

الورقاتُ  
في أصولِ الفقه

لإمام الحرمين الجويني رحمه الله تعالى

Al-Waraqat

in Usul al-fiqh

by Imam al-Haramayn al-Juwayni

Arabic text - English translation with study notes

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About the Book	3
About the Author	3
Introduction	4
Types of Speech (Kalaam)	11
Command and Prohibition (Amr wa Nahy)	14
General and Specific ('Aam wa Khaas)	18
Summarised and Elaborated Speech (Mujmal wa Mubeen)	23
The Prophet's actions (Af'aal)	25
Abrogation (Naskh)	27
Methods of Interpretation	30
Consensus (Ijmaa')	32
Reports (Akhbar)	34
Analogy (Qiyaas)	37
Prohibition, Permissibility and Presumption of Continuity	40
The Prioritising of Evidences	41
Legal Reasoning (Ijtihad)	42

## About the Book

*Al-waraqat* is a renowned Islamic classical text on the subject of Uṣūl al-fiqh. It paves the way for a foundational education on the sources of Islamic law and the procedures by which the law is derived from the sources. It is called *waraqat* because it is concise, with the Arabic text (*matn*) fitting on roughly five pages. It is part of a series of Islamic classical texts, known as summarised works (*mukhtasarat*), that are considered essential study for every serious seeker of Islamic knowledge who wants to follow the methodology laid out by the scholars of Islam to facilitate the acquisition of beneficial knowledge.

## About the Author

Abul Ma'ali Abdul Malik ibn Abdullah ibn Yusuf Ibn Muhammad al-Juwayni an-Naisaburi, born in 419 AH /999 CE is a scholar and author. He is commonly known as al-Juwayni and Imam of the Two-Sacred Mosques ( Imam al-Haramayn) because at the age of twenty he taught for four years in the two Sacred Mosques of Makkah and Madinah. He has authored and compiled numerous books on various Islamic sciences. His expertise was in Usul al-fiqh, two of his main works being *al-Burhan* (Fiqh Principles) and *al-Waraqat*, this concise text (Matn).

## بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

. هذه ورقات تشتمل على معرفة فصول من أصول الفقه

. وذلك مؤلف من جزأين مفردين: فالأصل ما يبنى عليه غيره، والفرع ما يبنى على غيره

. والفقه: معرفة الأحكام الشرعية التي طريقها الاجتهاد

## Introduction

In the name of Allah, the Merciful, the Compassionate.

These pages comprise knowledge of aspects of the principles of Islamic Law (*usul al-fiqh*).<sup>1</sup> It consists of two distinct parts: the root [*al-asl*] is that on which something else is built. The branch [*al-far'*] is that which is built on something else.

Islamic Law [*fiqh*]<sup>2</sup> is the knowledge of the divinely legislated rulings [*al-ahkaam al-shari'ah*] that are arrived at by independent reasoning [*al-ijtihad*].<sup>3</sup>

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<sup>1</sup>'Uṣūl al-Fiqh' has been translated in multiple ways. The principles of law and theory of law are perhaps the two most common translations.

<sup>2</sup> Linguistically Fiqh means understanding. Islamically it is 'knowledge of the practical legal rulings of the Shari'ah with the detailed proofs acquired from the sources'.

<sup>3</sup> *Ijtihad* literally means exertion of effort. It is a jurist's [*Faqih*] exertion of his utmost effort inquiring into the sources of law to arrive at a legal ruling on a situation for which no agreed-upon ruling yet exists.

والأحكام سبعة: الواجب، والمندوب، والمباح، والمحظور، والمكروه، والصحيح، والفساد .

فالواجب: ما يثاب على فعله ويعاقب على تركه .

والمندوب: ما يثاب على فعله ولا يعاقب على تركه .

والمباح: ما لا يثاب على فعله ولا يعاقب على تركه .

والمحظور: ما يثاب على تركه ويعاقب على فعله .

والمكروه: ما يثاب على تركه ولا يعاقب على فعله .

There are seven legal rulings (*ahkaam*):<sup>4</sup> obligatory (*wajib*), recommended (*mandub*), permitted (*mubah*), prohibited (*mahtur*), reprehensible (*makruh*), valid (*sahih*), and invalid (*batil*).<sup>5</sup> Obligatory is what one is rewarded for doing and punished for omitting.<sup>6</sup> Recommended is what one is rewarded for doing but not punished for omitting.<sup>7</sup> Permitted is what one is neither rewarded for doing nor punished for omitting.<sup>8</sup> Prohibited is what one is rewarded for omitting and punished for doing.<sup>9</sup> Reprehensible is what one is rewarded for omitting but not punished for doing.<sup>10</sup>

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<sup>4</sup> *Ahkam* is plural of *Hukm*. A *Hukm Shar'i* is a communication from the Lawgiver concerning the conduct of the *mukallaf* (person in full possession of his faculties) which consists of a demand, an option or an enactment.

<sup>5</sup> Some of the *ahkaam* are also known by other names, for example 'wajib' is also known as 'fard', *mahtur* is commonly known as *haram*, *mandub* is also known as *mustahab* and *sunnah*, *batil* is also known as *fasid*.

<sup>6</sup> *Wajib* is a binding demand addressed to the *mukallaf* in respect of doing something, e.g. the five daily prayers

<sup>7</sup> *Mandub* is a demand addressed to the *mukallaf* in respect of doing something which is not binding, e.g., giving charity

<sup>8</sup> *Mubah* is communication concerning the conduct of the *mukallaf* which gives him the option to do or not to do something, e.g., travelling to different parts. Actions which are *mubah* become *mandub* when the intent is connected to an action which is considered worship [*ibadah*].

<sup>9</sup> *Mahtur* is a binding demand addressed to the *mukallaf* in respect of abandoning something, e.g. theft.

<sup>10</sup> *Makruh* is a demand which requires the *mukallaf* to avoid something, but not in prohibitory terms, e.g. wasting time.

والصحيح : ما يتعلق به النفوذ ويعتد به .

والباطل : ما لا يتعلق به النفوذ ولا يعتد به .

Valid is what is effective and relied upon.<sup>11</sup>

Invalid is what is neither effective nor relied upon.<sup>12</sup>

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<sup>11</sup> *Ahkaam* are described as *sahih* when they fulfill all the requirements pertaining to the essential pillars (*arkan*), causes (*asbaab*), conditions (*shuroot*) and hindrances (*mawani*). Prayer performed on its time, with all the conditions and pillars fulfilled without any of the hindrances present is described as being *sahih*, meaning that it counts and does not have to be repeated.

<sup>12</sup> *Ahkaam* are described as *batil* when any of the above mentioned requirements is lacking or deficient. Prayer performed without ablution, which is an essential pillar, is described as *batil*, meaning it does not count and needs to be repeated before the obligation is lifted.

- والفقه أخص من العلم .
- والعلم معرفة المعلوم على ما هو به في الواقع .
- والجهل : تصور الشيء على خلاف ما هو به في الواقع .
- والعلم الضروري ما لا يقع عن نظر واستدلال، كالعلم الواقع بإحدى الحواس الخمس .
- وأما العلم المكتسب فهو الموقوف على النظر والاستدلال .
- والنظر هو الفكر في حال المنظور فيه .
- والاستدلال طلب الدليل .
- والدليل هو المرشد إلى المطلوب .
- والظن تجويز أمرين أحدهما أظهر من الآخر .
- والشك تجويز أمرين لا مزية لأحدهما على الآخر .

*Fiqh* has a narrower meaning than knowledge (*al-'Ilm*). Knowledge (*'ilm*) is to know the thing known as it actually is.<sup>13</sup> Ignorance [*jahal*] is to imagine something as other than what it actually is. <sup>14</sup> Immediate knowledge (*ilm durooree*) is that which does not result from rational or evidentiary inquiry,<sup>15</sup> like knowledge that is known by one of the five senses. Whereas acquired knowledge [*ilm muktasib*] rests on rational and evidentiary inquiry.<sup>16</sup> Rational inquiry (*nathr*) is reflection on the object of inquiry.

<sup>13</sup> Mecca is the birth place of the Prophet Muhammad is a statement that is consistent with fact and is therefore considered knowledge in the definitional sense.

<sup>14</sup>Medinah is the birth place of the Prophet Muhammad is a statement that is inconsistent with fact, and therefore considered ignorance in the definition sense.

<sup>15</sup> It is called immediate knowledge because it is accepted immediately without need for rational enquiry. Knowledge that the five daily prayers is *wajib* is acquired without *ijtihad* because the evidence for it is explicit.

<sup>16</sup> The knowledge that penetration without ejaculation makes *ghusl* an obligation is an example of acquired knowledge. It relies on *ijtihad* as the evidence for it is not explicit. There are conflicting reports, one which indicates obligation of *ghusl* and the other indicates it is not an obligation. After diligent inquiry into the evidences, the conclusion is that *ghusl* is an obligation and that the evidence indicating it is not an obligation is abrogated.

Evidentiary inquiry (*istidlaal*) is the search for evidence. Evidence (*daleel*) leads to what is sought (*the hukum*).<sup>17</sup> Opinion (*thann*) is acknowledging two possibilities, one of which is more probable than the other.<sup>18</sup> Doubt (*shak*) is acknowledging two possibilities, neither of which is superior to the other.

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<sup>17</sup> *Daleel* is an indication from which a *hukm* of Shari'ah is deduced. The question 'does sexual intercourse without ejaculation make ghusl an obligation?' Reflection and pondering on it to know the *hukum* is called *nathr*, searching for the evidence relating to it is called *istidlaal* and the hadith that leads us to the *hukum* is called *dalil*.

<sup>18</sup> The more probable is called *ath-thann*. In surah al-Baqarah, verse 230 Allah says: And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah (2:230). Here the meaning is that between the possibility of keeping the limits of Allah or not keeping the limits of Allah, they think that it is more probable they will keep the limits of Allah. Another example is when you see a friend driving a car, you assume that it runs on petrol. However, it is possible it runs on diesel or even electricity. The first possibility is likely, the second is considered unlikely.

وأصول الفقه: طرقه على سبيل الإجمال وكيفية الاستدلال بها .

*Usul al-fiqh* is its means (of fiqh) in general, and the manner of using them in evidentiary inquiry.<sup>19</sup>

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<sup>19</sup> The definition includes two parts. The first part is the proofs of fiqh. the Quran, the Sunnah, Ijma etc. Proofs of Fiqh in general distinguishes it from the proofs for individual cases or issues. General proof is greater than proof for specific issues, and encompasses all the smaller issues for which particular verses or hadith are used to deduce rulings. The second part is the method of deducing rulings from the proofs, also known as principles of deduction. A third part included at the end of the book is the description of the *mujtahid*, the scholar who deduces rulings from the evidences, and taqleed, following the mujtahid. The command in the Quran to 'Establish the prayer' (2, 43) is evidence for the obligation of prayer. The scholars of Usul use the principle: 'An imperative indicates obligation'. This is a comprehensive principle used to deduce a ruling from the evidence. The evidence points to a demand to establish the prayer, but it does not clarify whether the type of demand is obligation, recommendation or otherwise. This general principle indicates that any imperative from the Quran and the Sunnah indicates obligation unless there is a contextual indication on the contrary. As there is no indication to the contrary, then prayer is considered an obligation.

وأبواب أصول الفقه: أقسام الكلام، والأمر، والنهي، والعام، والخاص، والمجمل، والمبين، والظاهر، والأفعال، والناسخ، والمنسوخ، والإجماع، والأخبار، والقياس، والحظر والإباحة، وترتيب الأدلة، وصفة المفتي والمستفتي، وأحكام المجتهدين .

*Usul al-fiqh* falls under the following chapters: the types of speech, command and prohibition, the general and the specific, the summarised and the elaborated, the apparent, actions of the Prophet - peace and blessings be upon him, the abrogating and the abrogated, consensus, reports of the Prophet -peace and blessings be upon him, analogy, prohibition and permission, the prioritising of evidences, the characteristics of the issuer of legal opinion (*mufti*), and the seeker of legal opinion (*mustafti*) and the qualities of practitioners of legal reasoning (*ijtihad*).<sup>20</sup>

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<sup>20</sup> The first five headings relate to the comprehensive principles used to deduce rulings from the evidences. The headings on abrogation, evidences, prioritising of evidences and characteristics of mufti are connected to the application of the principles to the evidences. The comprehensive principles are applied to the abrogating not the abrogated, to the evidence which is considered strong not weak, by the mufti, who is qualified to apply the comprehensive principles to the evidences.

## أقسام الكلام

فأما أقسام الكلام، فأقل ما يترتب منه الكلام: اسمان، أو اسم وفعل، أو فعل وحرف، أو اسم وحرف .

والكلام ينقسم إلى أمر ونهي وخبر واستخبار، وينقسم أيضاً إلى تمن وعرض وقسم .

## Types of Speech (Kalaam)

At the very least speech (*Kalaam*)<sup>21</sup> must consist of two nouns, or a noun and a verb, or a verb and a particle, or a noun and a particle.

Speech divided into command, prohibition, report, inquiry, as well as wish, offer, and oath.<sup>22</sup>

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<sup>21</sup> In order to correctly interpret the Qur'an or the Sunnah and to deduce legal rulings, it is necessary that the language of the Qur'an and the Sunnah, which is Arabic, be clearly understood. Therefore, the classification of words and their usages is included in the science of Usul al-fiqh.

<sup>22</sup> 'Zaid Qaa'im' (Zaid [is] standing) is a sentence composed of two nouns. 'Qaama Zaid' (Zaid stood up) is a sentence composed of the past tense verb 'qaama' and the noun 'Zaid'. 'Lam yaqum' (He did not stand up) is a sentence in the negative composed of a particle 'Lam' and the verb 'yaqum'. The statement 'Yaa Zaid' (O Zaid) is a sentence composed of a particle 'yaa' and a noun 'Zaid'. 'ithhab' (go) is demanding an action. 'laa tath-ab' (do not go) is demanding abandoning an action. 'Thahaba Zaid ilaa al-masjid' (Zaid went to the masjid) is an example of information. 'Ayna thahaba Zaid? (Where did Zaid go?) is asking for information. 'Layta ashabaab ya'ood' (if only I was young again) is asking for something impossible or really difficult. 'Laa ta'teenaa fa nukrimuka? (Will you not visit us so we can show you hospitality?) is asking for something politely. 'Wallahi' (I swear by Allah) is an oath.

ومن وجه آخر ينقسم إلى حقيقة ومجاز، فالحقيقة ما بقي في الاستعمال على موضوعه، وقيل: فيما اصطلح عليه من المخاطبة .

والمجاز ما تجوز به عن موضوعه .

والحقيقة إما لغوية وإما شرعية وإما عرفية .

والمجاز إما أن يكون بزيادة أو نقصان أو نقل أو استعارة،

فالمجاز بالزيادة مثل قوله تعالى: ( ليس كمثله شيء )،

والمجاز بالنقصان مثل قوله تعالى: ( واسأل القرية )،

والمجاز بالنقل كالغائط فيما يخرج من الإنسان،

والمجاز بالاستعارة كقوله تعالى: ( جداراً يريد أن ينقض ) .

In another respect, it is divided into literal and metaphorical.<sup>23</sup> Literal means it is used in the sense for which it was first coined,<sup>24</sup> or it is said that it is used according to convention.<sup>25</sup> Metaphorical means that it is taken beyond the sense for which it was first coined.<sup>26</sup>

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<sup>23</sup> When a word is used literally, it keeps its original meaning, but when it is used in a metaphorical sense, it is transferred from its original to a secondary meaning on grounds of a relationship between the two meanings. Scholars have differed over the presence of metaphorical speech in the Quran. For further elaboration see the works of Sheikh ul-islam ibn taymiyyah, Sheikh ibn Uthaymeen, and Sheikh Muhammad Amin al-Shanqiti.

<sup>24</sup> The word 'lion' used in its literal dictionary meaning in the sentence 'I saw a lion in the cage' is also used metaphorically to mean a brave man, as in the statement 'I saw a lion fighting on the battlefield'.

<sup>25</sup> This definition makes the word 'asad' (lion) a literal meaning for both an animal from the cat family and also a brave man. This second definition looks at how we use the word, while the first looks at the dictionary definition of the word itself as it was coined.

<sup>26</sup> The principle governing *kalaam* (speech) is that it is to be taken upon its literal sense. It is not to be changed to a metaphorical meaning except when it is impossible to employ its literal meaning.

Literal use can be linguistic (*lughawi*),<sup>27</sup> juridical (*shar'i*),<sup>28</sup> or customary (*urfi*).<sup>29</sup>

Metaphorical use can be by addition,<sup>30</sup> subtraction,<sup>31</sup> transference,<sup>32</sup> or borrowing of meaning.<sup>33</sup> Metaphorical use by addition is like Allah's saying [English meaning] "There is nothing like his likeness". Figurative use by subtraction is like Allah's saying "Ask the town." Metaphorical use by transference is like 'hollow' being used for what comes out of a person. Metaphorical use by borrowing is like Allah's saying "a wall that wants to collapse."

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<sup>27</sup> The linguistic is a word is used in its dictionary meaning, such as 'lion' for the animal of the cat family, and 'man' for the male gender of the human being.

<sup>28</sup> The juridical is a word which is used for an islamic meaning that Allah has given it in the first place, such as *salah*, which literally means 'supplication' but in its juridical sense means 'particular actions and speech that starts with saying *takbir* and ends with saying the *taslim*.'

<sup>29</sup> The customary is a word used for a meaning that is absolutely common among people. The Arabic word '*dabbah*' in its dictionary meaning applies to all living beings that walk on the face of the earth but according to custom it is used to mean an animal that walks on four legs.

<sup>30</sup> When there is an additional word to a statement that can be removed without changing the meaning of that statement. "There is nothing like his likeness" (42:11), the 'kaaf' in the Arabic language is considered additional in this verse according to the example that the author uses.

<sup>31</sup> When there is a word implicitly understood from the statement that if it was not the statement would not be valid. The author uses the example "Ask the town" (12:82) where the word 'the people of' is implicit. The deficient word is 'the people' as if it was not implicit the sentence would not make sense as you cannot ask the town. It is metaphorical, because the apparent or literal meaning is ask the town itself, but the word is being used for a meaning other than its original meaning.

<sup>32</sup> It means to transfer a word from its original meaning to another. The word '*gha'it*' is originally used to mean a hollow place in the ground. It became used to mean what comes out of a person.

<sup>33</sup> It means to borrow a word from its original meaning and use for another meaning that there is some resemblance like Allah's saying "a wall that wants to collapse" (18:77), where the meaning of 'want to' is borrowed to mean 'about to'. The word 'yureed' (to want) is used to personify/describe humans, not objects. The word is borrowed and used for another meaning, to describe a wall that is leaning in the direction of collapsing.

والأمر استدعاء الفعل بالقول ممن هو دونه على سبيل الوجوب

وصيغته: افعل، وعند الإطلاق والتجرد عن القرينة تحمل عليه، إلا ما دل الدليل على أن المراد منه الندب أو الإباحة .

ولا يقتضي التكرار على الصحيح، إلا ما دل الدليل على قصد التكرار .

ولا يقتضي الفور .

والأمر بإيجاد الفعل أمر به وبما لا يتم الفعل إلا به، كالأمر بالصلاة أمر بالطهارة المؤدية، وإذا فعل يخرج المأمور به عن العهدة .

## Command and Prohibition (Amr wa Nahy)

A command is a verbal demand obliging an inferior to do an action. <sup>34</sup>

The verbal form that indicates command is if'al [the imperative].<sup>35</sup> When unqualified and in the absence of indications to the contrary it is interpreted as obligation, except when some evidence indicates that recommendation or permission is meant.<sup>36</sup>

The correct view is that command does not require the repetition of the act, unless some evidence indicates that repetition was intended; <sup>37</sup> nor does it require immediate action.<sup>38</sup>

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<sup>34</sup> A command / imperative (*amr*) is defined as a verbal demand to do something issued from a position of superiority over one who is inferior. The command 'Establish the prayer', is from Allah and the one requested is the servant of Allah. So this is considered a command.

<sup>35</sup> There are other forms that show obligation, such as 'Fasting has been prescribed for you' (2,183) where the form indicating command is past simple.

<sup>36</sup> As general rule, a command (*amr*) conveys obligation (*wujub*). In the verse 'Establish the prayer', the word establish is an imperative. The basic principle is that the imperative conveys obligation. There is no contextual indications or evidence indicating recommendation or otherwise, so the result is that this imperative indicates obligation. An example of an imperative with evidence indicating recommendation is the hadith of the Prophet 'Pray before Magrib' and he repeated it three times before mentioning 'whoever wishes to'. The imperative here has contextual context that indicates that the original ruling of obligation is not intended.

<sup>37</sup> In the absence of proof specifying repeated performance as a requirement, a single instance of performance is the minimum requirement of a command.

<sup>38</sup> The command itself merely consists of a demand, and the manner of its performance must be determined in the light of indications and surrounding circumstances.

The command to perform an action is a command to perform both the act and whatever is required for the completion of the act,<sup>39</sup> so the command to perform the prayers is a command enjoining ablution that paves the way for the prayer. When the act is performed, then the person to whom the command was addressed is released from the charge laid upon him.<sup>40</sup>

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<sup>39</sup> The means which lead to the observance of commands and prohibitions are covered by the same ruling which applies to the command/prohibition in the first place.

<sup>40</sup> If it is not performed in the commanded manner, then he is required to do it again. The verse 'establish the prayer', if performed fulfilling all its conditions and pillars, then the person is not commanded to perform it again.

الذي يدخل في الأمر والنهي وما لا يدخل  
يدخل في خطاب الله تعالى : المؤمنون .  
والساهي والصبي والمجنون غير داخلين .  
والكفار مخاطبون بفروع الشريعة، وبما لا تصح إلا به،  
وهو الإسلام، لقوله تعالى :  
( قالوا لم نك من المصلين ) .

Who is included in command and prohibition, and who is not:

The believers are included in Allah's speech (commands and prohibitions),  
but the inattentive (unaware), young people, and the insane are not.<sup>41</sup>

Unbelievers are addressed concerning the branches of the revealed laws, and concerning Islâm, without which the performance of the branches is not valid, because Allah has said "What has landed you in hell? They said, we did not pray (74:43)."

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<sup>41</sup> The one who is asleep, pre-pubescent and insane are not sinful for leaving off obligations or performing prohibitions.

والأمر بالشئ نهي عن ضده، والنهي عن الشئ أمر بضده .  
والنهي استدعاء الترك بالقول ممن هو دونه على سبيل الوجوب، ويدل على فساد المنهي عنه .  
وترد صيغة الأمر والمراد به الإباحة والتهديد أو التسوية أو التكوين .

The command to do something is the prohibition of its opposite,<sup>42</sup> and the prohibition of something is the command to do its opposite.<sup>43</sup>

A prohibition is a verbal demand obliging an inferior to omit an act.<sup>44</sup>

The verbal form of command occurs with the meaning of permitting<sup>45</sup>, threatening,<sup>46</sup> giving alternatives,<sup>47</sup> or bring into creation.<sup>48</sup>

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<sup>42</sup> The command to establish prayer is prohibition of not establishing it.

<sup>43</sup> The prohibition of betraying trusts (8,37) is the command to keep and protect trusts

<sup>44</sup> Prohibition (nahy), being the opposite of a command, is defined as a word or words which demand the avoidance of doing something addressed from a position of superiority to one who is inferior. Also as the opposite of command then a prohibition requires immediate and permanent omission.

<sup>45</sup> In the verse '*But when you come out of ihram, then [you may] hunt*' (5,2) the form of the verb is a command but the meaning of the verse is permissibility to hunt.

<sup>46</sup> In the verse '*Do whatever you will*' (41,40) the form of the verb is a command but the meaning of the verse is warning/ threat to contemplate the result of your actions

<sup>47</sup> In the verse '*then be patient or impatient*' (52,16), the form is a command verb the meaning is that your patience is the same as your lack of patience

<sup>48</sup> In the verse "*Be apes, despised.*" (2,65) the form of 'be' is a command but the meaning is to bring into creation.

## [ العام والخاص وأقسامهما ]

وأما العام فهو ما عم شيئين فصاعداً، من قوله: عممت زيداَ عمراً بالعطاء، وعممت جميع الناس .

وألفاظه أربعة: الاسم الواحد المعرف باللام، واسم الجمع المعرف باللام، والأسماء المبهمة، كمن فيما يعقل، وما فيما لا يعقل، وأي في الجمع، وأين في المكان، ومتى في الزمان، وما في الاستفهام والجزاء وغيره، ولا في النكرات .

والعموم من صفات النطق .

ولا تجوز دعوى العموم في غيره من الفعل وما يجري مجراه .

## General and Specific ('Aam wa Khaas)

'Aam (general) encompasses two or more things without restriction.<sup>49</sup> It can be expressed in four forms: a singular noun made definite by an alif and a lâm (the definite article);<sup>50</sup> a plural noun made definite by a lâm;<sup>51</sup> nouns of indeterminacy such as 'who' for rational beings,<sup>52</sup> 'what' for non-rational things, 'any' for both of these, 'where' for place, 'when' for time, 'what' for inquiry and reward and other

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<sup>49</sup> 'Aam is a word that has a single meaning, but which applies to an unlimited number without any restrictions. The command, 'Whoever enters this house, give him a dirham', 'whoever' is general and includes every human being without restriction to gender or age etc.

<sup>50</sup> The verse, 'the adulterer, whether a woman or a man, flog them one hundred lashes' (24:2). the article *al* preceding 'adulterer' (al-zaniyah wa'l-zani) indicates that all adulterers must suffer the prescribed punishment.

<sup>51</sup> When the plural form of a noun is preceded by *al*, it is identified as 'Amm. For example in the waiting period of the divorced women (al-mutallaqat), the ayah begins by the word '*al-mutallaqat*', that is, 'the divorced women' who are required to observe a waiting period of three courses before they can marry again. 'The divorced women' is 'Amm which comprises all to whom this statement can apply.

<sup>52</sup> The word 'man' ('he who'), when used in a conditional speech, has the effect of a general word. In 'Whoever [fa-man] among you sees the new moon must observe the fast' ( 2:185) applies to everybody who sights it.

things;<sup>53</sup> and 'no' applied to indefinite nouns.<sup>54</sup> Generality is an attribute of speech. It is not permissible to claim generality for other things such as action or the like.<sup>55</sup>

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<sup>53</sup> In the question '*maa indaka?*' meaning '*maa huwa kulli maa indaka?*' In '*maa indaka fa'tee bihi*' meaning *kullu maa indaka fa'tee bihi* is reward. By other the author means relative pronoun '*a'ti bima indak*' meaning '*i'ti bi kulli maa indaka*' .

<sup>54</sup> In the statement '*maa indika shay'a*' meaning *laa shay' indak*. The Hadith *la darar wa la dirar* fi'l-Islam ('no harm shall be inflicted or reciprocated in Islam') is 'Amm, as '*la darar*' and '*la dirar*' are both indefinite words which convey their concepts in the negative, thereby negating all to which they apply.

<sup>55</sup> It is a characteristic of speech, not actions. The prophet went inside the Kaba and prayed. It is not allowed to now say that the word 'prayed' in the hadith is general reference prayer to include compulsory and voluntary, as it is an action and generality is a characteristic of speech. Therefore this action is interpreted to mean permissible to pray voluntary prayer in the Ka'ba as it is the least that can be inferred from the word prayer.

. والخاص يقابل العام

والتخصيص تمييز بعض الجملة، وهو ينقسم إلى: متصل ومنفصل، فالمتصل الاستثناء والشرط، والتقييد بالصفة،

Specific are those that are not general.<sup>56</sup> To make something specific is to distinguish part of a whole.<sup>57</sup> It is either attached<sup>58</sup> and separated.<sup>59</sup> Attached comprises exception, condition, and qualification by an attribute.<sup>60</sup>

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<sup>56</sup> The proper nouns Muhammad or Makkah are specific utterances.

<sup>57</sup> 'The whole family went except Zaid', here 'the family went' indicates everybody, including Zaid. However, 'except Zaid' removes Zaid from the generality of the statement and indicates that he did not go.

<sup>58</sup> The general and specific statement are in the same utterance

<sup>59</sup> The specific utterance is independent of the general statement. If you said 'the family went' and in another utterance sometime later you said 'Zaid did not go', this is separate because the general and specific statement are not in the same utterance.

<sup>60</sup> An attached clause may qualify a general proposition by introducing an exception (istithna), a condition (shart), a quality (sifah), or indicating the extent (ghayah) of the original proposition.

والاستثناء إخراج ما لولاه لدخل في الكلام، وإنما يصح بشرط أن يبقى من المستثنى منه شيء .  
ومن شرطه أن يكون متصلاً بالكلام . ويجوز تقديم الاستثناء على المستثنى منه . ويجوز  
الاستثناء من الجنس ومن غيره . والشرط يجوز أن يتقدم على المشروط .  
والمقيد بالصفة يحمل عليه المطلق كالرقبة قيدت بالإيمان في بعض المواضع وأطلقت في بعض،  
فيحمل المطلق على المقيد . ويجوز تخصيص الكتاب بالكتاب، وتخصيص الكتاب بالسنة، وتخصيص  
السنة بالكتاب، وتخصيص السنة بالسنة، وتخصيص النطق بالقياس، ونعني بالنطق قول الله تعالى وقول  
الرسول صلى الله عليه وآله وسلم .

Exception is the exclusion of that which an expression would otherwise include. It is only valid on condition that there remains something of that from which the exception was made. Another condition is that the exception be connected to the speech from which exception is being made.<sup>61</sup> That which is excepted can be mentioned before that from which it is excepted.<sup>62</sup> Exception can be from the same class, and from other things.<sup>63</sup> A condition can precede that which is made conditional upon it.

The unqualified is interpreted in accordance with what is qualified by an attribute. For example, 'slave' is qualified by *emaan* in some passages, so unqualified references to slaves are interpreted in accordance with the qualified ones.<sup>64</sup>

<sup>61</sup> As in the statement 'The family went except for Zaid'. 'The family' is that from which the exception is made and 'Zaid' is the exception. This is valid because both conditions are met. After removing Zaid Members of 'the family' remain after 'zaid' is removed and 'Zaid' is connected to the utterance.

<sup>62</sup> 'Maa qaama illa Zaid ahad' - Did not stand up except Zaid anybody - where the exception, Zaid, is mentioned before that which is excepted from, Ahad. The sentence before any change has been made is 'maa qaama ahad illa zaid'.

<sup>63</sup> 'Jaa'a al-qawm illa Zaid' is an example of exception from a class as Zaid is from the class of 'the family'. 'Jaa'a al-qawm illa himaar' is an example of exception from other things is as the donkey is not from the class of the family.

<sup>64</sup> The verse 'to free a believing slave' (4:92) relates to expiation for killing wrongfully. Another verse says 'free a slave before you have relations with them' (58:3) relating to expiation for *dhihaar*. Where freeing a slave is mentioned unqualified in one instance and mentioned qualified in another instance, then the unqualified is interpreted according to the qualified. So the meaning of the verse in the second instance is 'to free a believing slave before you have relations'.

The Quran can be made specific by the Quran,<sup>65</sup> the Quran by the Sunnah,<sup>66</sup> the Sunna by the Quran,<sup>67</sup> the Sunna by the Sunna,<sup>68</sup> and utterance by analogy,<sup>69</sup> where by utterance we mean the speech of Allah and the speech of the Prophet - peace and blessings be upon him.

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<sup>65</sup> It is permissible for the general statement to be from the Quran and the specific statement to also be from the Quran. The verse, '*Divorced women remain in waiting for three periods,*' (2:228), which is general for all divorced women is specified by the verse '*O You who have believed, when you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning them*' (33:49). Therefore the sum meaning of both verses is that the divorced women remain in waiting period except in the case of the woman who did not have sexual relations with her husband, in which case there is no waiting period for her.

<sup>66</sup> It is permissible for the general statement to be from the Sunnah and the specific statement to be from the Quran. The verse '*O you who have believed, when you rise to [perform] prayer, wash your faces and your forearms to the elbows and wipe over your heads and wash your feet to the ankles*' (5:6) is specified by the hadith '*Allah does not accept the prayer of anyone of you if he is in impurity until he makes wudu*' (Bukhari and Muslim). So the sum meaning of the verse and the hadith together is that 'it is an obligation on everybody who wants to perform the prayer to perform wudu unless he is already in a state of purity.'

<sup>67</sup> It is permissible for the general statement to be from the Sunnah and the specific statement from the Quran. The peace treaty of Hudaibiyah between the Prophet and the disbelieving Quraysh, in which it mentions '*That nobody can join the Prophet in Medinah, even if they are believers, without being returned back to Quraysh in Makkah*' which is general to mean men and women, is specified by the '*O you who have believed, when the believing women come to you as emigrants, examine them. Allah is most knowing as to their faith.*' (60:10). So the sum meaning of the verse and the hadith together is 'whoever from the disbelievers come to the Prophet in Medinah without permission, will be returned back to Makkah except in the case of women whose *emaan* is proven, they will not be returned.'

<sup>68</sup> It is permissible for the general statement to be from the Sunnah and the specific statement from the Sunnah. The saying of the Prophet, '*what is irrigated by rain, there is a zakat duty of one tenth*' (Bukhari and Muslim), is general for any amount large or small of agriculture is specified by the hadith '*there is no zakat on less than five awsaq*', so that the sum meaning of both hadith together is the amount which zakat is a duty on agriculture of any amount over five awsaq, the equivalent of three hundred Saa'.

<sup>69</sup> It is permissible for the general statement to be from the Quran or Sunnah and the specific statement from qiyas (analogy). For example, the verse '*The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes*' (24:2), which is general for every unmarried fornicator, and the verse '*then for them is half the punishment for free [unmarried] women*' (4:25) is specific and omits the slave-girl about whom the punishment is fifty lashes. The punishment for the male slave is through qiyas (analogy) with the female slave. So the meaning of the verses together with qiyas is that the unmarried male and female fornicator receives 100 lashes, except the male and female slave who fornicates, then they receive fifty lashes each, the female slave based on the verse and the male slave based on analogy.

المجمل ما يفتقر إلى البيان .

والبيان إخراج الشيء من حيز الإشكال إلى حيز التجلي .

والمبين هو النص .

## Summarised and Elaborated Speech (Mujmal wa Mubeen)

Summarised speech (*Mujmal*) stands in need of elaboration.<sup>70</sup> Elaboration (*Bayaan*) is to remove something from the domain of the problematic into the domain of the evident.<sup>71</sup>

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<sup>70</sup> *Mujmal* denotes a word or text which is inherently unclear and gives no indication as to its precise meaning. 'Establish the Prayer' is unclear in regards to the manner of performing the prayer.

<sup>71</sup> *Bayaan* is two types, that which is evident in itself and that which makes something else evident or clear. The author's definition indicates the second type, makes something else evident. The command 'establish the prayer', is evident in itself as a command to establish the prayer. However from the angle of how the prayer is to be performed, it is *Mujmal*, as it is not made clear how to establish the prayer. The Sunnah clarifies the manner in which the prayer is performed, hence the sunnah 'yubayyin al-Quran'.

والنص ما لا يحتمل إلا معنى واحداً، وقيل: ما تأويله تنزيهه، وهو مشتق من منصة العروس وهو

الكرسي .

والظاهر ما احتمل أمرين أحدهما أظهر من الآخر، ويؤول الظاهر بالدليل، ويسمى ظاهراً بالدليل

Definite speech (*nass*), admits of only one meaning. Some say it is speech whose interpretation is its revelation. The word *nass* is derived from the *minassa*, or throne, of the bride.<sup>72</sup>

Apparent speech (*thaahir*) is that which allows one of two meanings, one of which is more apparent than the other.<sup>73</sup> Apparent speech is interpreted by means of evidence, and is then called 'apparent by virtue of evidence.'<sup>74</sup>

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<sup>72</sup> The verse 'Those are ten complete days' (2:196) cannot mean nine days or ten and a half days. It only admits one meaning, so is considered *Nass*. The throne of the bride is raised and is therefore visible to all, likewise *nass* is clear meaning as if you can see it from afar and its meaning is understood immediately as you come across it.

<sup>73</sup> *Thahir* is a word with a clear meaning but is open to *ta'weel* (interpretation). The hadith of the Prophet Muhammad 'Verily the Imam is there to be followed, so when says Allah Akbar, then say Allah Akbar'. The *fa* in the hadith has two possible means, to join two things in sequence one after the other or consecutive. The second meaning - consecutive, is less apparent than the first meaning, sequence. Therefore, whenever there is a *faa*, it is understood according to the first meaning unless there is evidence suggesting that the most probable and likely meaning is not intended. The *faa* the verse 'So when you recite the Qur'an, seek refuge in Allah from Satan, the expelled [from His mercy]. (16:98)' apparently means read Quran and then seek refuge from Shaytaan. However, in the Sunnah there is the hadith: He used to seek refuge before recitation of Quran. Therefore, the apparent meaning is relegated and the interpretation is based on a weaker possibility based on evidence, in this case not meaning sequence, This is then called 'ta'weel'.

<sup>74</sup> 'I saw a lion brandishing a sword'. The statement 'I saw a lion' has two possible meanings, the literal meaning and a metaphorical meaning. Its use as an animal is literal and as a brave man is metaphorical. The general principle is to use the literal meaning. However, there is evidence to suggest that the second meaning is stronger, which is the phrase 'brandishing a sword', which is a description of a man, not a lion. Therefore this statement is known as 'apparent by virtue of evidence'.

فعل صاحب الشريعة لا يخلو: إما أن يكون على وجه القربة والطاعة أو لا يكون .  
 فإن كان على وجه القربة والطاعة فإن دل دليل على الاختصاص به فيحمل على الاختصاص .  
 وإن لم يدل دليل لا يختص به، لأن الله تعالى قال: ( لقد كان لكم في رسول الله أسوة حسنة )،  
 فيحمل على الوجوب عند بعض أصحابنا، ومن أصحابنا من قال: يحتمل على الندب، ومنهم من قال:  
 يتوقف فيه، فإن كان على وجه غير وجه القربة والطاعة فيحمل على الإباحة .  
 وإقرار صاحب الشريعة على القول هو قول صاحب الشريعة، وإقراره على الفعل كفعله .  
 وما فعل في وقته في غير مجلسه وعلم به ولم ينكره فحكمه حكم ما فعل في مجلسه .

## The Prophet's actions (*Af'aa*)

An action of the bearer of legislation [the Prophet] either relates to piety and obedience or it does not.<sup>75</sup> If it does, then if some evidence indicates that it is specific to him, it is understood as specific to him;<sup>76</sup> But if no evidence so indicates, then the action is not specific to him, because Allah has said "In the Prophet of Allah you have had a good example."<sup>77</sup> Such an act is understood as obligatory by some of our colleagues,<sup>78</sup> while some of them say one should suspend judgment about it. If, however, the action relates to something other than piety and obedience, it is

<sup>75</sup> The actions of the the Prophet is divided into two categories. The first is that which is an action intending closeness to Allah and His obedience (worship). The second is an action that is not intending closeness to Allah and His obedience. Another way is to say that the actions of the Prophet are either customary acts, such as dress and matters of the home, or necessary acts such as eating when hungry or sleeping when tired, or acts of worship, with the intention to draw closer to Allah.

<sup>76</sup> There are certain matters which are specific to the Prophet so that his example concerning them does not constitute general law. There is a hadith where the Prophet forbade continuous fast which is to fast two days or more without eating or drinking at night, while he himself performed that fast.

<sup>77</sup> This verse proves that the general principle is that the actions of the Prophet are for every Muslim to follow unless evidence indicates otherwise.

<sup>78</sup> The scholars who say *wajib* take the safe approach based on verse 21 in surah al-Ahzab. The scholars that say *mandub* is based on the general principle is that a person is not punished for leaving an action. The scholars that say suspend judgement is based on there being a lack of evidence indicating that *wajib* or *mandub* is intended. In reality the least an action of worship can be is *mandub*. The opinion of suspending judgement takes an approach of caution (*wara'*). We know that the Prophet used to use miswak whenever he entered his home (Sahih Muslim). This is an action he did but that he did not order muslims to do. According to the first opinion, this would be considered *Wajib*, according to the second opinion it would be considered *mandub*.

understood as permissible.<sup>79</sup> The consent of the bearer of the revealed law in a saying constitutes a saying of the bearer of the revealed law, and his consent in an act is as his own act.<sup>80</sup> Whatever was done during his lifetime outside his presence, that he came to know of and did not disown, its ruling is as though it had been done in his presence.<sup>81</sup>

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<sup>79</sup> Actions such as the manner which he ate, slept, dressed is mubah

<sup>80</sup> The tacitly approved Sunnah consists of the acts and sayings of the Companions which came to the knowledge of the Prophet and of which he approved. The report of one of the prominent companions, 'Amr b. al-'As, that in the campaign of Dhat al-Salasil he had a wet dream at night but upon waking owing to extreme cold he did not take a bath but instead performed the morning Salah with tayammum. He then related this to the Prophet, who laughed but said nothing against it which implies that the act in question is permissible and that in similar circumstances when extreme cold proves to be hazardous to health the same action would be permissible. These actions are considered mubah.

<sup>81</sup> The sayings of Companions such as, 'we used to do such and such during the lifetime of the Prophet' constitute a part of Sunnah taqririya. Abu Sa'id al-Khudri said that '*for the charity of 'id al-Fitr, we used to give a sa' of dates or of barley*', which is a matter that could not have remained hidden, so it constitutes a *sunnah taqriria*.

## [ النسخ ]

وأما النسخ فمعناه الإزالة، يقال: نسخت الشمس الظل إذا أزالته، وقيل: معناه النقل من قولهم: نسخت ما في هذا الكتاب إذا نقلته .

وحده: الخطاب الدال على رفع الحكم الثابت بالخطاب المتقدم على وجه لولاه لكان ثابتاً مع تراخيه عنه .

ويجوز نسخ الرسم وبقاء الحكم، ونسخ الحكم وبقاء الرسم، والنسخ إلى بدل وإلى غير بدل، وإلى ما هو أغلظ وإلى ما هو أخف .

ويجوز نسخ الكتاب بالكتاب، ونسخ السنة بالكتاب، ولا يجوز نسخ الكتاب بالسنة .

ويجوز نسخ المتواتر بالمتواتر، ونسخ الآحاد بالآحاد وبالمتواتر، ولا يجوز نسخ المتواتر بالآحاد .

### Abrogation (*Naskh*)

The meaning of abrogation (*naskh*) is removal. A person says “the sun has abrogated the shade” when it makes it disappear. Some say its meaning is to copy, because people say “you have abrogated what is in the book” when you copy it in the form in which it was written.<sup>82</sup> *Naskh* is defined as speech that indicates the removal of a *Hukm* established by a previous speech, in such a way that without the second speech the *Hukm* would remain. There must be a delay between the first speech and the second.<sup>83</sup>

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<sup>82</sup> Removal (al-raf wa al-izalah) is the primary meaning of naskh. The author using the word ‘some say’ shows that copy, the secondary meaning of Naskh, is weaker.

<sup>83</sup> Naskh may be defined as the suspension or replacement of one Shari'ah ruling by another, provided that the latter is of a subsequent origin, and that the two rulings are enacted separately from one another. The verse ‘If there are among you twenty [who are] steadfast, they will overcome two hundred. And if there are among you one hundred [who are] steadfast, they will overcome a thousand of those who have disbelieved’ (8:65) means that if there are twenty Muslim combatants against a larger number of enemies they are obliged to fight so long as the enemies are not more than 10x their number. However, the verse ‘Now, Allah has lightened [the hardship] for you, and He knows that among you is weakness. So if there are from you one hundred [who are] steadfast, they will overcome two hundred. And if there are among you a thousand, they will overcome two thousand by permission of Allah. And Allah is with the steadfast.’ (8:66) is later than the first one and removes its *hukum* and replaces it with the obligation to fight the enemy so long as their number is not more than twice the number of muslims.

A text can be abrogated while the *Hukm* it indicates remains;<sup>84</sup> a *Hukm* can be abrogated while the text remains,<sup>85</sup> or both can be abrogated together.<sup>86</sup> Some abrogation substitutes a new requirement for the old one,<sup>87</sup> and some does not.<sup>88</sup> Some abrogation results in a stricter requirement,<sup>89</sup> and some in a lighter requirement.<sup>90</sup>

The Quran can be abrogated by the Quran,<sup>91</sup> and the Sunna can be abrogated by the Quran. The Quran cannot be abrogated by the Sunna.<sup>92</sup> What is collectively

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<sup>84</sup> It is allowed to abrogate the text while the ruling remains. The wording for stoning the one who commits adultery used to be in the Quran as mentioned in the hadith of Aisha (RA) recorded in al-Bukhari and Muslim, but was abrogated, removed, while the ruling remains according to ijmaa' of the muslim scholars.

<sup>85</sup> The two verses previously mentioned mentioning the ruling of fighting a larger number known as the verses of patience. This is the most typical type of *Naskh*.

<sup>86</sup> Abrogation of both the words and the ruling as in the example of the verse of Ridaa'ah (suckling) as reported by Aishah and recorded in Muslim.

<sup>87</sup> In the verses of patience the *hukum* has been substituted for another *hukum*.

<sup>88</sup> The verse 'O you who have believed, when you [wish to] privately consult the Messenger, present before your consultation a charity. That is better for you and purer. But if you find not [the means] - then indeed, Allah is Forgiving and Merciful.' (58:12), indicates it is an obligation to give charity before consulting the Prophet. It is abrogated by the verse 'Have you feared to present before your consultation charities? Then when you do not and Allah has forgiven you, then [at least] establish prayer and give zakah and obey Allah and His Messenger. And Allah is Acquainted with what you do.' (58:13), shows that the obligation is abrogated, without it being substituted for another *Hukum*.

<sup>89</sup> Where one *hukum* is substituted for another *hukum*, and the new *hukum* is tougher. The verse 'And upon those who are able [to fast, but with hardship] - a ransom [as substitute] of feeding a poor person [each day]. And whoever volunteers excess - it is better for him. But to fast is best for you, if you only knew.' (2:184), indicates that a person who has ability to fast in Ramadan has the option of not fasting and feeding poor instead. However, the verse 'So whoever sights [the new moon of] the month, let him fast it;' (2:185), abrogates the option of choosing between fasting and feeding and makes it an obligation to fast. Fasting is tougher than choosing between fasting and feeding.

<sup>90</sup> The verse of patience that has proceeded.

<sup>91</sup> The verse of patience and the verse of fasting that has preceded.

<sup>92</sup> It is allowed for the abrogator to be from the Quran and the abrogated from Hadith. Prayer in the direction of baytal-maqdis is established in the Sunnah and its abrogation is established by the verse 'turn your face toward al- Masjid al-Haram,' (2:149). The author did not mention the book can be abrogated by the sunnah, indicating that he does not see it as permissible. However according to the majority (jumhur) view, the Qur'an and the Sunnah may be abrogated by themselves or by one another.

transmitted can be abrogated by what is collectively transmitted,<sup>93</sup> and what is individually transmitted can be abrogated by what is individually or collectively transmitted, but what is collectively transmitted cannot be abrogated by what is individually transmitted.<sup>94</sup>

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<sup>93</sup> This is the second categorisation of abrogation, and it relates to the method of narration or the isnad of the abrogating text. Abrogation in the sunnah is two types, the first is where both the hadith that is abrogating and the abrogated hadith are both collectively transmitted and the second is where the abrogated hadith is individually transmitted and the abrogating hadith is either collectively or individually transmitted.

<sup>94</sup> The ahad hadith (single transmission) can abrogate the mutawatir ahadith. Imam al-Shafi'i refers to the incident when the congregation of worshippers at the mosque of Quba' were informed by a single person of the change of the direction of the Qiblah from Jerusalem to the Ka'bah; they acted upon it and turned their faces toward the Ka'bah. The fact that Jerusalem was the Qiblah had been established by continuous, or *mutawatir*, Sunnah. The congregation of Companions accepted the solitary report as the abrogator of *mutawatir*.

## [فصل التعارض والترجيح ]

إذا تعارض نطقان فلا يخلو: إما أن يكونا عامين أو خاصين أو أحدهما عاماً والآخر خاصاً أو كل واحد منهما عاماً من وجه وخاصاً من وجه .

فإن كانا عامين فإن أمكن الجمع بينهما جمع، وإن لم يمكن الجمع بينهما يتوقف فيهما إن لم يعلم التاريخ، فإن علم التاريخ فينسخ المتقدم بالمتأخر، وكذلك إذا كانا خاصين .

وإن كان أحدهما عاماً والآخر خاصاً فيخص العام بالخاص، وإن كان كل واحد منهما عاماً من وجه وخاصاً من وجه فيخص عموم كل واحد منهما بخصوص الآخر .

## Methods of Interpretation

If two statements contradict one another,<sup>95</sup> then they must be either both general, or both particular, or one general and the other particular, or each general in one respect and particular in another respect. If they are both general, then if they can be reconciled one reconciles them,<sup>96</sup> but if they cannot, one suspends judgment

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<sup>95</sup> There may be instances of conflict between two texts which, after scrutiny, may turn out to be apparent rather than real, and it may be possible to reconcile them and to eliminate the conflict. One of the two texts may be general (‘amm) and the other specific (khas), in which case the rules of interpretation and takhsis (specification) must be applied so as to eliminate the conflict as far as possible. One may be reported at an earlier time, and the other at a later time, in which the rules of naskh must be applied.

<sup>96</sup> Reconciliation is by one of two methods. The first is to combine both texts so that there is no longer any conflict as mentioned above. The second method is to make *tarjih* of one of the texts over the other. The hadith in Sahih Muslim where the Prophet said ‘I will inform you about the best witness, it is the one who testifies before being asked’ and in a hadith in both Bukhari and Muslim the Prophet said ‘there will be a people after you who deceive and not be trustworthy and they will give witness without being asked’. The first hadith contains a general praise for whoever testifies without being asked while the second hadith contains a general criticism of the same action. The scholars combine the two hadith by stating that the first is in relation to the witness of the one is testifying on behalf of somebody who does not know that he is a witness for him and the latter is regarding a person who gives testimony falsely.

concerning them if their dates are unknown,<sup>97</sup> but if they are known the earlier is abrogated by the later. Similarly if they are both particular.<sup>98</sup>

If one is general and the other particular, the general is particularised by the particular.<sup>99</sup> If each is general in one respect and particular in another respect, then the generality of each is particularised by the particularity of the other.<sup>100</sup>

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<sup>97</sup> No action is established on either of the two texts. This is in relation to that particular mujtahid who cannot reconcile between the two statements. However it does not apply to other mujtahids who may be able to reconcile between the two apparently conflicting statements.

<sup>98</sup> The method of reconciliation is the same as above. When do you know that two proofs (*dalil*) is considered conflicting? There are four conditions before you can say that two proofs are conflicting: both have to be authentic, they have to come to opposite rulings as if they both point to the same ruling there is no conflict, they indicate the same time period, and there is no proof indicating that one is abrogated by the other. The hadith of Ibn Umar, that the Prophet used to raise his hands when making Ruku', when coming coming back up from it, and when standing from the first Tashahud' (agreed upon) and the hadith of Ibn Mas'ud that the Prophet would raise his hands when making the first takbir and he would not raise them afterwards (reported by Abu Dawud) is an example of conflict. First look at the authenticity of the reports, the report of Ibn Masud is inauthentic, therefore there is no conflict. The hadith 'whoever touches his private parts, then let him make Wudu' (Abu Dawud, Tirmithi and Nisaa'i) and the hadith 'it is only a part of you' (Abu Dawud), both are authentic reports, so we try to reconcile. If it is possible for one to refer to a particular situation and the other to another, then we do that, without looking at if one preceded the other. The scholars say that the hadith it is a part of you relates to touching the private parts between a cover, as the questioner mentioned 'my hand touches my private parts while I am in prayer' and it is unlikely that a person would touch his private part directly without a covering during the prayer. There is therefore no need to turn to making *tarjeeh* of one over the other, or looking at the date to see if one abrogates the other.

<sup>99</sup> As in the case of the waiting period for the divorced woman that has preceded.

<sup>100</sup> The hadith '*Water which is pure is not made impure unless it changes colour, taste or smell*' is general from one aspect, 'water does not become impure' and specific from the aspect that 'it becomes impure if something impure changes one of its properties. The hadith '*When water reaches qulatayn it does not become impure*' is general from the aspect of when water reaches qulatayn it does not become impure, regardless of if it changes its properties or not, and specific in that if it is less than qulatayn it becomes impure just by impurity coming into contact with it. The generality of the first hadith is particularised by the particularity of the second hadith and vice versa. The sum meaning of both hadith together is if water is less than qulatayn it becomes impure just by water coming into contact with it and if it is more than qulatayn, then it does not become impure unless it changes one of its properties.

## [ الإجماع ]

وأما الإجماع فهو اتفاق علماء أهل العصر على حكم الحادثة، ونعني بالعلماء الفقهاء، ونعني بالحادثة الحادثة الشرعية .

وإجماع هذه الأمة حجة دون غيرها، لقوله صلى الله عليه وآله وسلم: (( لا تجتمع أمتي على ضلالة ))، والشرع ورد بعصمة هذه الأمة .

والإجماع حجة على العصر الثاني، وفي أي عصر كان، ولا يشترط انقراض العصر على الصحيح، فإن قلنا: انقراض العصر شرط يعتبر قول من ولد في حياتهم وتفقه وصار من أهل الاجتهاد ولهم أن يرجعوا عن ذلك الحكم .

والإجماع يصح بقولهم وبفعلهم وبقول البعض وبفعل البعض وانتشار ذلك وسكوت الباقي عنه .

وقول الواحد من الصحابة ليس بحجة على غيره على القول الجديد .

### Consensus (*Ijmaa'*)

Consensus is the agreement of a generation of scholars concerning an event. By scholars we mean jurists (*fuqaha*), and by event we mean a *shar'i* event.

The consensus of this community, and no other, is an authoritative proof, because the Prophet has said "my community does not agree upon an error." Revelation has stated the infallibility of this community.<sup>101</sup>

Consensus is a binding proof for the following generation, and for every generation.<sup>102</sup> The relevant authority of consensus is not conditional upon the passing of the generation in which it is reached. If we made it conditional on the passing of the generation, then one would take into consideration the statement of

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<sup>101</sup> *Ijma`* derives its validity from the scripture on the infallibility (*`ismah*) of the *ummah*, like verse 115 in Surah al-Nisaa. The hadith that the author mentions has been graded weak by the scholars of hadith so it cannot be used as a proof for the authority of *ijma*.

<sup>102</sup> *Ijma'* on a *shar'i* ruling has a quality of permanence. The companions have consensus that ejaculation makes *ghusl* an obligation. This '*ijma'*' is a proof so it is not allowed for anybody after them to differ and say otherwise.

someone who was born during their lifetime and studied fiqh and became one of the people of *ijtihaad*, and the *hukm* could then be revoked.<sup>103</sup>

Valid consensus can be established by the scholars' words, or by their actions,<sup>104</sup> or by the words or actions of only some of them, if those words or actions are disseminated and the others remain silent about them.<sup>105</sup> The saying of a single Companion is not an authoritative proof over others, according to the new opinion.<sup>106</sup>

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<sup>103</sup> In view of the overlapping of generations (*tadakhul al-a'sar*), it is impossible to distinguish the end of one generation from the beginning of the next.

<sup>104</sup> *Ijma'* can be divided into four categories: one, when all the scholars make a statement on a ruling, like saying that it is permissible to get on an aeroplane, two, when they all do an action, such as they all get on an aeroplane, three, like some saying it is allowed to get on a plane and others getting on a plane, and four, when some make a statement and the others remain silent, which is called '*ijma'* sukooti or tacit '*ijma'*'.

<sup>105</sup> From the viewpoint of the manner of its occurrence, *ijma'* is divided into two categories: explicit *ijma'* (*al-ijma' al-sarih*) in which every mujtahid expresses his opinion either verbally or by an action; and tacit *ijma'* (*al-ijma' al-sukuti*) whereby some of the mujtahids of a particular period give an opinion concerning an incident while the rest remain silent. This is valid with two conditions, the first is that the statement or action becomes widespread and the second is that the rest of the scholars remain silent not opposing that statement or action.

<sup>106</sup> There is general agreement among the ulema of *usul* on the point that the ruling of one companion is not a binding proof over another. The companions were themselves allowed to disagree with one another in matters of *ijtihad* so if the ruling of one Companion was a proof over another, then disagreement among them would not have been tolerated. The saying of a companion can be divided into three categories, the first is if a companion has a saying and another companion differs with him, in which case there is consensus that the companions statement is not a authoritative evidence. The second is if a companion has a saying, which becomes widespread without there being any other companion who disagrees with him, then it is considered tacit consensus, as has been previously mentioned. The third is when a companion has a saying which is not widespread, and for which there is no disagreement by another companion, in which case scholars have two opinions. the first opinion, which is attributed to Imam Shafi'e, is that it is not considered an authoritative evidence. The second opinion, which is the majority, is that it is an authoritative evidence.

## الأخبار

وأما الأخبار، فالخبر ما يدخله الصدق والكذب، وقد يقطع بصدقه أو كذبه .

والخبر ينقسم قسمين: إلى آحاد ومتواتر .

**فالمتواتر** ما يوجب العلم، وهو أن يروي جماعة لا يقع التواطؤ على الكذب عن مثلهم إلى أن

ينتهي إلى الخبر عنه فيكون في الأصل عن مشاهدة أو سماع .

**والآحاد** هو الذي يوجب العمل ولا يوجب العلم، وينقسم قسمين: إلى مرسل ومسند، فالمسند

ما اتصل إسناده، والمرسل ما لم يتصل إسناده، فإن كان من مراسيل غير الصحابة فليس بحجة، إلا مراسيل سعيد بن المسيب، فإنها فتشت فوجدت مسانيد .

والعنينة تدخل على الإسناد، وإذا قرأ الشيخ يجوز للرواي أن يقول: حدثني وأخبرني، وإن قرأ

هو على الشيخ فيقول: أخبرني، ولا يقول: حدثني .

وإن أجازته الشيخ من غير رواية فيقول: أجازني أو أخبرني إجازة .

## Reports (Akhbar)

A report is that which can be described by truthfulness or lying. It is possible to be certain about its being truth or a lie. Reports are categorised<sup>107</sup> into two types: individually or collectively transmitted.<sup>108</sup> A collectively transmitted report makes knowledge obligatory.<sup>109</sup> It is related collectively at every stage of its transmission all

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<sup>107</sup> The categorisation of reports here is in relation to the chain of transmission (*isnaad*).

<sup>108</sup> The solitary report (also known as *khbar al-wahid*) is a report which is reported by a single person or by few odd individuals from the Prophet.

<sup>109</sup> Collective testimony (*tawatur*) brings about certainty (*yaqin*) and the knowledge that it creates is equivalent to knowledge that is acquired through sense-perception. If it is reported that a particular person became an *aalim*, then as it was transmitted collectively then it is certain knowledge that is representative of truth and reality.

the way back to the one from whom it is reported, by a group the likes of which could not conspire to lie.<sup>110</sup> It must originate in eye-witnessing or hearing.<sup>111</sup>

An individually transmitted report makes action obligatory, but does not make knowledge obligatory, since it could contain an error.<sup>112</sup> There are two categories of individually transmitted reports: those that are attributed (*mursal*) to the Prophet, and those that are traced (*musnad*) to the Prophet. Traced reports have a continuous chain of transmission, and attributed reports have a discontinuous chain of transmission.<sup>113</sup> If a report is attributed by anyone but a Companion, it does not constitute authoritative proof (*hujjah*), except for the reports attributed by Sa'îd ibn al-Musayyab, which have been scrutinised and found to be traced.

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<sup>110</sup> *Mutawatir* means 'continuously recurrent'. In the present context, it means a report by an indefinite number of people related in such a way as to preclude the possibility of their agreement to perpetuate a lie. Such a possibility is inconceivable owing to their large number, diversity of residence, and reliability. There are three conditions for *mutawatir*, the large number of reporters that make it impossible to conspire to lie, such a number being present throughout the transmission, and the report being something attributed to the sense, witnessed or heard, not to opinion or *ijtihad*.

<sup>111</sup> When a companion says I heard the Prophet say, such and such, or do such and such, and a large number of companions were also present who also transmitted this report from the Prophet, then a similarly large number transmitted the report from the companions, and likewise until it was written down in the books of hadith like Sahih of Bukhari, Muslim etc.

<sup>112</sup> When a companion says I heard the Prophet say such and such or do such and such and this is reported by him alone, then it is transmitted from him by one other person and likewise up until the report is written down. All the four Imams of jurisprudence have considered *ahad* to be authoritative and none reject it unless there is evidence to suggest a weakness in its attribution to the Prophet, or which may contradict some other evidence that is more authoritative in their view. Therefore single transmission makes action and knowledge obligatory if it is an authentic *isnad*, there is no contradicting evidence and it is connected to the Prophet.

<sup>113</sup> From the viewpoint of the continuity and completeness of their chains of transmitters, the single transmission report is classified into two categories: connected (*muttasil*) and disconnected (*ghayr muttasil*). A connected report is one which has a complete chain of transmission from the last narrator all the way back to the prophet. A disconnected report, also known as *mursal*, is a report whose chain of transmitters is broken and incomplete. (the scholars of hadith are more specific definition for *mursal*, which is a hadith where a companion is missing from the chain. When the chain is disconnected from the middle it has different names for when there is somebody missing from the beginning of the chain, or the middle of the chain.

Relating a report “from so and so” (*an’ana*) qualifies as a form of tracing. If the *Shaykh* reads a report, the one who relates it from him may say “he told me” or “he informed me.” If the one who relates the report reads it to the shaykh, he says “he informed me,” but does not say “he told me.” If the *Shaykh* authorises him without any reading, the one who relates from him says “he authorised me,” or “he informed me by authorisation.”<sup>114</sup>

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<sup>114</sup> Transmission of hadith from a shaykh has three ways, hearing it directly from the Shaykh, reading it to the shaykh and receiving authorisation from the shaykh. Each method has its own specific wording.

## [ القياس ]

وأما القياس فهو رد الفرع إلى الأصل بعلة تجمعهما في الحكم .  
وهو ينقسم إلى ثلاثة أقسام: إلى قياس علة، وقياس دلالة، وقياس شبه .  
فقياس العلة ما كانت العلة فيه موجبة الحكم .  
وقياس الدلالة هو الاستدلال بأحد النظيرين على الآخر، وهو أن تكون العلة دالة على الحكم ولا تكون موجبة للحكم .  
وقياس الشبه هو الفرع المتردد بين أصليين، فيلحق بأكثرهما شبهاً .  
ومن شرط الفرع أن يكون مناسباً للأصل، ومن شرط الأصل أن يكون ثابتاً بدليل متفق عليه بين الخصمين .  
ومن شرط العلة أن تطرد في معلولاتها، فلا تنتقض لفظاً ولا معنى .  
ومن شرط الحكم أن يكون مثل العلة في النفي والإثبات .  
والعلة هي الجالبة، والحكم هو المجلوب للعلة .

## Analogy (Qiyaas)

Analogy<sup>115</sup> is relating the branch (*al-far'*) to the root (*al-asl*) by a common

characteristic (*'illa*) that gives them the same *hukm*.<sup>116</sup>

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<sup>115</sup> Qiyas suggests an equality or close similarity between two things, one of which is taken as the criterion for evaluating the other. In Usul al-fiqh it is the extension of a Shari'ah ruling from an original case, (*asl*) to a new case because the latter has the same effective cause (*'illa*) as the former. The original case is regulated by a given text and qiyas seeks to extend the same textual ruling to the new case. The majority of ulema have defined qiyas as the application to a new case (*far'*) on which the law is silent, of the ruling (*hukm*) of an original case (*asl*) because of the effective cause (*'illah*) which is common to both.

<sup>116</sup> In the verse "O you who have believed, when [the adhan] is called for the prayer on the day of Jum'u'ah [Friday], then proceed to the remembrance of Allah and leave trade" (62:9) trade after the second call to prayer (*athan*) on Friday (*Jum'ah*) is considered the original case where there is a given text and the *hukum* that this text indicates is the prohibition of trade. The *'illa* (reason) for this *hukum* is that trade inevitably leads to delaying going to the prayer and possibly missing it completely. If somebody asked what is the 'ruling of performing a marriage contract after the *athan* for *Jum'ah*, there is no text for this case so it is called the branch (new case). The Shari'ah *hukum* of this case is prohibition of performing marriage contract and the reason for this *hukum* is that the same *'illa* (reason) for the prohibition in the original case is present in this new case, so it is attached to it and given the same *hukum*. This is called *qiyas*.

There are three kinds of analogy: analogy by common characteristic (*qiyas al-'illa*),<sup>117</sup> by indication (*qiyas al-dalalah*),<sup>118</sup> and by resemblance (*qiyas al-shabah*).

Analogy by common characteristic is analogy in which the common characteristic entails the ruling by necessity.<sup>119</sup>

Analogy by indication is using one case as evidence for a parallel case; the common characteristic indicates the *hukum* but does not entail it necessarily.<sup>120</sup>

Analogy by resemblance is relating a branch that could be related to either of two roots, to the one that most resembles it.<sup>121</sup>

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<sup>117</sup> Analogy by common characteristic, which is the description which is suitable and precise that necessitates the legal ruling, for example analogy of heroin with alcohol, the common characteristic between the original case and the new case is the intoxication, a reason or effective cause that is suitable and precise for the legal ruling.

<sup>118</sup> Analogy by indication is combination between the original case and the new case by a description that is attached to the effective cause though it may not be the cause itself.

<sup>119</sup> The '*illa* is obvious and apparent either because it is explicitly mentioned or clearly deduced. The hadith in Sahih Muslim from Sa'd ibn Sahal that a man looked through the Prophet's door while he was itching his head with a comb. When the Prophet saw him he said if *I knew you were watching me I would have poked you with it in your eye, verily permission is sought so that you do not see what you should not*. The hadith where the Prophet said '*A judge does not issue a ruling between two disputants while he is angry*' is an example of when the '*illa* is deduced because the hadith does not explicit mention the reason for the prohibition. However the scholars have deduced that the reason, about which there is scholarly consensus, that his thinking is not adversely effected so that leads him to issue a ruling incorrectly. In the first hadith the Prophet mentioned the '*illa* explicitly, and in the second it is obvious. So if you make *qiyas* on this *asl* (original case) it is called *qiyas 'illa*.

<sup>120</sup> The '*illa* is not explicit, rather it is deduced and the deduction is not obvious and apparent. For example Allah's speech '*O you who have believed, when [the adhan] is called for the prayer on the day of Jumu'ah [Friday], then proceed to the remembrance of Allah and leave trade*' (62:9), does not explicitly state the reason for the prohibition of trade. Some scholars deduce that the '*illa* is that trade will results in delaying going to the prayer and could lead to missing it altogether. However others differ due to the fact that the '*illa* is not obvious from the text. If you make *qiyas* on this *asl*, it is called *qiyas dalaala*.

<sup>121</sup> It is similar to two cases where the *hukum* in each case is different. The solution is to attach it to the case which is resembles the most. If one person says that horse meat is permissible making analogy with camel meat but the other person argues that that it is impermissible based on analogy with donkey meat. The mujtahid looks at which animal horse most resembles. The first group argue that horse is used to ride on, in battle like camel and it is permissible to sell like camel etc. The second group argue that is resembles donkey in this and that, mentioning resembles.

The branch must be like the root in regard to that whereby they are both given the same hukm.<sup>122</sup> The root<sup>123</sup> must be established by evidence that is accepted by both parties.<sup>124</sup> The common characteristic<sup>125</sup> must be consistent in the rulings (*ahkaam*) it necessitates, without exception either in wording or in meaning.<sup>126</sup> The hukm<sup>127</sup> must be coextensive with the common characteristic.<sup>128</sup> The common characteristic brings about the hukm, and the hukm is brought about by the common characteristic.

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<sup>122</sup> If somebody said that sea water is impermissible to drink like *khamar* is impermissible to drink based on being intoxicating, it would be rejected because the new case is not like the original case, because it does not have the effective cause or reason.

<sup>123</sup> The ruling of the original case has to be based on evidence that is agreed upon, whether it is either the Quran, the sunnah or ijma.

<sup>124</sup> The first scholar, to bind the other scholar, has to first establish an agreement on the evidence that firstly the *asl* is authentic, Quran, Sunnah and ijmaa and secondly that the 'illa is obvious and clear.

<sup>125</sup> The 'illa has been variously defined by the ulema of *Usul*. According to the majority, it is an attribute of the *asl* which is constant and evident and bears a proper (*munasib*) relationship to the law of the text (*hukm*).

<sup>126</sup> If the same 'illa is present in two different cases with two different rulings, then qiyas cannot be performed. Every time intoxication is mentioned, prohibition is mentioned, there is no instance where intoxication is mentioned without prohibition.

<sup>127</sup> A hukm is a ruling, such as a command or a prohibition, which is dispensed by the Qur'an, the Sunnah or ijma', and analogy seeks its extension to a new case.

<sup>128</sup> If the 'illa is removed the hukm is removed and if the 'illa is present the hukm is present.

## [ الحظر والإباحة والاستصحاب ]

وأما الحظر والإباحة فمن الناس من يقول: إن الأشياء على الحظر إلا ما أباحتها الشريعة، فإن لم يوجد في الشريعة ما يدل على الإباحة يتمسك بالأصل وهو الحظر .  
ومن الناس من يقول بوضده، وهو أن الأصل في الأشياء على الإباحة إلا ما حظره الشرع .  
ومعنى استصحاب الحال : أن يستصحب الأصل عند عدم الدليل الشرعي .  
فإن وجد في النطق ما يغير الأصل وإلا فيستصحب الحال .

## Prohibition, Permissibility and Presumption of Continuity

Some people say that all things are forbidden, except what the divine law has permitted.<sup>129</sup>

Some people say the opposite, namely that the original state of things is permissibility, except for what revelation has prohibited.

'Carrying forward the state' means carrying forward the original state in the absence of evidence / divine legislation.<sup>130</sup>

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<sup>129</sup> The scholars differ regarding the ruling of things of benefit before the divine revelation. As for after the divine revelation, then there is scholarly agreement for the permissibility of things unless evidence indicates otherwise. Some say that it is impermissible for a person to do or say what he wills unless he has legislated evidence permitting that. The other view is that a person can say and do what he wills until there is evidence prohibiting that. The difference in both views becomes apparent when asked why does a person hold a thing permissible without evidence, he will reply that he searched for evidence and did not find any so the original state is permissibility. However, the person who holds the view of prohibition will respond to the question why does he hold a thing impermissible without evidence, by stating that he searched for evidence of its legal ruling and he did not find any so he adhered to the original state which is prohibition.

<sup>130</sup> Permissibility is the original state of things (*al-asl fi al-ashya' al-ibahah*). All matters which the Shari'ah has not regulated to the contrary remain permissible. They will remain presumed so unless the contrary is proved to be the case. Therefore, actions can be classified into four categories; that which the evidence shows permissibility only, then the ruling is permissible. that which evidence shows prohibition only, then the ruling if prohibition, that which evidence shows both permissibility and prohibition, then the ruling leans towards prohibition that which there is no evidence either for prohibition or permissibility, therefore the ruling is presumption of continuity or carrying forward the original state. So if it is like water, then the ruling is permissible, and if it is something like shedding blood, it is prohibition.

وأما الأدلة فيقدم الجلي منها على الخفي، والموجب للعلم على الموجب للظن، والنطق على القياس، والقياس الجلي على الخفي .  
فإن وجد في النطق ما يغير الأصل وإلا فيستصحب الحال .

## The Prioritising of Evidences

Clear evidences are given priority<sup>131</sup> over obscure ones,<sup>132</sup> and those that produce knowledge over those that produce opinion.<sup>133</sup> Utterance is given priority over analogy,<sup>134</sup> and clear analogy over obscure analogy.<sup>135</sup> If one finds an utterance that changes the original state, then the original state is changed, but if not then one carries forward the state.<sup>136</sup>

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<sup>131</sup> Giving preference to one evidence over another is to act on one evidence and reject the other, when there is a conflict and it cannot be reconciled or rules of abrogation applied.

<sup>132</sup> In the event of a conflict occurring between an evidence found in the Book or the Sunnah with another evidence found in the Book or the Sunnah (it is not possible to combine them or to apply the rules of abrogation) and one of the evidences is stronger and clearer than the other, such that one is *nass* and the other is *thahir*, then priority is given to the *nass*.

<sup>133</sup> In the event of a conflict occurring between the Book and *mutawaatir* hadith with *ahaad* hadith, then preference is given to the former. The hadith of ibn Umar that the Prophet used to raise his hand when making rukoo' and when rising from it is multiple chain of transmission. The hadith of ibn Mas'ood that the Prophet would raise his hand when making the first Takbir and then he would not raise it after that is a single chain of transmission. So the hadith of Ibn Umar is given priority.

<sup>134</sup> In the event of a conflict occurring between between an evidence found in the Book and Sunnah with qiyas, then qiyas is absolutely redundant. qiyas is only applicable when no explicit ruling could be found in the sources.

<sup>135</sup> In the event of a conflict occurring between two analogies, if they cannot be reconciled with one another, then one of them must be given preference. The *qiyas* whose effective cause ('illah) is stated in an explicit text is to be preferred to the one whose 'illah has been derived through inference (*istinbat*).

<sup>136</sup> In the event of a conflict occurring between evidence of the Book and Sunnah with the original state, preference is given to the Book and the Sunnah, regardless of whether the evidence is text or qiyas. Giving preference to one evidence over the other is for the *mujtahid* scholar.

## [ الاجتهاد والإفتاء والتقليد ]

ومن شرط المفتي أن يكون عالماً بالفقه أصلاً وفرعاً، خلافاً ومذهباً .  
وأن يكون كامل الآلة في الاجتهاد، عارفاً بما يحتاج إليه في استنباط الأحكام من النحو واللغة  
ومعرفة الرجال وتفسير الآيات الواردة في الأحكام والأخبار الواردة فيها .  
ومن شرط المستفتي: أن يكون من أهل التقليد، فيقلد المفتي في الفتيا .  
وليس للعالم أن يقلد .

### Legal Reasoning (*Ijtihad*)

The issuer of legal opinions (*mufti*) must be knowledgeable of the roots and branches, differences and schools of law.<sup>137</sup> He must be fully competent in legal reasoning (*ijtihad*). He must know all that he needs to know for deducing rulings, in several fields: grammar, language,<sup>138</sup> the science of the men who related traditions (*hadith*),<sup>139</sup> the explanation of legally relevant Quranic verses, and legally relevant *hadith*.<sup>140</sup> The seeker of legal opinion (*mustafti*) must be one who follows existing opinions, so that he follows the opinion of the *mufti*.<sup>141</sup> A scholar (*'Aalim*) may not follow existing opinion.

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<sup>137</sup> He must have knowledge of the *ahkaam*, the evidences and the cases/ issues. It is summarised as having the adequate grasp of the objectives of the Shari'ah, the knowledge of the sources and the methods of deduction.

<sup>138</sup> The Book and the Sunnah is in the Arabic language, so deducing rulings from the Book and Sunnah, which is the work of the *mujtahid*, is conditional on having knowledge of Arabic grammar and language.

<sup>139</sup> The *hadith* which rulings are deduced from must be authentic not rejected, and knowing the authentic from the rejected is conditional on knowing the condition of the men in the *isnad*.

<sup>140</sup> The source of the *ahkam* are the Quranic verses and *ahadith*, so deducing rulings from them is conditional on having knowledge of their explanation.

<sup>141</sup> Authors throughout the Muslim world criticise blind *taqlid* and advocate the continued validity of *ijtihad* as a divinely prescribed legal principle.

والتقليد قبول قول القائل بلا حجة، فعلى هذا قبول قول النبي صلى الله عليه وآله وسلم يسمى تقليداً .

ومنهم من قال: التقليد قبول قول القائل وأنت لا تدري من أين قاله، فإن قلنا: إن النبي صلى الله عليه وآله وسلم كان يقول بالقياس، فيجوز أن يسمى قبول قوله تقليداً .

*Taqlid* is to accept what someone has said without proof. According to this definition, to accept what the Prophet said is called *Taqlid*.<sup>142</sup> Some say that *Taqlid* is to accept what someone has said without knowing where he got it. On this definition, if we hold that the Prophet used to speak on the basis of analogy, then accepting what he said can be called *taqlid*.<sup>143</sup>

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<sup>142</sup> The speech of the Prophet is evidence in itself, so following his saying is not considered *taqlid*.

<sup>143</sup> The difference between the two definitions is that in the first one the *dalil* (proof) is not mentioned, where in the second *dalil* is mentioned but the person does not know how this opinion was deduced from the *dalil* (proof) .

وأما الاجتهاد فهو بذل الوسع في بلوغ الغرض، فالمتجهد إن كان كامل الآلة في الاجتهاد، فإن اجتهده في الفروع فأصاب فله أجران، وإن اجتهد فيها وأخطأ فله أجر .  
ومنهم من قال: كل مجتهد في الفروع مصيب .  
ولا يجوز أن يقال: كل مجتهد في الأصول الكلامية مصيب، لأن ذلك يؤدي إلى تصويب أهل الضلالة من النصارى والمجوس والكفار والملحدين .  
ودليل من قال: ليس كل مجتهد في الفروع مصيباً، قوله صلى الله عليه وآله وسلم: (( من اجتهد وأصاب فله أجران، ومن اجتهد وأخطأ فله أجر واحد )) .  
وجه الدليل أن النبي صلى الله عليه وآله وسلم خطأ المجتهد وصوبه أخرى .  
انتهت الورقات

Legal reasoning (*ijtihad*) is to go to the limits of one's ability to achieve one's objective.<sup>144</sup> If a fully competent practitioner of *ijtihad* inquires diligently into the branches of law and judges correctly, he has a double reward. If he inquires into them diligently and makes a mistake, he has a single reward. Some say that all who inquire diligently into the branches of law judge correctly, but it cannot be said that all who inquire diligently into theological roots judge correctly,<sup>145</sup> because that would require us to agree with those who are in error, Christians and Magians and infidels and atheists. The proof of those who say that not all who exercise legal reasoning concerning the branches of law judge correctly, is that the Prophet said "whoever inquires diligently and judges correctly, his is a double reward, and whoever inquires diligently and errs, his is a single reward." This is a proof because the Prophet

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<sup>144</sup> Ijtihad is the total expenditure of effort made by a jurist in order to infer the legal rulings of Shari'ah from their detailed evidence in the sources, or in implementing such rules and applying them to particular issues.

<sup>145</sup> According to the four leading imams and many other ulema, only one of the several opposing views on a particular issue may be said to be correct, as it is impossible to say that one and the same thing at the same time regarding the same person could be both lawful and unlawful.

declared the practitioner of legal reasoning to be in error in one instance, and affirmed him in another.<sup>146</sup>

Allah, the glorified and exalted, is higher and more knowing.

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<sup>146</sup> 'When a judge renders ijtiḥād and gives a right judgement, he will have two rewards, but if he errs, he will still have earned one reward.' The ḥadīth clearly shows that the *mujtahid* is either right (*musib*), or in error (*mukhtī'*), that some attain the truth while others do not; but that sin attaches to neither as they are both rewarded for their efforts. Hence anyone who maintains that there are as many truths as there are *mujtahids* is clearly incorrect and going against the ḥadīth. If every *mujtahid* were supposed to be right, then the division of *mujtahids* into two types in this ḥadīth would have no meaning.

