr (150/1).

¹⁴ Reported by al-Bukhārī (575/2); Muslim (986/2), H. 1353.

¹⁵ Reported by al-Bukhārī (857/2), H. 2302; Muslim (988/2), H. 1355.

¹⁶ Reported by al-Bukhārī (651/2), n°1736.

¹⁷ *Sharḥ an-Nawawī ‘alā Ṣaḥīḥ Muslim* (126/9).

¹⁸ *Zād al-ma‘ād* (453/3).

¹⁹ *Al-Qirā li-qāṣid umm al-qurā* (p. 642).

²⁰ *Al-Mughnī* (351/3).

²¹ *Al-Ijmā‘* (p. 57).

²² *Marātib al-ijmā‘* (p. 46).



3. **An-Nawawī (m)** said: Concerning hunting the game of the Ḥaram: it is forbidden, in the state of iḥrām or not; if one kills an animal, he will receive a penalty according to all the scholars.²³

Part III: Penalty for killing the game, in the state of iḥrām or not

Firstly: Penalty for killing game inside the Ḥaram for the muḥrim.

The ulama agreed that penalty is compulsory for he who kills the game of the Ḥaram.

Evidence:

The word of Allah Most High:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرْمٌ ۚ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمَّدًا فَجَزَاءٌ مِّثْلُ مَا قَتَلَ مِنَ النَّعْمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِّنْكُمْ هَدْيًا ۙ أَوْ بَلِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ ۖ طَعَامُ مَسْكِينٍ أَوْ عَدْلٌ ذَٰلِكَ صِيَامٌ ۖ لِّيَذُوقَ وَبَالَ أَمْرِهِ ۗ عَفَا اللَّهُ عَمَّا سَلَفَ ۚ وَمَنْ عَادَ فَيَنْتَقِمُ اللَّهُ مِنْهُ ۗ وَاللَّهُ عَزِيزٌ ذُو انتِقَامٍ

“O you who have believed, do not kill game while you are in the state of iḥrām. And whoever of you kills it intentionally – the penalty is an equivalent from sacrificial animals to what he killed, as judged by two just men among you as an offering (to Allah) delivered to the Ka’ba, or an expiation: the feeding of needy people or the equivalent of that in fasting, that he may taste the consequence of his deed. Allah has pardoned what is past; but whoever returns (to violation), then Allah will take retribution from him. And Allah is Exalted in Might and Owner of Retribution.”

Surat al-Mā’ida – The Table Spread: 95.

Significance: The verse expresses the obligation of a penalty for the muḥrim who killed game inside the Ḥaram.

Evidence of the Consensus:

²³ Sharḥ an-Nawawī ‘alā Ṣaḥīḥ Muslim (125/9).



Many scholars related a consensus over the obligation of a penalty for the muḥrim who killed game inside the Ḥaram; among them: Ibn Rushd²⁴, Ibn Qudāma, Ibn Baṭṭāl²⁵, etc.

Ibn Qudāma (m) said: The penalty is absolutely compulsory for the muḥrim who killed game inside the Ḥaram; the scholars unanimously agreed on this obligation and Allah Most High stated it.²⁶

Secondly: Penalty for killing game inside the Ḥaram for a person who is not in a state of iḥrām.

The ulama diverged on imposing a penalty for he who killed game inside the Ḥaram but who is not a muḥrim. There are two opinions; **the prevailing one** states that there is a penalty; this is the view of the majority and of the four imams.²⁷

Evidence:

1. The word of Allah Most High: “And whoever of you kills it intentionally – the penalty is an equivalent from sacrificial animals to what he killed” Surat al-Mā’ida – The Table Spread: 95.

Significance: By analogy with the penalty incumbent on the muḥrim for killing game; as the game of the Ḥaram has been made forbidden for the sake of Allah Most High, it is comparable with iḥrām; this is why it is followed by expiation.²⁸

Ash-Shirbīnī (m) said: There is no distinction between people in the state of iḥrām and others inside the Ḥaram because of the interdiction to oppose divine law.²⁹

Ibn Qudāma (m) said on hunting the game of the Ḥaram for people who are not in the state of iḥrām: It is forbidden to hunt it by divine authority; it is similar to the case of a muḥrim.³⁰

2. The word of Allah Most High:

²⁴ See: *Bidāya al-mujtahid* (358/2).

²⁵ *Fatḥ al-Bārī* (21/4).

²⁶ *Al-Mughnī* (265/3).

²⁷ See: *al-Mabsūṭ* (97/4); *al-Bināya* (306/4); *al-Muwaṭṭa’* (356/1); *Mawāhib al-jalīl* (255/4); *Sharḥ an-Nawawī ‘alā Ṣaḥīḥ Muslim* (125/9); *Fatḥ al-Bārī* (21/4); *al-Mughnī* (166/3); *al-Iqnā’* (605/1).

²⁸ See: *al-Muntaqā* (448/3); *al-Muhadhdhab* (398/1); *al-Furū’* (472/3).

²⁹ *Mughnī al-muḥtāj* (524/1).

³⁰ See: *al-Mughnī* (166/3).



وَأَنْتُمْ حُرْمٌ

“... while you are in the state of *iḥrām*...” Surat al-Mā’ida – The Table Spread: 95.

Significance: The words “in the state of *iḥrām*” refer to the state, namely the *iḥrām*, and the place: the Ḥaram.

Ibn al-‘Arabī (m) said about the word of Allah Most High “in the state of *iḥrām*³¹”: It has a general meaning referring to either time, space or the state of *iḥrām*; but according to a consensus, the connection to time here has been rejected, therefore only the connection to the place and the state of *iḥrām* remained the cause of the penalty.³²

3. There is a penalty – expiation for hunting the game of the Ḥaram for people who are not in the state of *iḥrām* – according to many Companions (rp); among them the two righteous caliphs ‘Umar and ‘Uthmān (r2) and no one objected to them, it is therefore a consensus.³³

Among the most important established acts of the Companions are the following:

- a. Nāfi‘ Ibn ‘Abd al-Ḥārith narrated: ‘Umar Ibn al-Khaṭṭāb (r) arrived in Mecca a Friday and he entered Dār an-Nadwa (a house where political affairs used to be discussed) as he intended to take a short cut to go to the Sacred Mosque. Inside the house, he threw his cloak on a pillar where a bird of the kind of the pigeon settled. He drove it away to a place where a snake bit it and killed it. After he performed the Friday prayer, I visited him with ‘Uthmān Ibn ‘Affān (r). ‘Umar told us: Give me your opinion on something I did today: I entered this house as I intended to take a short cut to the Sacred Mosque. Inside it I threw my cloak on this pillar where a bird of the kind of the pigeon settled. I feared that it might soil my cloak with its excrement so I drove it away and it settled on this other pillar where a snake bit it and killed it. I said to myself that I was the cause of that. It was in a safe place and I drove it to death. I

³¹ In Arabic the expression translated here by **in the state of *iḥrām*** may be used for someone entering the Ḥaram (without necessarily being in the state of *iḥrām*); it is said: a man is *ḥarām* (in the state of *iḥrām*) if he entered the sacred months, if he entered the Ḥaram, or if he entered the state of *iḥrām*. **The expression stands for either time, space or the state of *iḥrām***. See: *Tafsīr al-Qurṭubī* (305/6).

³² *Aḥkām al-Qur’ān* (175/2).

³³ See: *al-Ḥawī al-kabīr*, al-Māwardī (315/4); *al-Muntaqā* (439/3); *adh-Dhakhīra* (325/3); *al-Mughnī* (265/3).



(Nāfi') said to 'Uthmān (r): What do you think of a russet little goat³⁴ as an atonement that we could impose to the Commander of the Faithful? 'Uthmān agreed and 'Umar obeyed.³⁵

- b. What was reported by Ṣāliḥ Ibn al-Mahdī whose father told him: I was in Mecca with 'Uthmān (r) for the pilgrimage. I prepared him his bed and he fell asleep. A pigeon settled on an opening in the wall next to his bed and started to scratch (that place) with its feet. I feared that it might wake him up so I drove it away and it settled on another opening. Then a snake came and killed it. When 'Uthmān (r) woke up I informed him of what happened and he said: You have to sacrifice a ewe as atonement. I replied: I drove it away for you! He said: I will sacrifice a ewe as well.³⁶
- c. Ibn 'Abbās (r2) said that the penalty for a pigeon of the Ḥaram, imposed on people in iḥrām or not, was a ewe.³⁷

According to another narration, Ibn 'Abbās (r2) stated that for each dove of Mecca, the penalty was a ewe.³⁸

Ash-Shāfi'ī (m) said: 'Umar, 'Uthmān, Nāfi' Ibn 'Abd al-Ḥārith, 'Abd Allah Ibn 'Umar, 'Āṣim Ibn 'Umar, Sa'īd Ibn al-Musayyib and 'Aṭā' said so.³⁹

Part IV: The difference between making an error voluntarily and involuntarily

The ulama diverged on the expiation for killing game of the Ḥaram; is it compulsory for he who did it involuntarily as for he who did it intentionally? There are two opinions; **the prevailing one** states that there is no expiation for he who killed game involuntarily. Imam Aḥmad backed this opinion in one of the two versions he quoted⁴⁰. This view is preferred by Ibn al-Mundhir⁴¹, Ibn Ḥazm⁴² and Ibn

³⁴ See: *an-Nihāya fī gharīb al-ḥadīth wa al-athar* (261/3).

³⁵ Reported by ash-Shāfi'ī in his *Musnad* (p. 135). Authenticated by an-Nawawī in *al-Majmū'* (440/7); Ibn Ḥajar said its chain was ḥasan (good) in *Talkhīṣ al-ḥabīr* (285/2).

³⁶ Reported by Ibn Abī Shayba in his *Muṣannaf* (178/3), n°13221; it has other witnesses who make the chain even stronger. See: *Akhbār Makka*, al-Azraqī (142/2); *Akhbār Makka*, al-Fākihī (386/3), n°2269; *Muṣannaf 'Abd ar-Razzāq* (418/4), n°8284.

³⁷ Reported by al-Bayhaqī in *al-Kubrā* (205/5); Ibn al-Mulaqqin in *al-Badr al-munīr* (404/6).

³⁸ Reported by ash-Shāfi'ī *al-Umm* (207/2); 'Abd ar-Razzāq in his *Muṣannaf* (414/4) n°8265. An-Nawawī authenticated its chain in *al-Majmū'* (440/7) and al-Albānī in *al-Irwā'* (247/4), n°1056.

³⁹ *Al-Umm* (207/2).

⁴⁰ See: *al-Mughnī* (505/3); *al-Furū'* (398/3).



al-Jawzī⁴³; and among the contemporaries who chose it: as-Sa‘dī⁴⁴, Ibn Bāz⁴⁵ and Ibn ‘Uthaymīn⁴⁶.

Evidence:

1. The word of Allah Most High:

وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِّثْلُ مَا قَتَلَ مِنَ النَّعَمِ

“And whoever of you kills it intentionally – the penalty is an equivalent from sacrificial animals to what he killed” Surat al-Mā’ida – The Table Spread: 95.

Significance: the atonement has to be observed if one disobeys on purpose; therefore it does not concern acts committed by accident.

Ibn ‘Uthaymīn (m) said: “intentionally” is the very cause of the sanction. When a description (intentionally) is linked to a rule, the rule is conditioned by it, so if the description disappears, the rule is cancelled. Therefore, if someone committed something by accident, the sanction is cancelled. The verse is a law in the matter.⁴⁷

Ibn Bāz (m) said: The verse of the Qur’ān indicates that atonement is compulsory only for he who acted intentionally, this is the most obvious meaning, and a person in the state of iḥrām may kill an animal by accident, especially if he drives a car; Allah Most High said:

يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمْ الْعُسْرَ

“Allah intends for you ease and does not intend for you hardship” Surat al-Baqara: 185.⁴⁸

2. Qabīṣa Ibn Jābir al-Asadī narrated: We were heading to Mecca to perform Ḥajj and we were squabbling, in the state of iḥrām, about which was the fastest: the antelope or the horse? While we were like that, an antelope appeared and a

⁴¹ See: *al-Iqnā’* (215/1).

⁴² See: *al-Muḥallā* (214/7).

⁴³ See: *al-Furū’* (463/3).

⁴⁴ See: *Taysīr al-karīm ar-rahmān* (p. 244).

⁴⁵ See: *Majmū’ fatāwā wa maqālāt* (204/17).

⁴⁶ See: *Sharḥ al-mumtī’* (231/7).

⁴⁷ See: *Sharḥ al-mumtī’* (226/7).

⁴⁸ See: *Majmū’ fatāwā wa maqālāt* (204/17).



man among us threw it a stone that hit its *khushashā'* (a thin bone not covered by hairs behind the ear)⁴⁹, the antelope fell on its head, broke its neck and died. When we approached Mecca, we went to 'Umar and my friend told him the story. 'Umar (r) asked him: Did he kill it intentionally or not? He said: I wanted to throw it a stone, but I did not want to kill it. 'Umar (s) said: It is between intentionally and by accident. He then turned to a man at his side and spoke with him for a while. Then he called my friend and said to him: Take a ewe lamb, sacrifice it, give its meat as alms and make a water-skin from its leather.⁵⁰

According to another version; Qabīṣa Ibn Jābir al-Asadī narrated that he heard 'Umar Ibn al-Khaṭṭāb, 'Abd ar-Raḥmān Ibn 'Awf was with him, asking a man who killed an antelope while in the state of iḥrām: Did you kill it intentionally or not? The man replied: I wanted to throw it a stone but I did not intend to kill it. 'Umar then said: I see that you acted between intentionally and by accident; take a ewe lamb and sacrifice it, give its meat as alms and make a water-skin out of its leather.⁵¹

Significance: There is a distinction between killing the game of the Ḥaram intentionally and killing it by accident; as 'Umar (r) made it clear and 'Abd ar-Raḥmān Ibn 'Awf (r) did not question him.

Ibn Ḥazm (m) said after quoting this story: If, for 'Umar and 'Abd ar-Raḥmān (r2), there was no distinction between killing the game intentionally and killing it by accident, then why 'Umar did ask him if he killed it intentionally or not? 'Abd ar-Raḥmān (r) did not question 'Umar; the silence of 'Abd ar-Raḥmān (r) indicates that he agreed with 'Umar (r).⁵²

Part V: Bringing game inside the Ḥaram

The ulama diverged about permission to bring game inside the Ḥaram. There are two opinions, **the prevailing one** states that it is legal to bring game

⁴⁹ See: *Lisān al-'Arab* (72/5).

⁵⁰ Reported by aṭ-Ṭabarānī in *al-Kabīr* (127/1), n°259. Authenticated by an-Nawawī in *al-Majmū'* (425/7) and al-Albānī in *al-Irwā'* (245/4), n°1052.

⁵¹ Reported by Ibn Ḥazm in *al-Muḥallā* (214/7).

⁵² *Al-Muḥallā* (214/7).



inside the Haram; this is the view of the two imams Mālik⁵³ and ash-Shāfi‘ī⁵⁴ and Ibn al-Mundhir⁵⁵ and Ibn Ḥazm⁵⁶ preferred it.

Evidence:

1. Ṣāliḥ Ibn Kaysān (m) narrated: I saw game being sold alive in Mecca under the emirate of Ibn Zubayr (r2).⁵⁷
2. Ḥammād Ibn Zayd said: It has been said to Hishām Ibn ‘Urwa: ‘Aṭā’ considers slaughtering poultry a disliked act (makrūh); he (Hishām) said: What does ‘Aṭā’ know? Here is the Commander of the Faithful (Ibn Zubayr (r2)) at Mecca who sees *al-qamārī*⁵⁸ and *ad-dabāsī* in cages (without saying anything about it)⁵⁹.

Significance: Ibn Zubayr (r2) saw game being sold in cages inside Mecca and he did not question that; this indicates that it is permitted to enter game inside the Haram.

3. Originally it is permitted to enter game inside the Haram as nothing can make it forbidden except if there is evidence; moreover it is facilitation for the people of Mecca and the pilgrims. “If it was forbidden, it would have been very complicated for them.”⁶⁰

⁵³ See: *al-Kāfi fī fiqh ahl al-madīna* (p.155); *Mawāhib al-jalīl* (251/4).

⁵⁴ See: *al-Muḥadhdhab* (399/1); *Mughnī al-muḥtāj* (301/2).

⁵⁵ See: *al-Iqnā’*, Ibn al-Mundhir (218/1).

⁵⁶ See: *al-Muḥallā* (248/7).

⁵⁷ Reported by ‘Abd ar-Razzāq in his *Muṣannaḥ* (426/4), n°8318; and Ibn Ḥazm in *al-Muḥallā* (252/7), its chain is authentic (ṣaḥīḥ).

⁵⁸ *al-qamārī* a kind of pigeon with a beautiful voice and *ad-dabāsī*: another kind of pigeon. See: *Lisān al-‘Arab* (115/5 and 76/6); *al-Mu’jam al-wasīṭ* (758/2).

⁵⁹ Reported by al-Fākihī in *Akhbār Makka* (380/3) n°2250; its chain is authentic ṣaḥīḥ.

⁶⁰ *Mawāhib al-jalīl* (178/3).



Section II:

Lost Things Inside The Ḥaram

The ulama diverged about lost things found inside the Ḥaram: should one pick them up and keep them in order to publicize them or is it permissible to appropriate them? There are two opinions: **the prevailing one** states that it is utterly forbidden to appropriate them, instead one has to pick them up in order to make the find public. This is the view of ash-Shāfi'ī⁶¹ and Aḥmad in one of the two versions he quoted⁶², and it has been preferred by the majority of contemporary and ancient scholars.⁶³

Evidence:

1. Ibn 'Abbās (r2) narrated that the Prophet (s) said: **No one is to pick up the dropped things⁶⁴ except one who makes a public announcement of it^{65,66}**

In another version: **It is not permitted to pick up its dropped things except for he who makes a public announcement for it.⁶⁷**

⁶¹ See: *Sharḥ an-Nawawī 'alā Ṣaḥīḥ Muslim* (126/9); *Hidāya as-sālik* (728/2).

⁶² *Al-Mughnī* (706/5); *Zād al-ma'ād* (453/3).

⁶³ See: *Fatḥ al-Bārī* (88/5).

⁶⁴ **The dropped things** inside Mecca.

⁶⁵ **A public announcement:** in order to keep it safe and give it back to its owner. See: *'Umda al-qārī* (274/12).

⁶⁶ Reported by al-Bukhārī (857/2), H. 2301.

⁶⁷ Reported by al-Bukhārī (857/2), H. 4059.



2. Abū Hurayra (r) narrated: The Messenger of Allah (s) said: **It is not permitted to pick up its fallen things except for he who makes public announcement for it.**⁶⁸

In another version: **Picking up its fallen things⁶⁹ is not permitted except for he who makes public announcement for it^{70,71}**

3. ‘Abd ar-Raḥmān Ibn ‘Uthmān at-Taymī (r) narrated: The Messenger of Allah (s) **forbade taking lost things from the pilgrim.**⁷²

Significance: It is not permitted to pick up lost things except for making a public announcement for it in order to find its owner.

Al-Azharī (m) said: He (s) made a distinction between lost things inside the Ḥaram and lost things anywhere else around the world. The rule for lost things found anywhere but the Ḥaram is that he who finds a dropped thing has to make a public announcement for it and after one year he is allowed to use it; whereas something found inside the Ḥaram cannot be used by he who found it even after a public announcement for it and even after a long period of time. He ruled that it is not allowed to pick up dropped things inside the Ḥaram except with the intention of making public announcement for them for life. Therefore it is allowed to pick up dropped things inside the Ḥaram for making a public announcement for them, but it is not permitted to use these things, even after one year, as it is the case in any other places on earth but the Ḥaram.⁷³

An-Nawawī (m) said: In all the ḥadīths of the chapter is evidence that picking up dropped things and keeping them do not need the decision of a judge or permission of the governor; there is a consensus about it and there is no distinction between the poor and the rich; this is our opinion and the opinion of the majority.⁷⁴

The reason for the interdiction of picking up things inside the Ḥaram:

Ibn Ḥajar (m) spoke about the wisdom on the matter: The most probable is that he who finds a lost thing in Mecca despairs of finding its owner and its owner

⁶⁸ Reported by al-Bukhārī (857/2), H. 2302; Muslim (988/2), H. 1355.

⁶⁹ Picking up anything dropped inadvertently by its owner.

⁷⁰ **He who makes public announcement for it:** see: *‘Umda al-Qārī* (164/2).

⁷¹ Reported by al-Bukhārī (2522/6), H. 6486; Muslim (989/2), H. 1355.

⁷² Reported by Muslim (1351/3), H. 1724.

⁷³ *Tahdhīb al-lughāt* (222/11).

⁷⁴ *Sharḥ an-Nawawī ‘alā Ṣaḥīḥ Muslim* (28/12).



despairs of finding it before leaving for a remote place. He who finds a lost thing in Mecca may initially desire to possess his finding and may not want to make a public announcement for it but the law forbids it and states that no one is permitted to pick up a lost thing in Mecca except for making a public announcement for it in order to find its owner. This differs from the findings of soldiers in non Muslim countries (*Dār al-ḥarb*; House of War): after they left a country, there is no need to make a public announcement according to a unanimous agreement; whereas for something found in Mecca it is a duty to make a public announcement for it because of the possibility for its owner to come back to Mecca and then to know the finder.⁷⁵

Ibn al-Qayyim (m) said: Our sheikh said: This is a particularity of Mecca; the difference between Mecca and the rest of the world is that people coming from different countries can come back, ask for their lost things and find them.⁷⁶

⁷⁵ *Fatḥ al-Bārī* (88/5).

⁷⁶ *Zād al-ma'ād* (454/3).



هذا الكتاب منشور في

