

Usool al-Fiqh

[The Principles of Fiqh]

أصول الفقه

{English- إنجليزي}

[Usoolil-Fiqhil-Muhimmah, which is part of Manhajus-Saalikeen wa Tawdeehul-Fiqh bid-Deen (pp.101-112)]

All praise belongs to Allaah. So we praise Him for what He possess from His beautiful Names and lofty and perfect Attributes; and for His Judgement and Decree which encompasses everything in existence; and for His Divinely Prescribed Laws which encompass every field of legislation; and His Judgement concerning rewards for the doers of good, and punishments for the criminals.

I testify that none has the right to be worshipped except Allaah alone, who has no partner in His Names. Attributes or Judgement. And I testify that Muhammad is His Slave and Messenger; who clarified the Judgement and the rulings, made clear the halaal (lawful) and the haraam (prohibited), and established the fundamentals and expounded upon them - until the Religion was completed and established firmly. O Allaah extol and send the blessings of peace upon Muhammad, and upon his family, his Companions and those that follow them, particularly the Scholars.

To proceed: This is a brief essay concerning usoolul-fiqh (fundamentals of jurisprudence), uncomplicated in wording, clear in meaning, and useful in learning its rulings for whosoever contemplates its meanings. We ask Allaah that He benefits both its compiler and its reader. Indeed He is the Most Generous.

Chapter 1

Usoolul-Fiqh: it is the science concerning the comprehensive evidences of fiqh. Since fiqh consist of either [i] masaa'il (issues) concerning which the ruling by one of the five rulings is sought, or [ii] it is the dalaa'il (evidences) employed in extracting and determining these masaa'il (issues). So fiqh is actualy knowledge of the masaa'il (issues) and the dalaa'il (evidences).

These dalaa'il (evidences) are of two types:-

Comprehensive evidences that encompass every ruling - from the beginning to the end of fiqh - of a single kind; such as our saying: "al-amr lil-wujoob (a command is indicative of an obligation)." Or: "an-nahee lit-tahreem (a forbiddance is indicative of a prohibition)." And other similar evidences. So these are part of usoolul-fiqh

Detailed evidences that are to be understood in the light of the comprehensive evidences. So when such is completed, then the ahkaam (rulings) can be resolved.

Thus, the ahkaam (rulings) are in need of their detailed evidences, and the detailed evidences are themselves in need of comprehensive evidences. So by this, we recognise the

need and the necessity of knowing usoolul-fiqh, and that it aids in the understanding of fiqh itself, and that it is the foundations for deducing and making ijtihaad in the ahkaam (rulings).

Chapter 2

The ahkaam (rulings) upon which fiqh revolve are five:-

Waajib (obligation): that for which the one who performs it is rewarded, whilst the one who abandons it is punished.

Haraam (prohibition): this is the opposite of an obligation.

Masnoon (recommended): that for which the one who performs it is rewarded, whilst the one who leaves it is not punished.

Makrooh (detested): this is the opposite of a recommendation.

Mubaah (permissible): this is where both (its doing or leaving) are equivalent.

Those rulings which are waajib (obligatory) are divided into two categories: fard 'ayn (individual obligation), the doing of which is sought from every mukallaf (morally responsible), baaligh (mature) 'aaqil (sane) person. The majority of the Sharee'ah rulings enter into this category. The second is fard kifaayah (collective obligation), the performance of which is sought from the morally responsible collectively, but not from every individual specifically; such as the learning of the various branches of useful knowledge and useful industries; the adhaan; the commanding of good and forbidding of evil; and other similar matters.

These five rulings differ widely in accordance with its state, its levels and its effects. Thus, whatever is of pure or of overwhelming maslah (benefit), then the Shaari' (Lawgiver) has commanded its performance with either an obligation or a recommendation. Whatever is of pure, or of overwhelming mafsadah (harm), then the Lawgiver has stopped its doing with either an absolute prohibition or dislike. So this asl (fundamental principle) encompasses all matters commanded or prohibited by the Lawgiver.

As for those matters which the Lawgiver has permitted and allowed, then at times they lead to that which is good, and so are joined to those matters which have been commanded; and at other times they lead to that which is evil, and so are joined to those matters which are prohibited. So this is a great asl that: "al-wasaa'ilu lahaa ahkaamul-maqaasid (the means take on the same ruling as their aims)."

From this we learn that: "maa yatimmul-waajib illaa bihi fahuwa waajib (whatever is required to fulfill an obligation is itself an obligation)." Likewise, whatever is required to fulfill a masnoon (recommendation) is itself recommended. Whatever leads to the establishment of a

haraam (prohibition) is itself prohibited. And whatever leads to the establishment of a makrooh (detested act) is itself detested.

Chapter 3

The adillah (evidences) that fiqh is derived from are four:-

The Book and the Sunnah, and these two are the foundation by which the mukallafoon (the morally responsible) are addressed, and upon which is built their Religion. Then ijmaa' (consensus) and al-qiyaasus-saheeh (sound and correct analogy), these two are derived from the Book and the Sunnah. So fiqh - in its entirety - does not leave the realms of these four usool (fundamentals).

The majority of the important ahkaam(rulings) are indicated to by these four adillah (evidences). They are indicated to by the nusoos (texts) from the Book and the Sunnah; and the Scholars have ijmaa' (consensus) about them, and they are indicated to by qiyaasus-saheeh (sound and correct analogy); because of what they entail of benefit, if it is a command; or what they contain of harm, if it is a forbiddance. Very few of the ahkaam have been differed over by the Scholars. In such cases the closest of them to the truth is the one who correctly refers back to these four usool.

Chapter 4

Concerning the Book and the Sunnah

As for the Book: It is al-Qur'aanul-'Adheem (the Great Qur'aan), the Kalaam (Speech) of the Lord of the worlds, which was sent down by the Trustworthy Spirit upon the heart of Muhammad the Messenger of Allaah sallallaahu 'alayhi wa sallam, that he may be from the warners to the whole of mankind - in the clear arabic tongue - regarding all that they stand in need of with regards to what benefits them concerning their Religion and their world. The Book of Allaah is that which is recited by the tongues, written in the masaahif (copies), and preserved in the hearts; regarding which:

"No falsehood can approach from before or from behind it, it was sent down from the All-Wise, the One deserving of all praise."[Soorah Fussilat 41:42]

As for the Sunnah: It is the Prophet sallallaahu 'alayhi wa sallam's aqwaal (sayings), af'aal (actions), and his taqreer (tacit approvals) of the sayings and actions of others.

The ahkaamush-shar'iyyah (Sharee'ah rulings) are sometimes taken from a definite text of the Book and the Sunnah; which is defined as that text possessing a clear meaning, which

may not have any other meaning, except that single meaning. Sometimes it is taken from the dhaahir (apparent) meaning; which is defined as that which is indicative of the meaning, in a general manner, both through wording and meaning. Sometimes it is taken from the mantooq (explicit meaning); which is defined as being that which is indicative of the ruling due to the wording of the text. Sometimes the ahkaamush-shar'iyyah is taken from the mafhoom (implied meaning); which is defined as that which is indicative of the ruling due to being in agreement with the text; in cases where themafhoom is equal to, or stronger than the mantooq. Or by divergent meaning if the mafhoom differs from the mantooq in its ruling; whereas the mantooq is linked to a wasf (attribute) or a shart (condition), in the absence of which the ruling differs.

The dalaalah (indications) in the Book and the Sunnah are of three kinds:-

Dalaalah Mutaabiqah: this is where we apply the word to indicate all of its meanings.

Dalaalah Tadammun: when we employ the wording to indicate one of its meaning.

Dalaalah Iltizaam: where we employ the wording of the Book and the Sunnah to indicate the meaning which is a necessary consequence of it; and which follows on and completes it; and what the matter being judged with or being informed of cannot come about, except by it.

Chapter 5

The asl (fundamental principle) concerning commands in the Book and the Sunnah is that they are indicative of a wujoob (obligation), except if there is an evidence to indicate to it being mustahabb (recommended) or mubaah (permissible) The asl concerning prohibitions is that they are indicative of tahreem (forbiddance), except if there is an evidence indicating it being makrooh (hated).

The asl governing kalaam (speech) is that it is to be taken upon its haqeeqah (literal sense). So it is not to be turned away from it to its majaaz (figurative meaning) - if we accept this - except when it is impossible to employ its haqeeqah (literal meaning) Al-Haqaa'iq (literal meanings) are of three types:

[i] shar'iyyah (that which is defined by the Sharee'ah), [ii] lughawiyyah (that which is defined by language) and [iii] 'urfiyyah (that which is defined by customary usage).

So whatever ruling the Shaari' (Lawgiver) has defined, then it is obligatory to return it to the Sharee'ah definition. However, what the Lawgiver has ruled, but not defined, sufficing by its apparent linguistic meaning, then it is obligatory to return it to its linguistic meaning. But whatever has not been defined, neither in the Sharee'ah, nor in the language; then it is obligatory to refer it back to the habits of the people, and their customary usage. The Shaari'

(Lawgiver) may clearly specify to return these matters to 'urf (customary usage); such as commanding the good, living well with one's wife, and other similar matters.

So memorize these usool concerning which the faqeeh stands in need of in all his dealings of fiqh.

Chapter 6

From the texts of the Book and the Sunnah are those which are 'aam (general); which is defined as that word which is inclusive of many ajnaas (categories), anwaa' (types) and afraad (individuals). This majority of the texts are of this nature. Other texts are khaass (specific), and are indicative of only some categories, types and individuals. Thus, if there does not exist any contradiction between the 'aam and the khaass texts, then each of them are independently acted upon. However, if a contradiction is presumed, then the 'aam is specified and delineated by the khaas.

From the texts are the mutlaq (absolute) and the muqayyad (restricted) ones. It is restricted by a description or a reliable restriction. Thus, the mutlaq is restricted and qualified by the muqayyad.

And from the texts are the mujmal (comprehensive) and mubayyan (explicit). Whatever the Lawgiver has made comprehensive in one place, yet made it explicit in another, then it is obligatory to return to what the Lawgiver made mubayyan (explicit). Many of the rulings in the Qur'aan are mujmal (comprehensive) in nature, but have been explicitly explained in the Sunnah. So it is obligatory to return to the bayaan (explicit clarification) of the Messenger sallallaahu 'alayhi wa sallam, since he is the clear explainer from Allaah.

Similar to this are the texts that are muhkam (equivocal and singular in meaning) and those that are mutashaabih (unequivocal and open to more than one meaning). It is obligatory to understand the mutashaabih in the light of those texts that are muhkam.

Amongst the texts are the naasikh (abrogating) and the mansookh (abrogated) The abrogated texts in the Qur'aan and the Sunnah are few in number. Whenever there is the possibility of harmonising two texts, with the possibility of each one being acted upon in its own particular circumstance, then it is obligatory to do so. One may not turn to abrogation, except with a text from the Lawgiver, or an apparent contradiction between two authentic texts concerning which there is no possible way to resolve this contradiction such that each text is acted upon in its own particular circumstance. In this case, the later text abrogates the earlier one. However, if it is impossible to determine which is the earlier text and which is the later, we then turn to other means of tarjeeh (preferring one text over another). For example,

when there is an (apparent) contradiction between the Prophet sallallaahu 'alayhi wa sallam's statement and his action, then precedence is given to his saying. This is because his statement represents either a command or a prohibition to his Ummah, whereas his action is, in this case, interpreted to be something particular to him alone. So the khasaa'is (particular and unique rulings) pertaining to the Prophet sallallaahu 'alayhi wa sallam are actually based upon this asl (fundamental principle).

Likewise, when the Prophet sallallaahu 'alayhi wa sallam does something as an act of 'ibaadah (worship), but he does not command its performance, then what is correct is that this action of his is indicative of it being mustahabb (recommended). If he does something as an act of 'aadah (custom or habit), then it is indicative of it being mubaah (permissible).

Whatever the Prophet sallallaahu 'alayhi wa sallam acknowledges of statements and actions, then the ruling is one of ibaahah (permissibility), or other than it, according to the manner in which he acknowledged such statements and actions.

Chapter 7

As for the ijmaa' (consensus): it is the agreement of the mujtahid Scholars upon a new judgement. So, whenever we are certain about their ijmaa', then it is obligatory to turn to it, and it is not lawful to oppose. It is necessary that any ijmaa' be rooted in the evidences of the Book and the Sunnah. As for qiyaasus-saheeh (correct and sound analogy): it is linking a subsidiary branch with its root, due to a common Illah (effective cause) between them. So whenever the Lawgiver indicates a matter, or describes it with a particular wasf (characteristic); or the Scholars deduce that the ruling has been legislated because of that particular wasf (characteristic), then if that particular wasf (characteristic) is found to exist in another issue, which the Lawgiver has not legislated any particular ruling for - without their being a difference between it and the texts - then it is obligatory to link the two in their ruling. This is because the All-Wise Lawgiver does not differentiate between matters equivalent in their characteristics, just as He does not join between dissimilar and opposing matters. This sound and correct qiyaas (analogy) is al-Meezaan (the Balance) which Allaah sent down. And it is inclusive of justice, and it is that by which justice is recognised.

Qiyaas is only resorted to when there exists no text. So this asl (fundamental principle) is turned to when there exists no other source. And qiyaas supports the text. Thus, all that the texts that the Lawgiver has given rulings to, then they are in agreement with qiyaas, not in opposition to it.

Chapter 8

The Scholars of usool have deduced from the Book and the Sunnah many usool (fundamental principles), upon which they have built many rulings; by which they have also benefited themselves and benefited others.

Amongst these usool (fundamental principles):

“Al-yaqeen laa yazoolu bish-shakk [certainty is not invalidated by doubt].”

Under this principle they have entered many ‘ibaadaat (acts of worship), mu‘aamalaat (social interactions) and huqooq (rights). So whosoever entertains a doubt regarding any of that, should return to the asl of certainty. They also deduce: “al-aslut-tahaarah fee kulli shay [The basis concerning all things is that they are pure].” And: “al-aslul-ibaahah illaa ma dallad-daleelu ‘alaa najaasatihi aw tahreemihi [The asl (basic principle) is permissibility of using anything, except when there exists an evidence indicative of its impurity or prohibition].” And: “The asl is freedom from accountability concerning obligations towards the creation, until a proof is established to the contrary.” And: “The asl is the continuation of accountability concerning the obligations to the Creator, and to His servants, until there is certain proof of freedom and discharging.”

And from them is that: “Al-mashaqah tajlibut-tayseer [difficulty brings about ease].”

Based upon this are all the rukhas (concessions) allowed during a journey, and a lightening of ‘Ibaadaat (acts of worship), mu‘aamalaat (social transactions), and other matters.

And from it is their saying: “Laa waajib ma‘al-‘ajaz wa laa muharram ma‘ad-daroorah [there is no obligation with inability, nor is there any prohibition with necessity].”

The Lawgiver has not made incumbent upon us what we are incapable of doing in totality. What the Lawgiver has made obligatory, from the obligations, but the servant is incapable of performing it, then that obligation is totally dropped. However, if he is capable of performing a part of it, then it is required for him to fulfil what he is capable of, whilst the part he is incapable of is dropped. There are many many examples of this.

Likewise, whatever the creation are in need of, then it has not been made haraam (prohibited) to them. As for the khabaa’ith (evil matters), which have been made haraam, then if the servant is in need of that (due to a necessity), then there is no sin in using it. This is because daroorah (necessity) allows those matters which are fixed and prohibited. And daroorah is measured by its need, in order to lessen the evil. Thus, daroorah permits the use of what is normally forbidden from food, drinks, clothing, and other than them.

And from them: “Al-umooru bi maqaasidiha [matters are judged by their motives].”

Entering into this are the ‘ibaadaat and the mu‘aamalaat. Likewise, the prohibition of employing forbidden hiyaal (means and stratagems) is derived from this asl. Likewise, is

directing those words which are kinaayaat (not clear and unequivocal) to be sareeh (clear and unequivocal) is based upon this asl. Its forms are very many indeed.

And from them: "Yukhtaaru 'alal-maslahatayn wa yartakab akhafal-mufsadatayn 'indat-tazaahum [select the higher of the two benefits, or incur the lesser of the two harms when faced with them both]."

Upon this great principle many issues are built. So when the benefit and harm are both in equal proportion, then: "dar`ul-mafaasid uwla min jalbil-masaalih [repelling harm takes precedence over procuring benefits]."

And from this is the principle: "Laa tutimmul-ahkaam illaa bi wujoodi shurootiha wa intifaa' mawaani'iha [rulings are not complete except with the presence of their conditions and the negation of their impediments]."

This is a tremendous principle, upon which is built - from the issues, rulings and other matters - many things. So whenever a shart (condition) for 'ibaadaat (acts of worship), or mu'aamalaat (social transactions), or establishment of rights is not present, then the ruling is not correct, nor is it established. Likewise, if its mawaani' (impediments) are present, then it is nor correct, nor is it legally valid.

The shuroot (conditions) for 'ibaadaat and mu'aamalaat are: all those matters upon which the validity of such 'ibaadaat and mu'aamalaat rest. And these shuroot are known by a thorough and detailed study of the Sharee'ah. Due to this asl, the fuqahaa were able to enumerate the faraa'id (obligations) of the various 'ibaadaat, and its shuroot (conditions). Likewise, by it they were able to determine the various shuroot (conditions) and mawaani' (impediments) for the mu'aamalaat.

As regards al-hasr (collecting and enumerating): it is establishing a ruling for something, whilst negating it from something else. By it, the fuqahaa are able to determine the shuroot of various things and matters, and that what is other than it, then the ruling is not affirmed for it.

And from it is their saying: "al-hukm yuduru ma'a 'illatihi thabootan wa 'adaman [the ruling revolves around its effective cause in both affirmation and negation]."

So when the 'illatut-taamah (complete effect cause) - which it is known that the Shaari' has linked the ruling to it - is present, then the ruling is present; and when it is absent, then the ruling is not established.

And from them is their saying: "al-aslu fil-'ibaadaat al-hadhru illaa maa waradah 'anish-shaari' tashree'ahu, wal-aslu fil-'aadaat al-ibaahaa illaa maa waradah 'anish-shaari' tahreemahu [the basic principle concerning acts of worship is prohibition, except what is related from the Lawgiver regarding its legislation, and the basic principle regarding customs and habits is permissibility, except what is related from the Lawgiver regarding its forbiddance]."

This is because al-'ibaadah (worship) is what the Lawgiver has prescribed; either as an obligation, or a recommendation. Thus, whatever steps out of this is not considered to be an act of worship. And because Allaah created for us all that is upon the earth, so that we may benefit from all things and utilise them, except those things that the Lawgiver has made haraam (unlawful) to us.

From them: "idhaa wajidat asbaabul-'ibaadaat wal-huqooq thabatat wa wajibat illaa idhaa qaranahl-maani' [if the cause for acts of worship are present, they are confirmed and obligatory, except if linked by a prevention]."

And from them: "al-wajibatu talzimul-mukallafeen [obligations obligate the morally responsible]."

So at-takleef is reached with: al-buloogh (attainment of maturity) and al-'aql (sanity). However, compensation for injury and harm is required from the mukallafeen (morally responsible), and others. So whenever a person reaches maturity and is sane, those general obligations then become required from him to do. And those specific obligations also become required from him, providing he possesses those qualities which necessitate that. The naasee (forgetful) and the jaahil (ignorant one) is not held responsible from the point of view of sinning, nor from the point of view of compensating what is harmed or injured.

Chapter 9

The statement of a single Sahaabee(Companion) - who is defined as anyone who met the Prophet sallallaahu 'alayhi wa sallam, having eemaan (certainty of faith) in him, and dying upon eemaan - if it has become widespread and not objected to, but rather it has been affirmed by the Sahaabah (Companions), then it is a form of ijmaa' (consensus). If it is not known to have become widespread, nor is there known to be anything in opposition to it, then according to the most correct opinion, it is a hujjah (proof). However, if other Companions have disagreed or contradicted it, then it is not a proof.

Chapter 10

An amr (command) for something, entails a nahee (prohibition) for its opposite. And a prohibition of something, entails a command for its opposite. A prohibition of something necessitates that matter to be null and void, except if there is a daleel (evidence) indicative of its validity. And a command which follows a prohibition, returns it to what it was prior to this. And both an amrand a nahee necessitate immediate compliance, but they do not require repetition, except when linked to a specific sabab (cause). So it becomes waajib (obligatory) or mustahabb (recommended) to comply whenever that sabab (cause) exists.

Matters in which a choice is given are of varying types. So if the choice was given with the aim of facilitating ease to the makallaf, then the choice is desirable and preferred. If the choice was given to achieve a particular maslahah (benefit), then choosing that which is a greater benefit is obligatory.

Words indicative of generality are: kull, jaami', al-mufridul-mudaaf (the genitive form of a singular), the indefinite when attached to a nahee (prohibition), a nafee (negation), an istifhaam (interrogative), or ashart (condition).

And: "al-'ibrah bi 'umoomil-lafdh laa bi khusoosi-sabab [the lesson. or consideration is in the generality of the wording, not in its specific cause of legislation]."

The khaass(specific) can mean the 'aam (general); and visa versa, providing the existence of qaraa'in (signs) are indicative of this.

The Khitaab (address) of the Lawgiver to any one of the Ummah, or His Speech in any specific issue, actually includes all the Ummah, and all the specific issues, unless there is an evidence indicative of it being khaass (specific). Likewise, the asl (basic principle) concerning the actions of the Prophet sallallaahu `alayhi wa sallam is that his Ummah is to take him as a model and an example to follow, except when there exists an evidence indicative of that being specific to him. If the Lawgiver negates an act of worship or a social transaction, then this is indicative of it being invalid; or a negation of some necessary aspect of it. Hence, it does not become totally invalid because of the negation of some of its recommended aspects.

Contracts are bound or cancelled by all that which is indicative of this, from both statements and actions.

Masaa'il (issues) are of two types:- [i]: Those that have been agreed upon by the Scholars. So here it is required to picture and to establish the evidence upon it, then to rule accordingly, after picturing and deducing. [ii]: That in which the Scholars have differed. So here it is required to reply to the evidence of the differing opinions. This is the right of the mujtahid (the one capable of employing ijtihaad) and the mustadlil(the one able to employ inductive reasoning). As for the muqallid (blind follower), his duty is to ask the People of Knowledge.

And taqleed is: the acceptance of a saying of someone, without a proof. So the one capable of inductive reasoning, then it is upon him to exercise ijtihaad and istidlaal. as for the one who is incapable, the it is upon him to make taqleed and ask; as Allaah has mentioned both matters in His Saying:

"Ask the People of Knowledge if you do not know." [Soorah al-Anbiyaa 21:7].

And Allaah knows best.

And may Allah extol and send the blessings of peace upon Muhammad, the Messenger of Allaah, and upon his Family, Companions and followers.