

Introduction to Fiqh

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First Lesson

Definition to *Fiqh*

Linguistic Definition: True understanding to what is intended,¹ understanding in something and knowledge in it,² intricate understanding that needs thinking.³

The Quran: {So what is the matter with those people that they can hardly understand any statement} (Q: 4-78). {And remove the impediment from my tongue o people may understand my speech} (Q: 20-27-28).

The Sunnah: Prophet Muhammad (ﷺ) said to ibn Abbas: “O Allah (ﷻ) give him the *fiqh* (understanding) of religion”⁴. And also: “To whomsoever Allah wishes good, He gives *fiqh* of the religion”.⁵

Technical Definition: Fiqh is the Knowledge of the practical legislative rulings which are extracted through the detailed evidences.⁶

The science of deducing Islamic Laws from evidences that found in the sources of Islamic Law.⁷

The knowledge of the rulings of the Sharia as derived from the Quran and Sunnah.

Fiqh is the understanding of the texts (Quranic verses) and Hadiths, and knowing how to derive rulings from them.

- The human conduct is the domain of Islamic Law.

¹ . Abu Ameenah Bilal Philips. (2006). *The Evolution of Fiqh*. Riyadh: International Islamic publishing House. P. 15.

² . Muhammad Bin Abī Bakr al-Rāzī. (1999). *Mukhtār al-Şiḥāh*. Beirut: al-Maktabah al-Aşriyah. P. 242.

³ . Ustadh Abdul Rahman Hassan. *Introduction to Fiqh*. Al-Madrasatu al-Umariah. P. 3.

⁴ . Muhammad B. Isma‘īl al-Bukhārī. (2002). *Şaḥīḥ al-Bukhārī*. Damascus; Beirut: Dār Bin Kathīr. No. 143.

⁵ . Muhammad al-Qushayrī. (2006). *Şaḥīḥ Muslim*. Ed. Mohammad Abd al-Baqī. Riyadh: Dār Ṭaybah. No.1037.

⁶ . Hassan. *Introduction to Fiqh*. P. 4.

⁷ . Philips. *The Evolution of Fiqh*. P. 15.

Explaining the Technical Definition to *Fiqh*

- **Knowledge or science:** *Fiqh* is a kind of science that has a specific subject and certain rules.
- **Legislative Ruling:** This legal ruling is either charging legal ruling, or correlative law.
 1. **The charging law:** Is the mandatory provision that has five categories.
 - Firstly, is **Obligation** which denotes punishing the legally commissioned person in case of failure to perform the duties imposed by lawgiver; E.G: Prayers, fasting, zakat. {“What has landed you in Hell?” They will reply, “We were not of those who prayed } (Q: 74-42-43). {O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous } (Q: 2-183).
 - Secondly, is **Prohibition**, which demands punishing the doer after committing the wrong acts banned by lawgiver. E.G: Adultery, stealing. {As for male and female thieves, cut off their hands for what they have done } (Q: 5-38). {As for female and male fornicators, give each of them one hundred lashes } (Q: 24-2).
 - Thirdly, is **Recommendation** which signifies a reward in hereafter for doing it, but no punishment for leaving it. E.G: *Duḥá* prayer, loan writing. {O believers! When you contract a loan for a fixed period of time, commit it to writing } (Q:2-282). The evidence that loan writing is not an obligatory is the next verse: {If you trust one another, then ‘there is no need for a security, but’ the debtor should honour this trust ‘by repaying the debt } (Q: 2-283).
 - Fourthly, is **Permissibility** which denotes neither reward nor punishment for doing it. E.G. Eating, getting married. {O humanity! Eat from what is lawful and good on the earth } (Q: 2-168). {There is no blame on you for subtly showing interest in ‘divorced or widowed women or for hiding the intention’ in your hearts } (Q: 2-234).

- Fifthly, is **Abominable** which indicates that leaving it will be rewarded but committing it will not lead to punishment. E.G. Taking a wage from orphan's money. {Say, improving their condition is best. And if you partner with them, they are bonded with you in faith. And Allah knows who intends harm and who intends good} (Q: 2-220).

2. **The Correlative Law** is legal rulings in relation to circumstances. It consists of six categories.

Firstly, is the **Condition** which implies that its existence does not necessitate a rule's existence, but its absence necessitate the non-existence of that rule. The example is purity in relation to prayer.

Secondly is the **Cause** which indicates the apparent disciplined description which the legislator made a sign of a rule. Its example is the setting of the sun is a reason for *Dhuhur* prayer.

Thirdly, is the **Hindrance** which denotes an obstacle that prevent a rule. Its existence necessitates the non-existence of a rule. The example is menstruation in relation to prayers. And then there are the strict original law and the permit. the accomplishment and making up. Finally, the valid, invalid and voidness.

- **The Sources of Islamic Law:** The Quran and the Sunnah.

The Quran: Is the most sacred and important source of Islamic Law, which contains verses related to God, human beliefs and how a believer should live in this worldly life. {Forbidden to you are carrion, blood, and swine; what is slaughtered in the name of any other than Allah; what is killed by strangling, beating, a fall, or by being gored to death; what is partly eaten by a predator unless you slaughter it; and what is sacrificed on altars. You are also forbidden to draw lots for decisions} (Q: 5-3).

The Sunnah: Which represents Prophet Mohammad (ﷺ) deeds and sayings, which were formulated in the form of narratives became known as Prophetic Hadith. It also

encompasses a number of legal provisions that must be practised by all believers of Islam. The Messenger (ﷺ) of Allah (ﷻ) said, (The blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am His messenger, cannot be shed except in three cases: In *qisas* for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam (apostate) and leaves the Muslims.)⁸

- **Why Did Fiqh Emerge and Develop?**

Certain legal rulings in the Quran and the Sunnah do not need legal reasoning and are not open to different interpretations as they are clear and definitive. While other legal rulings need legal reasoning according to diverse interpretations.

There is a main reason behind making a big number of legal contents mentioned in the Quran and the Sunnah open to legal reasoning which is to make them flexible that qualifies the laws to be legally valid for all cases regardless of time and place as it is amenable to development and change. Logically, the difference in the interpretations of a particular legal issue is regarded amongst jurists as a kind of mercy.

- The examples of definitive legal ruling: {O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous 'Fast a' prescribed number of days} (Q:2-183-184)

- The examples of not-definitive legal ruling: {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.} (Q: 5-6)

- **Definition of Sharia**

Linguistic Definition: It is defined as a water source, which is the source to which people who want to drink, and bring their animals to drink from it as well. The Arabs do not call a water source Sharia unless the water is flowing without interruption, and it is visible.

⁸ . Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*. No. 6484.

Technical Definition: The sum total of Islamic Laws which revealed to Prophet Muhammad (ﷺ) and which are recorded in the Quran as well as deducible from the Prophet's divinely guided lifestyle called Sunnah.⁹ The example in the Quran: {Then We put you, [O Muhammad], on an ordained way [Shariah] concerning the matter [of religion]; so, follow it and do not follow the inclinations of those who do not know} (Q: 45:18).

The Distinction Between *Fiqh* and Sharia

1. Sharia is the whole body of the revealed law (Quran and Sunnah as well as Fiqh and Ethics), while *fiqh* is the body of laws deduced from Sharia to cover specific situations not mentioned directly.

The example: All scholars agree that one must face the Masjid al-Haram (in Mecca) during every prayer, this incident mentioned in the Quran and Sunnah and also in *fiqh*.

The Quran: {Direct your face to the Masjid al-Haram. Wherever you may be, turn your faces to it} (Q:2-144).

The Sunnah: We prayed along with the Prophet (ﷺ) facing Jerusalem for sixteen or seventeen months. Then Allah ordered him to turn his face towards the *Qibla* (in Mecca)".¹⁰

In *fiqh*: If one cannot determine the direction of the *qibla*, he should ask who knows. If he finds no one, he should try his best to determine it himself. In such a case, his prayer will be valid even his prayer is in a wrong direction, and he does not need to repeat it. If it is made clear to him while he is praying that he is facing the wrong direction, he just needs to turn in the accurate direction without ending his prayer to repeat.

2. Sharia is fixed and unchangeable, while *fiqh* is changeable according to circumstances under which is applied. The legal rulings are divided into two types: First type is a type that does not change from one state, neither according to times nor places, such as

⁹ . Philips. *The Evolution of Fiqh*. P. 15.

¹⁰ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 4216.

the obligation of duties, the limits imposed by the Sharia on crimes. The second type is a type which based on a cause that may change with the change of time, place, circumstances, and person. What changes according to the objective of the Sharia at that time, place and situation, such as the amounts of punishments, their types, and their characteristics, for the Legislator diversifies them according to the interest of the country. These issues in which the Legislator did not come up with specific rules, but rather left them to depending on the prevailing customs. The examples of these issues: Kind treatment and spending on wives and offspring, the transactions in details because the general norms had been set up by the legislator.

3. Sharia is general where it lays down basic principles while *fiqh* is specific where it explains how these basic principles could be applied in given circumstances. In Sharia, there is a general ruling in the Quran that everybody should pay zakat: {And establish prayer and give zakat and bow with those who bow} (Q: 2-43). But in *fiqh*, women are not obliged to pay zakat for their gold which they use. And also, people do not pay zakat for their houses where they live on, even though they are considered as wealth that are subjected to heredity norms explained in the Quran. There are many differences among juristic opinions regarding zakat.

Lesson Summary

1. Fiqh is the knowledge of legislative rulings of the Sharia as derived from the detailed evidence in the Quran and the Sunnah.

2. legislative Rulings are five kinds: Prohibition, obligation, permissible, recommendation, abominable.

3. Certain legal rulings are not open to different interpretations and definitive (fasting in Ramadan). While others are open to differences, this flexibility qualifies them to be legally valid over time. example: wiping on head in ablution.

4. Sharia includes the Quran, the Sunnah, and also *fiqh*.

5. The differences between *fiqh* and the Sharia are the following; The Sharia is general, unchangeable and the whole of revealed knowledge in addition to *fiqh*. While *fiqh* is a part, specific and changeable.

Lesson 2

The Ruling on Learning Jurisprudence

The rule on learning *fiqh* ranges between two levels; Individual obligation and collective obligation.

1. **Individual Obligation:** It is an obligatory on every legally commissioned person, like learning what are the duties that he has to do that are not fulfilled without it, such as how to perform ablution, prayer, fasting, Hajj and zakat. In addition, the basics of transaction and trading according to Islamic law. Moreover, the family jurisprudence, duties and rights for husband and wife, the method of educating children especially in the time of modern technology that make everything available to teenagers. It was narrated from Anas bin Malik that the Prophet (ﷺ) said: (Seeking knowledge is an obligatory upon every Muslim).¹¹ There is a jurisprudential rule that: “Should a duty not be fulfilled except by a matter, that matter becomes a duty”.¹²

2. **Collective Obligation:** This obligation means it is enough for all Muslims to have a group of believers who are obliged to fulfill it. Then the whole community will be on safe side, and no one will be sinful. The duties that fall into this category are the items that people need to establish their religion. Such as memorizing the Quran, giving *fatāwá* in given

¹¹ . Muhammad ibn Yazid al-Qazwīnī. (n.d). *Sunan Ibn Mājah*. Al-Maktabah al-‘Ilmiyya. No. 24. Garde: *Ṣaḥīḥ* (Al-Bani).

¹² . Muhammad Sedqi al-Borno. (1996). *Kitāb al-Wajīz fī Idāh Qawā‘id al-Fiqh al-Kuliyyah*. Beirut: Mu’saset al-Risālah. P.393.

circumstances, teaching the Quran. There is a need for jurists who are qualified for such tasks.

In the Quran:

{And it is not for the believers to go forth [to battle] all at once. For there should separate from every division of them a group [remaining] to obtain understanding in the religion and warn their people when they return to them that they might be cautious.} (Q: 9-122).

The Importance of Jurisprudence

God Almighty created mankind and jinn to worship Him. This worship can only be known by studying Islamic jurisprudence, its rulings and evidences, and this is only by knowing the scholars from the imams of Islamic jurisprudence. Likewise, it is not possible to perform acts of worship and dealings in the correct manner except with jurisprudence.

The importance of jurisprudence is evident in the fact that it is the means by which the lawful and the forbidden are known.

God Almighty only accepts the sincerest and the correct deeds: {Indeed, mankind is in loss, Except for those who have believed and done righteous deeds and advised each other to truth and advised each other to patience} (Q: 103-1-3).

The right thing is what should be done according to Sharia, for those who are not well-versed in religion, it is impossible to understand and practice it.

The Virtue of Learning Jurisprudence

One of the reasons for the servant's happiness, and the signs of God will for him to do good is that He gives *faqih* understanding in the religion. The Prophet (ﷺ) said: (When Allah wishes good for anyone, He bestows upon him the *fiqh* (comprehension) of the religion).¹³

¹³ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 71.

The Prophet (ﷺ) also said: (Whoever takes a path upon which to obtain knowledge, Allah makes the path to Paradise easy for him).¹⁴

It is for this reason that God honoured the scholars and raised their status, {Only those fear Allah, from among His servants, who have knowledge.} (Q: 35-28)

The Development of *Fiqh*¹⁵

1. **Foundation:** The era of the Prophet (ﷺ) (609-632 CE).
2. **Establishment:** The era of righteous Caliphs (632-661 CE).
3. **Building:** From the establishment of Umayyad dynasty until its decline (661-the middle of 8th century).
4. **Flowering:** From rise of ‘Abbasid dynasty middle 8th century to the middle 10th century.
5. **Consolidation:** The decline of ‘Abbasid dynasty 960 CE to the murder of last Abbasid Caliph by Mongols middle of 13 century.
6. **Stagnation and Decline:** From the sacking of Bagdad 1258 CE until the present.

The Era of the Prophet Muhammad (ﷺ)

The Emergence of Jurisprudence

The method of legislation for revelation in the period of prophethood was mainly to solve the problems. This method took various forms. Sometimes the revelation answered directly to the questions raised, and sometimes it reacted to specific incidents. There are some verses indicate the gradation of legislation which reflects the wisdom and merciful of the lawgiver.

¹⁴ . Muslim. *Ṣaḥīḥ Muslim*. No. 2699.

¹⁵ . Philips. *The Evolution of Fiqh*. P. 17.

1. **In the Quran:** Many verses in the Quran were revealed to solve problems confronted Muslims¹⁶:

A. A number of them are direct answers to questions raised by Muslims and non-Muslims in the era of prophethood. Some verses begin with: “They ask you about”. {They ask you about the sacred month - about fighting therein. Say, "Fighting therein is great [sin], but averting [people] from the way of Allah and disbelief in Him} (Q: 2-217). Another example: {They ask you about wine and gambling. Say, in them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit.} (Q: 2-219).

B. A number of verses were revealed due to particular incidents which took place during the era of the Prophet (ﷺ). The example is the case of Hilal ibn Umayyah, who accused his wife of adultery, the Prophet (ﷺ) said: (Either you bring a proof (3witnesses) or you will receive the fix punishment (80 lashes) on your back); {And those who accuse their wives [of adultery] and have no witnesses except themselves - then the witness of one of them [shall be] four testimonies [swearing] by Allah that indeed, he is of the truthful. And the fifth [oath will be] that the curse of Allah be upon him if he should be among the liars. But it will prevent punishment from her if she gives four testimonies [swearing] by Allah that indeed, he is of the liars. And the fifth [oath will be] that the wrath of Allah be upon her if he was of the truthful.} (Q: 24-6-9).

2. **In the Sunnah:**¹⁷ Most of it was the answers of questions: “O Messenger of Allah”. The example: The Prophet’s companions asked him: “We sail the seas, if we make ablutions with fresh water, we will go thirsty. Can we make it with sea water? The Prophet (ﷺ) replied: (Its water is pure and its dead (sea creatures) are *ḥalāl* (permissible to eat))”.¹⁸

¹⁶ . Ibid., p. 19.

¹⁷ . Ibid., p. 21.

¹⁸ . Abu Bakr Ahmad al-Bayhaqī. (2011). *Al-Sunan al-Kubrā*. Ed. Abdu Allah al-Turki. Cairo: Hajar Center. No.4. Garde: *Ṣaḥīḥ* (Al-Bani).

3. **Gradual legislation:**¹⁹ Some of them were to achieve gradation in the enactment of laws because it is more easily for Arabs who were newly converted, and not familiar with many of these legislations. The example: The formal prayers (*ṣalāh*) were in Mecca period twice a day, after migration to Medina it became 5 times a day. And also, they were two units except Maghrib 3 unites, when Muslims became accustomed with prayers, the units for presidents became 4 units.

The Era of the Prophet Muhammad

The Legal Content of the Quran

- The legal contents of the Quran might be grouped into two categories; Dealings between man and Allah (ﷻ), and dealings among men²⁰.

1. **Dealings between Allah (ﷻ) and man:** They are religious rituals that will not be accepted without correct intentions. There are three types of these rites; The first is pure worship like prayers and fasting. The second is socio-economic worship like zakat. The third is socio-physical worship like Hajj (pilgrimage).

2. **Dealings among men:** They cover four classifications.

A. Law securing spreading of Islam such as armed or unarmed holy fighting.

B. Family Law which protects the family institution by several procedures like: Marriage, divorce, inheritance.

C. Transactions Law which covers financial dealings such as; Trade law, Islamic finance, contracts, sales.

D. Criminal law which keeps the safety of society like killing murderers, cutting off the hands of thieves.

Lesson Summary

¹⁹ . Philips. *The Evolution of Fiqh*. P. 22.

²⁰ . Ibid., p. 26.

1. The Ruling on learning jurisprudence might be an individual obligation or a collective obligation.
2. Knowledge of legal rulings and its evidences cannot be achieved without learning Fiqh.
3. The Virtue of learning *fiqh* is clear that God's will to give *faqih* happiness, it is a way to Paradise.
4. The Development of *fiqh* passed through six stages; foundation, establishment, building, flowering, consolidation and finally decline.
5. Many verses were answering the questions raised by people to the Prophet, and bringing solutions to incidents occurred, and also Sunnah, they showed the gradation in the enactment of the law.
6. The Legal Content of the Quran is two types; the relationship between God and his servants and the relationships among men.

Lesson 3

Basic legislations in the Quran²¹

The Quran was revealed in order to improve human conditions, not to eradicate all customs, but the harmful and corruptions. Islam forbade interest because it takes money of the needy. And also, it forbade adulatory because it destroys the family bonds. Moreover, it forbade alcohol because it damages people's health physical and psychological.

Islam is a religion of constructing not distraction, the main goal is reformation. Islam reform the trade system by practicing mutual consents. The marriage institution was reformed by imposing some limits on divorce and arrange the relationship between two genders.

²¹ . Ibid., p. 27-29.

The main concern of Islam is the achievement of human welfare by confirming the beneficial, not to destroy a human civilization with its morals and customs in order to build a new one. Islam accepted some of Arab's customs, the part which confirmed is integral to divine code for some reasons. Some of them were inherited from other divine religion like Hajj, which was instituted by Prophet Ibrahim. And others were the results of human intellectual activities, which is in line with Islamic principles that free human intellect from irrationality. If the confirmed practices are not present, Islam would institute them according to human's needs.

In order to enact new laws, Islam took into consideration these four steps: The removal of difficulties, the reduction of religious obligations, the realization of public welfare and realization of universal values.

1. The removal of difficulties²²

Islamic Laws are designed to facilitate people's individual and societal needs, one of these pillars is the removal of unnecessary difficulties. Evidences of such a pillar are existed in the Quran: {Allah does not charge a soul except [with that within] its capacity} (Q: 2-286). {Allah intends for you ease and does not intend for you hardship} (Q:2-185). {Allah wants to lighten for you [your difficulties]; and mankind was created weak} (Q: 4-280).

Many rulings were enacted in order to ease the lives of human beings and to not to put them under pressure, especially that belonged to Islamic legislations. We can find with each duty a permit or concession for those who are weaker than ordinary people. For prayer, there are the traveller's prayer, the patient's prayer, the prayer on the battlefield. For fasting, there are concessions for travellers, patients and the elderly.

There are also concessions to consume the forbidden in situation of extreme hunger or thirst, or imminent death: {But whoever is forced by severe hunger with no inclination to sin - then indeed, Allah is Forgiving and Merciful} (Q: 5-3).

²² . Ibid., p. 29-31.

The Prophet (ﷺ) is an example of choosing the easy path whenever he was given the choice between two permitted things.²³

2.The reduction of religious obligations²⁴

The general rule is that the original law is the permissibility in everything, so the prohibited acts or substances are a few in comparison to those which allowed. {He is the One Who created everything in the earth for you} (Q: 2-29). {This day [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you and your food is lawful for them.} (Q: 5-5). The forbidden is exception as in this verse: {Say, 'O Prophet, ' "Come! Let me recite to you what your Lord has forbidden to you: do not associate others with Him 'in worship'. 'Do not fail to' honour your parents. Do not kill your children for fear of poverty. We provide for you and for them. Do not come near indecencies, openly or secretly. Do not take a 'human' life—made sacred by Allah—except with 'legal' right} (Q: 5-151).

In food the prohibited are a few species: {Prohibited to you are dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah, and [those animals] killed by strangling or by a violent blow or by a head-long fall or by the goring of horns, and those from which a wild animal has eaten, except what you [are able to] slaughter [before its death], and those which are sacrificed on stone altars, and [prohibited is] that you seek decision through divining arrows} (Q: 5-3). The allowable food is a wide range: {This day [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you and your food is lawful for them} (Q: 5-5).

Another general concept is the concept that to not to ask about something which have been not mentioned. {Do not ask about any matter which, if made clear to you, may disturb

²³ . Muslim. *Ṣaḥīḥ Muslim*. No. 2327.

²⁴ . Philips. *The Evolution of Fiqh*. P. 31-35.

you. But if you inquire about what is being revealed in the Quran, it will be made clear to you".
(Q: 5-101).

The third concept is that the Quran provides Muslims with general rules that fit all circumstances, and include all cases: {O believers! fulfil your contracts} (Q: 5-1). {But Allah has permitted trade} (Q: 2-275).

3. The realization of public welfare²⁵

Islamic Laws have a main object which is human beings' interest, they take into consideration the general good of all people.

A. The abrogation is one of the manifestations that realized God's mercy. It means that God replaced the law that was established for a specific period with another more suitable to be practiced over time when its unique suitability was achieved: {We do not abrogate a verse or cause it to be forgotten except that We bring forth [one] better than it or similar to it} (Q: 2-106).

The inheritance (*mīrāth*) is a good example. The first law that enacted is to write a bequest for parents as a compulsory. {Prescribed for you when death approaches [any] one of you if he leaves wealth [is that he should make] a bequest for the parents and near relatives according to what is acceptable} (Q: 2-180). Then the later law of inheritance was defined by revelation: {Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth} (Q: 4-11).

²⁵ . Philips. *The Evolution of Fiqh*. P. 35-43.

The Prophet (ﷺ) said: (Surely Allah has given everyone with a right to inheritance his right, so there should be no bequest for inheritance).²⁶

The second example of abrogation is mourning Period. It was a full year with a provision for maintenance and housing: {And those who are taken in death among you and leave wives behind - for their wives is a bequest: maintenance for one year without turning [them] out} (Q: 2-240). The ruling was replaced by another which eliminates the bequest and made the period of waiting only four months and 10 days, the widow will get her portion prescribed previously. {And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days]} (Q: 2-234).

The third example is the punishment of fornication. It was in the first time of revelation just to put the adulterous women in the jail. {Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way.} (Q: 4-15). The revelation replaced the confinement to lashes: {The woman or man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment.} (Q: 24-2).

B. The second manifestation of God's mercy and His consideration to mankind's welfare is determining the reason behind the law which has been enacted. There are many examples in the Quran. {Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?} (Q: 5-91). The Prophet (ﷺ) also mentioned the rationale behind his commands, he said: (I had forbidden you from visiting graveyard, so, visit them, for they do remind one of

²⁶ . Ibn Mājah. *Sunan Ibn Mājah*. No. 2714. Garde: *Ṣaḥīḥ* (Al-Bani).

the next life).²⁷ If the benefit for which the law enacted has changed, due to circumstances, the law must be changed, the example is Umar ibn al-Khattab (The portion of zakat belonged to non-Muslims).

C. The third manifestation of God's mercy and His consideration to mankind's welfare can be found also in the methodology of the ruling. If laws related to unchangeable human benefits, God gave us the details in legislation. The examples are family law for marriage and divorce, and the punishment of crimes. But in case of changeable human benefits, the divine laws are general like business transactions, the structures of the societies. In case of general welfare versus individual benefits, the precedence is giving to the general over individual, and to prevent greater harm over smaller harm.

4. The realization of universal justice²⁸

In Islamic law, human beings have the same duties to be accomplished, and their responsibility are equal in case of committing the forbidden. {Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice} (Q: 4-58). {O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness} (Q: 4-135). The Prophet Muhammad (ﷺ) said to people who were trying to make excuse to the woman of Makhzoom tribe: (People before you are destroyed because they left the nobles when they stole, but applied God's punishment when the poor stole If my daughter Fatimah stole, I would cut off her hand).²⁹

Lesson Summary

1. The Quran was revealed to improve people lives, it left some of customs that were in line with Islamic code, and remove the harmful.

²⁷ . Muhammad Bin 'Īsā al-Tarmidhī. (n.d). *Sunan al-Tarmidhī*. Beirut: Dār al-Kutub al-Ilmīyah. No. 1054. Garde: *Ṣaḥīḥ* (Al-Bani).

²⁸ . Philips. *The Evolution of Fiqh*. P. 43-45.

²⁹ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 3288.

2. Islam took into consideration four steps when it decreed new rules. The removal of difficulties, the reduction of religious obligations, the realization of public welfare and the realization of universal justice.

3. The removal of difficulties is found in many verses in the Quran, there are always with each duty a permit for the weak. And also, consumption of the forbidden would be allowable in case of necessity.

4. The reduction of religious obligations is found in the permissibility of everything as an original law, the forbidden are a few. The general rules fit all circumstances and also, to not ask about not mentioned.

5. The realization of public welfare is found in some legislations like abrogation, mentioning the rationale behind each ruling and also in the methodology of the ruling.

6. Abrogation occurred in many cases to realize the good of people such as inheritance regulation, mourning period and the punishment of fornication.

7. Each law contains the reason in verse and hadiths, but if the law does not get the aimed benefit, the law should be changed.

8. The methodology of legislation is shown in regulating some rules in general and others in details according to human welfare.

9. The realization of universal justice is found in many verses and Hadiths as a compulsory requirement on all without exception.

Lesson 4

Sources of Islamic law

The first source of legislation is the Quran, and the second is the Sunnah which has several categories.³⁰

³⁰ . Philips. *The Evolution of Fiqh*. P. 45-62.

The Sunnah's role is to convey the message of God: {O Messenger! Convey everything revealed to you from your Lord} (Q: 5-67).

The Sunnah is an exposition of the Quran, by which its generalities are clarified and its intended meanings are specified.³¹ Because of this, abiding to Sunnah is an obligatory according to the Quran: {Whatever the Messenger gives you, take it. And whatever he forbids you from, leave it} (Q: 59-7). The Sunnah's roles may be classified as following:

1. **The inclusions that were not logically deduced:** The Prophet (ﷺ) added to the forbidden types of food in the Qur'an another type, which is donkeys. The verse said about Prophet Muhammad (ﷺ): {permits for them what is lawful and forbids to them what is impure} (Q: 7-157). In the Sunnah: (Someone came to Allah's Messenger (ﷺ) and said, "The donkeys have been (slaughtered and) eaten. Another man came and said, "The donkeys have been destroyed." On that the Prophet (ﷺ) ordered a caller to announce to the people: Allah and His Apostle forbid you to eat the meat of donkeys, for it is impure.)³²

2. **Deducing rulings from general principles:** This deducing either accepted by revelation or rejected.

A. The accepted rulings extracted by the Prophet (ﷺ) can be presented in the case of the wife's paternal aunt or maternal aunt being combined. The Prophet (ﷺ) inferred this rule from this verse: {Lawful to you are all beyond these} (Q: 4-24). He said: (One should not combine in marriage a woman with her father's sister, or her mother's sister).³³

B. The unaccepted rulings extracted by the Prophet (ﷺ) can be presented in specific sort of divorce called *zihār*. {Those of you who 'sinfully' divorce their wives by comparing them to their mothers 'should know that' their wives are in no way their mothers. None can be their mothers except those who gave birth to them. What they say is certainly detestable and

³¹ . Philips. *The Evolution of Fiqh*. P. 46.

³² . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 5202.

³³ . Muslim. *Ṣaḥīḥ Muslim*. No. 1408.

false} (Q: 58-2). The complaint is in this narration: “Khawlah was the wife of Aws ibn as-Samit; he was a man immensely given to sexual intercourse. When his desire for intercourse was intensified, he made his wife like his mother's back. So Allah, the Exalted, sent down Qur'anic verses relating to expiation for *zihār*.”³⁴The answer of the Prophet (ﷺ) when she complained was to accept the *zihār* as a sort of divorce, but the revelation sent to correct his reply”.³⁵

C. The unconfirmed rulings derived from habits and customs of the Prophet (ﷺ) that he did not teach them to his companions. The example is related to the Prophet's companions when he saw them while they were pollinated palm trees, he said: (If you were not to do it, it might be good for you. (So they abandoned this practice) and there was a decline in the yield. He (the Holy Prophet) happened to pass by them (and said): What has gone wrong with your trees? They said: You said so and so. Thereupon he said: You have better knowledge (of a technical skill) in the affairs of the world).³⁶

D. The legal rulings on disputes occurred before the Prophet (ﷺ), and it could not be accurate due to the human nature of him, and the inaccurate information that his companions gave him.

3. **The *ijtihād* of the Prophet** is a legal reasoning to reach a new decision regarding a new incident, or to find a ruling for an old incident under different circumstances. Prophetic *ijtihād* is not considered independent because it was covered by the divine revelation.

The Prophet (ﷺ) encouraged his companions to practice *ijtihād* by promising a reward even in case of wrong decision. (When a judge utilizes his skill of judgement and comes to a

³⁴. Abī Dāwūd al-Azadī. (n.d). *Sunan Abī Dāwūd*. Ed. Muhammad Abu al-Hamid. Beirut: Dār al-Kutub al-‘Asrīyah. No. 2219. Grade: *Ṣaḥīḥ* (Al-Bani).

³⁵ . Muhammad al-Qurṭubī. (1964). *Tafsīr al-Qurtubī*. Ed. Ahmad al-Bardūnī & Ibrāhīm Atfīsh. Cairo: Dār al-Kutub al-Maṣriyyah. Vol. 17. P. 270.

³⁶ . Muslim. *Ṣaḥīḥ Muslim*. No. 2363.

right decision, he will have a double reward, but when he uses his judgement and commits a mistake, he will have a single reward).³⁷

He was keen to show them that there was no blame if they strive in making *ijtihād* as in the battle of Banū Quraiza. He said: (None should offer the ‘Aṣr prayer but at Bani Quraiza.)³⁸ Some of them prayed on the way, and others prayed when they reached at Bani Quraiza. The Prophet (ﷺ) did not blame anyone.

The Era of Righteous Caliphs

In the epoch of the four righteous Caliphs, Islam spread outside the Arabian Peninsula, the number of people who converted to Islam increased rapidly, Muslims found themselves in touch with different systems that had diverse cultures and configurations of behavior. The righteous Caliphs confronted a big number of issues that needed rulings according to Islamic law. Therefore, they relied on *ijtihād* which was actively used in the era of the Prophet (ﷺ). And also, consensus (*ijmāʿ*) in two types either explicit or implicit; Explicit consensus requires that all jurists publicly state their opinions at the same time, and implicit consensus means that no one objects to or denies the consensus of other jurists of the same era.³⁹ These two procedures became the basis of *fiqh*.

Problems Solving Procedures of the Righteous Caliphs

Problem-solving procedures during the time of the righteous Caliphs went through stages in order to ensure the accuracy of the rulings issued of new problems. They started searching on a solution in the Quran, then in the Sunnah in its two methods (verbally and physically). If they did not find, they called for a meeting among the senior companions to obtain unanimous agreement. If they couldn't get it, they took the opinion of the majority. If there was no majority, they produced their own opinion (*ijtihād*).

³⁷ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 6919.

³⁸ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 904.

³⁹ . Qutub Mustafa Sano. (2000). *Muʿjam Muṣṭalahāt Uṣūl al-Fiqh*. Damascus: Dār al-Fikr. P. 39.

The Approach of Individual Companion (*Ṣaḥābah*) to *Ijtihād*

In cases where the Prophet's (ﷺ) Companions who were in decision-making position were required to individually solve each day problems, they had a general course of action:

Firstly, they acknowledged that they may reach at incorrect decision. The example is the issue of the inheritance of a married woman without a fixed dowry. People went to Abdullah Ibn Mas'ud to take his *fatwá*. He replied: (In this matter I hold the opinion that she should receive the type of dower given to women of her class with no diminution or excess, observe the waiting period (*'iddah*) and have her share of inheritance. If it is erroneous, that is from me and from Satan. Allah and His Apostle are free from its responsibility).⁴⁰

Second, they abandoned their inferred opinions and their differences, if they found authentic evidence which contradicted them. The example is the incident of the Prophet's (ﷺ) grave when Abu Bakr referred to the words of the Prophet (ﷺ) after the conflict occurred between *ṣaḥābah*: (No Prophet ever passed away but he was buried where he died).⁴¹

Thirdly, if there was no consensus, they respected the opinions of others, and did not force them to adopt any individual judgment.

The Absence of Factionalism

There were some factors that prevented the Companions (*ṣaḥābah*) from dispersing, perhaps the most important of it, is due to the principle of consultation (*shūrā*), which was established by the Rightly Guided Caliphs in the capital of the Islamic state in which they lived.

Moreover, it was not easy for the Companions (*ṣaḥābah*) to issue *fatāwá*, and instead they tended to refer to the most knowledgeable senior figures. They also relied more on the Quran, as ordered by Caliph Umar ibn al-Khattab. Nor did they exaggerate in narrating Hadiths

⁴⁰ . Abī Dāwūd. *Sunan Abī Dāwūd*. No. 2116. Grade: *Ṣaḥīḥ* (Al-Bani).

⁴¹ . Jalal al-Dīn al-Siyūṭī. (2013). *Tārīkh al-Khulafā'*. Qatar: Wazarat al-Awqaf. Vol. 1, p. 158.

for fear of making a mistake. The Prophet (ﷺ) said: (And whoever tells a lie against me (intentionally), then (surely) let him occupy his seat in Hell-fire).⁴²

Characteristics of *Fiqh* During the Period of the Righteous Caliphs

The first: *Fiqh* was realistic based on real problems rather than hypothetical ones that would come later in Iraq with reasoning people.

The second: The Companions (*ṣaḥābah*) were open in accepting different opinions, they did not follow certain procedures, and they did not have a complete set of prescribed procedures for the nation to follow. Moreover, they encouraged the public to read the Quran carefully without distracting from the legal rulings on unspecified matters.

The third: The Companions (*ṣaḥābah*) preferred to interpret according to literal meaning, but some of them used a wide range of personal opinions.

The fourth: There were some factors behind changing some legal rulings. Among them is the disappearance of the reason for these rulings, such as the prohibition of the share of new Muslims. It is caused by the Muslims' need for their support, which no longer exists after the spread of Islam.

Another factor related to social conditions, such as pronouncing a divorce three times at a time, which was considered a single divorce according to the Prophet (ﷺ), but Caliph Umar changed it to become a triple divorce as a punishment.

Lesson summary

1. The Sunnah is an exposition of the Quran, by which its generalities are clarified and its intended meanings are specified. It is obligatory to follow the Sunnah.
2. The Sunnah's roles may be classified as following; The inclusions that were not logically deduced, the deducing rulings from general principles either accepted by revelation

⁴² . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 107.

or rejected, the unconfirmed rulings derived from the Prophet's customs and the legal rulings on disputes occurred before him.

3. In the era of righteous caliphs, Muslims confronted a lot of problems as a result of many people from different countries converted to Islam, thus, jurists relied on two procedures which are *ijtihād* and *ijmā'*.

4. The procedures of righteous Caliphs in solving problems were in steps; they searched in the Quran, then the Sunnah. If they did not find they called for *ijmā'*, if there was no *Ijma'*, they embraced the majority's position, if there was any they made their own *ijtihād*.

5. The approach of the individual in *ijtihād* was to respect the opinion of the other if they did not reach a consensus After realizing that everyone is subject to error.

6. The most important factor in preventing division was the principle of *shūrā*, in addition to avoiding fatwas, and relying more on the Quran.

7. Fiqh in this era was realistic, *ṣaḥābah* were open-minded in accepting differences, they did not follow or impose on other a set of procedures in order to find rulings, they changed some rulings according to the change in social circumstances.

Lesson 5

The Era of the Followers

There were two principal schools of *fiqh* which arose in the era of al-Tabi'ūn (the followers); The school of the Hadith and the school of opinion.

The school of the Hadith which was called also the school of Ahl al-Medina (people of Medina). Its most important scholars are the seven jurists: 'Urwa ibn al-Zubayr ibn al-'Awwām, Sa'id ibn al-Musayyib, Sālīm ibn 'Abd Allah ibn 'Umar, Sulayman ibn Yasar, Kharija ibn Zayd ibn Thabit, Ubayd Allah ibn Abd Allah, Al-Qāsim ibn Muḥammad ibn Abī Bakr. The head of this school is Imām Mālik bin Anas, its headquarters was in al-Madinah al-

Munawwarah. One of the most prominent scholars of this school is Abū ‘Abdillāh Muḥammad ibn Idrīs ash-Shāfi‘ī. After the death of Imām Mālik, Bagdad arose as a center of this school and also, Imām Aḥmad ibn Ḥanbal al-Dhuhlī.

The method of this school is to rely on texts in inferring legal rulings, the Quran and the Sunnah then *ijmā’*. The scholars of this school have the advantage of taking precedence in codifying the Hadith and setting the rules for it.

The school of Kufa or the opinion (*Ahl ar-Rā’i*), known as the Iraqi or Kufan school. It was established at first by Abdullah Bin Mas’ūd, then *al-Qādī* Shuraiḥ ibn al-Hārith and others. The head of this school is Abū Ḥanīfa Nu‘mān ibn Thābit ibn Zūṭā ibn Marzubān.

The method of this school is to rely on *ijtihād* in determining legal rulings, they used *qiyās* (analogy), the objectives of the Sharia and *istiḥsān* in order to give their opinion regarding an issue. They did not neglect the texts, but they avoided narrating Hadith, because many fabricated Hadiths arose and many liars reported in favor of some political parties. This school was based mainly on the assessment of the cause (*‘illah*) and the public welfare (*maṣlaḥa*). The Prophet’s Companions who used *Ra’i* extensively are Umar ibn al-Khattab, Ali Bin Abi Talib and ‘Āysha the wife of the Prophet (ﷺ). Depending on opinion in *ijtihād* gave rise to differences between jurists’ judgments.

The Era of Umayyad Dynasty⁴³

In this epoch, many social changes occurred, the political system was transferred from rightly guided Caliphate to dictatorial monarchy (kingship) which affected profoundly the social structure. Troubles became the hallmark of this time. Subsequently, the followers of the Prophet (ﷺ) among the leading jurists fled to remote areas in search of safety, which made consensus very difficult.

Factors Affecting *Fiqh* in the Era of Umayyad Dynasty

⁴³ . Philips. *The Evolution of Fiqh*. P. 64-70.

This period was very crucial in the establishment of the various schools of jurisprudence. And there were some factors that affected jurisprudence in that era, such as: the division of the nation, the deviation of the Umayyad Caliphs, the dispersion of scholars, and the fabrication of hadith.

1. **Division of the Ummah:** The Shiites, the Kharijites, and Abdallah ibn Az-Zubair ibn al-‘Awwām rebelled to overcome the authority that created divisions in the Islamic state. The first two groups established their own jurisprudence by relying on unorthodox interpretations, rejecting the contributions of the Companions, and elevating their leadership figures to the rank of legislators, their jurisprudence being politically oriented.

2. **Deviation of Umayyad Caliphs:** Aspects of life in Islamic state changed during the Umayyad Caliphate due to its contact with multiple cultures. Some of them opposed Islam, like the amusement that brought in the palace of Caliphs. The political system transferred from consultation (*shūrā*) to dictatorship like forcing the public to accept Yazid as a Caliph, so it was changed from oath and *bay‘ah* to be hereditary monarchy. The central treasury (*Bayt al-māl*) became the personal property of Caliphs. With the passage of time, the deviation from Islamic teachings increased, and the Caliphs tried to manipulate jurisprudence, and jurists and scholars fled so as not to be forced to issue *fatāwā* against Islam. However, scholars began to collect the jurisprudence of the early era.

3. **Dispersion of the scholars (‘Ulamā’):** When the scholars fled fearing persecution of competing parties, *ijmā‘*, (unanimous agreement) became very difficult, as a result individual *ijtihad* increased significantly. Some scholars arose as an outstanding figure that students in his region gathered around them. This method led to evolve the *fiqh* schools (*madhāhib*) in Muslim world. Abū Ḥanīfā in Iraq, Imām Mālik bin Anas in Medina, Abū ‘Amr ‘Abd al-Raḥmān ibn ‘Amr al-‘Awzā‘ī in Beirut, Al-Layth ibn Sa‘d ibn ‘Abd al-Raḥmān in Egypt.

4. **Fabrication of Hadith:** The need for the Sunnah increased when Islamic state unofficially stopped governing according to it. This led to the emergence of fabricated Hadiths which took its way to Islamic knowledge, and were not used by Muslim scholar purposely. Consequently, some scholars rejected all Hadiths even the true ones from the area known by fabricated Hadiths, and also, the science of Hadith criticism was developed.

The Characteristics of *Fiqh* in the Umayyad Period

Scholars and students in Muslim world divided into two major groups, *Ahl al-Hadith* and *Ahl ar-Râ'i*.

Ahl al-Hadith used to make judgements of matters that were defined in the revealed texts clearly with their purposes, and could be subjected to analogical deduction. But the undefined issues would be left without *ijtihād*. Accordingly, they never used unreal problem. Their evidence: {Do not follow what you have no 'sure' knowledge of. Indeed, all will be called to account for 'their' hearing, sight, and intellect} (Q: 17-36).

Ahl ar-Râ'i (reasoning people) believed that every judgment has its reason, whether God and His Messenger specified it or not. Therefore, they use inference to find reasons for judgments to apply the same judgments in similar cases. They used analogy and deductive reasoning extensively. Their evidence was the reasoning of some Major Companions. Some of their issues were hypothetical "what if it were like this?".

Reasons for Differences

The reasons are embedded in the political conditions that affected the Islamic world at that time, as well as the cultures prevailing in the Caliphate region.

The Hijaz was the home of *Ahl al-Hadith*, it was also the home of the Prophet (ﷺ), and the capital of the Islamic state of the first three righteous Caliphs. As a result, there were many Hadiths, as well as the Companions' *ijtihād*.

Iraq was the home of *Ahl ar-Râ'i*. It became the capital of the Islamic state since Ali bin Talib moved to it. There were very few Companions who lived there, while many people from different cultures who converted to Islam. There were few Hadiths, and as a result, Iraq became the home of the fabricated Hadiths of the Prophet (ﷺ), as well as the origin of deviant sects in the Islamic world. Consequently, Iraqi scholars relied on reasoning to not to rely on fabricated Hadiths.

Compilation of *Fiqh*

During the righteous Caliphate period, the Companions did not collect their *fatāwá* because they did not see them as truths that applied to all Muslims, rather they were only legal rulings on some problems at a particular time.

During the Umayyad Caliphate period, many legal rulings published in line with the new political structure which was changed from Caliphate to Monarchy. Their rulings differed from the rulings of the Companions, which led to the necessity of preserving the rulings of the Companions. Accordingly, Hijaz's scholars collected the *fatāwá* of Abdullah ibn 'Abbās, Abdullah ibn 'Umar, 'Āysha bint Abu Bakr. Iraqi 's scholars collected the *fatāwá* of Abdullah ibn Mas 'ūd, Ali ibn Abi Talib. Unfortunately, all collections disappeared, but the books of *fiqh*, Hadiths and interpretations contained their original narrations.

Lesson summary

1. During the era of the followers, the school of the people of Medina and the school of the people of opinion emerged as the main schools of jurisprudence.
2. The house of the Hadith School was in Medina, and its approach was to rely on texts in deriving legal rulings, and among its most important symbols were Imām Mālik, al-Shāfi'ī, and Imām Aḥmed.

3. The school of reasoning people was in Iraq, its method is to rely on *ijtihād*. They avoided narrating Hadiths. They expanded *qiyās*, and used reason and *maṣlahah* widely, its most prominent scholar was Abū Ḥanīfa.

4. The era of the Umayyad state was characterized by social instability, and the political system moved to a kingdom, so the scholars fled to outlying areas.

5. There were some factors that influenced the establishment of *fiqh* in the era of Umayyad Caliphate such as: division of the Ummah, deviation of Umayyad Caliphs, dispersion of the scholars and fabrication of Hadiths.

6. Some groups such as the Shiites, the Kharijites, and Abdullah bin Al-Zubayr created chaos to seize power, and they had their own political interpretations.

7. The Umayyad caliphs began to manipulate jurisprudence in favor of their political goals, as many un-Islamic practices were identified. Thus, the scholars fled and began compiling the original legal rulings of jurisprudence.

8. The prominent jurisprudential figures arose in different regions of the Islamic state, so their students gathered around them, and each jurist with his students, and this was the starting point for establishing different schools of thought (*madhāhib*).

9. Fabricated hadiths developed due to the scarcity of authentic hadiths. As a result, the jurists rejected all the Hadiths in the regions famous for liars.

10. The reasons for the difference between the two main schools are due to the political and social aspects. Hijaz contained many hadiths, and the *ijtihād* of the Companions

11. While Iraq contained Muslims of different cultures and few hadiths of the Prophet, which led to the emergence of deviant sects and liars, which made the scholars almost dependent on *ijtihād*.

12. The need to collect *fatāwá* appeared, because the *fatāwá* of the Umayyad Caliphate differed from the original *fatāwá* of the Companions, but after collecting them they disappeared to be found only in the books of later scholars.

Lesson 6

The Era of ‘Abbāsīd Dynasty

Sciences flourished during the reign of ‘Abbāsīd Caliphate, including Islamic sciences. Baghdad became the capital of knowledge. Fiqh for the first time developed as an independent branch in Islamic disciplines. Jurisprudential discussions and debates flourished because the Caliphs supported them, like all knowledge. Many schools of thought emerged as well as *madhāhib*, and the recording and compilation of jurisprudence were the result of the active writing and translation movement that prevailed in this era. By the end of that epoch, two jurisprudential divisions were clearly defined: fundamental principles (*uṣūl*), secondary principles (*furū’*). And also, the sources of Islamic law and the differences between major *madhāhib*.⁴⁴

Period of the Great Imāms

There were some factors that affected this era.

1. State support for the scholars: ‘Abbās's successors sought to establish their authority on the basis of Islamic law. They sent their children to learn jurisprudence in the major schools of it that prevailed in their time. Moreover, some of them became scholars, ‘Abbāsīd Caliphs also consulted eminent scholars on all matters. Caliph Mansūr asked Imam Mālik to make his book on the Sunnah as a constitution for the state, but he refused because it is not fair to impose the Hadiths that were narrated during his writing of his *madhab*, and the Hadiths that were narrated by some of the Companions are excluded. The freedom of the jurists

⁴⁴ . Philips. *The Evolution of Fiqh*. P. 73.

was limited especially when they gave *fatāwá* against officially political policy. They would be then exposed to sever punishment.

2. Increase in the centers of learning: Scholars and students traveled in order to gain knowledge from their contemporaries. An example of this is al-Shāfi'ī's trip to the Hijaz to study during the reign of Imām Mālik, then to Iraq to study during the reign of Muhammad ibn al-Hasan, and then to Egypt to study during the reign of al-Layth ibn Sa'd. As a result, he formed his new *madhab*, he had two versions of *fiqh* one is the old, another is the new.

3. The spread of debate and discussion: Discuss legal provisions face to face or by mail between scholars to reach a common conclusion or accept different options by each other. Al-Shāfi'ī and Abū Ḥanīfa agreed that if a Hadith was authentic, then it would be their *madhab*. Because at this stage of development, there was no rigidity, they were all looking for accurate evidence.⁴⁵

Period of Minor Scholars

There were some factors that influenced this era of the second generation of the great scholars.

1. Compilation of *fiqh*: Some scholars compiled their legal rulings themselves, and others dictated them to their students. The types of compilation were:

a. Collection of legal rulings, Hadiths and the opinions of the Companions and the Followers. The example is “*al-Muwatta*” by Imām Mālik.

b. Collecting the basic principles of *fiqh* with its proofs of Hadiths. The example is “*Kitāb al-Kharāj*” by Imam Abu Yusuf, and “*al-Umm*” by al-Shāfi'ī.

c. Assembling the application of jurisprudential principles into chapters according to the topics under discussion. The example is “*al-Mudawwanah*” by Imām ibn al-Qāsim.

⁴⁵ . Philips. *The Evolution of Fiqh*. P. 74-78.

2. Court debates: They were held merely for the amusement of the Caliphs and some notables at his court, some scholars devised cases to rival others, and as a result hypothetical jurisprudence was seen more as a product of ridiculousness than of sublime origin. Defending one's opinion, even with falsehood, became a virtue, and this was the beginning of sectarianism among the conversers.

3. Compilation of Hadiths: Scholars concentrated on collecting authentic Hadiths in order to support legal rulings. Imām Aḥmad ibn Ḥanbal started this trend in arranging Hadiths in chapters according to the format established in *fiqh* in his “*al-Musnad*”. Imam al-Bukhari and Muslim followed his method.

4. Organizing of *fiqh*: The jurists benefited from previous sciences in their method like deduction and reasoning in establishing *fiqh*. And also, they arranged its branches; the fundamental (*uṣūl*), the secondary principles (*furūʿ*), the grammar (*naḥw*) and Hadith. They classified the primary sources of Islamic law according to its importance.⁴⁶

The Sources of Islamic Law⁴⁷

1. **The Quran:** The first and last source of legal rulings, and there is no doubt about its authenticity. There are some differences in the interpretation of some of its verses. The example: {Establish prayer, pay alms-tax, and bow down with those who bow down.} (Q: 2-43).

2. **The Sunnah:** The second source of legal provisions. There are various conditions set by scholars for the acceptance of a Hadith and its implementation. The example this Hadith: (Return to your families and teach them (religious knowledge) and order them (to do good deeds) and offer your prayers in the way you saw me offering my prayers, and when

⁴⁶ . Philips. *The Evolution of Fiqh*. P. 78-82.

⁴⁷ . Ibid., p. 82-84.

the stated time for the prayer becomes due, then one of you should pronounce its call (i.e., the *adhān*), and the eldest of you should lead you in prayer.)⁴⁸

3. ***Ijmā‘* (consensus):** The collective agreement among authoritative Muslim scholars after the death of the Prophet (ﷺ) on a single ruling on a particular matter in the same generation.⁴⁹ The example is the share of grandmother from grandson’s wealth is 1/6.

4. ***Qiyās* (analogical deduction):** A type of *ijtihād* is based on deductive reasoning based on evidence found in the Quran, Sunnah, or consensus. The example is drugs’ prohibition because of its intoxication like wine.

5. ***Istihsān* (legal preference):** Preferring a judgment based on current benefit over another judgment based on analogy for the same problem. This source is found in another *madhab* under Different name, since this term belongs to Ḥanafī *madhab*. Shāfi’ī *madhab* called it *istishāb*, while Mālikī *madhab* called it *maṣlahah mursalah* (unspecified benefit). The example is selling goods before possession. It was unacceptable but later when people need this item, it becomes acceptable.

6. ***‘Urf* (custom):** Customs and traditions may be accepted as a Sharia ruling in a given society, but they must not conflict with Sharia or lead to the neglect of agreed upon Islamic rules. For example, dividing the dowry into two parts; one before marriage and the other after death or divorce because there is no text in the details.

Lesson Summary

1. The era of the ‘Abbāsīd state was the era of the flourishing of all sciences, including Islamic sciences, and at the end of it were two strictly defined sections. The primary (*uṣūl*), the secondary principles (*furū‘*).

⁴⁸ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 5662.

⁴⁹ . *Mawsū‘at al-Ijmā‘ fī al-Fiqh al-Islamī*. Riyadh: Dār al-Fadhilah. Vol. 1, p. 25.

2. There were some factors that influenced this era such as; State support for scholars, an increase in the number of learning centers, and the spread of discussions and debates.

3. The ‘Abbāsīd Caliphs returned to Islamic law, but the scholars' freedom was limited. Scholars traveled to various centers of knowledge in the Islamic state in order to study the knowledge of others. Scholars used to discuss to come to a common conclusion or to accept each other's opinion, there was no religious fanaticism.

4. There were some factors that influenced the era of minor scholars such as; compilation of *fiqh* in one of three methods, court debates, compilation of Hadiths and organizing of *fiqh*.

5. The six jurisprudential sources are arranged according to their importance; The Quran, the Sunnah, *ijmā‘* (consensus), *qiyās* (analogical deduction), *istihsān* (legal preference) and *urf* (custom).

Lesson 7

The Madhabs: Schools of Islamic Legal Thought

In this chapter, we mentioned all *madhāhib* that developed in this era, with an explanation of their methods and prominent personalities.

1. Ḥanafī Madhab⁵⁰

The founder is Abū Ḥanīfa Nu‘mān ibn Thābit (703-767 CE), his birth in Kufa (80 AH). He studied firstly Dialectics (*‘Ilm al-Kalām*), then he studied *fiqh* deeply, his teacher was Hammad ibn Zayed who was the best scholar of Hadith, after his death, Abū Ḥanīfa took his position and taught at the age of forty. He refused the position of *qāḍī* (judge) in Kufa, and was

⁵⁰ .Hassan. *Introduction to Fiqh*. P. 15-16. Philips. *The Evolution of Fiqh*. P. 89-94.

beaten because of his refusal, and remained in prison until his death. Abū Ḥanīfa is considered as a Follower; Because he met some Companions and narrated Hadiths from them.

The method of Abū Ḥanīfa relied on group discussion, posing a problem, and asking his students to discuss and record the solution, whatever it might be. They were also discussing hypothetical matters, which led to this *madhab* being called "What differs?". Hanafi school excelled in analogy and the reason of the legal ruling. In addition, it relied on the utility and the objectives of the Sharia.

Sources of its legal rulings: First, the **Quran** as a primary source. No other source on its level, every evidence contradicts the Quran, it must be inaccurate. The second in importance is the **Sunnah**, but with conditions; Hadith must be authentic (*ṣaḥīḥ*) and also, widely known (*mashūr*). The third is the **consensus of the Companions** which was given preference over Abū Ḥanīfa personal judgement. Followed by the **consensus of Muslim scholars** in any epoch. The fourth is the **opinion of the Companion**, and it was chosen by Abū Ḥanīfa if there was no consensus, so he used his deductive reasoning to choose the most accurate opinion for a specific incident. The fifth is *qiyās* (analogical deduction) which he felt free to use, because he had established it himself with his students. The sixth is *istiḥsān* (legal preference), in which he favored a more suitable judgment over the less suitable judgment, even though the favored may have a weaker proof. The seventh is *urf* (custom), local practice could be legalized if there were no Islamic custom for all.

The students of Abū Ḥanīfa: He had many students, the most famous of them were two: Abu Yūsuf Ya‘qūb ibn Ibrāhīm al-Anṣārī, Abū ‘Abd Allāh Muḥammad ibn al-Ḥasan ibn Farqad ash-Shaybānī.

Abu Yūsuf Ya‘qūb ibn Ibrāhīm al-Anṣārī (d.182 AH): He studied Hadith until he became noticeable scholar, then he studied *fiqh* under Abū Ḥanīfa nine years, when the later died, Abu Yūsuf studied in Medina under Imām Mālik. He was appointed as a chief judge in

the reign of ‘Abbāsīd Caliphate. He applied Ḥanafī *madhab* in governance, so he was a tool for spreading his school of thought.

Muḥammad ibn al-Ḥasan ash-Shaybānī (d.189 AH): He studied first Hadith, then *fiqh* under Abū Ḥanīfa. After the death of Abū Ḥanīfa, he studied under Abu Yūsuf, then he became one of the narrators of the book of Imām Mālik: “*al-Muwatta*’”. Imām al-Shāfi’ī studied under him and many others.

The Ottoman Empire codified its law according to the Ḥanafī school of thought, and all those officially appointed had to learn it because they had to act according to it, which is why this *madhab* spread throughout the world.

2. The ‘Awzā’ī *Madhab*

The founder is Abū ‘Amr ‘Abd al-Raḥmān ibn ‘Amr al-‘Awzā’ī who born in Baalbek in Lebanon (708-774 CE). He was scholar of Hadith, and used *qiyās* excessively. His *madhab* spread in grate Syria as well as in Spain until tenth century. It disappeared when the judge of Damascus encouraged people to study Shāfi’ī *madhab* by giving reward.⁵¹

3. The Mālikī *Madhab*⁵²

The founder is Mālik bin Anas ibn ‘Amr ibn al-Ḥārith (717-801 CE) was born in Medina (93 AH). He studied Hadith under al-Zuhri who was great scholar. He was beaten because of his *fatwá* that forced divorce is not valid, even if forced by the Caliph. Imām Mālik taught Hadiths and Athar of the Companions and their successors for forty years, and compiled his famous book “*al-Muwatta*’” as Caliph Ja‘far al-Mansur asked for a comprehensive law according to Sunnah to be imposed on all, but Imām Mālik refused to give him his book for such a purpose.

⁵¹ . Philips. *The Evolution of Fiqh*. P. 94.

⁵² . Hassan. *Introduction to Fiqh*. P. 19-23. Philips. *The Evolution of Fiqh*. P. 95-100.

The method of his teaching Hadith is one of two ways. The first is to discuss with his students the implications of a Hadith. The second is to present a current problem to them in order to discuss with them the appropriate Hadith that might carry the solution.

The sources of Islamic law according to Imām Mālik in order are the following: The **Quran** at first place then the **Sunnah** but should not contradict the practice of Medina people. The third is the **practice of people of Medina**, because the common practices must have been allowed or encouraged or command by the Prophet (ﷺ) who was living with them. So, it is an authentic source. The fourth is the **consensus of the Companions**. The fifth is **individual opinion of a Companion**. Then the sixth is *qiyās* (deductive reasoning) but Imām Malik used it rarely because of its subjectivity. The seven is the **customs of Medina people** who were in isolated eras since it did not contradict Hadith, because these customs had its origin from the generation who lived with the Prophet (ﷺ). The eighth, *istihsān* but under other name which is *istiṣlah*, means human welfare, but it might be not considered by the Sharia, in this method Imām Mālik satisfied the current needs. An example of it is a group shared in murdering someone, they were guilty even though they did not commit a murder. And also, the eligibility of a Caliph to collect more taxes from the rich according to the situation. Finally, *urf* (custom) and social habits in any part of Muslim world could be considered as a secondary source of law in a condition that it did not contradict the Sharia.

The students of Imām Mālik: The most famous were two.

Abu Abdur-Rahman ibn al-Qāsim, studied under his teacher for twenty years, then he wrote his book in Mālikī *fiqh*, “*al-Mudawwanah*”.

Abu Abdullah ibn Wahab, studied under his teacher, but he excelled in the deductive reasoning that was called *mufti*, a formal title.

There were also many students, moreover, some prominent figures studied his book under him such as al-Shāfi’ī as well as ash-Shaybānī.

4. **The Zaydī Madhab**

The founder is Imām Zayd ibn ‘Alī ibn al-Ḥusayn Zayn al-‘Ābidīn ibn ‘Alī ibn Abī Ṭālib (700-740 CE). He was the distinguished scholars of ‘Alawi family, he narrated Hadiths from all his relatives, travelled to Iraq to gain knowledge. His approach was to teach the Quran and Hadiths, if there was a jurisprudential question, he would try to answer or to refer to other jurists like Abdur-Rahman ibn Abi Laila.⁵³

5. **The Thawrī Madhab**⁵⁴

The founder is Sufyan al-Thawrī (719-777 CE). He was born in Kufa, became the main scholar of *fiqh* in the school of Hadith. He opposed the *qiyās* of Abū Ḥanīfa.

6. **The Shāfi‘ī Madhab**⁵⁵

The founder is Imām Abū ‘Abdillāh Muḥammad ibn Idrīs ash-Shāfi‘ī (769-820 CE). He was born in Gaza (150 AH), memorized the Quran at age of seven, after that he went to Hudhyl tribe to master the Arabic language. Then he travelled to Medina to study *fiqh* and Hadith under Imām Mālik. At the age of fifteen, Muslim ibn Khalid al-Zanji authorized al-Shāfi‘ī to issue *fatāwā*. After Imām Mālik’s death (801) he travelled to Yemen to teach, unfortunately, he was accused of Shiite tendency and was brought before ‘Abbāsīd Caliph Harun al-Rashid. He proved that his approach was correct, thus setting him free. He stayed at Iraq to study under Imām Muhammad ibn al-Hassan, the student of Abū Ḥanīfa. Afterward, he left to Egypt to study Laythi *madhab*, he remained there until his death.

The method of Imām al-Shāfi‘ī in constructing his *madhab* is to combine the two *madhāhib* (al-Mālikī and al-Ḥanafī) and create his own. As a result, he dictated his book “*al-Ḥujjah*” (the evidence) to his students on (810 CE) in Bagdad, which was known the old *madhab*. When he travelled to Egypt to study Laythi *madhab*, he was exposed to different

⁵³. Philips. *The Evolution of Fiqh*. P. 101-103.

⁵⁴. Ibid., p. 106.

⁵⁵. Philips. *The Evolution of Fiqh*. P. 108-112. Hassan. *Introduction to Fiqh*. P. 23-27.

customs and also, he learned many Hadiths which he had not known before, so he changed many of his *fatāwá*, and wrote his book *al-Umm* in which, the new *madhab* was formed. Imām al-Shāfi‘ī who was the one who systematically categorized the fundamental principles of *fiqh* (*uṣūl al-fiqh*), and it was a great achievement in the jurisprudential discipline.

The sources of Islamic law according to Imām al-Shāfi‘ī in order are the following: Firstly, the **Quran**. Secondly, the **Sunnah**, the accepted Hadiths have only one condition; It must be authentic (*ṣaḥīḥ*). Thirdly, *ijmā‘* (consensus). Fourthly, the **individual opinion of a Companion** but under one condition which is, there are no different opinions in contradict to each other. Fifthly, *qiyās* that has evidences in the Quran and the Sunnah, because the personal deductive reasoning is inferior to the first two sources. Sixthly, *istiḥāb* (linking) which requires keeping the thing in its previous regulation unless a legal situation changes it. It relied on the assumption that the legal ruling for an incident under specific conditions is valid as long as those conditions remained unchanged.

The students of Imām al-Shāfi‘ī: The most famous are three:

Abū Ya‘qūb Yusūf ibn Yahya al-Buwaytī: He was one of the greatest scholars of the Shāfi‘ī school, and he arranged the book of “*al-Umm*”.

Abū Ibrāhīm Ismā‘īl ibn Yahyā al-Muzanī al-Misrī: He was a constant acquaintance of al-Shāfi‘ī and wrote the most comprehensive and famous book in Shāfi‘ī school which named “*Mukhtaṣar al-Muzanī*”.

Al-Rabi‘ ibn Sulayman al-Murādī: He was the main narrator of al-Shāfi‘ī, he wrote the book of “*al-Umm*”, and the book of “*al-Risālah*”.

7. The Ḥanbalī Madhab⁵⁶

⁵⁶ . Philips. *The Evolution of Fiqh*. P. 112-115. Hassan. *Introduction to Fiqh*. P. 29-31.

The founder is Aḥmad ibn Ḥanbal al-Dhuhlī (778-855 CE), he was born in Bagdad (164 AH). He studied Hadith as well as *fiqh* under Abu Yūsuf then Imām al-Shāfi‘ī and became the greatest narrator of Hadith.

He taught Hadith, but was interrupted a few years because ‘Abbāsīd Caliphs (al-Ma’mūn and al-Wāthiq) persecuted him for his rejection of the Mu‘tazila philosophy of the creation of the Quran. After that, Caliph Al-Moutawakel released him to continue his teaching until his death.

The method of Imām Aḥmad was to dictate Hadiths from his book “*al-Musnad*”, with the interpretations of the Companions, when he encountered a jurisprudential problem, he would offer his opinion, but he asked his students to not to record. So, his *fiqh* was recorded by the second generation of his students.

The sources of Islamic law according to Imām Aḥmad in order are the following: the **Quran**. Secondly, the **Sunnah**, his condition to accept Hadith is to be attributed directly to the Prophet (ﷺ) (*marfū‘*). Thirdly, the **consensus of the Companions**. Fourthly, the **individual opinion of a Companion**, the contradicted opinions are acceptable by Imām Aḥmad. Fifthly, the **weak Hadith**, but its weakness is not due to incompetence narrators, such as liars and degenerates. Sixthly, *qiyās* that was applied hardly in Ḥanbalī *madhab*.

The students of Imām Aḥmad were his sons and also Imām al-Bukhārī and Imām Muslim. Most of his followers are in Saudi Arabia because King Abdul-Aziz declared the Ḥanbali school of ruling the official law of the kingdom.

8. The Dhāhirī *Madhab*⁵⁷

The founder is Dāwūd ibn ‘Alī bin Khalaf al-Zāhirī (815-883 CE). He was born in Kufa, and studied *fiqh* under Imam al-Shāfi‘ī, but he returned to study only Hadith under Imām Aḥmad, he remained there until his expulsion for saying that the Quran is newly existed. After

⁵⁷ . Philips. *The Evolution of Fiqh*. P. 115-117. Hassan. *Introduction to Fiqh*. P. 32.

that he became an independent scholar with a unique way of thinking based on the literal meaning of the texts; The Quran and the Sunnah.

The sources of Islamic law according to Imām al-Zāhirī in order are the following: Firstly, the **Quran**. Secondly, the **Sunnah**. But these two sources must be understood literally, and practiced under the same conditions as the previous ones. Thirdly, the **consensus of the Companions**. Fourthly, *mafḥūm* (understood meaning), but it was sometimes not distinguishable from *qiyās* (analogical deduction).

Ibn Ḥazm was one of the most prominent students of Imām al-Dhāhirī in Spain in the eleventh century. He revived the *madhab* and wrote exceptional books such as; “*Iḥkām al-Aḥkām in Uṣūl al-Fiqh*” and “*al-Muḥallā in Fiqh*”. As a result, Dhāhirī *madhab* flourished in Spain until the exit of the Muslim state in Andalusia.

9. The Jarīrī Madhab

The founder is Abū Ja‘far Muḥammad ibn Jarīr ibn Yazīd al-Ṭabarī (839-923 CE). He was born in Tabaristan, He studied all *madhāhib*, and followed Shāfi‘ī *madhab*, then he created his own *madhab*.

He brilliantly wrote a book on interpretation entitled “*Jāmi‘ al-Bayān*” and another history book entitled “*Tārīkh al-Rusul wa al-Mulūk*” the History of the Messengers and the King.⁵⁸

Lesson Summary

There were many *madhāhib* in this era, some of them will be mentioned here:

1. The founder of Ḥanafī *madhab* is Abū Ḥanīfa, who is one of the followers. He studied Dialectics and *fiqh*. His method was group discussion, and he discussed with his students also hypothetical problems. Ḥanafī school relied on analogy, utility and the objectives of the Sharia. The sources of Islamic law are the following respectively: The Quran, the

⁵⁸ . Philips. *The Evolution of Fiqh*. P. 117-118.

Sunnah, consensus of the Companions, consensus of Muslim scholars, opinion of the Companion, *qiyās*, *istiḥsān*, ‘urf. Abu Yūsuf, the student of Abū Ḥanīfa, applied Ḥanafī *madhab* in the era of ‘Abbāsīd Caliphate because he was a chief judge, that helped in spreading the *madhab*.

2. The founder of Mālikī Madhab is Mālik bin Anas. He studied Hadith and taught it for forty years; He compiled his famous book “*al-Muwatta’*”. He had either of two methods in teaching; Discussing the implications of the hadith, or raising a problem to find the appropriate hadith that solves it. The sources of Islamic law are the following respectively: The Quran, the Sunnah, the practice of people of Medina, consensus of the Companions, opinion of a Companion, *qiyās*, customs of Medina people, *istiḥsān*, *istiṣlah*, ‘urf. His student ibn al-Qāsim wrote “*al-Mudawwanah*” in Mālikī *madhab*, and also, ibn Wahab was called *mufī* because he excelled in reasoning.

3. The founder of Shāfi‘ī *madhab* is Muḥammad ibn Idrīs ash-Shāfi‘ī. He studied Hadith and *fiqh*. He created his old *madhab* in Iraq by combining Mālikī and Ḥanafī *Madhāhib*. When he left to Egypt, he changed his *fatāwá* and wrote his book “*al-Umm*”, and that was his new *madhab*. The sources of Islamic law are the following respectively: The Quran, the Sunnah, consensus, opinion of a Companion, *qiyās*, *istishāb*. His books were arranged by his students al-Buwaytī, al-Misrī and al-Murādī.

4. The founder of Ḥanbalī *madhab* is Aḥmad ibn Ḥanbal. He studies *fiqh*. and Hadith, and became the greatest narrator of Hadith. His method was teaching Hadiths from “*al-Musnad*”, with the interpretation of the Companions, he could offer his solution for jurisprudential problem but without recording. His sources of Islamic law differed from others in accepting weak Hadith after consensus, and rarely used *qiyās*, while he did not recognize custom as source. Imām Muslim and al-Bukhārī were his students.

5. The founder of Dhāhirī *madhab* is Dāwūd al-Zāhirī. He studied *fiqh* and Hadith and became an independent scholar with a distinctive method of literal meaning of the texts. His sources differed from others in replacing *qiyās* by *al-mafhūm* (understood), and denied custom.

Lesson 8

The Fifth Stage: Consolidation of *Fiqh*

This era covers the period from the fall of Baghdad until the end of the ‘Abbāsīd Caliphate (950-1258 CE). There were some recognizable phenomena occurred such as: Writing the debates in books, factionalism, drop of all *madhāhib* except the four that survived, the spirit of competition dominated, scholars should establish their *ijtihād* according to the *madhab* they followed and finally the formalizing to *fiqh* continued until it became standard.⁵⁹

1. **The Four *Madhāhib*.**⁶⁰ All *madhāhib* disappeared except the four main *madhāhib*, Ḥanafī, Mālikī, Shāfi‘ī and Ḥanbalī. Their followers named themselves according to their *madhab* for example: Al-Baghawī Ash-Shāfi‘ī. After al-Shāfi‘ī introduced the fundamental principles, the followers of other *madhāhib* determined the fundamentals of their *madhāhib*. Their *ijtihād* turned out to be limited, as a result, independent *ijtiḥād* became too rarely that it was supplanted by sectarian *ijtihād* (*ijtiḥād madhabī*). Accordingly, the differences between scholars were only in the secondary principles, but not in fundamental principles. *tarjīḥ* (favoring)'s process arose as a tool for selecting the correct opinion among others about the same incident.

The scholars of each *madhab* removed all fabricated statements, and classified the founder of each *madhab*'s narrations according to their accuracy, which called *taṣḥīḥ*

⁵⁹ . Philips. *The Evolution of Fiqh*. P. 133.

⁶⁰ . Ibid., p. 134-135.

(correcting). This systematic treatment facilitates *ijtihād* within the *madhab* itself, but contributed to factionalism.

2. **Compilation of *Fiqh*:**⁶¹ A new format of writing and arranging *fiqh*. in chapters and headlines developed and became a common standard until now. Any researcher who seeks to address a jurisprudential subject, he formulates the opinions of each school with its proof, and then proceeds to systematically prove the opinion of his school.

The Sixth Stage: Declining of *Fiqh*

This stage covers the period between the fall of the ‘Abbāsīd Caliphate and the expulsion of the ‘Abbāsīd family to the nineteenth century. The most prominent features of this period were blind following (*taqlīd*) and factionalism. Consequently, *ijtihād* was missed, so all efforts in jurisprudence was directed to the commentary method. With the fall of the Ottoman Empire, which represented the last Islamic Caliphate, European laws replaced Islamic laws. Because of the loss of dynamic jurisprudence, Islamic law could not cope with current issues.⁶²

1. **The Emergence of *Taqlīd*:**⁶³ Muslim scholars decided to close the door to *ijtihād*, because all matters were dealt with. However, some unfamiliar concepts have developed. One of them is that, every Muslim should follow one of the four *madhāhib*, otherwise he will be apostate. Some scholars believed that the Prophet (ﷺ) anticipated the presence of the four Imams. Marriage from different *madhāhib* became prohibited. Each one should pray behind the Imam from his *madhab*. Mosques were divided between different *madhāhib*. Even the masjid al-Ḥarām was affected by this tendency. Later on, the King Abdul-Aziz ibn Saud united all Muslims behind one Imam.

2. **The Reasons of *Taqlīd*:**⁶⁴ *Taqlīd* (blind following) is different from *ittibā’* (reasoned following). *Taqlīd* refers to follow one *madhab* regardless of mistakes they see. It is

⁶¹ . Philips. *The Evolution of Fiqh*.135.

⁶² . Ibid., p. 137.138.

⁶³ . Ibid., p. 138-139.

⁶⁴ . Ibid., p.139-141.

acceptable for those ordinary people with little knowledge in the Sharia. There are many factors that led to *taqlīd* and closing the door of *ijtihād*, some of them will be mentioned here:

- A. The large amount of hypothetical *fiqh* left a small room for *ijtihād*.
- B. When the ‘Abbāsīd Caliphate fell, the ministers took power, most of whom were Shiites. Moreover, the minor rulers showed less interest in Islamic law.
- C. After the disintegration of the ‘Abbāsīd Caliphate into small states, each state chose a school of thought to follow, Egypt chose Shāfi’ī, Turkey chose Ḥanafī, and Spain chose Mālikī.
- D. Some unqualified scholars made mistakes in *ijtihād*, misleading the public, which prompted other scholars to close the door to *ijtihād* in order to protect Sharia.

3. **Compilation of *Fiqh*:**⁶⁵ The jurisprudential scripts were exposed to treatment in order to make it memoizable by students. This treatment went through some processes such as condensation and abridgement, and then it was put into rhyme. Then the scholars added to these summaries successively; Explanations, commentaries and footnotes. *Ijtihād* was narrowly defined and limited which led to the exclusion of many earlier scholars. A few books had been written in comparative *fiqh*. The authors selected the most accurate opinions of Imāms. Ottoman Caliphs codified Ḥanafī *madhab* in “*Majallat al-Aḥkām al-‘Adliyyah*” in (1876 CE) by entrusting the seven top ranking jurists. The resulting law was enforced officially but it has some negative social effects such as increasing fanaticism trend in Muslim community. European law replaced Islamic law after the fall of Ottoman Empire. It remained unused in all Muslim countries except Saudi Arabia which practices Ḥanbalī *madhab*, Pakistan which practices Ḥanafī *madhab*, Iran which practices Ja‘farī *madhab*.

⁶⁵ . Philips. *The Evolution of Fiqh*. P. 141-143.

4. **Reformers:**⁶⁶ A few exceptional scholars emerged in the era of *taqlīd* to re-establish *ijtihād* and return to the original religion. Some of them will be mentioned here as examples.

A. Aḥmad ibn Taymiyyah (1263-1328 CE) in Damascus: He is the most important reformer of his time, but he denounced *taqlīd*, so people called him an apostate. He studied jurisprudence in the Ḥanbalī school of thought, mastered all Islamic sciences. He conducted researches on all deviant doctrines of Islam. He also studied and criticized all Christian and Jewish denominations. His student Ibn Qayyim al-Jawziyya was a great scholar in *fiqh* and Hadith.

B. Muḥammad ibn Ali al-Shawkānī (1759–1834 CE) in Yemen: He freed himself from all *madhāhib* after studying *fiqh* and its fundamental deeply. He believed that *taqlīd* is prohibited.

C. Shāh Walīullāh Dehlawī (1703-1762 CE) in India: He mastered all Islamic sciences, and called for opening the door of *ijtihād* and unify all *madhāhib*.

D. Sayyid Jamāl al-Dīn al-Afghānī (1839-1879 CE) in Egypt. He criticized *taqlīd*, and taught his ideas in al-Azhar University. His student Muḥammad ‘Abduh called for *ijtihād* in his books. Moreover, some other scholars have emerged in the twentieth century to raise the flag of *ijtihād*.

E. Hassan al-Banna, Sayed Qutub in Egypt. Sayyid Abul A'la al-Maududi in Pakistan. Muhammad Nāsir ad-Din al-Albānī in Damascus called for *ijtihād* and unifying all *madhāhib*.

Comparative jurisprudence is taught in educational institutions that teach jurisprudence, but the truth is that every institution teaches the state’s *madhab*, even at Al-Azhar University

⁶⁶ . Philips. *The Evolution of Fiqh*. P. 143-147.

where all *madhāhib* are taught, but students of each *madhab* have their own class, and therefore students are sorted according to their *madhāhib*.

Lesson Summary

1. The consolidation stage that accompanied the demise of ‘Abbāsīd Caliphate witnessed various phenomena in the development of *fiqh*. The four *madhāhib* survive but others disappeared. The fundamental principles for all four *madhāhib* have been well defined.

2. *Ijtihād Madhabī* prevailed, while independent *ijtihād* has almost disappeared. The *tarjih* was developed as a tool for choosing the most accurate opinion. *Taṣhīh* was also applied to remove fabrications and classify narratives according to their accuracy.

3. A new format for arranging the books of *fiqh* in chapters and headlines was established, the scholars should go through specific steps in order to make their research.

4. The noticeable features of the declining stage that covered the fall of the ‘Abbāsīd Caliphate to the nineteenth century are *taqlīd* and factionalism.

5. With prevailing the phenomenon of *taqlīd*, some unfamiliar concepts occupied Muslim societies. A Muslim must adhere to one *madhab*. Marriage between different sects is not permissible, rather the prayer must be behind the imam of the same sect.

6. Some of the reasons that led to *taqlīd* are: A small room left to Ijtihad because of the huge jurisprudential legacy left to us. After falling the ‘Abbāsīd Caliphate, people who took the power showed less interest in Islamic law, and each state had its own *madhab*. Some scholars who practiced *ijtihād* committed big mistakes that left others discouraged *ijtihād*.

7. The jurisprudential writings were limited to Explanations, commentaries and footnotes on the summaries prepared for students. Ottoman Caliphate codified Ḥanafī *madhab* in “*Majallat al-Aḥkām al-‘Adliyyah*” in order to be its official law. After the fall of the last Islamic Caliphate, European law replaced Islamic law except in Turkey, Iran and Pakistan.

8. Some brilliant scholars grew up in the era of *taqlīd* calling for the revival of religion and opening the door to *ijtihād*. The foremost of them is Ibn Taymiyyah, then al-Shawkānī and Walīullāh Dehlawī.

Lesson 9

The Reasons of Differences Among the Companions, and Between the Jurists

1. **Differences Among the Companions:**⁶⁷ The differences in interpretations and opinions among the Companions were a healthy phenomenon that proves the freedom of thinking that prevailed in their time. These differences might be attributed to many factors. One of them was that the variety in innate personal capacities for reasoning. The other factor was related to the lack of necessary information; The development of sciences related to Hadith, which is the second source of legal rulings, flourished too late. As a result, the Companions were not able to know all the Hadiths, and to distinguish between the true and the false.

Later on, when the Companions were making *ijtihād*, some disagreements arose, but they didn't like it. In return, they were trying their best to bridge the gap which created by their variations. There is ample evidence for this, for example: Omar Ibn Al-Khattab settled the dispute when some of the Companions were arguing in prayer with a piece of cloth by expressing the correct opinion.⁶⁸

Moreover, the early scholars denied the validity of the difference, and emphasized that the correct saying is only one. If they declared different opinions on a topic, they would investigate each other's evidence. But in general, they did not accept the idea of contradiction in judgments, because the Quran criticizes disagreement. Although they differed in the practice of some judgments, they showed unity and integration.⁶⁹

⁶⁷ . Philips. *The Evolution of Fiqh*. P. 166-176.

⁶⁸ . Ibn Baṭṭāl. (2003). *Sharḥ Ṣaḥīḥ al-Bukhārī*. Riyad: Dār al-Rusd. Vol.2, p. 21.

⁶⁹ . Philips. *The Evolution of Fiqh*. P. 172-176.

The Hadiths that encourage sectarianism such as: “Disagreement among my nation is a mercy”. “My Companions are like stars; You will be guided by whichever you follow”, they are basically weak or fabricated and contradict some Quranic verses like: {And not dispute with one another, or you would be discouraged and weakened} (Q: 8-46). {‘like’ those who have divided their faith and split into sects, each rejoicing in what they have} (Q:30-28). {Had your Lord so willed, He would have certainly made humanity one single community ‘of believers’, but they will always ‘choose to’ differ} (Q: 11-118).

2. Differences Among the Jurists: The main reasons for conflicting rulings are mostly embedded in these factors: Word meanings, Hadiths narrations, admissibility of certain principles and the method of *qiyās*.⁷⁰

A. **Word meanings:** Shared literal meanings, literal and figurative meanings and grammatical meanings.

a.1. **Shared literal meanings:**⁷¹ There are some words in the Quran which have more than one meaning that influenced the rulings related to them. The word ‘*ayn* (eye, fountain and also spy), *nikāḥ* (marriage, sex as well as the contract), *shirā’* (buying and selling) and also the word *qur’* (menstruation and the purity period).

The differences in the interpretation of the word (*qur’*) divided the scholars into two groups regarding this verse: {Divorced women must wait three monthly cycles ‘before they can re-marry} (Q: 2-228). The first group (Mālikī, Shāfi‘ī and Ḥanbalī) believed that the *qur’* is the purity period, accordingly the divorced woman should wait until the third purity finishes to get married, it will be two menses and less than three purity periods because divorce must take place in the beginning of purity period.

⁷⁰ . Philips. *The Evolution of Fiqh*. P. 122-131.

⁷¹ . Muhammad Hasan Abd al-Ghaffar. (n.d). *Athr al-Ikhtilāf fī al-Qawā‘id al-Uṣuliyyah fī Ikhtilāf al-Fuqahā’*. Vol.3, p. 9. <https://shamela.ws/book/37648/41#p2>.

The second group (Ḥanafī *madhab*) believed that the *qur'* is the menses, accordingly women should wait until the third menstruation finishes to get married, thus, the waiting period will be three menses and three purity periods. The evidence that proves the correctness of this opinion is the Hadith: (She should abandon prayer during her menstrual period (*qurū'*), then wash and pray; then she should wash during her menstrual period.)⁷²

a.2. **Literal and figurative meanings:** Some Arabic words have two meanings; One is literal, and the other figurative. The example is the word Lams (touch) which is literally means contacting hands or touching. Figurative (symbolic) mostly indicates in the Quran having sex. These differences lead to different jurisprudential rulings concerning this verse: {Or you have contacted women and find no water, then seek clean earth} (Q:4-43) as following:

- Touch does not break the ablution because the verse mentions sexual intercourse. This is the opinion of Abu Ḥanīfa and one of Ahmad's sayings, and it is supported by the Hadith: (It was narrated from 'Āishah that the Prophet (ﷺ) used to kiss one of his wives then pray without performing *wudū'*).⁷³

- Touch does break the ablution if it accompanies with pleasurable feelings. This is the opinion of Mālik, and it is supported by the Hadith: (I used to be asleep while my legs would be in the front of the Messenger of Allah (ﷺ) while he was praying during the night. When he wanted to prostrate, he would prod my feet, so I would pull them up, and he would prostrate.)⁷⁴

- Touch does break the ablution whatever it is, this is the opinion of al- Shāfi'ī and one of Ahmad's sayings.⁷⁵

a.3. **Grammatical meanings:** There are some grammatical constructions that need clarifying, and its ambiguity caused different rulings among the four *madhāhib*. The example

⁷² . Abū Dā'ūd. (n.d). *Sunan Abū Dāwūd*. No. 297. Grade: Ṣaḥīḥ (Al-Albani).

⁷³ . Ahmad ibn Shu'ib al-Nasā'i. (1994). *Sunan an-Nasā'i*. Maktab al-Maṭbu'āt al-Islāmyyah. No. 170. Grade: Ḥasan (Al-Albani).

⁷⁴ . Abū Dā'ūd. *Sunan Abū Dāwūd*. No. 170.

⁷⁵ . Ibn Qudāmah al-Maqdisī. (1997). *Al-Mughnī*. Ed. Al-Turky. Saudi: Dār 'Ālam al-Kutub. Vol.1, p. 256-257.

is the word *'ilā* (to), as stated in this verse, it mentions the process of performing ablution. {When you rise up for prayer, wash your faces and your hands up to the elbows} (Q: 4-6). There are two jurisprudential opinions regarding the correct interpretation of this verse, whether the ablution must include the elbows or not. The four Imāms believed that the ablution must include the elbows. Their proof is the Hadiths that describe the performance of the Prophet (ﷺ), one of which is that of Abu Hurayrah: “He (Abu Hurayrah) extended the (washing) of his hand that it went up to his armpit. I said: O Abu Huraira, what is this ablution? He said: O of the tribe of Faruukh, you are here; If I knew that you were here, I would have never performed ablution like this; I have heard my Friend (ﷺ) say: (In a believer adornment would reach the places where ablution reaches).⁷⁶ However, a few of jurists said that washing hands until the elbows is enough, their evidence is linguistic, they used this verse as an example: {Then complete the fast until nightfall} (Q: 2-187).⁷⁷

B. Narrations of Hadiths: Availability of Hadiths, weak narrations, conditions of accepting Hadiths and resolution of textual conflict in Hadiths.

b.1. Availability of Hadiths: The Hadiths were not shown to the great Imāms, because the narrators were Companions who lived in different regions of the Islamic empire, and it was not until the early first decade of the tenth century that the original six books of Hadiths became available. Some of rulings were influenced by this factor such as *ṣalāt al-istisqā'* (the rain's prayer). Abu Ḥanīfa held the position that there is no formal prayer for *istisqā'*, because the Prophet (ﷺ) was satisfied with supplication.⁷⁸ Whereas, the three Imams agreed that *ṣalāt al-istisqā'* (the rain's prayer) is correct, their evidence the Hadith of al-Walid ibn Uqbah when he

⁷⁶ . Muslim. *Ṣaḥīḥ Muslim*. No. 250.

⁷⁷ . Ibn Qudāmah al-Maqdisī. *Al-Mughnī*. Vol.1, p. 172.

⁷⁸ . Ibid., vol.3, p. 336.

asked Ibn Abbas if the prayer for rain was offered by the Prophet (ﷺ). So, Ibn Abbas described it.⁷⁹

b.2. **Weak narrations:** Some jurists accept weak Hadiths in legislation, but not all, and thus there are some differences in the resulting rulings. The example is the case of breaking ablution by vomiting. Ḥanafī and Ḥanbalī *madhāhib* believed that vomiting breaks ablution, they supported their viewpoint by a weak Hadith: (Whoever vomits, has a nosebleed, belches, or emits prostatic fluid, should stop praying; perform ablution...)⁸⁰. The Mālikī and Shāfi'ī schools see that vomiting does not invalidate ablution, because the Hadith mentioned is not authentic, and there are no other Hadiths that support the previous statement.⁸¹

b.3. **Conditions of accepting Hadiths:** Each Imām had his own conditions for accepting Hadiths in legalization. Abu Ḥanīfa stipulated that the Hadith be well-known, and Mālik stipulated that the Hadiths should not contradict the actions of the people of Medina. Ahmad ibn Ḥanbal accepted *mursal* Hadiths in ruling, while al-Shāfi'ī accepted only the *mursal* of Sa'īd ibn al-Mussayyib.

b.4. **Resolution of textual conflict in Hadiths:** The four Imāms used two procedures in order to overcome contradiction between literal meanings of Hadiths. One of them called *tarjih* (preference), and the other called *jami'* (combining). *Jami'* refers to combining contradictory Hadiths so that one is general and the other is specific. The example is the prohibition of praying at specific times. The Prophet (ﷺ) (Forbade offering prayers after the *Fajr* prayer till the rising of the sun and after the *'Aṣr* prayer till its setting).⁸² But there is an

⁷⁹ . “The Prophet (ﷺ) went out wearing old clothes in a humble and lowly manner until he reached the place of prayer. He then ascended the pulpit, but he did not deliver the sermon as you deliver. He remained engaged in making supplication, showing humbleness, and uttering the takbir. He then offered two rak'ahs of prayer as done on the 'Id (festival). *Sunan Abū Dāwūd*. No. 1165. Grade: Hasan (Al-Albani)

⁸⁰. Ibn Mājah al-Qazwīnī. (n.d). *Sunan Ibn Mājah*. Cairo: Dār 'Iḥyā' Al-Kutub al-'Arabīyah. No.1221. Grade: Da'īf.

⁸¹. Ibn Qudāmah al-Maqdisī. *Al-Mughnī*. Vol.1, p. 247-249.

⁸². Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 563.

authentic Hadith in which the Prophet (ﷺ) allowed certain *ṣalāh* to be performed without restriction: (If anyone of you enters a mosque, he should pray two rak`at before sitting.)⁸³

Accordingly, Mālikī, Shāfi‘ī and Ḥanbalī *madhāhib* classified the first Hadith as general regulation that forbids voluntary *ṣalāh*, whereas the second is specific that allowed the highly recommended *ṣalāh* at that time.

C. Admissibility of Certain Principles: There are a number of basic principles that have been the subject of disagreement among the jurists who have not agreed upon them.

- The *ijmā‘* (consensus) after the time of the Companions is doubtful about the possibility of its occurrence (al- Shāfi‘ī), some rejected it (Ibn Ḥanbal).
- The custom of Medina’s people is rejected by the majority of jurists.
- *Istiḥsān* (preference) and *istiṣlāḥ* (benefit) are rejected that too independent of the texts (al- Shāfi‘ī).

D. The Methods of *Qiyās* (Analogical deduction): The application of *qiyās* took different approaches that led to great differences among the jurists. Some of them used it on a large scale, so they are belonged to the school of opinion, and others used it with strict conditions. This source has been a controversial topic for a long time.

Lesson Summary

1. Freedom of thought prevailed at the time of the companions who differed in opinion due to lack of information, but they tried to settle their differences.
2. The scholars in the time of the followers rejected the concept of different judgments on one subject, because the Quran encourages unity and criticizes disagreement.
3. Most of jurisprudential differences were the results of linguistic differences or the acceptance of Hadiths.

⁸³ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 433.

4. Linguistic differences include shared literal meanings for one word, and the word that has literal and figurative meanings, and also different grammatical meanings.

5. The differences in the Hadith were about its availability and the weakness of its narration. Moreover, the jurists differed on the conditions for accepting the Hadith. The textual dispute was resolved in one of two ways; Either *tarjih* (preference) or *jam'* (combining).

6. The jurists differed in accepting some sources such as; *ijmā'*, the custom of medina's people, *istihsān* and *istiṣlāḥ*, they also used *qiyās* in different methods and to different extent.

Lesson 10

The Books of the Four *Madhāhib* and Their Terminologies

In this section, the most important books of the four schools of thought and books of comparative jurisprudence. Moreover, there is an explanation of the terms used by the scholars of each *madhhab*.

Ḥanafī *Madhab* Books

1. “*Zāhir al-Riwāyyah*” (the appearance of the novel) by Imām Muhammad ibn al-Ḥasan al-Shaybānī, it includes: *Al-Aṣl* (the origin), *al-Mabsūt*, *al-Ziyādāt* (the increases), *Jāmi' al-Kabīr* (big collector), *Jāmi' al-Ṣaghīr* (small collector), *al-Sīyar al-Kabīr* (the big biographies), *al-Sīyar al-Ṣaghīr* (the small biographies).

2. “*Al-Mabsūf*” (the extended) by Imām Abi Bakr al-Sarkhasī.

3. “*Al-Baḥr al-Ra'iq Sharḥ Kanz al-Daqa'iq*” (the clear sea, explanation of treasure minutes) by Abd Allah ibn Ahmad al-Nasafī.

4. “*Badā'i al-Sanā'i fī Tartīb al-Sharā'i*” (goodies of crafts in the order of the canons) by Abu Bakr al Kāsānī.

5. “*Al-Hidāyah Sharḥ Bidāyat al-Mubtadī*” (the guidance of explaining the beginning of the beginner) by al-Marghīnānī.

6. “*kitāb al-kharāj*” (the taxes) by al-Qaḍī Abū Yūsuf.

7. “*Musnad al-Imam Abu Ḥanīfa*” by Abu Nu'aym al-Aṣbahānī.

8. “*Ḥashiyat Ibn ‘Ābidīn ‘Alā al-Durr al-Mukhtār*” (footnote of ibn abidin on chosen essence).

9. “*Tuḥfat al-Fuqahā*” (the masterpiece of jurists) by Samarkandī.

10. “*Nur al-Idāh fī-Fiqh al-Ḥanafī by al-Sharanbalālī*” (the light of clarification in Ḥanafī jurisprudence).

11. “*Al-Mukhtaṣar al-Qudūrī fī-Fiqh al-Ḥanafī*”.

12. “*kitāb al-Athār*” By Imām Muhammad ibn al-Hasan al-Shaybānī.

13. “*Fatḥ al-Qādīr*” (opening the Almighty) by Ibn al-Humām.

14. “*Majallat al-Aḥkām al-‘Adliyah*” (Mecelle-’i Aḥkām-ı ‘Adliye).

Ḥanafī Madhab Terminologies⁸⁴

- “*Al-Imām*”: *al-Imām al-A‘zam* Abū Ḥanīfah.
- “*Al-Imām al-Thānī*”: Abū Yūsuf.
- “*Al-Imām al-Thālith*”: al-Imām al-Rabbānī: Muhammad ibn al-Hasan al-Shaybānī.
- “*Al-Ā‘immah al-Thalāthah*”: Abū Ḥanīfah, Abū Yūsuf, al-Shaybānī.
- “*Al-Shaykhān*”: Abū Ḥanīfah and Abū Yūsuf.
- “*Al-Ṣāhibayn*”: Abū Yūsuf and al-Shaybānī.
- “*Aṣḥābunā*”: The fuqahā’ of the *madhab*.
- “*Shamsu al-A‘immah*”: al-Sarkhasī.
- “*Al-Salaf; al-Mutaqadimūn*”: The early scholars of the *madhab*.

⁸⁴ . Hassan. *Introduction to Fiqh*. P. 18-19.

- “*Al-Khalaf; al-Muta’akhirūn*”: The later scholars of the *madhab*.
- “*Al-Mashāyikh*”: Anyone who did not meet Abū Ḥanīfa.

Mālikī Madhab Books

1. “*Al-Muwaṭṭa’*” (the easy facilitator) by Imām Mālik.
2. “*Al-Mudawwanah al-Kubrā*”, “*Mudawwanat al-Aḥwāl al-Shakhṣiyyah*” by Sahnūn ibn Sa’īd.
3. “*Al-Mustakhrajah*” (*al-Utbiyyah*) by Muhammad ibn Ahmad al-‘Utbī.
4. “*Al-Wāḍiḥah*” by ‘Abdīl-Malik ibn Habīb al-Sulamī.
5. “*Al-Mawwāziyyah*” by Muhammad ibn Ibrāhīm al-Mawwāz
6. “*Mukhtaṣar al-Imām khalīl*” by Khalīl ibn Ishāq.
7. “*Ḥāshiyat al-Dusūqī ‘Alā al-Sharḥ al-Kabīr*”.
8. “*Sharḥ Bidayat al-Mujtahid wa Nihāyat al-Muqtaṣid*” (explanation of the beginning of the hardworking and the end of the frugal) by Abdullah al-‘Abādī.
9. “*Al-Tamhīd*” (*Sharḥ al-Muwaṭṭa’*) by Imām ibn Abd-al-Barr.
11. “*Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl*” by Imām al-Haṭṭāb.
12. “*Al-Dhakhīrah*” (the reservoir) by al-Qarāfī.
13. “*Al-Qawānīn al-Fiqhiyyah*” by Ibn Jizī al-Kalbī.
14. “*Matn al-Risālah*” by al-Qayrawānī.
15. “*Al-Kāfī fī Fiqh Ahl al-Madinah*” by Imām ibn Abd-al-Barr.

The Terminologies of Mālikī Madhab⁸⁵

- “*Al-Kitāb*”: *Al-Mudawwanah*
- “*Al-Ummahāt al-Arba’*”: *Al-Mudawwanah*, *al-Mustakhrajah*, *al-Wāḍiḥah*, and *al-Mawwāziyyah*.
- “*Al-Madanīyūn*”: The followers of Imām Mālik

⁸⁵ . Hassan. *Introduction to Fiqh*. P. 22-23.

- “*Al-Imām*”: Al-Māziri
- “*Al-Shaykh*”: Ibn Abī Zayd al-Qayrawānī
- “*Al-Shaykhān*”: Ibn Abī Zayd al-Qayrawānī and ibn al-Qābisī.
- “*Al-Riwāyah*”: The speech of Imām Mālik.
- “*Al-Aqwāl*”: The speech of the students of Imām Mālik.
- “*Al-Ittifāq*”: The agreement within the *madhab*.
- “*Al-Ijmā’*”: The consensus of the scholars generally.
- “*Al-Jumhūr*”: The four schools have this view.
- “*Al-Mutaqīdimūn*”: Before ibn Abī Zayd al-Qayrawānī
- “*Al-Muta’akhirūn*”: After and including ibn Abī Zayd al-Qayrawānī
- “*Al-Azhar/al-Aṣaḥ/al-Ṣaḥiḥ*”: The strongest opinion.
- “*Al-Mashhūr*”: The famous view.

Shāfi‘ī Madhab Books

1. “*Al-Umm*” by Imām Shāfi‘ī.
2. “*Minhāj al-Ṭālibīn*” (the student curriculum) by Imām al-Nawawī.
3. “*T’ānat al-Ṭālibīn ‘Alā Ḥall al-Fāz Fath al-Mu’in*” (the guidance of the students to solve the words of the helper’s opening) by Sayid al-Bakrī.
4. “*Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj*” (guide the needy to explain the curriculum) by al-Ramlī.
5. “*Tuḥfat al-Muḥtāj bi Sharḥ al-Minhāj*” (the masterpiece of the needy to explain the curriculum) by Ibn Ḥajar al-Haytamī.
6. “*Al-Iqnā’ fī Ḥall al-fāz Abī Shujā’*” (persuasion in solving the words of Abi Shujā) by Al-Khatib al-Shirbīnī.
7. “*Al-Wajīz fī al-Fiqh al-Shāfi’ī*” by Abu Hamid al-Ghazālī.

8. “*Asnā al-Maṭālib fī Sharḥ Rawḍ al-Ṭālib*” (the highest demands in explaining the student's kindergarten) by Zakaryā al-Anṣārī.
9. “*Mughnī al-Muḥtāj ilā Ma ‘rifat Ma ‘ānī al-fāz al-Minhāj*” (the sufficiency of the needy in knowing the meanings of the curriculum words) by Imam al-Khatīb al-Shirbīnī.
10. “*Qawā ‘id al-Aḥkām fī Maṣāliḥ al-Ibād*” by Al-‘Izz ibn Abd al-Salām.
11. “*Matn al-Ghāyah wa al-Taqrīb*” (the text of the target and approximation) by Abu Shujā‘ al-Aṣfahānī.
12. “*Luma ‘ al-Lawāmi ‘ fī Tawḍīḥ Jam ‘ al-Jawāmi‘*” (luminous shine in clarifying the collections) by ibn Raslān al-Ramlī.
13. “*Matn al-Zubad (Ṣafwat al-zubdah)*” by Ibn Raslān.
14. “*Al-Yāqūt al-Nafīs fī Madhab Ibn Idrīs*” (precious sapphire) by Ahmed ibn Umar al-Shāṭirī.
15. “*Mukhtaṣr al-Muzanī*”.
16. “*Al-Hāwī al-Kabīr*” by al-Māwardī.
17. “*Umdat al-Sālik wa ‘Uddat al-Nāsik*” (the walking pillar and the hermit device) by Ibn Nāqīb al-Maṣrī.

The Terminologies of Shāfi‘ī *Madhab*⁸⁶

- “*Al-Imām*”: Imām al-Ḥaramayn al-Juwānī.
- “*Al-Qāḍī*”: Al-Qāḍī Hussayn al-Marwadhī.
- “*Qāḍīayn*”: Al-Māwardī and al-Rūiyānī.
- “*Al-Shāriḥ*”: Imām Jalāl al-Dīn al-Maḥallī.
- “*Shaykhayn*”: Al-Rāfi‘ī and al-Nawawī.
- “*Al-Shuyūkh*”: Al-Rāfi‘ī, al-Nawawī, and ibn al-Subqī.
- “*Al-Qadīm wa al-Jadīd*”: The old and new Shāfi‘ī *madhab*.

⁸⁶. Hassan. *Introduction to Fiqh*. P. 28-29.

- “*Al-Qawlān*”: Al-Shāfi‘ī’s statements.
- “*Al-Wajhān*”: Sayings of the followers of al-Shāfi‘ī.
- “*Al-Naṣṣ*”: Sayings of al-Shāfi‘ī written or oral.
- “*Al-Ṭuruq*”: Different ways of telling the same incident.
- “*Al-Aṣḥāb*”: The scholars and jurists of the same *madhab*.

Ḥanbalī Madhab Books

1. “*Kashshāf al-Qinā‘ ‘an Matn al-Iqnā‘*” (the masks detector on the persuasion text) by Maṣṣūr al-Bahūtī.
2. “*Al-Kāfī fī Fiqh al-Imām Ahmad*” by Muwafaq al-Dīn ibn Qudāmah al-Maqdissī.
3. “*Al-Muqni‘ fī Fiqh al-Imām Ahmad*” (persuasive) by Muwafaq al-Dīn ibn Qudāmah al-Maqdissī.
4. “*Al-Mubdi‘ Sharḥ al-Muqni‘*” (the inventor in the persuasive explaining) by Ibrāhīm ibn Muhammad ibn Mufliḥ.
5. “*Al-Rawḍ al-Murba‘ bi Sharḥ Zād al-Mustaḥni‘*” (the square garden in explaining the provisions of the contented person) by Mansūr ibn Yunus al-Buhūtī.
6. “*Matn Zād al-Mustaḥni‘*” (the text of the provisions of the contented person) by Sharaf al-Din Musā ibn Ahmad al-Hajjāwī.
7. “*Al-Inṣāf fī Ma‘rifat al-Rājiḥ mina al-Khilāf*” (fairness in knowing the most correct of the dispute) by Ali ibn Sulayman al-Mardāwī.
8. “*Muntahā al-Irādāt*” (ultimate wills) by Ibn Najjār.

The Terminologies of Ḥanbalī Madhab⁸⁷

- “*Al-Riwāyah*”: Sayings of Imām Ahmad.
- “*Al-Tanbīhāt*”: What Imām Ahmad pointed out.

⁸⁷ . Hassan. *Introduction to Fiqh*. P. 31.

- “*Al-Awjuh*”: Different sayings of the people of the *madhab*.

The Comparative *Fiqh* Books

1. “*Al-Mughnī*” (Sufficient) by Muwafaq al-Dīn ibn Qudāmah al-Maqdissī.
2. “*Al-Majmū‘ Sharḥ al-Muhadhab*” (the total, explaining the polite) by Yhyā ibn Sharaf al-Nawawī.
3. “*Bidāyat al-Mujtahid wa Nihayāt al-Muqtaṣid*” (the beginning of the hardworking and the end of the frugal) by Ibn Rushd (*al-Ḥafīd*).
4. “*Al-Muḥllā bi al-Āthār*” (the inlaid by antiquities) by Ali ibn Ahmad ibn Ḥazm.
5. “*Mukhtaṣar Ikhtilāf al-‘Ulama’*” (briefness in the difference of scholars) by al-Ṭahāwī.
6. “*Al-Ishrāf ‘alā Madhāhib al-‘Ulamā’*” (supervising the doctrines of scholars) by al-Naysābūrī.
7. “*Nayl al-Awṭār*” (acquisition of the intentions) by Muhammad ibn Ali al-Shawkānī.

Lesson 11

An Introduction to the Sections of Jurisprudence and its Detailed Topics

Jurists differed in dividing jurisprudence into several sections. But they divided it mainly into two sections; The jurisprudence of worships and the jurisprudence of transactions.

The jurisprudence of worships reflects the relationships between God and His servants. Whereas the jurisprudence of transactions reflects the relationships between human beings.

The jurisprudence of worships encompasses firstly the heart-related acts such as faith, intentions and the testification of faith (*shahādatān*). And secondly the physical-related acts such as prayers, fasting, charity and pilgrimage.⁸⁸

⁸⁸. Muhammad al-Tuwjijirī. (2016). *Summarized Islamic Fiqh in Light of the Quran and Sunnah*. Saudi: Dār Aṣḍā’ al-Mujtama’. Vol.1, p.22.

The Jurisprudence of transactions consists of jurisprudence of civil rulings, marriage, pleadings, international relations, the economical jurisprudence and so on.

The Divisions of Ḥanafī Madhab

Ibn ‘Ābdīn divided jurisprudential topics into three main sections: Worships, transactions and criminal jurisprudence.

1. **The jurisprudence of worships:** Prayers, fasting, charity, pilgrimage and jihad.
2. **The jurisprudence of transactions:** Financial exchanges, marriages, disputes (*munāza‘āt*), trusts and the estimates (*farā‘id*).
3. **The jurisprudence of penalties:** Retribution (*qiṣās*), prescribed punishment (*ḥudūd*) for theft, adultery, slander (*qadhf*) and apostate (*riddah*).

Details of Jurisprudence Topics in the Books of Ḥanafī Madhab

Purity (*tahārah*), prayers, fasting, charity (*zakāh*), pilgrimage.

Marriage, divorce, breastfeeding.

Oaths (*aymān*), prescribed punishment (*ḥudūd*), biographies (*siyar*), bastard (*laqīf*), money on the ground (*laqīṭah*), the fugitive (*ābiq*), the lost (*mafqūd*).

Company, endowment (*waqf*), sales.

Judicature (*qaḍā’*), testimony (*shahādah*), revocation of testimony (*rujū‘ ‘an al-shahādah*).

Attorney (*wakālah*), lawsuit (*da‘wā*), admitting (*iqrār*), reconciliation (*ṣulḥ*).

Speculation (*mudārabah*), deposit (*wadī‘ah*), borrowing (‘*āriyah*), gift (*hibah*), Leasing (*ijārah*), contracted manumission (*mukātabah*), loyalty (*walā’*), compulsion (*ikrāh*), confinement (*ḥajr*), authorized register (*m’dhūn*).

Usurpation (*ghaṣb*), preemption (*shuf‘ah*), division (*qismah*), sharecropping (*muzāra‘ah*), crop sharing (*musāqāh*).

Carcass (*dhabā'ih*), cultivating barred land (*iḥyā' al-mawāt*), beverages (*ashribah*), hunting (*ṣayid*), mortgage (*rahn*).

Felonies (*jināyāt*), wills (*waṣāyā*), bisexual (*khunthā*), estimates (*farā'id*).

Details of Jurisprudence Topics in the Books Mālikī Madhab

The Mālikī jurists divided jurisprudential topics into four main sections: Worships, marriages, sales and Judicature.

Rulings on Worships: Purity, prayers, funeral processions (*janā'iz*), charity, fasting, religious retreat (*i'tikāf*), pilgrimage, carcass (*dhabā'ih*), foods, the permissible, sacrifices (*aqīqah*), oaths (*aymān*), vows (*nudhūr*), jihad, competition (*musābaqah*).

Rulings on Marriages: Marriage, divorce, oath (*ilā'*), *ḡihār*, damned/cursed (*li'ān*), Waiting period (*'iddah*), breastfeeding, alimony (*nafaqah*).

Rulings on Sales: Sale, forward sale (*salam*), loan (*qarḍ*), mortgage (*rahn*), bankruptcy (*falas*), confinement (*ḥajr*), reconciliation, money transfer (*ḥawālah*), guarantee (*damān*), company, attorney (*wakālah*), admitting (*iqrār*), deposit (*wadī'ah*), borrowing (*i'ārah*), preemption (*shuf'ah*), division (*qismah*), Speculation (*qirāḍ*), crop sharing (*musāqāh*), leasing (*ijārah*), cultivating barred land (*iḥyā' al-mawāt*), endowment (*waqf*), gift (*hibah*), money on the ground (*laqīṭah*).

Rulings on Judicatory: Retribution (*qiṣāṣ*), manumission (*'itq*), the estimates (*farā'id*).

Details of Jurisprudence Topics in the Books of Shāfi'ī Madhab

The Shāfi'ī jurists divided jurisprudential topics into four main sections: Worships, transactions, marriages, felonies and quarrels.

Rulings on Worships: Purity, prayers, charity, fasting, religious retreat (*i'tikāf*) and pilgrimage.

Rulings on Transactions: Sales, forward sale (*salam*), loan (*qarḍ*), mortgage (*rahn*), bankruptcy (*falas*), money transfer (*ḥawālah*), company, attorney (*wakālah*), admitting (*iqrār*), borrowing (*i'ārah*), usurpation (*ghaṣb*), preemption (*shuf'ah*), loan (*qirāḍ*), crop sharing (*musāqāh*), leasing (*ijārah*), cultivating barred land (*iḥyā' al-mawāt*), endowment (*waqf*), gift (*hibah*), money on the ground (*laqīṭah*), wages (*ju'ālah*), estimates (*farā'id*), wills (*waṣāyā*), spoils (*fai'*), charities (*ṣadaqāt*).

Rulings on Marriages: Dowry (*ṣidāq*), divorce filed by the wife (*khul'*), divorce, return (*ruj'ah*), oath (*īlā'*), *ḥiḥār*, cursed (*li'ān*), waiting period (*'iddah*), breastfeeding, alimony (*nafaqah*).

Rulings on Felonies and Quarrels: Blood money (*diyyāt*), blood lawsuit (*da'wa al-dam*), the tyrannous (*al-bughāt*), apostate (*riddah*), adultery (*zinā*), slander (*qadhf*), stealing (*sariqah*), bandits (*qāṭi' al-ṭarīq*), beverages (*ashribah*), discretionary punishment (*ta'zīr*), assaulter (*ṣā'il*), biographies (*al-siyar*), tribute (*jiziyah*), armistice (*hudnah*), hunting (*ṣayid*), sacrifice (*uḍḥiyyah*), foods (*aṭ'imah*), competition (*musāqāh*), oaths (*aymān*), vows (*nudhūr*), Judicature (*qaḍā'*), testimony (*shahādah*), lawsuit (*da'wa*), evidences (*bayyināt*), manumission (*'itq*), contracted manumission (*mukātabah*), children's mothers (*umahāt al-awlād*).

Details of Jurisprudence Topics in the Books of Ḥanbalī Madhab

They divided jurisprudential topics into five sections: Worships, transactions, marriages, felonies and quarrels and Judicatory.

Rulings on Worships: Purity, prayers, funeral processions (*janā'iz*), charity, fasting, religious retreat (*i'tikāf*), rites (*manāsik*), jihad.

Rulings on Transactions: Sales, usury and exchange (*ribā wa al-ṣarf*), fraud ban (*tahrīm al-taḥayul*), loan (*qarḍ*), mortgage (*rahn*), guarantee (*ḍamān*), money transfer, reconciliation, neighboring rules (*aḥkām al-jiwār*), confinement (*ḥajr*), attorney (*wakālah*), company, leasing (*ijārah*), preemption (*shuf'ah*), wages (*ju'ālah*), borrowing (*'āriyah*), money

on the ground (*laqīṭah*), gift (*hibah*), usurpation (*ghaṣb*), endowment (*waqf*), wills (*waṣāyā*), estimates (*farā'id*), manumission (*itq*).

Rulings on Marriages: Marriage, dowry (*ṣidāq*), divorce filed by the wife (*khul'*), divorce, return (*ruj'ah*), oath (*ilā'*), *ḡihār*, cursed (*li'ān*), waiting period (*'iddah*), breastfeeding, alimony (*nafaqah*).

Rulings on Felonies and Quarrels: Crimes (*jināyāt*), prescribed punishments (*ḥudūd*), foods (*al-aṭ'imah*), hunting (*ṣayid*), oaths (*aymān*).

Rulings on Judicatory and Fatwa: Judiciary (*qaḍā'*), testimony (*shahādah*), admitting (*iqrār*).

Lesson 12

Contemporary Jurisprudence

The jurisprudence of priorities, the Jurisprudence of contemporary issues (*nawāzil*).

First: Jurisprudence of Priorities⁸⁹

Definition: The *fiqh* of priorities as well as the *fiqh* of acts ranking. Its aim is to identify which of the acts is more important than others at a specific time and thus categorizing them, it is called also the *fiqh* of balances.

The Evidences of the *Fiqh* of Priorities

There are some verses and Hadiths that show a comparison between conflicting behaviors in their interest or harm.

The first verse: {Do you 'pagans' consider providing the pilgrims with water and maintaining the Sacred Mosque as equal to believing in Allah and the Last Day and struggling

⁸⁹ . Yusuf al-Qaradwai. (1996). *The Fiqh of Priorities*. Cairo: Maktabat Wahbah. Abdul Majeed al-Souswa. (2004). *Approach to the Fiqh of Balances in Islamic Sharia*. Dubai: Dār al-Qalam.

in the cause of Allah?} (Q: 9-19). In this verse, there is a preference between commendable acts from the Quranic perspective, which of them should take the precedence over others.

The second verse: {Do not insult what they invoke besides Allah or they will insult Allah spitefully out of ignorance} (Q: 6-108). In this verse, there is a comparison between two contrasting results; One is harmful and the other is beneficial, but both are the results of an act of insult to the pagan gods. In the first place, insulting the gods worshiped by the pagans is advisable, and on the other hand, it can lead to very harmful effects like insulting God, so it is better not to insult their gods.

The first Hadith: The Prophet (ﷺ) replied when he was asked as to which prayer was most excellent after the prescribed prayer, and which fast was most excellent: (Prayer offered in the middle of the night, and the most excellent fast after (fasting) in the month of Ramadan is the fast in God's month al-Muharram)⁹⁰.

The second Hadith: Some of the Prophet's Companions asked him: Which deed is most beloved to Allah (ﷻ)? He replied: (Prayer offered on time, honoring one's parents, and Jihad in the cause of Allah.)⁹¹

The third Hadith: We were along with Allah's Messenger (ﷺ) in an expedition that a person from amongst the emigrants struck at the back of a person from the Anṣār. The Anṣārī said: O Anṣār! And the Muhājir said: O Emigrants! Thereupon Allah's Messenger (ﷺ) said: What are these proclamations of the Days of Ignorance? It is something disgusting. 'Abdullah b. Ubayy heard it and said: They have indeed done it. By Allah, when we would return to Medina the respectable amongst them (the Anṣār) would turn away the mean (the emigrants). Thereupon 'Umar said: Permit me so that I should strike the neck of this hypocrite. But the Prophet (ﷺ) said: (Leave him, the people may not say that Muhammad kills his companions.)⁹²

⁹⁰ . Muslim. *Ṣaḥīḥ Muslim*. No. 1163b.

⁹¹ . Al-Nasā'ī. *Sunan an-Nasā'ī*. No. 610. Grade: *Ṣaḥīḥ*.

⁹² . Muslim. *Ṣaḥīḥ Muslim*. No. 2584b.

‘Āisha reported: (Never did Allah's Messenger (ﷺ) make a choice between two things but adopting the easier one as compared to the difficult one, but his choice for the easier one was only in case it did not involve any sin).⁹³

The Sources of the Jurisprudence of Priorities

The foundations on which the *fiqh* of priorities is based are several. The Quran and the Sunnah, the objectives of the Sharia, the consequences of a conduct (considering the ends), knowledge of reality, taking into account the conditions of individuals and their capabilities, preferring cooperation over disagreement.

1. **The Quran and the Sunnah:** The sources of legislation are the Quran and the Sunnah. Each legal ruling and all rules are based ultimately on it. {We have revealed to you the Book as an explanation of all things, a guide, a mercy, and good news for those who ‘fully’ submit.} (Q: 16-89). {Whatever the Messenger gives you, take it. And whatever he forbids you from, leave it.} (Q: 59-7).

2. **The objectives of the Sharia:** All the rulings of Islam are justified, and their causes are the purposes of legislation that must be achieved sooner or later. Its evidence from the Quran: {I did not create jinn and humans except to worship Me.} (Q: 51-56). {He is the One Who created the heavens and the earth in six Days and His Throne was upon the waters in order to test which of you is best in deeds.} (Q: 11-7).

3. **The consequences of a conduct:** After realizing harmful outcomes of an act even it is recommended, the legally mandated person should not perform it. The example is this Hadith: (Leave him, the people may not say that Muhammad kills his companions.)⁹⁴

4. **Knowledge of reality:** In order to prioritizing acts, familiarity of the reality and current situation is recommended. When the Messenger of Allah (ﷺ) sent Mu‘ādh towards

⁹³ . Ibid., no. 2327d.

⁹⁴ . Ibid., no. 2584b.

Yemen he said: (Verily you would reach a community of the people of the Book, the very first thing to which you should call them is the worship of Allah (ﷻ), and when they become fully aware of Allah (ﷻ), instruct them that He has enjoined five prayers during the day and the night, and when they begin observing it, then instruct them that verily Allah (ﷻ) has made Zakat obligatory which would be collected from the wealthy and distributed to their needy, and when they submit to it, then collect it from them and avoid (the temptation) of selecting the best (items) of their riches.)⁹⁵

5. Taking into account the conditions of individuals and their capabilities:

There were many cases when the Prophet (ﷺ) took into consideration the circumstances of people around. The example is: (A Bedouin urinated in the mosque. Some of the persons stood up but the Messenger of Allah (ﷺ) said: Leave him alone, don't interrupt him. He (the narrator) said: And when he had finished, the Prophet (ﷺ) called for a bucket of water and poured it over.)⁹⁶

6. Preferring cooperation over disagreement and lenience over hardship:

There are many examples of preferring unifying over disagreement. In the Quran: {And hold firmly to the rope of Allah and do not be divided. Remember Allah's favour upon you when you were enemies, then He united your hearts, so you by His grace became brothers.} (Q: 3-103). The Prophet (ﷺ) said, (Facilitate things to people and do not make it hard for them and give them good tidings and do not make them run away (from Islam).)⁹⁷

Second: The Jurisprudence of Contemporary Issues (*Nawāzil*)

Definition: The branch of *fiqh*, which studies new facts and issues that were not governed by Sharia, and had no specific rulings.

⁹⁵ . Ibid., no. 19c.

⁹⁶ . Ibid., no. 284a.

⁹⁷ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 69.

It is called the *fiqh* of *nawāzil* originally. *Nāzilah* denotes “A hardship descends in an age”.⁹⁸ The term *nawāzil* appeared in the book of ibn Qayyim al-Jawziyya: “*I‘lām al-Muwaqqi‘īn ‘an Rabb al-‘Ālamīn*”.⁹⁹ It can be called *waqi‘āt* ‘incidents’, *fatāwá* and also contemporary, new issues.

The *fiqh* of *nawāzil* is called also: The jurisprudence of reality, the jurisprudence of purposes, the jurisprudence of priorities and the jurisprudence of balances.

The Types of Contemporary Issues

New, never-before-seen issues such as cloning, transplantation, genetic signature, mitochondrial transfer, and test-tube babies. Also, the new issues related to transactions are Islamic banking, *murābahah* for the one who orders the purchase.

The issues exist, but their rulings should be renewed due to changing circumstances. The examples are contraception, miscarriage and abortion. In worships; Purifying water by new technologies. In prayer; Praying at airplane, and astronomical observations in determining prayer time. In food; killing animals by electric shock.

The Regulations of the *Fiqh* of *Nawāzil*

This field of *fiqh* reflects the realism of Sharia, as well as its applicability in all times and places. The conditions of jurists and the incidents are:

1. The *mujtahid* should be knowledgeable in all branches of the Sharia; The Quran, the Sunna and the principles of *fiqh*.
2. The issue must be new, real, applicable, usable, and beneficial to the human being.
3. The *mujtahid* must understand the issue comprehensively.

⁹⁸ . Ibn Fāris Abū al-Ḥusayn Aḥmad. (1979). *Mu‘jam Maqāyīs al-Lughah*, Beirut: Dār al-Fikr. Vol. 5, p.417.

⁹⁹. Ibn Qayyim al-Jawziyya Abu ‘Abu Allah Muhammad, (n.d). *A‘lām al-Muwaqqi‘īn ‘an Rabi al-‘Ālamī*, Ed. ‘Abd al-Rahman al-Wakil. Saudi: Maktabat al-Madani. Vol. 1, p. 203.

4. The *mujtahid* must consult specialists and experts in the professional field, scientifically or legally.

5. The *mujtahid* must take into account the purposes of the Sharia, as well as the prevailing customs, and the habits of the people at the time of the incident.

Lesson summary

Several types of jurisprudence have arisen in the modern era, the most important of which are two; The jurisprudence of priorities, the jurisprudence of contemporary issues (*nawāzil*).

1. The aim of the jurisprudence of priorities is to arrange conducts according to its importance, it called also the *fiqh* of balances. There are many evidences in the Quran and the Sunnah on it.

2. The sources of the jurisprudence of priorities are six: The Quran and the Sunnah, the objectives of the Sharia, the consequences of a conduct (considering the ends), knowledge of reality, taking into account the conditions of individuals and their capabilities, preferring cooperation over disagreement and lenience over hardship.

3. The aim of the jurisprudence of contemporary issues (*nawāzil*) is to find out the legal rulings of new incidents, because of that it is called the *fiqh* of *fatāwá*.

4. The range of the *fiqh* of *nawāzil* covers almost all branches of *fiqh*; Worships, transactions, marriages, Judiciary and penalties. It is applied in new cases as well as in old ones that need to be renewed.

5. The regulations of the *fiqh* of *nawāzil* are: A *mujtahid* must be familiar with all branches of Sharia as well as the issue itself scientifically and legally. The problem must be new, real, applicable, usable, and useful. A *mujtahid* must take into account the customs of the people and the country, as well as the purposes of Sharia.

Legal Maxims of Islamic Jurisprudence

Linguistic Definition: *Qā'idah* is the basis of the construction and the regulator, or the whole thing that applies to its particulars.¹⁰⁰

Technical Definition: *Qā'idah* is a general rule or a general case from which the rulings of the particulars that fall under its subject are understood and applied to it.¹⁰¹

The definition of *qā'idah fiqhiyyah*: It is a holistic jurisprudential ruling that applies to many particulars from more than one chapter.¹⁰²

Legal maxims divided into four types: Normative legal maxims (*Al-qawā'id al-kuliyyah al-kubrā*) e.g., "Hardship begets ease". Partial normative legal maxims (*Al-qawā'id al-juz'iyyah al-kubrā*) e.g., "Non-liability or man is absolved from guilt, blame or responsibility for any wrong deed in principle". Non-normative legal maxims (*Al-qawā'id al-kuliyyah ghayr al-kubrā*) e.g., "Damage, if its greater and more comprehensive, should be avoided first". The jurisprudential controller (*Al-dawabiṭ al-fiqhiyyah*) e.g., "The prescribed penalties shall be fallen by suspicion".

The Development of the Legal Maxims (*Al-Qawā'id al-Fiqhiyyah*)

First stage: The foundation phase¹⁰³ arose during the era of the Prophet (ﷺ), his Companions and the Tābi'ūn. Its sources are mainly the Quran, the authentic Sunnah and the saying of the Companions and the Tābi'in.

The Prophet (ﷺ) said: (There is no injury and no return injury).¹⁰⁴

'Umar ibn al-Kaṭṭāb said: "Rights decisively lean on the provisions".¹⁰⁵

¹⁰⁰ . *Al-Mu'jam al-Wasīṭ*. (1972). Majma' al-Lughah al-'Arabiyyah in Cairo. Vol. 2, p. 748.

¹⁰¹ . Muhammad Ṣidqī Āl Būrnū. (2003). *Mawsū'at al-Qawā'id al-Fiqhiyyah*. Beirut: Mu'saset al-Risālah. Vol. 1, p. 22.

¹⁰² . Taqayy al-Dīn al-Ḥuṣnī. (1997). *Al-Qawā'id*. Riyadh: Maktabat al-Rushd. Vol.1, p. 23.

¹⁰³ . *Legal Maxims of Islamic Jurisprudence*. (2013). Islamic University of North America (Mishkāh). P. 9-14.

¹⁰⁴ . Mālik ibn Anas. *Al-Muwaṭṭ'*. Ed. Abd al-Baqī. Beirut: Dār 'Ihyā' al-Turāth al-'Arabī. Vol.2, p. 745.

¹⁰⁵ . Badr al-Dīn al-'Aynī. (2016). *'Umdat al-Qāri' Sharḥ Ṣaḥīḥ al-Bukhārī*. Beirut: Dār 'Ihyā' al-Turāth al-'Arabī. Vol. 9, p. 619. No. 2721.

Ali ibn Talib said: “There is no guarantee upon whom shares profits”.¹⁰⁶

Second stage: The recording phase¹⁰⁷ began in the fourth century with *taqlīd* where there was a great deal of jurisprudential legacy. The jurists tended to collect the opinions of the previous *mujtahids*, and classify them in books, because the new *ijtihad* became rare. The first manuscript specialized in legal maxims, had come down to us, which is the book: “*Uṣūl al-Karkhiy*”, and his author Imām al-Karkhiy recorded thirty-nine *qā'idah fiqhiyyah*, seventeen of which are for Imām al-Dabbās. As we have noted, the Ḥanafī *madhhab* preceded other schools of thought in this branch of jurisprudence.

In the fifth century, Imām al-Dabbūsiy al-Hanafī compiled his book: “*T'sīs al-Nazar*” in the same field, following by Imām al-Ḥaramayn al-Juwaynī al-Shāfi'ī who organized his famous book: “*Al-Ghiyāth*”.

In the seventh century, Imām Izz al-Dīn Bin Abd al-Salām wrote his book “*Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*”. And also, Shihāb al-Dīn al-Qarāfi al-Mālikī wrote his book: “*Al-Furūq*”.

In the eighth century, the Shāfi'ī jurists were advanced in this field compared to other schools of thought, and their writings flourished until this century became the golden age for the branch of legal jurisprudence. The most prominent jurisprudential transcripts are: “*Al-Qawā'id al-Nūrāniyyah*” for ibn Taimiyyah. “*Al-Qawā'id*” for al-Maqarī. “*Al-Ashbāh wa al-Nazā'ir*” for al-Subkī.

The most significant development took place in the eleventh century was organizing *al-qawā'id al-fiqhiyyah* in “*Majalat al-Aḥkām al-'Adliyyah*” to be applied in different courts as laws.

The Sources of Legal Maxims (*Al-Qawā'id al-Fiqhiyyah*)

¹⁰⁶ . Abd al-Razzaq al-San'ānī. (2013). *Musanaf 'Abdur-Razzāq*. Ed. Markaz al-Buḥūth. Cairo: Dār al-T'ṣil. Vol.8, p. 72.

¹⁰⁷ . *Legal Maxims of Islamic Jurisprudence*. P. 15-19.

The sources of *al-qawā'id al-fiqhiyyah* are: The Quran, the Sunnah, *qiyās*, *istidlāl*.¹⁰⁸

1. The Quran: Some maxims were taken directly from the text of the Quran; The example is this verse: {Allah has permitted trading and forbidden interest} (Q: 2-275).

2. The Sunnah: Some maxims were taken directly from the Prophet' (ﷺ) s sayings; The example is this Hadith: (Every intoxicant is Khamr and every intoxicant is forbidden)¹⁰⁹.

3. *Qiyās* (analogy): Some maxims were taken from *qiyās*, the example is this *qā'idah*: “An unknown object is similar to a nonexistent one”.

4. The indication of *al-dalālah* (evidence): The maxim does not extracted directly from the texts, the example is this *qā'idah*: “Non-liability is the original rule”.

The Importance of Legal Maxims (*Al-Qawā'id al-Fiqhiyyah*)

1. Simplifying the study of secondary jurisprudence principles (*furū'*).
2. Classification and organization of branches of Islamic jurisprudence.
3. Making the task of *ijtihād* in contemporary issues accessible.
4. Facilitating comparison between the different schools of thought of scholars.
5. Proving the idea that Islam is a valid religion for all societies and for all ages.¹¹⁰

The Differences Between Legal Maxims (*Al-Qawā'id al-Fiqhiyyah*) and the Like

There are some terminologies in Islamic jurisprudence share same functions with *al-qawā'id al-fiqhiyyah* such as; the controller (*dābiṭ*), the fundamentalist legal maxim (*al-qā'idah al-uṣūliyyah*) and legal maxim in the objectives of the Sharia (*al-qā'idah al-maqāṣidiyyah*).

1. Differences between *qā'idah fiqhiyyah* and *dābiṭ*: The definition of *al-dābiṭ* is the ultimate rule that control a set of branches under one chapter. The differences are the generality of *qā'idah fiqhiyyah* which governs many branches under several chapters. Also,

¹⁰⁸ . *Legal Maxims of Islamic Jurisprudence*. P. 28-30.

¹⁰⁹ . Muslim. *Ṣaḥīḥ Muslim*. No. 2003b.

¹¹⁰ . *Legal Maxims of Islamic Jurisprudence*. P.31.

there are many exceptions in it, whereas *al-dābiṭ* rarely has exceptions. Moreover, *al-qā'idah* has more jurisprudential branches (*furū'*) from *dābiṭ*. An example of *al-dābiṭ* is the purification of animal's skin by tanning that stated in this Hadith: "We are the inhabitants of the western regions. The Magians come to us with skins full of water and fat. He said: Drink. I said to him: Is it your own opinion? Ibn Abbas said: I heard the Messenger of Allah (ﷺ) say: (Tanning purifies it -the skin-).¹¹¹ Whereas the legal maxim is: "Necessity renders prohibited matters permissible".¹¹²

2. Differences between *al-qawā'id al-fiqhiyyah* and *al-qā'idah al-uṣūliyyah*: The focus of legal maxims in *fiqh* is on the conducts of legally commissioned person, whereas the focus of legal maxims in *uṣūl al-fiqh* is on vocabularies and its implications for rulings because it is a comprehensive issue that leads to the deduction of legal rulings. Fundamentalist legal maxims regulate the methods of deduction and research methods to extract legal rulings, but jurisprudential legal maxims link many cases under one rule. Jurisprudential legal maxims have many exceptions, whereas fundamentalist legal maxims are fixed and steady. An example of *qā'idah al-uṣūliyyah* is: Command after prohibition leads to permissibility.¹¹³

3. Differences between *al-qawā'id al-fiqhiyyah* and *al-qā'idah al-maqāṣidiyyah*: The focus of *al-qā'idah al-maqāṣidiyyah* is on the wisdom of legislation whereas the focus of *al-qawā'id al-fiqhiyyah* is on ruling that links many branches of *fiqh*, it is not a proof that help in extracting rules, while *al-qā'idah al-maqāṣidiyyah* is very strong that helps *mujtahids* in finding correct rules.

The Authority of Legal Maxims in Islamic Jurisprudence

Is it permissible for *al-qawā'id al-fiqhiyyah* to be proofs for inferring legal rulings?¹¹⁴

¹¹¹ . Muslim. *Ṣaḥīḥ Muslim*. No. 366d.

¹¹² . *Legal Maxims of Islamic Jurisprudence*. P.35-38.

¹¹³ . Ibid, p. 43-44.

¹¹⁴ . Ibid, p. 32-33.

There are two possibilities:

1. *Al-qawā'id al-fiqhiyyah* are not sacred texts from the Quran and the Sunnah, so, they should not be an evidence for deriving legal rulings.

2. *Al-qawā'id al-fiqhiyyah* are of different types, some of which are taken from the Quran and the Sunnah, so it is necessary to classify them according to their sources:

- *Al-qawā'id al-fiqhiyyah* that extracted directly from the sacred texts are proofs for inferring legal rulings.

- *Al-qawā'id al-fiqhiyyah* that extracted from fully agreed-upon sources (*ijmā'*) can be proofs for inferring legal rulings.

- *Al-qawā'id al-fiqhiyyah* that extracted from not fully agreed-upon sources (*qiyās, istihsān, 'urf, istiṣhāb*) can be secondary proofs for inferring legal rulings.

Normative Legal Maxims

Al-Qawā'id al-Kuliyyah al-Kubrā

There are five normative legal maxims agreed-upon by most jurists, which are the pillars of Islamic jurisprudence.

- *Qā'idah* 1: Certainty is not overruled by doubt (*al-yaqīn lā yazūl bi al-shakk*).

- *Qā'idah* 2: Hardship begets ease (*al-mashaqqah tajlibu al-tiysīr*).

- *Qā'idah* 3: There is to be no harm, and no reciprocating harm, or harm must be eliminated (*lā ḍarar wa lā ḍirār, al-ḍarar yuzāl*).

- *Qā'idah* 4: Custom is the basis of judgment (*al-'ādah muḥakkamah*).

- *Qā'idah* 5: Acts are judged by their intent (*al-umūr bi maqāṣidihā*).

The First Normative legal Maxim

“Acts Are Judged by their Intent” (*Al-Umūr bi Maqāṣidihā*)¹¹⁵

¹¹⁵ . *Legal Maxims of Islamic Jurisprudence*. P. 52-55.

The meaning of this rule is that the legally charged person will be held accountable according to the purposes and objectives of his actions and behaviors.

The sources of *al-qā'idah*: “Acts Are Judged by their Intent”.

The Quran: {Allah will not hold you accountable for unintentional oaths, but for what you intended in your hearts} (Q: 2-225).

The Sunnah: The Prophet (ﷺ) said: (The reward of deeds depends upon the intentions and every person will get the reward according to what he has intended. So whoever emigrated for worldly benefits or for a woman to marry, his emigration was for what he emigrated for.)¹¹⁶

Legal maxims that fall under *al-qā'idah*: “Acts are judged by their intent”.¹¹⁷

Qā'idah 1: “The essence in contracts is their goals and meanings not their words and forms”.

The meaning of this *qā'idah* is that the primacy of purposes over the terms used. Sometimes the invalid intentions spoil the contract like the marriage of *muḥalil* (the marriage of a three-divorced woman to become lawful for her first husband).

Qā'idah 2: “Does intention particularize a general discourse or generalize a particular discourse?”.

The jurists of four *madhāhib* have different opinions about this *qā'idah*: Mālikkiyyah and Ḥanābilah agree about it. Shāfi'iyyah agree that it particularizes the general speech, but intentions could not generalize a particular statement in oaths. Ḥanafiiyyah agree about it if the matter between God and people, but between people, it will not be acceptable.

Qā'idah 3: “Do oaths lean on discourse or on purposes?”.

Mālikkiyyah and Ḥanābilah agree that words in oaths are based on intentions, whereas Shāfi'iyyah and Ḥanafiiyyah observed that oaths depend on words if discourse used.

¹¹⁶ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 1.

¹¹⁷ . *Legal Maxims of Islamic Jurisprudence*. P. 56-67.

Qā'idah 4: "Do the words employed in oaths built on tradition?"

Ḥanafīyyah and Ḥanābilah agree that oaths rely on 'urf of the one who sewars. Mālikīyyah agree that oaths depend firstly on intentions, then on 'urf, and finally on words.

Excluded legal maxim (*qā'idah*) from the normative legal maxim (*al-qā'idah al-kulīyyah al-kubrā*) is this *qā'idah*: "When someone rushes into something before its due time, he is punished by depriving".

The applications of this *qā'idah* in jurisprudential issues are of two types; The first is depriving the heir of his share if he killed his inheritor. The second is giving the divorced wife her share if the husband divorced her during his terminal illness.

The Second Normative Legal Maxim

"Certainty Is Not Overruled by Doubt" (*Al-Yaqīn lā Yazūl bi al-Shakk*).¹¹⁸

The meaning of this *qā'idah* is that when a matter is certain, it should not be cancelled by merely suspicion.

The sources of this *qā'idah* and its evidences:

The Quran: {Most of them follow nothing but 'inherited' assumptions. 'And' surely assumptions can in no way replace the truth} (Q:10-36).

The Sunnah: Narrated `Abbad bin Tamim: "My uncle asked Allah's Messenger (ﷺ) about a person who imagined to have passed wind during the prayer. Allah' Apostle replied: (He should not leave his prayers unless he hears sound or smells something)."¹¹⁹

(When any one of you is in doubt about his prayer and he does not know how much he has prayed, three or four (*rak'ahs*). He should cast aside his doubt and base his prayer on what he is sure of. Then perform two prostrations before giving salutations. If he has prayed five

¹¹⁸ . *Legal Maxims of Islamic Jurisprudence*. P. 68-75.

¹¹⁹ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 137.

rak'ahs, they will make his prayer an even number for him, and if he has prayed exactly four, they will be humiliation for the devil).¹²⁰

The applications of this *qā'idah* in jurisprudential issues: If someone doubts that his cloth is *tāhir* or not, he should build his opinion on the original rule which is purification. Another example; If the spouses are married but doubted that divorce took place, they should build on the original rule which is marriage.

Legal maxims that fall under the *qā'idah*: “Certainty is not overruled by doubt”.

Qā'idah 1: “Non-liability or man is absolved from guilt, blame or responsibility for any wrong deed in principle”.

The meaning of this *qā'idah* is that any one is innocent from any accusation.

Qā'idah 2: “Whatever is proved true with certainty, cannot be cancelled but by proof”.

The example from *fiqh*: if someone has a doubt whether he performed prayer or not, no one should obligate this person to repeat the prayer as long as the time is passed.

Qā'idah 3: “Should things, in principal, be permissible or forbidden?”.

In the Quran: {He is the One Who created everything in the earth for you} (Q: 2-29).

{Who has forbidden the adornments and lawful provisions Allah has brought forth for His servants?} (Q: 7-32).

This *qā'idah* is applicable in everything except in warships, because rituals must be decreed by God.¹²¹

Qā'idah 4: “In principle, legal sexual intercourse is forbidden except legal ones”.

The meaning is that the original rule for any woman to be married is prohibited until you make sure that she is available.¹²²

The Third Normative Legal Maxim

¹²⁰ . Muslim. *Ṣaḥīḥ Muslim*. No. 571a.

¹²¹ . *Legal Maxims of Islamic Jurisprudence*. P.79-82.

¹²² . *Ibid.*, p.82.

Hardship Begets Ease (*Al-mashaqqah tajlibu al-tiysir*)¹²³

This *qā'idah* has many evidences from the Quran and the Sunnah, it includes all exceptional provisions from duties in order to facilitate the life of human beings.

The Quran: {Allah intends ease for you, not hardship} (Q: 2-185).

{Allah does not require of any soul more than what it can afford} (Q: 2-285).

{It is not Allah's Will to burden you} (Q: 5-6).

The Sunnah: (Facilitate things to people and do not make it hard for them and give them good tidings and do not make them run away).¹²⁴

(Whenever the Prophet (ﷺ) was given an option between two things, he used to select the easier of the two as long as it was not sinful).¹²⁵

Legal maxims that fall under the *qā'idah*: “Hardship begets ease”.

***Qā'idah 1&2*:** “When a matter tightens, it will be widen, and vice versa”.

The meaning of this *qā'idah* is that the Sharia simplifies obligations whenever there are difficult circumstances, but if these circumstances end, every obligation must be reinstated. Its evidence from the Quran: {When you travel through the land, it is permissible for you to shorten the prayer especially if you fear an attack by the disbelievers} (Q: 4-101). Then it must return to its original judgment that the fear is gone: {But when you are secure, establish regular prayers. Indeed, performing prayers is a duty on the believers at the appointed times} (Q: 4-103).

The application of the *qā'idah*: “When a matter tightens, it will be widen” in Islamic jurisprudence: It is permissible to pray on the plane without knowing the direction of the *qibla*, and also without standing, if this is not possible.

***Qā'idah 3*:** “Necessity renders prohibited matters permissible”.

¹²³ . Ibid., p. 88-108.

¹²⁴ . Al-Bukhārī. *Ṣaḥīḥ al-Bukhārī*. No. 69.

¹²⁵ . Ibid., no. 6786.

The meaning of this rule is that the prohibition is legislated in cases of scarcity, and the evidence for this rule is many verses and Hadiths.

The Quran: {He has already explained to you what He has forbidden to you except when compelled by necessity?} (Q: 6-119).

{But if someone is compelled by necessity neither driven by desire nor exceeding immediate need, they will not be sinful} (Q: 2-173).

{Whoever disbelieves in Allah after their belief not those who are forced while their hearts are firm in faith} (Q: 16-106).

The application of the *qā'idah*: Necessity renders prohibited matters permissible in Fiqh: It is allowed to drink wine in the time of necessity, as well as eating prohibited meat.

Qā'idah 4: “Necessities have limits that should not be exceeded”.

The meaning of this *qā'idah* is that those who are in difficult circumstances should not take advantage of the exceptional rules, but should perform their duties as best as possible. When the difficult circumstances are over, they must perform their duties to the fullest.

The example in Islamic jurisprudence: A doctor is not allowed to look at the private part of his patient except what the injured part.

The Fourth Normative Legal Maxim

“There Is to Be No Harm, and No Reciprocating Harm, or Harm Must Be Eliminated” (*lā Ḍarar wa lā Ḍirār, al-Ḍarar Yuzāl*).¹²⁶

The meaning is that people must not harm others directly and indirectly, and also, others should not reply as well. Many legislations encourage security and peace among people, and prevent detriment like *shuf'ah*, *ḥajr*, *qiṣāṣ*.

The Quran: {No mother or father should be made to suffer for their child} (Q: 2-233).

¹²⁶ . *Legal Maxims of Islamic Jurisprudence*. P.109-122.

{But do not retain them 'only' to harm them 'or' to take advantage 'of them'} (Q: 2-231).

The Sunnah: The Messenger of Allah said: (There is no injury nor return of injury).¹²⁷

Legal maxims that fall under the *qā'idah*: “There is to be no harm, and no reciprocating harm”.

***Qā'idah 1*:** “Harm should be avoided as much as possible”.

The meaning of this rule is that people must pay harm by all means without harm. Its evidence in the Quran: {Prepare against them what you 'believers' can of 'military' power and cavalry to deter Allah's enemies and your enemies as well as other enemies} (Q: 8-60).

The example in *fiqh*: preemption (*shuf'ah*) and confinement (*hajr*).

***Qā'idah 2*:** “Harm should be eliminated”.

Several options in transactions in sales legalized in order to prevent people from any excepted harm; *Khayār al-ghubn*, *khayār al-'ayb*. Compensation in case of some harm takes place.

***Qā'idah 3*:** “Harm should not be eliminated by another harm, or by the same harm”.

In the event of being forced to kill a person, it is not permissible to kill another Muslim to save his life. In case of scarcity, it is not allowed to take someone else's food to save one's life.

***Qā'idah 4*:** “Severe harm is removed by lesser harm”.

The chosen ones are the lesser of harm or the lesser of two evils.

If two spoilers' conflict, take into account the greatest harm by committing the least harm.

If the two harms come together, the greater harm must be avoided.

¹²⁷ . Mālik. *Al-Muwaff'*. Vol.36, no. 31.

The example: The hostages must be released by giving money if necessary. In case of harm to the mother and the fetus, we dispose of the fetus in order to preserve the life of the mother.

Qā'idah 5: "Avoiding detriments takes precedence over bringing about benefits".

Its evidence in the Quran: {Do not insult what they invoke besides Allah or they will insult Allah spitefully out of ignorance} (Q: 6-108). The example: Postponing showing for prayer if there is no secure restroom.

The Fifth Normative legal Maxim

"Custom Is the Basis of Judgment" (*Al-ʿĀdah Muḥakkamah*)¹²⁸

Custom is repetition over time until it becomes known, stable in the souls and minds, and is received by acceptance without presumption until it becomes customary fact.¹²⁹

The Quran: {Be gracious, enjoin what is right, and turn away from those who act ignorantly.} (Q: 7-199).

{But if the offender is pardoned by the victim's guardian,² then blood-money should be decided fairly³ and payment should be made courteously.} (Q: 2-178).

The Sunnah: Hind (bint `Utba) said to the Prophet (ﷺ) "Abu Sufyan is a miserly man and I need to take some money of his wealth." The Prophet (ﷺ) said, (Take reasonably what is sufficient for you and your children).¹³⁰

The example: Payment for the teachers who teach Islamic subjects. The days of menstruation subjected to *al-ʿādah*. And also, the wages of labors.

¹²⁸ . *Legal Maxims of Islamic Jurisprudence*. P.123-127.

¹²⁹ . Muhammad Mustafa al-Zuhayli. (2006). *Kitāb al-qawā'id al-Fiqhiyyah wa Taṭbīqātihā fī ah-Madhāhib al-Rba'ah*. Damascus: Dār al-Fikr. Vol. 1, p.299.

¹³⁰ . Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*. No. 7180.

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