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Agency (Tawkil) in Islamic Jurisprudence and Afghan Laws

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***Abstract*—This study examines sub-agency (Tawkil) within litigation agency and its implications for the validity of judicial representation, the legal effect of procedural acts, and the liability of agents. It addresses the conditions under which an agent may appoint a sub-agent, the extent to which express authorization is required, and the circumstances in which authorization may be inferred from the nature of the agency, professional custom, or necessity. The study also evaluates the consequences of exceeding the scope of authorization and examines the consistency of Hanafi jurisprudence with Afghan legal regulations governing legal representation and litigation procedures. A descriptive-analytical and comparative methodology is employed, based on documentary analysis of classical jurisprudential sources, Afghan legislation, and relevant legal literature. The findings indicate that authorization is the fundamental basis of valid sub-agency. However, authorization may be express or implied where custom, necessity, or the nature of the entrusted task supports such an inference. Exceeding the limits of authorization may render the relevant act ineffective, suspend its effect pending ratification, or result in civil, professional, and disciplinary liability. The study concludes that Afghan law and Hanafi jurisprudence substantially converge on the principle that sub-agency must remain within the limits of the authority granted by the principal.**

***Index Terms*—sub-agency; litigation agency; appointment of an agent by an agent; authorization; custom; necessity; Hanafi jurisprudence**

I. INTRODUCTION

Litigation agency is an important form of legal representation because it enables litigants to pursue claims, present defenses, and submit evidence through a person who possesses the necessary legal and procedural knowledge. In practice, however, an appointed agent may be unable to perform every procedural act personally. This situation gives rise to sub-agency, through which the original agent appoints another person to perform all or part of the work entrusted to him. Although sub-

agency may facilitate the administration of litigation, it also raises important questions concerning the source and limits of the sub-agent's authority, the validity of his procedural acts, and the liability of the original agent and the sub-agent.

The principal problem addressed in this study is the legal and jurisprudential basis of sub-agency in litigation. More specifically, the study examines whether an agent may appoint a sub-agent only on the basis of express authorization or whether such authority may also be inferred from the nature of the agency, established professional custom, or necessity. It further analyzes the consequences of exceeding the scope of authorization, including whether the act is effective, remains suspended pending ratification, or is legally ineffective. The study also considers the relationship between Hanafi jurisprudence and the Afghan legal framework governing litigation agency and the legal profession.

The research is guided by four questions. First, what is the meaning and jurisprudential basis of sub-agency in litigation? Second, what conditions govern the appointment of a sub-agent, and what roles do express authorization, implied authorization, custom, and necessity play in determining its validity? Third, what are the procedural and legal effects of acts performed by a sub-agent within or beyond the scope of authorization? Fourth, to what extent are the principles developed in Hanafi jurisprudence consistent with Afghan legislation concerning legal representation, legal practice, and judicial procedure?

The significance of the study lies in its attempt to clarify the relationship among the principal, the original agent, and the sub-agent. Uncertainty concerning this relationship may affect the validity of procedural acts, the legal position of litigants, and the professional liability of lawyers. The study is therefore important both theoretically and practically: theoretically, because it examines the jurisprudential foundations of sub-agency; and practically, because it addresses the conditions under which a sub-agent may validly act before a court.

The study employs a descriptive-analytical and comparative methodology. It describes and analyzes the relevant rules of Islamic jurisprudence, particularly Hanafi jurisprudence, and compares them with the Afghan Civil Code, the Afghan Civil Procedure Law, and the Regulation on the Affairs of Defense Attorneys. Documentary research is used to examine classical jurisprudential works, statutory provisions, legal commentaries, and other academic sources. The analysis focuses on the validity of sub-agency, the limits of delegated authority, the role of custom and necessity, and the legal consequences of unauthorized acts.

The study is organized into five sections. Section One examines the nature and legitimacy of sub-agency and defines litigation agency in linguistic, jurisprudential, and legal terms. Section Two discusses the ruling on sub-agency according to the major schools of Islamic jurisprudence. Section Three analyzes the Afghan legal framework governing the legal profession and the appointment of sub-agents. Section Four examines procedural restrictions and sanctions under the relevant Afghan laws and regulations. Section Five evaluates the legal consequences of exceeding authorization and the possible invalidity of the sub-agent's acts.

The study concludes that authorization is the basic condition for the validity of sub-agency, although it need not always be express. In appropriate circumstances, authorization may be

inferred from custom, necessity, the nature of the entrusted work, or the wording of the original agency. Such inference, however, must remain within reasonable limits and must not contradict the principal's intention or prejudice the principal's rights. Where a sub-agent acts within the scope of valid authorization, his procedural acts may produce legal effects for the principal. Where he exceeds that authority, the act may be ineffective or remain subject to ratification, and the responsible agent may incur civil, professional, or disciplinary liability.

The Nature and Legitimacy of Sub-Agency

Before examining the rules governing sub-agency, it is necessary to clarify the meaning of litigation agency. This section therefore begins with the linguistic meaning of litigation agency and then examines its jurisprudential and legal definitions. It subsequently distinguishes original agency from sub-agency and identifies the basic elements required for the appointment of a sub-agent.

The Linguistic Concept of Litigation Agency

The expression "litigation agency" (al-wakālah bi al-khuṣūmah) is an annexed construction consisting of the term's "agency" (al-wakālah) and "litigation" (al-khuṣūmah). The annexation specifies the type of agency under consideration and distinguishes it from other forms of agency, such as agency for sale, marriage, or other transactions. The linguistic meanings of the two terms are therefore relevant to understanding the legal and jurisprudential concept of litigation agency.

II. AGENCY IN THE LINGUISTIC SENSE

The term al-wakālah is derived from the Arabic root w-k-l. Linguistically, it conveys meanings such as entrusting an affair to another, relying upon another person, appointing a representative, and authorizing someone to act on one's behalf. Al-Jurjānī defines an agent as a person who acts on behalf of another, particularly where the principal does not undertake the matter personally (al-Jurjānī, n.d., p. 254).

The Qur'an uses the concept of agency in several related meanings. One of these meanings is reliance upon and entrusting one's affairs to God. Allah says: "And rely upon Allah; and sufficient is Allah as Disposer of affairs" (Qur'an 33:3). Al-Ṭabarī explains this verse as an instruction to entrust one's affairs to Allah and rely upon Him (al-Ṭabarī, 2001, vol. 19, p. 6). The Qur'an also states: "And upon Allah let the believers rely" (Qur'an 3:122). In explaining this verse, al-Rāzī describes reliance as entrusting one's affairs to another because one relies upon that person to manage them and does not undertake them independently (al-Rāzī, 1420 AH, vol. 8, p. 348).

The same concept appears in the verse: "And rely upon the Ever-Living who does not die" (Qur'an 25:58). In his interpretation of the related meaning, al-Bayḍāwī explains that the believer should take Allah as the One entrusted with the management of affairs (al-Bayḍāwī, 1418 AH, vol. 3, p. 258). Thus, the linguistic meaning of al-wakālah includes entrustment, reliance, and the assignment of responsibility to another.

The term also conveys the meaning of protection, guardianship, and supervision. The Qur'an states: "And you are not over them a guardian" (Qur'an 6:107), indicating that the Prophet was not appointed as the guarantor or controller of the conduct of others. Similarly, the expression "sufficient is Allah as Disposer of affairs" indicates that Allah undertakes the preservation, management, and proper ordering of affairs. Ibn Kathīr explains the term in this context as meaning a guardian, supporter, and helper (Ibn Kathīr, 1999, vol. 5, p. 130).

Accordingly, the linguistic concept of al-wakālah contains three principal meanings: entrusting an affair to another, relying upon another for the management of that affair, and appointing another person to act on one's behalf. These meanings provide the linguistic foundation for the technical concept of agency, including litigation agency, in which the principal entrusts the conduct of procedural matters to an authorized representative.

III. LITIGATION IN THE LINGUISTIC SENSE

The term al-khuṣūmah linguistically denotes dispute, contention, argument, and opposition between two or more parties. Ibn Manẓūr defines al-khuṣūmah as argumentation and dispute (Ibn Manẓūr, n.d., vol. 12, p. 68). The Qur'an uses the term and its derivatives in several contexts.

One such meaning is confrontation or combat. Allah says: "These are two parties who have disputed concerning their Lord" (Qur'an 22:19). According to the narration recorded by Muslim, this verse refers to the confrontation at the Battle of Badr between two opposing groups: Ḥamzah, ʿAlī, and ʿUbaydah ibn al-Ḥārith on one side and ʿUtbah, Shaybah, and al-Walīd ibn ʿUtbah on the other (Muslim ibn al-Ḥajjāj, 1955, Hadith No. 3033).

The term may also refer to verbal or intellectual argumentation. In relation to the same verse, al-Qurṭubī reports interpretations concerning a dispute between Paradise and Hell and, according to another report, a discussion between the Jews and the Muslims (al-Qurṭubī, 2004, vol. 12, pp. 25–26). These interpretations demonstrate that al-khuṣūmah is not limited to physical conflict; it may also signify verbal dispute, debate, and opposing legal or theological claims.

The Qur'an also criticizes excessive argumentation, stating: "Rather, they are a people given to argumentation" (Qur'an 43:58). In this context, al-Qurṭubī explains the term as referring to intense and blameworthy disputation (al-Qurṭubī, 2004, vol. 16, p. 104).

A further meaning is legal defense and representation. Allah says: "And do not be an advocate for those who betray" (Qur'an 4:105). Al-Ṭabarī explains that the verse prohibits defending a person who has betrayed another person with respect to his person or property by arguing on his behalf against the person whose right has been violated (al-Ṭabarī, 2001, vol. 7, p. 457). Ibn Kathīr similarly discusses the legal disputes and claims connected with this verse (Ibn Kathīr, 1999, vol. 2, p. 397).

In this sense, litigation is not merely a disagreement between parties. It includes the presentation of claims, arguments, evidence, and defenses before a competent authority. This meaning provides the linguistic basis for the technical expression al-wakālah bi al-khuṣūmah, namely, appointing another person to represent a litigant in judicial proceedings.

Definition of Litigation Agency in Terminological Usage

IV. LITIGATION AGENCY ACCORDING TO ISLAMIC JURISTS

In Islamic jurisprudence, litigation agency (al-wakālah bi al-khuṣūmah) refers to a lawful form of representation through which a principal authorizes another person to conduct litigation, submit claims, present evidence, respond to allegations, and defend the principal's rights before a judicial authority. The litigation agent acts on behalf of the principal within the limits of the authority granted to him and may undertake the procedural acts necessary to establish or defend the principal's legal position (Al-Zuhayli, 2004, p. 4081).

ʿAbd al-Karīm Zaydān defines litigation agency as the lawful delegation of authority from the principal to the agent, enabling the latter to pursue litigation and defense on the principal's behalf in disputed matters. This definition emphasizes that the agent's authority is derived from the principal and is therefore limited by the scope of the authorization granted to him (Zaydān, 1989, pp. 120–130).

Islamic jurists generally agree that litigation agency is permissible because it serves the legitimate purpose of protecting rights and facilitating access to justice. Its permissibility is supported by the Qur'an and the Sunnah. The Qur'an states: "So send one of you with this silver coin of yours to the city" (Qur'an 18:19). This verse indicates the permissibility of appointing another person to undertake a task on behalf of others.

The permissibility of agency is also supported by the ḥadīth of ʿUrwah al-Bāriqī, in which the Prophet Muhammad ﷺ appointed him to purchase a sheep. ʿUrwah purchased two sheep with the money entrusted to him, sold one of them, and returned to the Prophet ﷺ with one sheep and the original payment. The Prophet ﷺ then prayed for blessing in his transactions (Al-Bukhārī, 1993, Hadith No. 3642). This narration demonstrates the validity of authorizing another person to perform a lawful transaction on behalf of the principal.

Accordingly, litigation agency in Islamic jurisprudence is a legitimate form of representation founded on authorization, trust, and the protection of rights. The agent is authorized to act in the principal's interest but must remain within the limits of the authority granted to him.

V. DEFINITION OF LITIGATION AGENCY IN LEGAL JURISPRUDENCE

In legal jurisprudence, litigation agency is generally defined as a special contractual relationship through which a principal authorizes an agent to represent him or her in judicial proceedings before courts and other competent authorities. Such representation includes filing claims, submitting evidence, presenting legal arguments, defending the principal's rights, and undertaking other procedural acts necessary for the conduct of litigation (Al-Mashhadānī, 2005, pp. 6–13).

Legal scholars describe agency as a contract under which one person authorizes another person to perform a legal act in the principal's name and for the principal's benefit. In the context of litigation, this authority allows the agent to appear before judicial bodies, conduct pleadings,

submit legal documents, and take procedural steps connected with the claim or defense (Katouzian, 2006, p. 115; Madanīī, 2006, p. 162).

The Egyptian Civil Code defines agency as a contract under which the agent undertakes to perform a legal act for the benefit of the principal (Egyptian Civil Code, 1948, art. 699). Similarly, the Majallat al-Aḥkām al-ʿAdliyyah defines agency as the delegation by one person to another of the authority to act on his behalf in a specified matter. Under this definition, the person granting authority is the principal (muwakkil), the person authorized to act is the agent (wakīl), and the entrusted matter is the subject of agency (muwakkal bih) (Majallat al-Aḥkām al-ʿAdliyyah, 1876, art. 1449).

The Afghan Civil Code adopts a comparable approach. Article 1554 defines agency as a contract through which one person appoints another to take his or her place in undertaking a legally permissible act (Afghan Civil Code, 1977, art. 1554). This provision confirms that agency is based on representation and that the agent's authority must concern an act capable of lawful delegation.

Thus, litigation agency under modern legal systems is a contractual mechanism of judicial representation. It enables the principal to exercise procedural rights through an authorized agent while preserving the requirement that the agent act within the scope of the power granted by the principal.

VI. COMPARATIVE STUDY OF JURISPRUDENTIAL AND LEGAL CONCEPTS

A comparison between the jurisprudential and legal definitions of litigation agency demonstrates substantial agreement regarding its basic nature. Both approaches recognize that agency is founded on representation: the agent acts on behalf of the principal in undertaking legal or procedural acts. Both also recognize that the agent's authority originates from the principal and is limited by the terms of authorization.

Islamic jurisprudence, however, gives particular attention to the Sharīʿah and ethical dimensions of agency. It emphasizes valid consent, trustworthiness, honesty, the protection of the principal's interests, and the obligation of the agent to avoid acts that violate Sharīʿah principles. The agent must act faithfully, must not exceed the authority granted to him, and may not use agency to assist in unlawful conduct or to cause harm to the principal (Al-Zuhayli, 2004, p. 4081).

Legal jurisprudence focuses more directly on the contractual, regulatory, and procedural dimensions of agency. It addresses the formation of the agency contract, the scope of authority, the obligations of the parties, the legal effects of the agent's acts, and the civil liability that may result from exceeding authority or breaching professional duties (Katouzian, 2006, p. 115).

The jurisprudential concept of litigation agency therefore provides an ethical and Sharīʿah-based framework for representation, while the legal concept provides detailed rules governing the operation of agency before courts and public authorities. These approaches are complementary rather than contradictory. Together, they provide a comprehensive understanding of litigation agency as a relationship based on authorization, representation, trust, and legal accountability.

Definition of Sub-Agency and Its Distinction from Original Agency

VII. LINGUISTIC AND TERMINOLOGICAL DEFINITION OF SUB-AGENCY

Sub-agency, also described as the appointment of an agent by an agent, arises when the original agent appoints another person to perform all or part of the task entrusted to him by the principal. This appointment must be based on valid authority derived from the principal, either expressly or implicitly, or from a recognized custom or necessity. The sub-agent's acts are attributed to the original principal only to the extent that they fall within the limits of the authorization granted for the original agency (Al-Kāsānī, 1986, vol. 6, pp. 71–72).

In this arrangement, the original agency remains legally relevant because the first agent derives his authority directly from the principal. The sub-agent does not acquire unrestricted or independent authority; rather, his authority is secondary and depends upon the validity and limits of the original agency. Therefore, the appointment of a sub-agent cannot expand the principal's obligations beyond the authority originally granted.

The concept of sub-agency combines the meanings of delegation and trust. Delegation refers to the transfer of limited authority to perform a legal act, while trust refers to the duty of care owed by the agent to the principal. Because the original agent has been entrusted with the principal's rights and interests, the appointment of a sub-agent must preserve those interests and must not undermine the fiduciary nature of the original agency relationship (Ibn Manẓūr, n.d., vol. 15, p. 147).

The Majallat al-Aḥkām al-ʿAdliyyah, which reflects important Hanafi principles, recognizes that an agent's authority is limited by the authorization granted by the principal. The agent may appoint a sub-agent where the principal has expressly authorized such appointment, where authorization can be inferred from the wording or nature of the agency, or where recognized custom or necessity supports delegation. In the absence of such grounds, the agent is generally required to perform the entrusted task personally (Majallat al-Aḥkām al-ʿAdliyyah, 1876, arts. 1395–1398).

The Afghan Civil Code is also relevant where no specific legislative provision governs a particular issue concerning sub-agency. Article 2 provides that, in the absence of an applicable statutory provision, courts shall decide cases in accordance with the fundamental principles of Hanafi jurisprudence (Afghan Civil Code, 1977, art. 2). Accordingly, Hanafi principles concerning authorization, delegation, custom, and trust may assist in determining the validity and scope of sub-agency under Afghan law.

For sub-agency to be valid, three basic elements must be present. First, there must be a valid original agency that identifies the subject matter and limits of the agent's authority. Second, the original agent must have valid authority to appoint a sub-agent, whether through express authorization, implied authorization, necessity, or recognized professional or judicial custom. Third, the matter entrusted to the sub-agent must be capable of representation, and the appointment must not create a conflict of interest, prejudice the principal's rights, or violate the agent's duty of trust (Haqbin, 2021, pp. 112–115).

In litigation practice, sub-agency may be necessary where the original agent cannot personally attend a hearing, submit a procedural document, or complete a particular legal task. Nevertheless,

the validity of such delegation depends upon the wording of the power of attorney, the nature of the litigation, the applicable professional custom, and the limits placed upon the original agent by the principal. The sub-agent's acts produce legal effects only where these requirements are satisfied (Haqbin, 2023, pp. 45–48).

VIII. DISTINCTION BETWEEN ORIGINAL AGENCY AND SUB-AGENCY

Original agency is established through a direct contractual relationship between the principal and the first agent. Through this contract, the principal grants the agent authority to perform a specified legal act or to represent the principal in a defined category of matters. The original agency therefore determines the source, scope, duration, and limits of the first agent's authority.

Sub-agency, by contrast, establishes a secondary level of representation. The sub-agent derives authority indirectly from the principal through the original agent. The appointment is valid only where the original agent has been authorized to delegate the entrusted task, whether through express permission, implied authority, the nature of the transaction, custom, or necessity. The relationship between the principal and the sub-agent is therefore not necessarily an independent agency contract; rather, it is an extension of the original agency within the limits established by the principal (Al-Kāsānī, 1986, vol. 6, pp. 71–72).

The distinction between the two forms of agency has important legal consequences. In original agency, the first agent's authority is based directly on the principal's consent. In sub-agency, the sub-agent's authority depends on the continuing validity of the original agency and on the extent of the original agent's authority to appoint another person. A sub-agent may not exercise powers that the original agent does not possess, and the original agent may not use sub-agency to circumvent express limitations imposed by the principal.

The Majallat al-Aḥkām al-ʿAdliyyah reflects this principle by limiting representation to the scope of authorization. It recognizes that an agent may appoint another agent only where delegation is authorized or justified by the relevant circumstances. Where no such authorization or justification exists, the agent must personally undertake the task entrusted to him (Majallat al-Aḥkām al-ʿAdliyyah, 1876, arts. 1395–1398).

Original agency may therefore be defined as a direct legal relationship through which the principal appoints an agent to act on the principal's behalf in a specified matter. Sub-agency may be defined as a secondary and derivative form of representation through which the original agent, acting within the limits of valid authority, appoints another person to perform all or part of the entrusted task. The legal effects of the sub-agent's acts are attributed to the principal only where the sub-agent acts within the scope of valid authorization.

Although the expression "sub-agency" is widely used in contemporary legal writing, the concept itself is well established in classical Hanafi jurisprudence. Classical jurists discussed it under the issue of an agent appointing another agent and analyzed it in relation to authorization, custom, necessity, competence, and trust. The contemporary term therefore describes a classical

jurisprudential institution rather than creating a new legal concept (Al-Kāsānī, 1986, vol. 6, pp. 71–72).

The Ruling on an Agent Appointing Another Person as an Agent in Islamic Jurisprudence and the Views of the Schools of Law

The appointment of a sub-agent is an important issue in Islamic jurisprudence because it concerns the transfer of authority from the original agent to another person who performs all or part of the entrusted task. The four major Sunni schools of law agree that an agent may appoint a sub-agent where the principal has expressly authorized such delegation. In that circumstance, the appointment is valid because the authority of the sub-agent is based on the principal's express consent.

The schools differ, however, where the principal neither expressly authorizes nor expressly prohibits sub-agency. This difference arises from their respective understandings of the nature of agency. Some jurists emphasize the personal and fiduciary nature of agency and therefore require the agent to act personally unless authorization to delegate is clearly established. Other jurists give greater weight to the nature of the entrusted task, established custom, necessity, and the practical interests of the principal. The detailed positions of the Hanafi, Maliki, Shafiʿi, and Hanbali schools are examined in the following sections.

The Hanafi School and the Limits of Delegation

According to the Hanafi school, an agent's authority is limited to the scope of the authorization granted by the principal. Consequently, an agent may not appoint a sub-agent unless the principal has expressly or implicitly authorized delegation, or unless such authority is established by custom or necessity.

Where an agency is restricted to a specific matter, the original agent may not appoint another person to perform that matter unless the principal has expressly permitted sub-agency. The Hanafi jurists also recognize that certain expressions may constitute general authorization. For example, where the principal instructs the agent to act according to his own judgment or discretion, the agent may appoint a sub-agent because the wording grants broader authority in managing the entrusted matter. This principle was codified in Article 1466 of the Majallat al-Aḥkām al-ʿAdliyyah, which provides that an agent may not appoint another person for the task entrusted to him unless the principal has authorized such appointment or has left the matter to the agent's judgment (Majallat al-Aḥkām al-ʿAdliyyah, 1876, art. 1466; Ḥaydar, n.d., vol. 3, pp. 592–593; al-ʿAtāsī, n.d., vol. 4, pp. 440–445).

Where the agency is general or unrestricted, the Hanafi school permits the agent to appoint a sub-agent if the wording of the authorization grants the agent broad discretion. In this situation, the sub-agent is generally regarded as acting on behalf of the original principal rather than merely on behalf of the first agent. Accordingly, the termination of the first agent's authority through dismissal or death does not necessarily terminate the authority of the sub-agent where the latter was appointed directly for the principal under a valid general authorization (Majallat al-Aḥkām al-ʿAdliyyah, 1876, art. 924).

Later Hanafi jurists developed these principles in greater detail. Al-Zaylaʿī emphasized that the agent's authority must be determined according to the wording and purpose of the agency, while Ibn Nujaym examined the relationship between express authorization, custom, and the limits of delegated authority. Al-Kāsānī likewise explained that the permissibility of appointing a sub-agent depends on the nature of the original authorization, the type of entrusted matter, and the existence of a valid basis for delegation (Al-Kāsānī, 1986, vol. 6, pp. 71–72; Ibn Nujaym, n.d., vol. 7, p. 175; Al-Zaylaʿī, n.d., vol. 4, p. 276).

IX. THE MALIKI SCHOOL AND THE SCOPE OF AUTHORIZATION

The Maliki school also considers the personal performance of the entrusted task to be the general rule. Therefore, an agent may not appoint a sub-agent without the principal's authorization. Nevertheless, Maliki jurists recognize exceptions where the nature of the work, the social position of the agent, or the magnitude of the task makes personal performance unreasonable or impracticable.

An agent may appoint another person where the assigned work is ordinarily unsuitable for a person of the agent's social standing to perform personally, provided that the principal knew the agent's status when appointing him. In this circumstance, the principal is presumed to have understood that the agent would normally arrange for another person to carry out the task. However, where the principal was unaware of the agent's status and the agent appoints another person without authorization, the original agent may be liable if loss results from the unauthorized delegation.

The Malikis also distinguish between obtaining assistance and transferring the entire agency. Where the entrusted task is extensive and cannot reasonably be completed by the agent alone, the agent may obtain another person's assistance. However, the agent may not independently transfer the whole matter to another person unless the principal has authorized full delegation. This distinction protects the principal's reliance on the competence and trustworthiness of the original agent while permitting practical assistance where necessary (Ibn ʿAbd al-Barr, n.d., vol. 2, p. 786; Al-Ḥaṭṭāb, n.d., vol. 7, p. 192; Al-Mawwāq, n.d., vol. 5, pp. 201–202; Ibn Rushd al-Jadd, n.d., vol. 3, p. 52; Al-Tasūlī, n.d., vol. 1, p. 206).

The Shafiʿi and Hanbali Schools

The Shafiʿi and Hanbali schools agree that an agent may not appoint a sub-agent without a valid basis for delegation. Both schools view agency as a revocable contract based on consent, personal trust, and the principal's reliance on the particular agent selected. However, they differ regarding the circumstances in which authorization may be implied.

The Shafiʿi School

According to the Shafiʿi school, an agent may not appoint a sub-agent unless the principal has expressly authorized the appointment or an established custom clearly indicates that delegation is

permitted. The Shafiʿis generally adopt a restrictive approach because agency is presumed to require personal performance by the appointed agent.

The statement of the principal to the agent, "Do whatever you wish," does not, according to the Shafiʿi position, necessarily include authorization to appoint a sub-agent. This expression may grant the agent discretion in performing the task, but it does not remove the presumption that the agent himself should perform the entrusted act. A sub-agent may therefore be appointed only where express authorization, clear implication, necessity, or established custom supports that appointment (Ibn Qudāmah, 1985, vol. 5; Al-Rāfiʿī, n.d., vol. 11, p. 43; Al-Nawawī, 1991, vol. 4, p. 298; Al-Māwardī, n.d., vol. 6, p. 519; Al-Shirbīnī, n.d., vol. 2, pp. 226–227).

The Hanbali School

The Hanbali school distinguishes among three situations. First, where the principal expressly prohibits the appointment of a sub-agent, delegation is impermissible without disagreement. Second, where the principal expressly authorizes sub-agency, the appointment is valid. Third, where the principal neither authorizes nor prohibits delegation, the permissibility of appointing a sub-agent depends on the nature of the work and the circumstances of the agent.

Where the entrusted work is ordinarily unsuitable for the agent's position to perform personally, or where the agent is genuinely unable to perform it himself, the Hanbali school permits the appointment of a sub-agent. Similarly, where the assigned task is so extensive that the agent cannot reasonably complete it alone, the agent may appoint another person to assist in its performance. This rule is based on practical necessity and the protection of the principal's interests, provided that the sub-agent is qualified and that the delegation does not exceed the scope of the original agency (Ibn Qudāmah, 1985, vol. 5).

Unlike the Shafiʿi school, the Hanbalis generally consider a broad expression such as "Do whatever you wish" sufficient to include authority to appoint a sub-agent. They interpret such wording as a general grant of discretion, unless the circumstances demonstrate that the principal intended personal performance by the original agent (Ibn Qudāmah, 1985, vol. 5; Al-Buhūtī, n.d., vol. 2, p. 189; Al-Ruḥaybānī, n.d., vol. 3, pp. 447–448).

X. THE LEGAL FRAMEWORK UNDER THE AFGHAN REGULATION ON THE LEGAL PROFESSION

1. Legal Basis and Applicable Provisions

The legal framework governing sub-agency in Afghanistan is derived from the Afghan Civil Code, procedural legislation, and the Regulation on the Affairs of Defense Attorneys. The Regulation provides professional and administrative rules concerning legal practice, the licensing of defense attorneys, the establishment of legal offices, professional duties, and disciplinary measures

Article 4 of the Regulation recognizes the right of a person to appoint a defense attorney to defend him or her after arrest or to establish a legal right. This provision forms the legal basis for the relationship between the principal and the original attorney. The authority of any sub-agent must

therefore remain connected to a valid original agency relationship and to the limits of the principal's authorization (Regulation on the Affairs of Defense Attorneys, 1443 AH, art. 4).

Article 7 establishes the qualifications required for the practice of law, including Afghan citizenship, the absence of disqualifying criminal convictions, possession of a recognized degree in Sharīʿah or law, completion of relevant legal training, successful completion of the professional examination, and fulfillment of registration requirements. These conditions apply to every person who acts as a defense attorney, including a person appointed as a sub-agent (Regulation on the Affairs of Defense Attorneys, 1443 AH, art. 7).

Article 8 identifies categories of persons who may not engage in legal practice, including judges, prosecutors, and persons employed in certain state institutions. These restrictions protect the independence and impartiality of legal representation. Accordingly, a person who is legally prohibited from practicing law cannot validly serve as a sub-agent in litigation proceedings (Regulation on the Affairs of Defense Attorneys, 1443 AH, art. 8).

Article 11 regulates the issuance and duration of a lawyer's license. It provides the administrative basis for professional authorization to practice law and confirms that a defense attorney must hold a valid license when undertaking representation before judicial authorities. A sub-agent must likewise possess the legal and professional capacity required by the Regulation (Regulation on the Affairs of Defense Attorneys, 1443 AH, art. 11).

Article 23 imposes duties of trust, loyalty, confidentiality, and professional conduct upon defense attorneys. It requires attorneys to preserve the interests and confidential information of their clients, refrain from assisting the opposing party, and comply with the rules of the court. These duties apply equally to an original attorney and to a sub-agent acting in a matter entrusted by the principal (Regulation on the Affairs of Defense Attorneys, 1443 AH, art. 23).

Article 31 addresses the attendance of defense attorneys at criminal proceedings. Where the original attorney is unable to attend, the provision permits the introduction of another defense attorney to continue the relevant legal work. This provision constitutes an express practical application of sub-agency in the context of judicial representation, subject to the requirements of professional capacity and the limits of the original authority (Regulation on the Affairs of Defense Attorneys, 1443 AH, art. 31).

Articles 37 to 40 establish disciplinary measures for professional violations. These measures may include recommendation, warning, temporary suspension, closure or suspension of professional activity, and non-renewal of the license for the prescribed period. A defense attorney who exceeds the limits of authority, breaches professional duties, or improperly appoints a sub-agent may therefore face disciplinary consequences in addition to possible civil liability (Regulation on the Affairs of Defense Attorneys, 1443 AH, arts. 37–40).

2. Conditions for the Validity of Sub-Agency

The validity of sub-agency under the Afghan legal framework depends on several interconnected requirements. First, there must be a valid original agency that clearly identifies the subject matter and limits of representation. An attorney cannot delegate authority that he or she does not possess.

Article 4 establishes the original relationship between the client and the defense attorney, while Articles 22 and 23 regulate the attorney's duties in performing that representation (Regulation on the Affairs of Defense Attorneys, 1443 AH, arts. 4, 22–23).

Second, the appointment of a sub-agent requires express or implied authorization. As a general rule, authority entrusted to a particular attorney should not be transferred to another person without a valid legal basis. Nevertheless, Article 31 recognizes that the original attorney may introduce another defense attorney where attendance is not possible. This provision supports the inference that necessity in judicial proceedings may justify limited sub-agency, provided that the replacement attorney is legally qualified and acts within the scope of the original representation (Regulation on the Affairs of Defense Attorneys, 1443 AH, art. 31).

Third, the sub-agent must possess legal and professional capacity. The second attorney must satisfy the statutory requirements for legal practice under Article 7 and must not fall within any category prohibited from practicing law under Article 8. In addition, the sub-agent's authority must not exceed the limits established in the original power of attorney or the authorization granted by the principal.

Fourth, the appointment must comply with applicable procedural and administrative requirements. The attorney must hold a valid license under Article 11, and the relevant legal office must comply with registration and publication requirements under Article 26. These requirements are essential to ensuring that legal representation is undertaken by properly authorized professionals (Regulation on the Affairs of Defense Attorneys, 1443 AH, arts. 11 & 26).

Finally, both the original attorney and the sub-agent remain subject to duties of care, loyalty, confidentiality, and professional responsibility. Where the original attorney appoints a sub-agent without authority, selects an unqualified person, or permits the sub-agent to exceed the limits of representation, disciplinary measures may apply. The legal effect of the sub-agent's acts depends on proof of valid authorization or, where permitted, subsequent ratification by the principal.

3. Legal Effect of the Acts of the Sub-Agent

The Regulation on the Affairs of Defense Attorneys does not repeal the Afghan Civil Code or the Civil Procedure Law. Rather, it supplements the general rules of agency and litigation by establishing more detailed professional requirements for defense attorneys. The Civil Code regulates agency as a contractual relationship, the Civil Procedure Law regulates representation before the courts, and the Regulation governs the qualifications, duties, and discipline of defense attorneys.

Where no statutory rule governs a particular issue, Article 2 of the Afghan Civil Code requires the court to apply the fundamental principles of Hanafi jurisprudence. This provision is significant for sub-agency because Hanafi jurisprudence contains detailed rules concerning the agent's authority to appoint another person, the role of custom and necessity, and the effects of exceeding authorization (Afghan Civil Code, 1977, art. 2).

The Afghan Civil Code, the Regulation, and Hanafi jurisprudence agree that authorization is the foundation of valid delegation. They differ, however, in the manner by which authorization may

be established. The Civil Code requires authority to be derived from the original agency or subsequently ratified by the principal. Hanafi jurisprudence recognizes express authorization, implied authorization, custom, and necessity within defined limits. Article 31 of the Regulation provides a professional application of this principle by permitting the introduction of another defense attorney where the original attorney cannot attend a criminal proceeding (Regulation on the Affairs of Defense Attorneys, 1443 AH, art. 31; Ibn ʿĀbidīn, 1995, vol. 5, p. 412).

Articles 23 and 37 to 40 of the Regulation also correspond with the distinction between restricted and unrestricted agency. An attorney who acts beyond the scope of authority may incur professional and civil liability. The Regulation adds a disciplinary framework that is not set out in equivalent detail in the Civil Code, including sanctions ranging from warning to suspension and non-renewal of the professional license (Regulation on the Affairs of Defense Attorneys, 1443 AH, arts. 23 & 37–40).

The Civil Procedure Law regulates the procedural proof of representation before the court, including the filing of documents establishing agency and the continuation of litigation authority during judicial proceedings. The Regulation complements these rules by requiring professional licensing and registration. The two legal instruments should therefore be applied together: procedural law determines whether representation has been properly established before the court, while the Regulation determines whether the person acting as attorney satisfies the professional conditions for legal practice.

With respect to civil liability, Article 1564 of the Afghan Civil Code regulates the effect of an agent's acts beyond the scope of authorization. Article 38 of the Regulation supplements this framework by establishing disciplinary responsibility for professional misconduct. In addition, Article 23 requires defense attorneys to preserve confidentiality and avoid assisting the opposing party. These obligations transform the general fiduciary principle of trust into enforceable professional duties (Afghan Civil Code, 1977, art. 1564; Regulation on the Affairs of Defense Attorneys, 1443 AH, arts. 23 & 38).

The Effect of Exceeding Authorization and the Invalidity of Acts: A Comparative Study of Islamic Jurisprudence and Afghan Law

The legal consequences of exceeding authorization in sub-agency must be assessed in light of the Afghan Civil Code, the Civil Procedure Law, the Regulation on the Affairs of Defense Attorneys, and the relevant principles of Islamic jurisprudence. These sources share the fundamental principle that an agent may not bind the principal beyond the limits of valid authority. They differ, however, in the mechanisms through which unauthorized acts are treated and the remedies available to the principal and other affected parties.

1. The Position Under Afghan Civil and Procedural Laws

Articles 1563 and 1564 of the Afghan Civil Code provide that acts performed by an agent beyond the scope of authority are not binding upon the principal unless the principal subsequently approves them. This rule reflects the principle of ratification. The principal may approve the unauthorized act, in which case the act becomes effective within the scope of the approval, or may

reject it, in which case the act does not bind the principal (Afghan Civil Code, 1977, arts. 1563–1564).

In litigation, Article 206 of the Afghan Civil Procedure Law provides that litigation agency remains effective until judgment is issued by the relevant court, unless the law or the power of attorney provides otherwise. Accordingly, an attorney or sub-agent may not undertake procedural acts outside the temporal, substantive, or procedural limits of the original agency. Where a defect in representation is capable of correction, the court may permit the relevant party to establish or rectify legal capacity before deciding the case, provided that the correction does not prejudice the procedural rights of the opposing party (Afghan Civil Procedure Law, 1990, art. 206).

2. The Comparative Jurisprudential Position

According to Hanafi jurisprudence, an agent who exceeds the authority granted by the principal acts outside the scope of agency. The legal effect of the act depends on its nature, the wording of the authorization, the existence of custom, and the possibility of ratification by the principal. Al-Kāsānī explains that an agent who exceeds the limits of authorization no longer acts as an authorized representative in relation to the excessive act (Al-Kāsānī, 1986, vol. 6, p. 34). Ibn ʿĀbidīn further emphasizes that litigation agency may be influenced by custom, particularly where established practice clarifies the ordinary scope of an attorney's authority (Ibn ʿĀbidīn, 1995, vol. 5, p. 529).

The Maliki school generally protects the principal against acts that depart materially from the authorization. Where an agent acts contrary to the express wording of the authorization, its implication, or the applicable custom, the principal may have the right to approve or reject the act. The agent may become liable where the unauthorized conduct causes loss or exposes the principal to harm. The Maliki approach therefore seeks to balance the protection of the principal's interests with the stability of legal transactions (Al-Dardīr, 1998, vol. 3, p. 384).

The Shafiʿi school treats agency as a specific delegation that may not be expanded beyond the limits of authorization unless there is clear authorization or an established custom that supports the extension. Therefore, where an agent appoints a sub-agent or performs an act beyond the scope of authority without valid authorization or custom, the act is generally ineffective against the principal (Al-Nawawī, 1991, vol. 5, p. 410).

The Hanbali school recognizes the validity of sub-agency where the principal has granted general authorization or where custom and necessity support delegation. However, where neither authorization nor a legally recognized justification exists, the appointment of a sub-agent is not permissible. In such a case, the unauthorized act does not bind the principal unless it is subsequently ratified in accordance with the applicable rules (Ibn Qudāmah, 1985, vol. 5, p. 256).

3. Intersection With Modern Afghan Law

The Regulation on the Affairs of Defense Attorneys operationalizes jurisprudential principles of authorization, trust, and responsibility through professional rules and disciplinary measures. Where an attorney causes harm to a principal through unauthorized conduct, negligence, breach

of confidentiality, or failure to comply with professional obligations, the attorney may incur civil liability in addition to disciplinary responsibility.

Article 23 requires defense attorneys to preserve confidential information, avoid assisting the opposing party, and observe professional obligations toward the principal. These requirements reflect the jurisprudential principle that agency is founded on trust. A sub-agent who breaches confidentiality, acts for conflicting interests, or exceeds the limits of authority violates both the professional duties established by the Regulation and the underlying fiduciary obligations of agency (Regulation on the Affairs of Defense Attorneys, 1443 AH, art. 23).

Articles 37 to 40 provide a disciplinary framework for professional violations. Depending on the gravity of the violation, disciplinary consequences may range from recommendation and warning to suspension of professional activity or non-renewal of the attorney's license. These sanctions may apply independently of the court's assessment of the validity or legal effect of the procedural act (Regulation on the Affairs of Defense Attorneys, 1443 AH, arts. 37–40).

XI. CONCLUSION

This study examined sub-agency in litigation from the perspectives of Islamic jurisprudence and Afghan law. It found that authorization is the decisive condition for the validity of sub-agency. As a general rule, authority to conduct litigation does not pass from the original agent to a sub-agent unless the principal has granted valid authorization. Such authorization may be express, through clear wording in the power of attorney, or implied where the nature of the task, established custom, or necessity demonstrates that delegation is reasonably intended.

The study also established that custom and necessity may expand the scope of implied authorization, but neither can replace authorization in every circumstance. Their role is limited to situations in which delegation is reasonably required, consistent with the principal's interests, and compatible with the purpose and limits of the original agency. Custom and necessity cannot be used to defeat an express prohibition imposed by the principal or to justify acts that materially prejudice the principal's rights.

The legal effect of an act performed by a sub-agent depends upon the existence of valid authorization, the proper establishment of the chain of representation, the professional capacity of the sub-agent, and compliance with the substantive and procedural limits of the original agency. Where these conditions are fulfilled, the sub-agent's acts are effective and bind the principal. Where the sub-agent exceeds the scope of authorization, the act may be ineffective, subject to subsequent ratification, or invalid, depending on the seriousness of the violation and its impact on the litigation.

The study further demonstrated substantial consistency between Hanafi jurisprudence and the Afghan legal framework. Both systems recognize that authorization is the foundation of valid representation and that agents must act within the limits of their authority. Hanafi jurisprudence provides detailed principles concerning express and implied authorization, custom, necessity, trust, and the consequences of exceeding authority. Afghan law and the Regulation on the Affairs of

Defense Attorneys provide complementary rules concerning the documentation of authority, the professional qualifications of attorneys, the regulation of legal practice, and civil and disciplinary liability.

Accordingly, sub-agency may serve as a legitimate and practical means of facilitating litigation where it is based on valid authorization, limited by the principal's intention, supported by proper documentation, and performed by a professionally qualified attorney. Where these requirements are not observed, sub-agency may create procedural disputes, expose the parties to the risk of invalidity, and give rise to civil, professional, and disciplinary liability.

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