

NOTES ON AL-WARAQAT

Introduction to *Usool al-Fiqh*

Based on the Lectures of
Sh. 'Amir Bahjat

By Rameez Abid
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Foreword

These are my notes from the [lectures of Sh. 'Amir Bahjat](#), a Hanbali scholar based in Saudi Arabia, explaining the classical text on *Usool al-Fiqh* entitled **al-Waraqat** by the Shafi' scholar Imam al-Haramayn, the teacher of the famous Imam al-Ghazali. The book gives an excellent bird's eye view of the field of *Usool al-Fiqh*. It is an introductory level text to introduce the student to the field and is usually the first text taught in classical study before delving into the more advanced texts on the topic.

Usool al-Fiqh deals with issues related to how Islamic law is deduced from its sources and the qualifications necessary for those who are allowed to do so. You need this science in order to understand the debates of the Muslim jurists (*fuqaha*) over Islamic law and why those differences occur. It also delves into the topic of how Muslim scholars deal with conflicting evidence.

I put these notes together for other students of knowledge who may be newly delving into this subject and those who are curious about the field. The main purpose of my notes is to be a supplement and I would strongly suggest that those serious about it should find a teacher to study the book. There are numerous commentaries on it from many scholars available on YouTube in Arabic and English. A student can also find mp3 commentaries available for download from competent teachers from various websites across the web. Of course, this will never replace having access to a live teacher, which is always the best option.

I benefited from [Sh. Musa Furber's translation](#) of the text and incorporate many of his translation choices, however, I also do my own in other places where I felt it would make the points more clear. I also borrowed a lot from [my notes](#) on Sh. al-'Uthyameen's book on Hanbali *Usool* entitled **al-Usool min 'ilm al-Usool**.

Finally, I pray that Allah benefits you through this book and brings you closer to your religion.

Rameez Abid

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Introduction

- I. This is a brief text on *Usool al-Fiqh* authored by Imam al-Juwayni, also known as Imam al-Haramayn, who belonged to the *Shafi'* school of thought
 - A. He was the teacher of Imam al-Ghazali
- II. We first need to understand what we mean by *Usool al-Fiqh*
 - A. It consists of three things in its definition:
 1. Knowing the *fiqhi* evidence in brief
 - a) This means detailed evidence is excluded from the definition of *Usool al-Fiqh*
 - b) Ex: Knowing that the Qur'an, sunnah, consensus, etc. are evidence for Islamic legal rulings
 2. How to make use of the evidence
 - a) Meaning understanding when something in the evidence is pointing to a command, prohibition, recommendation, etc. and who is included in the ruling
 - (1) There are certain rules and structures in place to determine this that must be understood and they are studied in *Usool al-Fiqh*
 3. Understanding the qualifications of those who have the right to deduce legal rulings from the evidence
 - a) It is not open to everyone, rather, it is restricted to those who meet the conditions
 - B. Its main purpose is to connect Islamic legal evidence to Islamic legal rulings. It is done through two steps:
 1. To figure out what are the sources of evidence
 2. To figure out how to deduce Islamic legal rulings from that evidence
 - a) This is the fruit of *Usool al-Fiqh*
- III. It is not allowed to do *ijtihad* or give *fatwas* without having studied *Usool al-Fiqh*
 - A. This is because this science prevents the person from following his own desires and deriving whatever he wants from the texts
 - B. Without it a person could fall into using incorrect principles to derive wrong Islamic legal rulings despite having the correct sources
 1. Ex: those who try to prove that *hijab* for women is not required according to the Qur'an!
- IV. Imam Shafi' was the first person to write an independent book on the topic of *Usool al-Fiqh*
 - A. His book was called *al-Risalah*
 - B. The concept and principles of *Usool al-Fiqh* existed even before Imam Shafi', however, he was the first one to actually sit down and write them into an independent book on the subject
- V. Ruling on *Usool al-Fiqh*
 - A. It is a communal obligation on the *ummah* as a whole
 1. Meaning as long as some people in the *ummah* learn it, then it will absolve the rest from sin
 - B. It is an individual obligation on the *Mujtahid*

1. Meaning those who deduce Islamic legal rulings from the sources are required to know it
- VI. Arabic language plays a huge role in *Usool al-Fiqh* because the primary sources are in that language, therefore, it is important to understand the language of the Arabs
- VII. The word *Usool* comes from the word *asl* (أصل) which means origin
- A. Means that which is the basis for something else
 1. It is the root of it
 2. Ex: the *asl* of the wall means the origin of its basis that is keeping it standing, the *asl* of the obligation of *salah* is such and such verse in the Qur'an means that verse is the basis for its ruling, etc.
 3. The sources of Islamic law are the *asl*
 - B. The word *far'* (فرع) which means branch
 1. It is the opposite of *asl*, which means it is that which is built upon something else
 - a) It is not the root of it
 - b) Ex: the branches of a tree. They are not its base
 2. The issues that are derived from the sources of Islamic law (i.e. evidence) are the branches of *fiqh*
 - a) Ex: types of water to use for *wudu*, details of how to perform *salah*, types of various contracts allowed in the religion, etc.
- VIII. The word *fiqh* (فقه) means knowing Islamic legal rulings which are arrived at through *ijtihad*¹
- A. This definition excludes legal rulings that are not related to Islam
 1. Ex: legal rulings related to installing a water pipe in a building is not considered *fiqh*
 - B. The definition also excludes Islamic legal rulings that are not derived through *ijtihad* but are well established, therefore, they are not considered *fiqh*
 1. Examples of rulings that do not require *ijtihad*: the obligation of the five daily prayers, the prohibition of fornication, wine, swine's meat, etc.
 2. Examples of rulings that do require *ijtihad*: whether sitting in a particular way in *salah* is permitted or not, types of valid/invalid contracts, etc.
 - a) Basically, these are issues over which the scholars differ
- IX. Overall, we can say that the discussions in *Usool al-Fiqh* revolve around the following four:
- A. Rulings
 1. What are the different types of rulings?
 - B. Evidence
 1. What are the sources of evidence from where we can derive Islamic legal rulings?
 - C. How to make use of the evidence to arrive at the rulings
 1. How do we know if something is a command, prohibition, recommendation, allowed, or something else?
 2. How do we know if something is valid or invalid?
 - D. The one qualified to deduce the rulings from the evidence (i.e. *Mujtahid*, *Mufti*, etc.)

¹ *Ijtihad* requires the jurist to exert effort in finding a solution to an Islamic legal question for which a clear answer is not available in the Islamic legal sources. This means that if the sources clearly provide an answer, then *ijtihad* is not allowed on such questions.

Categories of Islamic Legal Rulings

- I. Islamic legal rulings are of two types
 - A. *Taklifi* (Defining)
 1. When the ruling is made in the form of a demand to do or not to do something or it is left optional
 - B. *Wadi'* (Declaratory)
 1. Whatever the Lawgiver (Allah) has placed as signs for something to be confirmed, absent, come into effect, or nullified
 - a) These types of rulings are concerned with causes, conditions, and hindrances
 - (1) Ex: the setting of the sun being a cause for the obligation of praying *Maghrib*, *wudu* being a condition for prayer, murdering a close relative being a hindrance for inheriting from their wealth, etc.
- II. *Taklifi* rulings are five:
 - A. Obligatory (*wajib*)
 1. It is anything for which one is rewarded if performed and punished if omitted
 2. Ex: the five daily prayers are obligatory and not performing them could result in the person being punished by Allah. However, if one performs the five daily prayers, then such a person will be rewarded
 - B. Recommended (*mandoob*)
 1. Anything for which a person is rewarded for if performed and not punished if omitted
 2. Ex: supererogatory prayer, voluntary charity to a poor person, etc.
 - C. Permissible (*mubaah*)
 1. Anything for which a person is neither rewarded for if performed nor punished for if omitted
 2. The general rule is that everything is permissible unless there is evidence to suggest that it falls into one of the other four rulings
 3. Ex: staring at a wall, buying a couch made of wood, etc.
 - D. Forbidden (*mahzoor*)
 1. Anything for which a person is rewarded if omitted and punished if performed
 2. Ex: fornication, worshipping idols, etc.
 - E. Offensive (*makrooh*)²
 1. Anything for which one is rewarded if omitted and not punished if performed
 2. Ex: eating onions, drinking while standing, etc.
- III. *Wadi'* rulings:
 - A. Valid (*sahih*)
 1. That which pertains to being effective [in contracts] and are of legal significance [in worship]
 - a) In other words, as long as all the conditions, pillars, and obligations for an Islamically legal contract or worship are completed and there are no

² It is also often translated as 'disliked'.

obstacles in place that prevent the ruling from taking effect, the act is considered valid

(1) Contract example

(a) Buying merchandise with all of the sale contract's conditions and pillars fulfilled. This would result in the commodity's ownership validly transferring to the buyer

(2) Worship example

(a) Praying the *Asr* prayer by fulfilling all of its conditions, pillars, and obligations. This would result in the person's *salah* being valid

B. Invalid (*baatil/faasid*)

1. That which does not pertain to being effective [in contracts] nor are of legal significance [in worship]

a) In other words, as long as all the conditions, pillars, and obligations for an Islamically legal contract or worship are not completed or there are obstacles in place that prevent the ruling from taking effect, the act is considered invalid

(1) Contract example

(a) Selling something one does not own. This would result in the commodity's ownership not transferring to the buyer because the sale is invalid

(2) Worship example

(a) Making *salah* without *wudu*. This would result in the person's *salah* being invalid, thus, it would need to be repeated

C. There are other *wadi'* rulings which the author does not mention. They are discussed in more advanced books. Examples include:

1. Reason/Cause for the ruling (*sabab*)

a) Its existence requires the existence of the ruling and its absence requires the absence of the ruling

2. Condition (*shart*)

a) A prerequisite whose absence necessitates the absence of the ruling but its presence does not obligate the ruling

3. Obstacle (*maani'*)

a) Something that prevents the ruling from being applied even if the cause is found and the condition is met

4. *Azima*

a) The Lawgiver (Allah) may indicate that a ruling is to be considered as obligation imposed initially as a general rule

5. *Rukhsah*

a) An exemption from the general rule

Levels of Perception

- I. *Fiqh* is more specific than knowledge (*'ilm*) in general
 - A. *Fiqh* is a type of knowledge. It relates specifically to knowing Islamic legal rulings. Not all knowledge is *fiqh* but all *fiqh* is knowledge
 1. Ex: knowing rulings on praying while traveling is *fiqh*
- II. Knowledge in general means knowing something as it is in reality
 - A. Ex: fire is hot
 1. Knowing this reality is not considered *fiqh*
 - B. It is of two types
 1. Compulsory
 - a) It means knowledge that does not depend on pondering and inference
 - b) It occurs directly through one of the five sense (taste, smell, sight, hearing, touch), therefore, it does not require any pondering or inference
 - (1) Ex: watching a friend walk into a specific store
 - c) A *mutawaatir* report also falls under this
 - (1) This is when a large number of people from different areas report the same thing on a subject
 - (a) Ex: there is a city in Australia called Sydney
 - (i) Even if we have not been there, we know it to be true because it is *mutawaatir*
 2. Acquired
 - a) It means knowledge that does depend on pondering and inference
 - b) It occurs through contemplation and thought
 - (1) Ex: realizing that the world is created
 - c) Pondering (*nazr*) is contemplating the state of the object in order to lead to what is sought
 - (1) Ex: When a person ponders over an issue and looks deeply into it
 - d) Inference (*istidlal*) is seeking evidence in order to verify an issue or information
 - (1) Ex: if someone gave you an answer to a math equation and you try to verify it by solving the equation
 - (2) Evidence is what guides to that which is being sought because it is its indicator. It verifies it
 - (a) In *fiqh*, it could be a verse, hadith, statement of a companion, or any of the other sources of Islamic law that show evidence for a particular ruling. When a jurist points to such evidence to prove a ruling, it is called *istidlal* (inference)
 - III. Types of ignorance
 - A. Compound ignorance
 1. Def: believing something to be contrary to what it is in reality
 2. Ex: someone believing that Al-Mughni was written by Ibn Taymiyyah
 - a) This is incorrect because it was written by Ibn Qudama
 - B. Simple ignorance

1. Def: the absence of knowledge on something
2. Ex: someone saying, "I don't know who the author of Al-Mughni is"

C. Speculation (*zann*)

1. Def: When two matters are possible, with one being more probable than the other
2. Ex: when a Muslim scholar looks into an issue in which there is a difference of opinion and prefers one over the other based on the evidence
 - a) It is a form of *ijtihad* on his part, thus, the other opinion is still possible. The judgement is not definitive due to the possibility of the other opinion being the correct one

D. Doubt (*shakk*)

1. Def: when two matters are possible, while neither possesses a feature distinguishing it over the other
 - a) Meaning there is no way to favor one over the other. They are both equally possible

The Topics of Usool al-Fiqh

- I. The way of *Usool al-Fiqh* is generality and not detailed analysis
 - A. Meaning it does not seek detailed evidence behind rulings, rather, its functions are as follows:
 1. To define categories of Islamic legal **rulings**
 - a) Meaning what are the various types of Islamic legal rulings
(1) Ex: obligatory, forbidden, recommended, permissible, valid, invalid, etc.
 2. To clarify what are the types of valid **evidence** that can be used to derive rulings from it
 - a) Ex: Qur'an, sunnah, consensus, analogical deduction (*qiyas*), statement of a companion, etc.
 3. To define how to use the evidence to **infer** the rulings
 - a) Meaning how do we know if something is a command or prohibition in the Qur'an, sunnah, or in any of the other sources of Islamic law? How do we know if the ruling applies to all or only specific types of people?, etc.
 4. The **eligibility** of the one inferring the rulings (i.e. *Mujtahid*)
 - a) Meaning to clarify what are the requirements for a person to be able to derive rulings from the evidence
- II. Other topics studied under *Usool al-Fiqh* include the following and all of them fall under one of the four functions discussed above. They will each be discussed in detail throughout the book *insha'Allah*:
 - A. Categories of phrases
 - B. Literal and figurative statements
 - C. Commands and prohibitions
 - D. Actions of the Prophet (pbuh)
 - E. Reports
 - F. General and specific statements
 - G. Ambiguous and clear statements
 - H. Apparent and interpreted statements
 - I. Order of preference in which evidence is cited
 - J. Rulings related to *Mujtahids*
 - K. Abrogation
 - L. Other similar topics

Categories of Phrases (Kalaam)

- I. The bare minimums from which a phrase can be composed of in Arabic are:
 - A. Two nouns
 1. Ex: زيد قائم (Zayd [is] standing)
 - B. One verb and one noun
 1. Ex: قام زيد (Zayd stood)
 - C. One particle and one verb
 1. Ex: لم يقم (He didn't stand)
 2. However, the majority of scholars of the Arabic language did not consider this sufficient. This is because the particle is actually connected to a noun
 - a) The same applies to a phrase with one particle and one noun
(1) Ex: يا زيد (O, Zayd!)
- II. Phrases are divided into the following:
 - A. *Inshaa'*
 1. Whatever is not possible to be described as true or false, rather, it deals with either:
 - a) Compliance or the absence of compliance
(1) Ex: commands and prohibitions
 - b) Interrogatives
(1) Ex: Did Zayd stand?
 - c) Fancy
(1) Ex: If only youth would one day return!
 - d) Urging
(1) Ex: Why not stay with us?
 - e) Oaths
(1) Ex: By Allah, I will do such and such!
 - B. *Khabar*
 1. Whatever is possible to be described as truth or false on its own
 - a) Ex: "I met your father yesterday", "I have a new car at home", etc.
(1) Meaning you can confirm if such reports are true or not and label them as such
 2. Some types are always true
 - a) Ex: Qur'an and hadiths that have reached us authentically

Literal (Haqeeqah) and Figurative (Majaaz)

I. Literal (*haqeeqah*)

A. Def: when a word is used to denote its actual meaning

1. Ex: using the word 'lion' for the actual predator animal

B. It can be divided into three types:

1. Linguistic - when a word is used with the linguistic meaning imposed on it

a) Ex: the word *salah* (صلاة) in Arabic linguistically means supplication

2. Islamic - when a word is used with the Islamic meaning imposed on it

a) Ex: the word *salah* (صلاة) in Arabic Islamically means the specific way of performing the Muslim prayer from *takbeer* to *tasleem* as done with the five daily prayers

3. Conventional - when a word is used by the people in an area with a specific meaning

a) Ex: the word *daabah* (دابة) in Arabic conventionally means any animal on four legs but linguistically it refers to any living creature on Earth whether man or beast

II. Figurative (*majaaz*)

A. Def: when a word is used to denote other than its actual meaning

1. Ex: using the word 'lion' to refer to a brave man

B. It can be divided into four types:

1. Addition

a) Ex: The verse, "There is nothing like unto Him" (Quran 42:11)

(1) The *kaaf* (translated as 'like') is an addition and not grammatically necessary. The words suggest as if there is something like Allah but in reality the point is to negate it

2. Deletion

a) Ex: The verse, "Ask the village" (Quran 12:82)

(1) What is intended here are the people of the village and not literally the houses and walls. The mention of the people has been omitted but it is what is intended

3. Transfer

a) Ex: Using the Arabic word *ghaait* (غائط) to mean feces

(1) This is not its literal meaning, which is a depressed spot wherein a person relieves himself. We transferred away from its literal meaning to a metaphorical one

4. Borrowing

a) Ex: The verse, "A wall wanting to collapse" (Quran 18:77)

(1) Here the wording is used in a way to suggest as if the wall is something living when in reality it is an inanimate object. We have borrowed wording used to describe the living to describe an inanimate object

(a) It is a type of comparison (*tashbeeh*)

Commands and Prohibitions

- I. This chapter is the essence of Usool al-Fiqh
 - A. Meaning the whole point to studying Usool al-Fiqh is to understand what Allah has commanded and forbidden. In order to do that, we need to first understand what is meant by the words 'command' and 'prohibition' and how do we determine them
- II. Commands
 - A. Def: Using an utterance to request the fulfillment of an action from someone inferior in a way that conveys obligation
 1. Commands in actuality are given through utterance and this is why it is highlighted in the definition
 - a) They can also be given through writing but in general they are given through utterance
 2. If a request is directed to someone
 - a) Superior
 - (1) It is called a plea
 - (2) Ex: a slave to Allah
 - b) Inferior
 - (1) It is called a command
 - (2) Ex: Allah to a slave
 - c) Equal
 - (1) It is called a request
 - (2) Ex: a friend to a friend
 3. If a request is not meant to be an obligation (i.e. a recommended act), then it is not in reality a command according to most scholars of Usool al-Fiqh
 - a) Others disagree and say it is still a command though not an obligatory one
 - B. Formulation
 1. It is done through the imperative verb
 - a) Ex: Drink! (اشرب)
 - b) There are numerous forms of this mentioned in the Qur'an and Sunnah
 - C. Indication
 1. In general, all commands are taken to be obligatory unless there is evidence to suggest otherwise
 - D. Commands do not necessitate immediacy according to the author
 1. Meaning even if someone has met all of the requirements to fulfill a command, he is not required to fulfill it immediately
 - a) Ex: a man who has the financial and physical ability to do *Hajj* but delays it, a man who is able to pay expiation (*kaffarah*) but chooses to delay it
 2. However, most of the scholars including Imam Ahmad disagree and say that commands necessitate immediacy
 - a) Meaning a person is obligated to fulfill a command as soon as possible without delay provided the person has met all of the requirements to fulfill it and there are no obstacles in place to prevent it
 - E. Commands do not entail repetition according to the author

1. Meaning unless there is evidence to indicate that a command is to be fulfilled over and over again, it suffices to do it just once
 2. However, the Hanbalis disagree and say commands do entail repetition unless there is evidence to suggest that it should not be repeated
- F. If a command is performed, the commanded person is cleared of the injunction
1. Ex: if someone prays the Maghrib prayer, he is cleared of its obligation and does not require repetition or make up
 - a) Provided he fulfilled all of the requirements that come along with it
 - (1) Ex: have *wudu*, covering privates, facing the *qiblah*, time of the prayer has entered, cleanliness of body, place, and clothes, going properly through all of the positions of prayer, etc.
- G. If there is evidence to suggest that a command is actually not an obligation, then it is either:
1. Recommended
 - a) Ex: “And take witnesses when you conclude a contract” (Quran 2:82)
 - (1) This verse seems to suggest a command but we know from the sunnah that the Prophet (pbuh) bought a horse but did not take witnesses, thus, it is understood to be a recommendation
 2. Permissible
 - a) Ex: “But when you come out of *ihraam*, then hunt” (Quran 5:2)
 - (1) This is understood to be indicating permissibility only and not obligation because the verse before it says, “hunting not being permitted while you are in the state of *ihraam*” (Quran 5:1)
 3. Threat
 - a) Ex: “The truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve” (Quran 18:29)
 - (1) Obviously Allah is not commanding us to disbelieve but the context makes it clear that it is a form of threat to those who choose to disbelieve
 4. Equality (*taswiyah*)
 - a) Ex: “Be patient or impatient - it is all the same for you” (Quran 52:16)
 - (1) We are just being shown equality between two states
 5. Formation (*takween*)
 - a) Ex: “Be apes, despised”(Quran 2:65)
 - (1) This does not entail compliance but Allah is informing us that he transformed some disobedient people in the past into monkeys
- H. The means to fulfill a command take the same ruling as it
1. Meaning any means that lead to fulfilling an obligation also become obligatory
 - a) Ex: Going to the Friday prayer is obligatory so anything that leads to going to it is also obligatory, such as, getting out of the house, heading towards the Friday prayer, making *wudu*, etc.
 2. The same rule applies to the prohibitions
 - a) Meaning any means that lead to something forbidden also become forbidden

(1) Ex: *zina* is prohibited, thus, any means that lead to it are also forbidden (getting into the car, driving to meet the person, being alone with the person, touching them, etc.)

- I. Those included in the commands mentioned in the Qur'an and Sunnah
 1. Believer
 - a) This is obvious
 2. Disbeliever
 - a) They are included as well in all of the commands and prohibitions
 - (1) This is because we have verses in the Qur'an which speak of disbelievers being punished not just for disbelief but also deeds lower than those
 - (a) Ex: "What put you into the flame? They will say, 'We were not of those who prayed, Nor did we used to feed the poor, And we used to enter into vain discourse with those who engaged [in it], And we used to deny the Day of Recompense'" (Qur'an 74:42-46)
 - J. Those excluded from the commands mentioned in the Qur'an and Sunnah. Meaning they are not held responsible for not fulfilling them
 1. Those forgetful
 - a) Ex: someone who skipped the *Dhuhr* prayer because he forgot
 2. Minors
 - a) These are those who have not reached puberty
 3. Insane
- III. Forbidden
- A. Def: Using an utterance to request the abandonment of an action from someone inferior in a way that conveys obligation
 1. The same details apply to it as those under 'command' except that it is focused on the abandonment of an action and not on its fulfillment
 - B. Formulation
 1. When it comes with the prohibitive *laa*
 - a) Ex: "Do not eat *riba*" (Quran 3:130)
 2. Describing something to be forbidden, dangerous or ugly
 - a) Ex: "Forbidden to you are your mothers in marriage" (Quran 4:23)
 - C. Indication
 1. In general, all prohibitions are taken to be obligatory unless there is evidence to suggest otherwise
 - a) Meaning we are obligated to refrain from whatever is forbidden in them
 - b) If there is some evidence or context to suggest that the prohibition is not meant to be obligatory, then it will be considered offensive (*makrooh*)
 2. Prohibitions also indicate invalidity
 - a) When it comes to worship, it will invalidate the worship
 - (1) Ex: if someone prayed a supregatory prayer (*nafl*) after 'Asr prayer, then such a prayer would be considered invalid
 - b) When it comes to contracts, it would invalidate it

(1) Ex: if someone sold something that he does not own, then such a sale would be considered invalid

The General (al-'Aam) and the Specific (al-Khaas)

I. The general

A. Def: whatever includes two or more things

1. Meaning it is not restricted in any way. It encompasses all individuals under it
 - a) Ex: "The students came"
 - (1) This sentence includes all students and not just specific students because it is general

B. Formulation

1. Singular nouns made definite using the article *alif-laam* (ال)
 - a) Ex: "Man (الإنسان) is indeed in loss except those who believe and do good works" (Quran 103:2-3)
 - (1) The word الإنسان is general and includes all mankind without exception
2. Plural nouns made definite using the article *alif-laam* (ال)
 - a) Ex: The statement of a female companion, "We were forbidden from following funerals (الجنائز)"
 - (1) The word الجنائز is general and includes all funerals without exception
3. Ambiguous nouns such as:
 - a) Whoever
 - (1) Ex: "Whoever sees something evil should change it with his hand"
 - (a) It means anyone without restriction
 - b) Whatever for non-sentient beings
 - (1) Ex: "Whatever good you do, you will be rewarded for it in full"
 - (a) It means any sort of good deed the person does
 - c) Whichever for sentient and non-sentient beings
 - (1) Ex: "Whichever of my brothers comes to you, be good to him"
 - (a) It means any one of his brothers without exception
 - d) Wherever
 - (1) Ex: "Wherever you may be, death will catch you"
 - (a) It means death reaches all spaces and places without exception
 - e) Whenever
 - (1) Ex: "Whenever you come to me, I will honor you"
 - (a) It means the person will be honored any time he/she arrives without exception
4. Negation with indefinite nouns
 - a) "There is no prayer (لا صلاة) after 'Asr"
 - (1) It means any type of prayer without exception

C. Generality is an attribute of utterance and not action

1. Meaning the rule of generality applies only to utterances and not actions

- a) Ex: The Prophet (pbuh) once prayed a supererogatory prayer (*nafl*) inside the *Ka'bah*. We cannot take from this that one can pray every prayer inside of it because actions do not indicate generality³

D. The general is preserved (*Mahfuz*)

- 1. Meaning the general must be acted on based on its generality. It is not valid to restrict it except through a specific evidence

E. There are different levels of generality

- 1. Some are more general than others, thus, encompass more
 - a) Ex: 'human being' is general and means all people but 'living thing' is even more general and includes other species

II. The specific

A. Def: It is the opposite of general. It is that which indicates restriction

- 1. Ex: "One man"
 - a) This means just one man and no other

B. Types

1. Connected

- a) Def: whatever is not independent by itself

- (1) Meaning when the evidence for it is dependent in that the verse or hadith which is making the specification comes as part of the same verse or hadith mentioning the general or it's mentioned in that same context

b) Types

(1) Exception

- (a) Def: removing something that otherwise would have been included by the phrase

- (i) Ex: The group came, except Zayd

- (a) Zayd is the exception specifically mentioned in the general phrase

- (b) The word used to make the exception is the word لا (except) or one of its sisters

- (i) Its sisters are words that give the same meaning as لا such as: سوى, عدا, خلا, حاشا

- (c) Conditions for it to be a valid type of exception:

- (i) Something must remain from that which the exclusion is being made

- (a) Ex: "I owe him \$10 excluding \$10"

- (i) This is not a valid exception because there is nothing remaining

- (b) According to the Hanbalis, it must not exceed more than half of its value or members

³ Ibn Qudamah said, "Obligatory (*fardh*) prayers are not valid inside the *Ka'bah* or on its roof, but they were regarded as permissible by al-Shaafa'i and Abu Haneefah...Supererogatory prayers (*nawafil*) are valid if offered inside the *Ka'bah* or on its roof, and we do not know of any difference of opinion concerning that, because the Prophet (blessings and peace of Allah be upon him) prayed two units inside the *Ka'bah*." [al-Mughni, 1/406]

- (i) This means with the previous example it cannot exceed over \$5, if it does, it will no longer be considered a valid exception
- (ii) Other schools may differ over the exact nature of this condition
- (ii) It should be connected to the phrase
 - (a) Ex: “The players came,” a very long pause, “except Zayd”
 - (i) This is an invalid exception because there is a long pause between the two phrases which makes it disconnected
- (d) It is permissible to put that which is excluded before that from which it is excluded
 - (i) Ex: “Except Zayd, no one stood”
- (e) It is permissible to exclude from the same category or from other things
 - (i) Ex: “The people (*qawm*) came, excluding the donkeys”
 - (ii) Some scholars disagree and do not allow it

(2) Conditional

- (a) Def: attachment of something based on something else’s existence or absence with the conditional **إن** (if) or one of its sisters
 - (i) Ex: “If Bani Tamim come to you, honor them”
 - (ii) The condition could come either before or after that which is stipulated by it
 - (a) After ex: “Give fruits, if Bani Tamim come to you”
 - (iii) Sisters of conditional **إن** are those words which can be utilized to give the same meaning in a sentence such as: **من، ما، أي، مهما، متى، أين، أنى، حيثما، إذ ما**

(3) Attribute

- (a) Def: when something absolute (*mutlaq*) is made restricted (*muqayyad*) using an attribute
 - (i) Ex: A verse in the Qur’an states, “*Then [he may marry] from those whom your right hands possess of believing slave girls*”
 - (a) The exception to marry among female slaves is restricted to only **believing** slave girls
 - (ii) *Mutlaq* (Absolute)
 - (a) Def: whatever indicates the actuality of something without restriction

- (i) Ex: A verse in the Qur'an states, "*And those who pronounce thihar (a form of divorce) from their wives and then [wish to] go back on what they said - then [there must be] the freeing of a slave before they touch one another.*" The slave here is absolute in the sense that it can be any slave and is not restricted to a particular type of slave
 - (b) It is required to act according to the absolute unless it is proven to be restricted through the *Shariah*
- (iii) *Muqayyad* (Restricted)
 - (a) Def: it means whatever indicates the actuality of something with restriction
 - (i) Ex: A verse in the Qur'an states, "*And whoever kills a believer by mistake - then the freeing of a believing slave.*" The slave here is restricted to be Muslim and not just any slave
 - (b) When the ruling mentioned in the absolute and restricted text is one and the same, the restricted text is given preference and the absolute is qualified using the restricted text
 - (i) Ex: **freeing of a slave** is mentioned a few times in the Qur'an as a form of **expiation** for different violations. Even though the violations vary, the expiation is the same in all cases: to free a slave. However, in Surah Nisa (4:92), it is mentioned that the freed slave **must be Muslim**, thus, this will **restrict** all the other verses which speak about freeing any slave in that the freed slave **must** be Muslim
 - (c) When the ruling mentioned in the absolute and restricted text is **not** the same, then the texts are separated and each is acted on its **own** terms
 - (i) Ex: The Qur'anic verse "[As for] the thief, the male and the female, amputate their hands" and the Qur'anic verse "O you who have believed, when you rise to [perform] prayer, wash your faces and

your hands to the elbows.” Is the second verse restricting the first absolute verse by saying that the hand is up to the elbow, therefore, we are required to amputate the hand of a thief up to the elbow? The answer is no. Because the first verse is speaking about **cutting** the hand while the other is speaking about **washing** it. These are two different rulings, therefore, we will apply each in its own place: we will cut off the hand up to the wrist for theft and wash up to the elbows for ablution

2. Disconnected

a) Def: whatever is independent by itself and comes through either the senses, reason or Islamic law

(1) Meaning the evidence for its specification is independent from the general text and the verse or hadith which is making the specification does not come as part of the same verse or hadith mentioning the general nor is it mentioned in that same context

b) Types

(1) Qur'an doing specification of other parts of the Qur'an

(a) This is when some verses of the Qur'an make specification of other verses

(b) Ex: The verse in Surah Baqarah, *“Divorced women remain in waiting for three periods,”* is general and the verse in Surah Ahzaab, *“O You who have believed, when you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning them,”* is a specification of it

(i) So in general a divorced woman's waiting period is three periods. But there is an exception to this rule for those women who never consummated their marriage, because they have no waiting period

(2) Sunnah doing specification of the Qur'an

(a) This is when a general rule is mentioned in the Qur'an and then the sunnah makes specification of it

(b) Ex: The verse in the Qur'an, *“Allah instructs you concerning your children: for the male, what is equal to the share of two females.”* The hadith, *“A Muslim does not inherit from a disbeliever and vice versa”* is a specification of it

(i) So in the verse it seems to suggest that it is the case in all familial situations. However, the sunnah explains

it and specifies that when the inheritance is between a Muslim and a non-Muslim, then it does not apply

(3) Qur'an doing specification of the Sunnah

- (a) This is when the Qur'an specifies something mentioned in general terms in the sunnah
- (b) Ex: the hadith, "*Allah does not accept prayer from any of you when they lose ritual purity until they make ablution [with water],*" being excluded by Surah Nisa, "*And if you be ill...and you find not water, then take clean earth*"
 - (i) So the sunnah made a general claim but the Qur'an specified an exception

(4) Sunnah doing specification of other sunnah

- (a) This is when one hadith makes specification of another hadith
- (b) Ex: the hadith "Whatever is watered by rain, then 1/10th of its produce is to be paid in *zakkah*" is general and the hadith "There is no *zakkah* on less than five *awsuq*" makes specification of it
 - (i) So the first hadith makes it seem that all that is watered owes 1/10th on it but the second hadith specifies that those who produce less than five *awsuq* are excluded

(5) Analogical deduction (*qiyaas*) doing a specification of an utterance in the Qur'an or sunnah

- (a) This is when analogical deduction (*qiyaas*) specifies something mentioned in general in the Qur'an or sunnah
- (b) *Qiyaas* is based on the Qur'an and sunnah, therefore, it is as though the Qur'an and sunnah itself is performing the specification
 - (i) How this is the case will be explained later under the chapter of *qiyaas* insha'Allah
- (c) Ex: The verse in the Qur'an, "*The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes*"
 - (i) However, because there is another Qur'anic verse (4:25) specifying that a female slave is to be given **half** the punishment (50 lashes) for the same crime, we can make the analogical deduction that it also applies to male slaves in a similar situation

Apparent (Dhahir), Ambiguous (Mujmal), Clear (Mubayyan), and Interpreted (Mu'awwal)

- I. The unequivocal text (*nass*) is that which cannot be interpreted except as having one single meaning
 - A. Ex: I saw Zayd
 1. There is no other way to interpret this except to conclude that the speaker saw Zayd
- II. The apparent (*dhahir*) is that which can be interpreted in two ways, but where one interpretation is more preponderant than the other
 - A. Ex 1: Today, I saw a lion in the forest
 1. The word 'lion' in the language is used for the actual beast but also as a metaphorical reference to a brave person. The reference to the beast is the *dhahir* meaning because that is the literal meaning of the word, therefore, it will always be considered first
 - a) Unless there is evidence to suggest that the literal meaning is not intended, we will always assume the literal meaning, which is the *dhahir*
 - B. Ex 2: whenever we see a command in the Qur'an or sunnah, then we understand it to be as such and not just a recommendation unless there is evidence to suggest that it is only meant to be a recommendation
 1. Meaning the *dhahir* of a command in the Qur'an or sunnah is to abide by it by default
 - C. The meaning of a *dhahir* is apparent by itself and does not require further elaboration
 1. Ex: the hadith which says not to face nor turn one's back towards the *qiblah* while answering the call of nature clearly indicates prohibition
 - D. It is obligatory to act according to the *dhahir* of the text unless there is evidence to suggest that the *dhahir* is not intended by the text
- III. Ambiguous (*mujmal*) is that which is in need of clarification
 - A. Meaning it can be interpreted in many ways and no one interpretation is more preponderant than another
 - B. Ex: The verse in the Qur'an, "*Divorced women remain in waiting for three quru*"
 1. The word *quru*' could mean menses or purity, thus, we need clarification with evidence as to which of the two is meant in the verse here
 - a) The sunnah specifies for us that the women wait for three 'menses' in this case according to the Hanbalis
 - C. The ruling on it is that we hold off acting on it until there is a clarification
- IV. Clear (*mubayyan*) is taking something from the realm of ambiguity (*mujmal*) into the realm of clarification
 - A. Meaning an ambiguous statement becomes clear after demonstration/explanation and does not require further clarification or it is clear on its own
 1. Ex: we are told to do *salah* in the Qur'an but there is no explanation on how it is to be done, however, the Prophet Muhammad (pbuh) demonstrated it to us. Then it became clear

- V. Interpreted (*mu'awwal*) is when there are evident indicators to suggest that the apparent meaning (*dhahir*) is not intended
- A. It is only done with use of evidence
 - 1. These evident indicators could be internal or external to the text
 - B. Ex 1: The Prophet (pbuh) forbids something in one hadith but then is reported to have done it in another hadith
 - 1. The apparent meaning from the first hadith would seem to suggest that the action is prohibited, however, the second hadith would be understood to clarify it, thus, we would interpret the first hadith to mean that the action is offensive (*makrooh*) but not forbidden
 - C. Ex 2: I saw a lion in the battlefield
 - 1. The word 'lion' literally means the wild beast that we all are familiar with, however, given the context of the statement we can conclude that the word 'lion' here is a metaphor and is referring to a brave warrior. The context of the statement here is an indicator to us that the word 'lion' here is *mu'awwal*

Actions of the Prophet (pbuh)

- I. The Sunnah of the Prophet (pbuh) is one of the sources of evidence for deriving Islamic law
 - A. It comes right after the Qur'an in terms of importance
- II. We can categorize the actions of the Prophet (pbuh) into three categories:
 - A. Statements
 1. These are actual utterances of the Prophet (pbuh)
 - B. Actions
 1. These are his actions as reported to us through his companions
 2. These are also sources of evidence for deriving Islamic law
 - C. Tacit approvals
 1. These are things which were either said or done in his presence but he (pbuh) did not forbid them, therefore, confirming their practice
 - a) This is because the Prophet (pbuh) is divinely protected from tacitly approving someone doing something objectionable
 - b) Ex: The Prophet's (pbuh) tacit approval of Khalid ibn Waleed eating a desert iguana
 - c) The same applies for things done while he (pbuh) was alive yet not in his presence, and that he (pbuh) knew of yet did not reject, is the same as something done in his presence
 - (1) Ex: The practice of *azl*⁴, a form of birth control. This was practiced by some companions and when it reached the Prophet (pbuh), he did not forbid it
 - (2) If something was not done in his presence nor did its knowledge reach him, then it does not qualify as a tacit approval, therefore, we cannot use it as evidence for permissibility
- III. We can also divide the actions of the Prophet (pbuh) into the following two categories:
 - A. Those related to worship and obedience to Allah
 1. These can be further subdivided into two categories:
 - a) Those exclusive to the Prophet (pbuh)
 - (1) Meaning nobody is allowed to follow him in it
 - (a) Ex: marrying more than four wives, fasting multiple days in a row without breaking the fast, etc.
 - (2) There must be evidence for this
 - b) Those not exclusive to the Prophet (pbuh)
 - (1) Meaning anyone can follow him in it
 - (2) This is the default, therefore, all his actions related to worship and obedience fall into this category unless there is evidence to suggest that it was exclusive to him
 - (3) What is the ruling on it?
 - (a) There are three opinions

⁴ Coitus interruptus: this is when the man pulls his penis out of the vagina before ejaculation.

- (i) It is **obligatory** by default to follow him in it unless there is some specific evidence to suggest that it is recommended
 - (a) This is the Hanbali position
- (ii) It is **recommended** by default to follow him in it unless there is some specific evidence to suggest that it is obligatory
- (iii) We remain **silent** about it by default until there is evidence to indicate whether it is obligatory or recommended

B. Those not related to worship and obedience to Allah

1. These actions are either due to his own personal habits, his people's customs, or his own natural dispositions
 - a) Ex: his particular choices in foods, reports of him riding a donkey, etc.
2. It is not obligatory to follow the Prophet (pbuh) in such actions, rather, such actions are permissible to do for him and ourselves

Abrogation (Naskh)

- I. Def: It means lifting a ruling or its wording mentioned in an Islamic legal text on the basis of evidence from the Qur'an or Sunnah
 - A. It is also sometimes defined as lifting of an established ruling based on an earlier address with a new ruling based on a later address
 - B. The basic idea is that for some rulings, the later revelation replaces the ruling of the earlier revelation, thus, a new ruling is established
 - C. The word 'lifting' in the definition means removing/changing the previous ruling
 - D. Ex: the Prophet (pbuh) first forbade visiting the graves but later allowed it
 1. The later ruling removed and replaced the previous one
- II. Conditions
 - A. That verse or hadith which is being abrogated should be *inshaa'*
 1. The meaning of *inshaa'* has already been discussed previously on page 10
 - B. Impossibility of combining between the two contradictory evidence
 1. If we are able to reconcile between the past and later revelations, then there is no need to resort to abrogation because we can act on both
 - C. The verse or hadith which is doing the abrogating should either be stronger or equal in strength to the verse or hadith being abrogated
 1. Meaning the new ruling cannot be based on a weaker evidence
 - a) Ex: a *mutawaatir* hadith vs an authentic *ahaad*⁵ hadith
 - (1) The former will be given preference
 - b) This is why a hadith can never abrogate a verse from the Qur'an because the latter is stronger than it. It doesn't matter whether the hadith is *mutawaatir* or *ahaad*
- III. Types of abrogation
 - A. Qur'an abrogating the Qur'an
 1. Types
 - a) Abrogation of recitation - wording of the verse removed from the Qur'an but the ruling still remains
 - (1) Ex: stoning
 - b) Abrogation of the ruling - wording of the verse remains in the Qur'an but the ruling is removed
 - (1) Ex: in beginning of Islam, fasting in Ramadan was optional and you could just feed the poor instead but later it was restricted to only the old and sick
 - c) Abrogation of both - Both the wording of the verse and the ruling are removed
 - (1) Ex: at first there was a verse saying that up to 10 breast feedings were required for a child to be considered your foster child but later the verse and the ruling both were removed
 - B. Qur'an abrogating the Sunnah

⁵ This refers to any transmitted hadith that does not fulfill the requirements for a *mutawaatir* hadith.

1. Ex: The Sunnah established in the beginning of Islam to pray facing Jerusalem, but then later the Qur'an changed the *qiblah's* direction to the *Ka'bah*
- C. Sunnah abrogating the Sunnah
1. Ex: When the Prophet Muhammad (pbuh) said he used to forbid going to the graveyards but now allows it
 2. It can only be done by either hadiths of a similar level or a higher level than it but never by a hadith of a lower level than it
 - a) *Mutawaatir* hadiths can do abrogation of other *mutawaatir* hadiths or of *ahaad* hadiths
 - b) *Ahaad* hadiths can only do abrogation of other *ahaad* hadiths but never of *mutawaatir* hadiths
- IV. Abrogation can be divided based on whether it has a replacement ruling or not:
- A. That which has a replacement ruling
 1. Ex: When the Prophet Muhammad (pbuh) said he used to forbid going to the graveyards but now allows it
 - B. That which does not have a replacement ruling
 1. Ex: The verse in the Qur'an, "When you consult the Messenger in private, give charity before such consultation" (Qur'an 58:12)
 - a) This was abrogated but there was no new ruling to replace it
 - b) Some scholars differ whether this verse qualifies or not
- V. Abrogation can also be divided based on the difficulty of the replaced ruling:
- A. When the new ruling is easier
 1. Ex: The waiting period for a widow was replaced from a year to 4 months and 10 days
 - a) This was to bring ease
 - B. When the new ruling is more difficult
 1. Ex: In beginning of Islam, fasting in Ramadan was optional and you could just feed the poor instead but later it was made an individual obligation

Conflicting Evidence

- I. We must understand that there is never a real conflict between two *shari'* forms of evidence. If there seems to be one, then it is only in the observer's mind
 - A. The *shari'* form of evidence here is in reference to Qur'an and Sunnah. There is never a case where two verses of the Qur'an, two authentically narrated *hadiths*, or a verse from the Qur'an and an authentic *hadith* will contradict
- II. Types of conflicts between texts
 - A. Both texts are of general nature, which means their applicability is universal
 1. In this case we either:
 - a) Reconcile between the two if possible
 - (1) Ex: One Qur'anic verse tells the Prophet Muhammad (pbuh), "You certainly guide to the straight path," while another states, "You cannot guide whom you love"
 - (a) They seem to contradict but we can reconcile between them.
The first verse is referring to delivering the message and giving *da'wah* to the people towards the truth and right guidance, whereas, the second verse is referring to changing of hearts, which is only in the Hands of Allah
 - b) If reconciliation is not possible, then we move to abrogation
 - (1) This is based on the condition that we know the chronology of both evidence. If we do not, then we cannot resort to this
 - (2) Ex: we have two hadiths in which one seems to suggest that a dead animal's skin becomes pure after tanning while the other suggests that it does not. We know from chronology that the second hadith was instructed by the Prophet (pbuh) a month or two before his death, therefore, it will be considered abrogating the previous hadith
 - c) If abrogation is not possible, then we move to preference
 - (1) This is when the evidence is weighed and then one of them is given preference over the other. How various forms of evidence are given preference will be discussed later under a different chapter insha'Allah
 - (2) Ex: There is a hadith which says that touching the penis breaks your wudu, whereas, there is another one which says that it does not. When scholars evaluated both hadiths, they found that the first one carries more weight because:
 - (a) It is more cautious than the second
 - (i) When we have a hadith that says that something breaks wudu and the other says that it does not, it is safer to follow the one that says that it does. This is important especially for worship
 - (b) It is transmitted from more paths than the second

- (c) More scholars have authenticated the first one than the second
 - (d) The first is moving away from the original rule, which is that *wudu* remains after performing it, whereas, the second is only affirming the original rule. An evidence that suggests moving away from the original rule is given preference because it is an indication of additional knowledge
 - d) If preference is not possible, then we withhold judgement
 - (1) This is very rare
- B. Both texts are of specific nature, which means their applicability is restricted to specific cases
1. In this case we either:
 - a) Reconcile between the two if possible
 - (1) Ex: there is a hadith which says that the Prophet (pbuh) prayed Dhuhr prayer on the 10th of Dhul Hijjah in Mecca while another says that he did so in Mina
 - (a) These are specific pieces of evidence because they point out specific locations and prayers he performed
 - (b) It is possible to reconcile them and say that he performed Dhuhr in Mecca and then repeated it in Mina as well for his companions. There is nothing that forbids repeating the same prayer
 - b) If reconciliation is not possible, then we move to abrogation
 - (1) This is based on the condition that we know the chronology of both evidence. If we do not, then we cannot resort to this
 - c) If abrogation is not possible, then we move to preference
 - (1) This is when the evidence is weighed and then one of them is given preference over the other. How various forms of evidence are given preference will be discussed later under a different chapter insha'Allah
 - (2) Ex: It is reported that Ibn Abbas said that the Prophet (pbuh) married Maymoonah while he was in the state of *ihraam*, however, Maymoonah herself reports that she married him while he was not in the state of *ihraam*
 - (a) In this case, we will prefer Maymoonah's version because it directly involves her own story and she is better equipped knowing the facts surrounding it. In addition, the companion Abu Raafi' supported her version and said that he was a messenger between the Prophet (pbuh) and her
 - d) If preference is not possible, then we withhold judgement
 - (1) This is very rare
- C. One of the texts is of general nature and the other a specific nature
1. In this case, the general text is restricted by the specific text

- a) Ex: a *hadith* says that the *zakkah* on things which grow from the earth and watered naturally is 10%, whereas, a different *hadith* says that *zakkah* on such items is not due until the collected produce reaches 5 *awsuq*
 - (1) We can combine between the first *hadith*, which is general, and the second *hadith*, which is specific, and conclude that *zakkah* is not due on such items until the collected produce reaches 5 *awsuq*. We have basically combined the two definitions and specified the general with the specific

D. When the conflict occurs between two texts where one is more general than the other from one angle and more specific than the other from another angle

1. In this case we have the following options:

- a) When there is an outside evidence which directs us to specify the generality of one with the specification of the other. Meaning we will qualify the generality of one with the specification of the other based on an evidence outside of the two conflicting texts

(1) Ex: There is a verse in the Qur'an that says, "And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days]", whereas, another verse says, "And for those who are pregnant, their term is until they give birth"

(a) Which verse is a wife to follow if she gives birth just a few days after her husband's death and wants to remarry?

- (i) The first verse seems general whether the wife is pregnant or not and specific with regards to a female widow, and the second verse is specific with regards to a pregnant wife and seems general with regards to a female widow or divorcee. In this case, we have another evidence which tells us that we should specify the first verse with the second, thus, a female widow's waiting period is four months and ten days unless she is pregnant, in which case, it will be as soon as she gives birth

(a) The other evidence that we have is a report of a female companion who gave birth to a child a few nights after her husband's death. The Prophet Muhammad (pbuh) allowed her to get remarried

- b) When there is no outside evidence which directs us to specify the generality of one with the specification of the other, we will resort to preference

(1) Ex: There is a *hadith* which states that a person should not sit after entering a mosque until he has performed two units of prayer, whereas, there is another *hadith* which states that a person is not to

pray after praying Fajr until the sun has risen and after praying Asr until the sun has set

(a) What should a person do who enters a mosque after praying Asr?

(i) The official position of the Hanbali school is that it is forbidden to pray any type of supregatory prayer during the forbidden times even *tahiyyah al-masjid* because it is safer. Hanbalis give preference to the safer and more cautious evidence. In other words, Hanbalis give preference to the prohibitory commands over the obligatory ones because they are considered safer. Similarly, if there is a verse or hadith which is warning against something and another recommending it, then the former will be given preference when evaluating them during the preference process because it is safer of the two. Praying two units before sitting down in a mosque is a recommendation while not performing prayer after praying Fajr or Asr is prohibited, which is stronger in terms of strengthening its preference

c) When there is neither an outside evidence nor is there ability to give preference to one over the other, then we act on them both in situations where they do not contradict and halt in situations where they do contradict

(1) This is extremely rare because the jurists generally are able to either reconcile, abrogate, or prefer one over the other in some way

Consensus

- I. Def: when Muslim jurists (*fuqaha*) of an era agree upon the ruling on an issue
- II. It is binding and it is sinful to go against it
 - A. It is a way to protect the religion from corruption
- III. Pillars of consensus
 - A. There must be agreement among the scholars
 1. Only the agreement of *Mujtahids* among the *fuqaha* are considered. The opinions of others are not considered
 2. All of the *Mujtahid fuqaha* living in that era must agree on it
 3. According to Hanbalis, it is essential that those who unanimously agree all die while still holding on to the agreed upon ruling for consensus to be established
 - a) They say that the *Mujtahids* of that particular era must all die, thus, if they all agreed on something and then later even one of them differed, then the consensus will not be considered to have taken place
 - b) The majority of scholars of other schools disagree with this and say that the consensus is established the moment they (the scholars of a particular era) agree, and it is not permissible for them or anyone else to go against it after that
 - B. The issue
 1. The issue on which there is agreement should be related to Islamic law
 - a) Meaning it should not be related to general actions or tastes of the people of that era
 - C. Ruling
 1. The ruling on it should be that of Islamic law
 - a) Ex: prohibited, obligatory, recommended, offensive, permissible
 - D. Types
 1. Verbal
 - a) Def: when all the *Mujtahids* in an era collectively have given the same ruling on a matter
 - (1) Ex: *zina* is prohibited
 - (2) This is a form of consensus by statement
 - b) It also includes when they collectively do something because their performance indicates permissibility
 - (1) Ex: making the *Dhuhr* and *Asr* congregational prayers silent and the rest out loud
 - (2) This is a form of consensus by action
 2. Silent
 - a) Def: when a *Mujtahid* gives an Islamic ruling on something and it is well known and widespread, then enough of a period of time passes that an objection could have been made but no other *Mujtahid* objects to it
 - (1) This is a form of consensus by statement

- b) It also includes when some of them are known to do something and no other *Mujtahid* in their times objects to it. This is a form of consensus by action

Statement of a Companion

- I. There is a difference of opinion whether this can be considered an evidence or not
- II. These fall into the following types
 - A. If it is a matter that cannot be based on *ijtihad* or an opinion
 1. In this case, it will be considered a statement of the Prophet (pbuh)
 - B. Those matters in which there is explicit agreement among the companions
 1. This is considered a form of verbal consensus and is binding
 - C. If something was spread among them and none of them denied it
 1. This is considered a form of silent consensus, thus, it is binding
 - D. If the statement of a companion was not widely known and there is also no report of a companion objecting to it or providing an opposing view
 1. Difference of opinion
 - a) Shafis
 - (1) Old school: it is an evidence
 - (2) New school: it is not an evidence
 - b) Hanbalis
 - (1) It is a form of evidence and is preferred over analogical deduction
 - E. There is a difference of opinion among the companions on a matter
 1. It is not considered a form of evidence

Reports

- I. *Khabar* def: a statement wherein truth and falsehood enter because it bears the possibility of them both
 - A. Details related to this have already passed under the chapter related to 'categories of phrases (kalam)'
- II. Types
 - A. *Mutawaatir*
 1. Def: when the number of people that narrate a report is so large that it is impossible to perceive that they all cooperated on a lie
 2. It conveys certain knowledge
 3. When it comes to *mutawaatir* hadith, it means:
 - a) The *mutawaatir* report must be something observed or heard and not based on personal reasoning
 - (1) In the context of hadith, the companion must explicitly say that he/she heard/saw something from the Prophet Muhammad (pbuh)
 - b) Number of people at every level of the chain must be very large
 - c) The large numbers make it impossible to suggest that they all colluded together on a lie
 - B. *Ahaad*
 1. Def: this refers to a transmitted report that does not fulfill the requirements for *mutawaatir*
 - a) It does not convey certain knowledge because there is a possibility of it being a mistake
 2. It is utilized if the scholars agree over it
 - a) Meaning if they agree on its reliability or content
 3. Types
 - a) *Musnad*
 - (1) Def: those reports that possess a continuously connected chain of transmitters
 - (2) Types
 - (a) *Sareeh*
 - (i) There is explicit mention of all its transmitters
 - (ii) Modes
 - (a) *Hearing*: when the student hears the hadith from his teacher
 - (i) The student can say in this case: "he related to me (*haddathani*)" or "he informed me (*akhbarani*)"
 - (ii) This is the highest level
 - (b) *Reading*: when the student only reads the hadith to his teacher
 - (i) The student can say in this case: "he informed me (*akhbarani*)"

- (ii) This is the second level
- (c) *Authorization*: when the teacher authorizes the student to convey the hadith without reading
 - (i) The student says in this case: “he authorized me” or “he informed me through an authorization”
 - (ii) This is the third level

(b) *Al-'an'annah*

- (i) Def: those reports in which the narrator says, “so-and-so from so-and-so” or “so-and-so said”
 - (a) Meaning there is no explicit mention of the student either *hearing* the hadith from the teacher or *reading* the hadith to the teacher
 - (i) It may be connected or it may not. We do not really know from the surface
- (ii) The default ruling on this is that if a narrator uses this word, then the chain would be considered connected (*musnad*) because the chain’s outward appearance is continuity
 - (a) Exception: the narrator who used this method was famous for *tadlees*, in which case, the chain would be considered disconnected. However, if the known *mudallis* (one who practices *tadlees*) explicitly mentions whom he directly heard it from, then it would be considered connected
 - (i) *Tadlees* is when a transmitter narrates a hadith from an authority whom he met but from whom he did not learn a particular hadith but had learned it from someone else that heard/learned it. So the *mudallis* drops the name of that someone else from whom he heard it and goes directly above him

b) *Mursal*

- (1) Def: those reports that are lacking a continuously connected chain through some of its transmitters being omitted
 - (a) In context of hadith, it means when a *tabi'ee* directly narrates from the Prophet (pbuh) and skips the companion
 - (i) Difference of opinion if these are binding proof or not
 - (a) Shafis
 - (i) These are not binding proof. However, they make an exception for the *mursal* reports of the *tabi'ee* Sa'eed Ibn

al-Musayyab because they view him reliable enough to even transmit it in *mursal* form

(b) Hanbalis

- (i) These are binding proof if the report is reliable
- (ii) If the companion hears something from another companion but omits the latter, then it is considered binding proof because all of the companions are considered trustworthy and upright

Analogical Deduction (Qiyaas)

- I. Def: it means giving a ruling concerning a new issue (i.e. one that is not directly mentioned in the Qur'an or Sunnah) the same ruling as the one on an initial issue (i.e. one that is directly mentioned in the Qur'an or Sunnah), on the basis of some common cause between them
 - A. There are four things here that we need to be aware of:
 1. New issue (*fari'*): this is the case we do not know the ruling on and want to find out
 2. Initial issue (*asl*): this is the case that we do know the ruling on
 3. Ruling (الحكم): this is the ruling on the initial issue which is mentioned in the Qur'an or Sunnah
 - a) Ex: obligatory, prohibited, permissible, offensive, recommended
 4. Cause (*'illah*): this is the reason for the ruling in the initial issue and is also the common factor between the new and initial issue

II. Types

A. Causative analogy (*qiyaas al-'illah*)

1. Def: that in which the apparent cause (*'illah*) necessarily requires the ruling
 - a) It does not make any sense to not apply the ruling in the initial issue to the new issue because they are very similar in their *'illah*
2. Ex: alcohol is forbidden in the Qur'an and Sunnah because it intoxicates. We can derive from this that any new type of drink that intoxicates will adopt the same ruling

B. Indicative analogy (*qiyaas al-dalalah*)

1. Def: using one of two identical things as evidence for the other
 - a) It is when the apparent cause (*'illah*) indicates the ruling without necessarily requiring the ruling
2. Ex: alcohol is an indication for the *'illah* of intoxicant, but it is not necessarily an apparent cause (*'illah*) in and of itself

C. Analogy of similitude (*qiyaas al-shabah*)

1. Def: when there is a new issue that can fit into two different initial issues with different rulings
 - a) Meaning the new issue is similar to both in some way
 - b) In this case, it is attached with the initial issue with which it has most likeness in comparison to the other
2. It is the weakest of the three
3. Ex: if we hear some new rhythm, then we will evaluate whether it resembles a human voice, which will make it permissible, or a musical instrument, which will make it prohibited. It will take on the ruling of whichever of the two it most resembles

III. Pillars of *qiyaas*

A. Initial issue (*asl*)

1. It must be established through evidence that is agreed upon between the two debating parties
 - a) This means two things:

- (1) The ruling of the initial issue must be agreed upon between them
 - (a) Ex: if one party does **not** accept the divorce of a drunk to be valid, then the opposing party cannot use that as evidence to do *qiyaas* for the validity of divorcing during anger
- (2) The evidence itself must be agreed upon between them
 - (a) Ex: if one party does **not** accept the statement of a companion as binding proof, then the opposing party cannot use a companion's statement as evidence to build *qiyaas* off of it

B. Ruling (*hukm*) of the initial issue

- 1. The ruling must follow the apparent cause (*'illah*) with regard to its absence and presence
 - a) Meaning it must be such that when the *'illah* is present, the ruling is present; when the *'illah* is absent, the ruling is absent
 - (1) Ex: intoxication in a drink is what makes it prohibited, therefore, if the intoxication aspect is removed from the drink, then so is its ruling of prohibition

C. New issue (*far'*)

- 1. It must be suitable for the initial issue
 - a) Meaning there must be some sort of suitable relationship to be able to connect the new issue to an initial one, otherwise, it would be invalid to base *qiyaas* off of it

D. Cause (*'illah*)

- 1. The cause must be constant in all the rulings wherein it exists in the initial issues. It should not be inconsistent in phrase or meaning
 - a) Meaning wherever the cause appears in the initial issues, then the same ruling should also follow. It should not be the case that there are instances in the initial issues where the cause exists but the ruling does not follow

Presumption of Continuity (Istishaab)

- I. Def: the continuation of what is established or the negation of what does not exist, i.e. it is the idea that the original ruling, negative or positive, continues until there is legal evidence of a change of state
 - A. This continuance is not proved through positive evidence, but by the absence of the existence of new legal evidence
 1. In other words, we assume that the original ruling continues to be in place until there is evidence to suggest that the original ruling has changed
 - a) Ex: the five daily prayers alone are obligatory and no new prayer was obligated, fasting in the month of Ramadan alone is obligatory and no other fast was made obligatory, *zina* is prohibited and that has not changed, etc.
- II. What is the default ruling on things when there is nothing in the Qur'an and Sunnah about it?
 - A. There are two opinions:
 1. Permissible unless there is evidence prohibiting it
 - a) This is the majority position
 2. Prohibition unless there is evidence allowing it

Order of Precedence in Evidence

- I. This chapter discusses how to prefer one type of evidence over another if they contradict and cannot be reconciled or abrogated
 - A. If we are able to reconcile or establish abrogation, then there is no need to turn to this exercise
- II. Texts which are clear are given precedence over texts which are hidden
 - A. Examples
 1. Explicit text (*nass*) is given precedence over the apparent text (*dhahir*)
 - a) Explicit text is that which only carries one meaning
 - b) Apparent text is that which carries the most likely meaning with the possibility of it having a different meaning
 - (1) This *dhahir* was discussed in detail in a previous chapter
 2. Apparent text (*dhahir*) is given precedence over the interpreted text (*mu'awwal*)
 - a) Interpreted text means whenever a word carries the less likely meaning
 - (1) This *mu'awwal* was discussed in detail in a previous chapter
 3. The literal text (*haqeeqah*) is given precedence over the figurative one (*majaaz*)
- III. Texts which are definitive are given precedence over those which are speculative
 - A. Ex: The *mutawaatir* hadith will be given precedence over a *ahaad* hadith
- IV. Clear *qiyaas* takes precedence over hidden *qiyaas*
 - A. Clear *qiyaas*: when the cause (*'illah*) between the new and initial issue is clear
 - B. Hidden *qiyaas*: when the cause (*'illah*) between the new and initial issue is speculative
- V. Something stated in the Qur'an and Sunnah takes precedence over *qiyaas*
- VI. Something stated in the Qur'an and Sunnah takes precedence over *istishaab*
 - A. *Istishaab* is only considered at the very end and is resorted to when it is not possible to use any other types of evidence

The Mufti, the Fatwa Seeker, and Following a Scholar (*Taqleed*)

I. Absolute *Mujtahid*

A. This is an individual that has:

1. The faculty and ability to do *ijtihad*

a) Faculty

(1) Meaning he possesses all of the tools to be able to deduce rulings from the text

2. Knowledgeable in the following:

a) He must know *Usool al-Fiqh*

b) He must know the branches of *fiqh*

(1) Some scholars did not agree that this is a condition because they consider it as just a result of *ijtihad*. However, it seems more probable that he should be familiar with the branches as well

c) He should know the differences of opinion over the issues

(1) Because it is necessary to know what the scholars of the past have said so that one does not go against them

d) He should know the school's position

(1) The school here is in reference to one of the four (Hanafi, Maliki, Shafi, Hanbali)

e) He should know Arabic grammar and language

(1) Because the Qur'an and Sunnah are in Arabic so how could one try to derive rulings from it yet not understand it?

f) He should know the narrators of reports

(1) This is so he can identify the accepted reports from the rejected ones based on the reliability of the narrators

g) He should know the Qur'anic verses related to rulings and their exegesis (*tafseer*)

(1) It is not sufficient to just memorize these but the *Mujtahid* must understand what they entail and the statements of the scholars regarding them

(2) He must have precise and detailed understanding of these

h) He should know the hadiths related to rulings and their meanings

(1) He should also know if they are reliable or not

(2) It is not sufficient to just memorize these but the *Mujtahid* must understand what they entail and the statements of the scholars regarding them

(3) He must have precise and detailed understanding of these

II. Fatwa

A. Def: It means informing someone of Allah's legal ruling on some issue

B. Mufti: This is the religious scholar that informs others about an Islamic legal ruling

C. The *Mufti* who is a *Mujtahid*

1. He is considered from the people of *ijtihad*

a) They are not allowed to do *taqleed*

(1) Two definitions of *taqleed*:

(a) Accepting another's opinion without proof

(b) Accepting another's opinion while you do not know from where he took it

D. The *Muqallid* (blind follower of a scholar)

1. He is from the people of *taqleed* and is a fatwa seeker

2. He takes his fatwas from the *Mufti* and follows him blindly

a) There is no harm in this because the one who has not reached the level of being able to do *ijtihad* is obligated to do *taqleed*

3. He can do *taqleed* in the following ways. All of them are permissible:

a) Ask a living *Mufti* a question directly

b) Follow a published fatwa of a dead scholar

c) Follow one of the four schools of *fiqh*

III. There is some dispute as to whether the Prophet (pbuh) performed *ijtihad* at times in religious issues or not. There are two opinions:

A. He did perform it at times

B. He did not perform it, rather, whatever he said was revelation

Ijtihad

I. *Ijtihad*

A. Def: expending all efforts in reaching the goal

1. The goal is to arrive at the correct Islamic legal ruling on an issue
 - a) If the *Mujtahid* arrives at the correct ruling, then he will have two rewards
 - b) If the *Mujtahid* arrives at the wrong ruling, then he will have one reward
2. Some are of the opinion that every *Mujtahid* that does *ijtihad* in the branches arrives at the correct ruling because it is based on his own qualified *ijtihad*
 - a) However, this seems to be incorrect due to explicit hadiths on the matter

II. Two types

A. In branches of *fiqh*

1. This is valid

B. In fundamental theological issues

1. This one is not valid because it opens the doors to acknowledging deviant beliefs, such as, Christianity being correct, idol worship being correct, etc.