

268937 - Guidelines for lawyers

the question

I am a religiously-committed lawyer, praise be to Allah. I wanted to ask how I can learn sharia-based laws. What I mean is that I want to learn Islamic criminal law, Islamic commercial law, and Islamic civil law. Is there a place that teaches these fields to Muslim lawyers? How can the Muslim lawyer serve his ummah? What is your advice to me?

Detailed answer

Praise be to Allah

Firstly:

The real nature of the lawyer's role is to represent someone in disputes when cases are taken to court in order to ward off injustice or attain rights and dues. The basic principle regarding this type of representation is that it is permissible.

Ibn Qattaan (may Allah have mercy on him) said:

The scholars are unanimously agreed that representing someone in disputes and pursuing rights in the presence of the one being represented and with the consent of the opponent, when the person represented is present, is permissible.

End quote from al-Iqnaa' (2/156).

Shaykh 'Abd al-'Azeez ibn Baaz (may Allah have mercy on him) said:

The lawyer is a person's representative in a dispute. This type of representation was known at the time of the Prophet (blessings and peace of Allah be upon him) and up until the present day. There

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is nothing wrong with this kind of representation, but calling the one who does this a lawyer is something new.

If the lawyer fears Allah and does not defend his client in wrongdoing or lying, then there is nothing wrong with it.

End quote from Fataawa Noor 'ala ad-Darb (19/231).

What is required of the lawyer is to defend one who is in the right. As for one who is in the wrong or has no right to a claim, it is not permissible to support him in his falsehood.

Allah, may He be exalted, says (interpretation of the meaning):

“And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty”

[al-Maa'idah 5:2]

“And do not argue on behalf of those who deceive themselves. Indeed, Allah loves not one who is a habitually sinful deceiver”

[an-Nisa' 4:107].

Shaykh 'Abd ar-Rahmaan as-Sa'di (may Allah have mercy on him) said:

“And do not argue on behalf of those who deceive themselves” in the sense of committing offences against their own souls. That includes the prohibition on speaking on behalf of one who has committed sin for which the punishment is now due, whether it is a hadd punishment (specified in sharia) or a ta'zeer punishment (a disciplinary punishment meted out at the judge's discretion). So he should not plead on his behalf by trying to prove that he did not do it, or try to ward off the resulting punishment as dictated by sharia.

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“Indeed, Allah loves not one who is a habitually sinful deceiver” that is, one who is habitually treacherous and sinful. Stating that Allah does not love someone implies the opposite, which is that He hates such a person. This is like the reason why what is mentioned above should not be done.

End quote from Tafseer as-Sa’di (p. 200)

It was narrated that Yahya ibn Raashid said: We sat waiting for ‘Abdullah ibn ‘Umar and he came out to us, and sat down and said: I heard the Messenger of Allah (blessings and peace of Allah be upon him) say: “If a person’s intercession prevents one of the hadd punishments of Allah (from being carried out), then he has opposed Allah. The one who argues for a false case knowingly will remain subject to the wrath of Allah until he gives it up. If a person says something of a believer that is not true, Allah will cause him to dwell in the mud of khabaal (the juice of the people of Hell) until he retracts what he said.”

Classed as saheeh by al-Albaani in as-Silsilah as-Saheehah (1/798).

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said:

The practice of law [as a lawyer] refers to the representation of a man so as to prove his case against his opponent; this is divided into two categories. The first is that in which the lawyer seeks to prove a case based on true facts and to protect the rights of the one whom he represents. There is nothing wrong with doing that, because all it is, is one person representing another in return for a fee, and representing someone in return for a fee is permissible and there is nothing wrong with it.

The second category of practising law refers to when the lawyer wants to prove a case whether rightly or wrongly. It is not permissible to do this, because in that case the lawyer will be defending any case, regardless of whether it is valid or false. This is haraam; rather what the Muslim is

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required to do, if he sees that his brother's case is based on falsehood, is to advise him and not agree to represent him, because the Prophet (blessings and peace of Allah be upon him) said: "Whoever among you sees an evil, let him change it with his hand (by taking action); if he cannot, then with his tongue (by speaking out); and if he cannot, then with his heart (by hating it and feeling that it is wrong), and that is the weakest of faith."

End quote from Fataawa Noor 'ala ad-Darb (11/609-610).

The Muslim lawyer who practices his profession on the basis of clear proof and in accordance with Islamic rulings, and with a sound intention, advising the one whom he represents to fear Allah, may He be exalted, and not to demand that to which they have no right, and only to pursue what is permissible to them according to Islamic teachings, and to acknowledge people's rights and to be truthful in their statements, words and testimonies, and tells him that fearing Allah, may He be exalted, is the way to a good life in this world and the hereafter, and to be kind to those of the poor and weak whose rights are neglected - the lawyer who adheres to all of that is doing an important job in rectifying society.

Secondly:

As for Islamic studies in your specialty, they are available in Islamic universities and in some colleges in which there are Islamic specialties.

In your country, there is the College of Sharia and Law in al-Azhar University; you can benefit from its curricula, and if you cannot study there, there are also Islamic sharia departments in colleges of law and the Centre of Islamic Economics in al-Azhar University.

One of the useful books that we can recommend to you is: at-Tashree' al-Jinaa'i al-Islami: Muqaaranan bi'l-Qanoon al-Wad'i by 'Abd al-Qaadir 'Awdah.

You could also benefit from Musannafah an-Nuzum al-Islamiyyah by Mustafa Kamaal Wasfi.

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Whatever the case, by continuing to read and study, asking questions of specialists in your country, you will come to know of books and curricula that will help you to achieve your goal.

Regarding the legal profession and some of its etiquette, and other issues connected to it, we advise you to read the book al-Muhaamaah by Shaykh Mashhoor Hasan Salmaan, which you will find on the following link:

<http://majles.alukah.net/t66552>

And Allah knows best.