

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu al Rashtah,
Ameer of Hizb ut Tahrir through his “Fiqhi” Facebook page**

Answer to Question

Consensus that the Prohibition Benefits the Invalidity of the Contract

To: Hamdi Al-Husseini

(Translated)

Question:

Respected scholar Ata bin Khalil Abu Rashtah, may Allah (swt) protect you, Assalamu Alaykom wa Rahmatullah:

It is mentioned in the book, *The Islamic Personality Volume 3*, that: “Also the Sahaabah may Allah be pleased with them inferred the corruption and the invalidity of contracts from the prohibition, from that is Ibn 'Omar's proof of the invalidity of marrying the polytheist women by the saying of Allah Ta'ala: ﴿وَلَا تَنْكِحُوا الْمُشْرِكَاتِ﴾ “Do not marry polytheist women...” and no one disapproved this of him so it was a consensus”.

My question is, Barak Allahu feekum, how is the matter a consensus when the evidence is apparent in the verse?

Wassalamu Alaykom wa Rahmatullah

Answer:

Wa Alaykom Assalam Wa Rahmatullah Wa Barakatuhu,

In order to clarify the answer to your question, I will provide the full text that you are asking about, under the chapter: “**Prohibition of Dispositions and Contracts**”:

(The prohibition of dispositions and contracts which benefit their verdicts like the sale, the marriage and the likes returns to either the contract itself or to something else. If it returns to other than the disposition and the contract, like the prohibition of the sale at the call time of the Jumu'ah prayer; it doesn't invalidate or corrupt the contract or the disposition. But if the prohibition returns to the disposition itself or to the contract itself then it does affect them and make them either invalid or corrupted. **The evidence that the prohibition affects the dispositions and makes them invalid or corrupted** is the saying of the Messenger (saw): «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» “**whoever does an action different to our matter it must be rejected**” compiled by Muslim, it means it is invalid and not accepted, and it is undoubtedly that the prohibited matter is not a commanded matter nor is it of the deen, so it is rejected, and there is no meaning for it being rejected except the invalidity and the corruption. **Also the Sahaabah may Allah be pleased with them inferred the corruption and the invalidity of contracts from the prohibition, from that is Ibn 'Omar's proof of the invalidity of marrying the polytheist women by the saying of Allah Ta'ala: ﴿وَلَا تَنْكِحُوا**

المُشْرِكَاتِ﴾ “Do not marry polytheist women...” [Al Baqarah: 221], and no one disapproved this of him so it is a consensus, and from that is the Companion's proof of corruption of the riba contracts, i.e. their invalidity, by His (swt) saying: ﴿...وَدُّرُوا مَا بَقِيَ مِنْ

الرِّبَا...﴾ “...and give up what remains (due to you) from riba (usury)...” [Al Baqarah: 278], and by the saying of the Messenger (saw): «لَا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ وَلَا الْوَرِقَ بِالْوَرِقِ» “**Do not sell gold by gold and do not sell silver by silver**” compiled by Muslim. All these are evidences that the prohibition affects the dispositions and make them invalid or corrupted. This is if the prohibition is a decisive request for abstention and denotes forbiddance, but if the prohibition

does not denote forbiddance but denotes dislike; it doesn't affect the dispositions and the contracts, because the effect comes from the forbiddance, so the forbiddance of the disposition and the contract makes it invalid or corrupted.) **End.**

By looking at this text, it becomes apparent that the meaning of Ijmaa' (consensus) in this context is the Ijmaa of Sahaba, may Allah be pleased with them, that the prohibition contained in the saying of Allah (swt): ﴿وَلَا تَنْكِحُوا الْمُشْرِكَاتِ﴾ **“Do not marry polytheist women...”** states the invalidity of the marriage contract, i.e. its nullity, Abdullah bin Omar (ra) deduced from this Verse the invalidity of the marriage contract with polytheist (mushrik) women, and none of the Sahaba denied this, which proves that the Sahaba view the prohibition related to contracts and dispositions in the Shariah texts as mentioned in the Verse above means the invalidity of the contract or the disposition... and this is different to the direct implication of the verse, because the verse indicates a direct prohibition of marrying polytheist women, but the Sahaba consented on top of this that the prohibition contained in the Verse proves the corruption of the contract i.e. its invalidity, so this is the position of the Ijmaa' (consensus), and it is a matter which the Ayah does not reveal, but is showed by the Ijmaa'.

To make the picture clearer for you, I will present to you two matters:

First: a man asks you: is he permitted to marry a Mushrik woman? You will respond: No it is prohibited, then he asks you: what is the evidence? You will reply: ﴿وَلَا تَنْكِحُوا الْمُشْرِكَاتِ﴾ **“Do not marry polytheist women...”** [Al Baqarah: 221].

Second: A man asks you that he is married to a Mushrik woman, so should he continue (his marriage) or what should he do? In this instance, it is not enough to present the Verse, so if you said to him: ﴿وَلَا تَنْكِحُوا الْمُشْرِكَاتِ﴾ **“Do not marry polytheist women...”** [Al Baqarah: 221]. He will tell you that he will not do so in the future, but he is asking about his current wife... thus your answer will not be sufficient unless you tell him that the consensus of the Sahaba agreed that the prohibition contained in the Verse proves the invalidity of the contract, i.e. you answer him that he should end his marriage contract with his wife because it is a nullified contract as the prohibition in the Verse to further the nullity of the contract by Ijmaa'.

While you believe here that the answer is not complete without mentioning the Verse, and you say that a prohibition lies in the Verse, then you add by saying that the meaning of the prohibition by Ijmaa' is the invalidity of the contract, without the Ijmaa stating that the prohibition benefits that invalidity of the contract, you would have not been able to answer his question on his previous marriage.

I hope that the matter has been clarified for you.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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

<https://www.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/462434917286918/?type=3&theater>

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

<https://plus.google.com/100431756357007517653/posts/aSBehbpTrSv>

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

<https://twitter.com/ataabualrashtah/status/717068882566053888?lang=ar>