لا إشارة في أصول الفتى

للقاء أبي الوليد الباجي الأندلسي (404-474هـ)

حقق وقدم له وعلق عليه وترجمه إلى اللغة الإنجليزية
طفل أحمد القارئ

مقالة قدست إلى:
قسم تقابل الأديان والثقافة الإسلامية جامعة السند، حيدرآباد، باكستان

لطلب درجة الدكتوراة

شهادة 1316هـ - سنة 1977م
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(ة) 

الاجماع

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1. في قصة مشهودة
2. كون الخبر مريباً باحتفظ و اضبط الراوي
3. كون الخبر مريباً باكثر الراوي
4. كون الخبر مريباً بطرق السمعة و الكتابة
5. كون الخبر متقناً على رضي الله علیه و سلم
6. كون الخبر مختلف الراوية
7. كون الخبر مريباً عن ماجب القصة
8. عمل اهل المدينة على الخبر
9. كون الراوية أشد تقيناً للحديث
10. كون الخبر سالماً من الاضطراب
11. إذا يوافق الخبر ظاهر الكتاب

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وجه الله جميع في الشهرين إن يكون الشهرين
1. سالماً من الاضطراب و الاختلاف
2. كون الخبر ناطناً على حكم حاديج
3. كون الخبر متقناً بفضل
4. استعمال الخبر في وضع الخلاف
5. كون أحد الخبرين متقنا على بالتخصص
6. إذا كان أحد الخبرين ما يقلد به بيان الحكم
(7) كون الخبر مؤثراً في الحكم
(8) كون أحد الخبئين واردًا على سبيل
(9) كون أحد الخبئين قد ثنى به على الآخر
(10) كون النص واردًا باللفظ واحد
(11) إذا كان أحد الخبئين نفي النص لصاحب النبأ على الله والسلام والأخرى في فظهم -

فصل ٤: ترجيحات المعاني

وجه ترجيح المعاني:

(1) أن يكون أحد العلتين منسوبًا عليها
(2) أن تكون أحد العلتين لا تعود على غير أصلها بالتخصيص
(3) أن تكون أحد العلتين مؤقتة لللفظ الآخر
(4) أن تكون أحد العلتين مطروحة متعكسة
(5) أن تكون أحد العلتين ليشهد لها أصول كثيرة
(6) إذا كان أحد القواعد قد الفن إلى جنس
(7) أن تكون أحد العلتين وافية
(8) أن تكون إحداهما لا يتم تمويها
(9) أن تكون أحد العلتين عامة
(10) أن تكون أحد العلتين مندتة عن أصول شمس عليها
(11) أن تكون أحد العلتين كثيرة الأوضح.
الكتبة الأزهرية

اول الفقه: 170
رقم تخميس: 6768
رقم التدوين: 80 من 104

اسم الكاتب: الآثارة في أصول الفقه (1)
اسم المؤلف: أبو الوليد سليمان بن خلف الاندلسي الباجي 474 هـ

تاريخ النسخ: 379هـ
عدد الأوراق: 12 × 18 ص
القياس: النسخ مجموعه من رقم: 40/29

(1) في نسخة م: الآثارة للباجي رحم الله - وعكس هذه الرقية
اخذ من النسخة رقم: ـ
بسم الله الرحمن الرحيم

علي الله وعلى مهد وعلي آل محمد صلى الله ثمبا: عزه الله يا معين

(باب)

اتمام املادة الشروع

املادة الشروع على ثلاثة أضرب:

1) أصل
2) ومعقل أصل
3) استصحاب حال

ناما الأصل فهو:

1) الكتاب
2) السنة
3) اجاعت الأمة

وأما معمل الأصل فهو لحن الخطاب

وأما استصحاب الحال فهو استصحاب حال العقل

(خاتم ) الأصل
الإفتاء والدالة في الشريعة

الппضالن للكثير من الحكمة، صلية عليه وسلم. إنفاذ عمود الفلاسفة

بلـٌـٌأفسـٌـٌـٌـٌـٌـٌـٌنـٌـٌـٌنـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌـٌ&n
الجزء الأول : الأساس
الكتاب

باب ١: اسم الكلام
فصل ١: الجزاز

إذا تثبت ذلك فالتكلاب على ضربين:

١) مجاز و
٢) حقيقة

فالمجاز كل لفظ يجوز به عن غير (١) موضع.

وهو على أربعة أضرب:

١) زيادة - كقوله تعالى ؛ لبنا نقضهم (٢)
٢) نقصان - كقوله تعالى ؛ وسائل القرية (٣)
٣) تقدم وتأخير - كقوله تعالى ؛ الذي أخبر المنى
نجعله غثاء أخرى (٤)

استمارة - كقوله تعالى (١) قال بلسما بأمركم به إبنك (٥)
(٢) ونوله واغضنه لما جناه الذي من الرحمة
(٣) ونوله ان الصلاة تابع من الفحشاء و النكر
(٤) ونوله ان السرية تابع من الفحشاء و النكر

و احتاج ان المجاز للضرورة و الله ينالى عن الضرورة 
و الجواب انا لا نسلم بل يستعمل الفحشاء المجاز مع القدرة على غيره

و يبرونه ابلاغ
احتجوا بأن القرآن كله حق، وكان حال أن يكون حقاً ما ليس حقًا - 
و الجواب أنه غير صحيح أن الحق ليس من الحقيقة لسبقـ 
ولا ذلك احتضن كل واحد منهما مع يد الآخر - يقصد إذا تكلـ 
"الإسرى في الدار"، وفيها رجل شجاع، ويكتب إذا تكلـ "زبد 
في الدار" وليس فيها أحدـ 
و قد قال محمد بن خيزير مدان (7) من أصحابنا وداردي الأصبهان (8) 
أنه لا يعجب وجود المجاز في القرآن وقد بينا ذلك 

فصل 2: الحقيقة 

وأما الحقيقة فهو "كل لفظ بني على موضوعه" 
و هو على ضني 

(١) مفصول و (٢) محسـ 
فاما الفصل، فهو "ما علم المراد به من لفظه فلم يلقـ 
في ببيانه إلى غيره" 
و هو على ضني 

(١) غير محتـ و 
(٢) محتـ 
فاما غير المحت فنهو "النص وحده ما يرجع في بيانه إلى 
اربع علامائه"، 
 نحو قوله تعالى "و المطلب يشتم بانفسهم ثلاثة قرو" (٩)
فصل ۱: المحتمل

وأما المحتمل فهو ما احتسب مبينين نزاعاً
وهو على ضربين:

احدهما لا يكون في احد محتمله اظهر منه في سايرها
 نحو قولك: "لون" الذي يقع على البياض و السود وغيرها من الالوان
 ونها واحدة وليس في احد من احد محتمله اظهر منه
 في سايرها نارذ ا قال من بازك أمره: " أمض هذا الشوب لوناً
 قابل كان ذلك على سبيل التغيير فأي لون صبغت كنت محتمل لا أمره،
 وان اراد لذلك لوناً بعينه لم يكمل امتهلاً الا بعد ان يبين
 اللون الذي اراده

ولا يجب أن يتأخير البيان عن وقت الحاجة إلى امتهال الفعل
 و الثاني ان يكون اللون في احد محتمله اظهر منه في سايرها
 كالنافذ الظاهر والمحمور.

فصل ۲: الظاهر

كان الظاهر فيو "المعنى الذي يسبق الى قيم ياجمه من
 المعاني التي يحتلها اللوز" 
 كالنافذ الأجور نحو قوله تعالى:
 (١) اثنا الخالصة و اثنا الزكاية (١٠٠)
 (٢) و اثنا الشركين (١١)
 بهذا اللون اذا ورد جواب عليه بالامر.
وان كان يجوز أن يرادبه:

1) الوضعه، نحو قوله تعالى: "و إذا حلتت ناصفة" (12)
2) التمكين: نحو قوله "كونا حجارة أو حديد" (13)
3) التهدئة: نحو قوله تعالى: "اعطوا ما شتمه بهم، وعملوا بعض الشر" (14)
4) التحديد: نحو قوله "نحن يذلون، و قد قيل ذلك في قوله تعالى: "أين هم و أبجرهم من باب" (15)

الآخير المظهر (ملع) في الأمر (من) ما يدل عليه الدليل.

باب 2: الأمر

فصل 1: تصفيف الأمر و الأقسام

إذا ثبت ذلك الأمر، اكتمام الفعل، و الباء على وجه الاستعالة و الفتح و القصر، و هو على ضربين:

(1) و (2) و مائدة اليد.

فالواجب "ما كان في ترك عقاب من حيث هو ترك له على وجه ما"
 نحو نوله تعالى لكتب المملك والتأمل والذكرى (16) وندوب اليم، هو المتأرجح الذي ينحو ثواب وليس في تركه عتاب من حيث هو ترك له على وجه ما نحو نوله تعالى لكتب تثبيتهم أن عجلته فيهم خيرا واتواهم من سال الله الذي أتاك ما إلا أن نظف أن نظر الأمر في الواجب يظهر منه الواجب ق/34 - أظهر منه التحية من النذير (16) ناوية ورد النظر الأمر عاريا من القرآن حله على الواجب إلا أن يدل دليل على التكذيب يداع به ليحيل عليه و قال القاض ببوتكد يتقف نه ولا يحيل على وجوب ولا ندب حتى يدم الدليل على التكذيب ب - ق/1 - ب و قال أبو الحسن بن النابي (18) وأبو النج (19) (ق/1 - ب) يحيل على التكذيب ولا يعدل به الواجب إلا الدليل والدليل على ما تقول نوله تعالى لا يلبيه ما شملك أن تسجد إذ أمرتك (20) فيبه وعابه لا يمثل أمر بالسجود اللاتي لا لم يكن مقتضاة الواجب ولا عاتك ولا يبه على ترك ما لا يجب عليه نفسك - فصل 2 : ساحة الأمر بعد الخطر (1) 

إذا وردت لفظة أنقل بعد الخطر انتفت الواجب أينما احتملها

(1) هذا الفصل غير موجود في م
قال جماعة من احبابنا أنه تقتضى الأباحة و يقول بعض
احبابه النافعين
و الدليل على ما نقوله أنه أجمعنا على أن لفظ الامر يجبره
يقتضي الواجب وهذا اللفظ الامر يجبره توجب أن يقتضي الواجب
و تقدم الخطر على الامر لا يخرجه من مقتضاه - كما أن تقديم الامر
على الخطر لا يخرجه من مقتضاه

فصل 3: الامر الطالق

الامر الطالق لا يقتضى الفور
وalice ذهب الكتابة ابيكر وذكر محمد بن خويز مقداد أنه مذهب
المخارة من المالكين و قال أكثر المالكين من البشداديين أنه
يقتضى الفور
و الدليل على ما نقوله أن لفظ " الفعل " لا يقتضي الزمان إلا
كضم الأخبار عن الفعل للزمان و لو أن خبري يخبر أنه يتم لم يكن
كذابا إذا وجد تبديه متابعا. وكذلك من أمر بالقيام لا يكون تأكرا
لما أمر به إذا وجد منه القيام متابعا
فلا تثبت ذلك بنا الناجب على الراجح حالة تعمي وجوب الفعل فيها
وهو إذا اقتضى الظن (1) المخاطب (ق/3-4) فوات الفعل و تجري
اباحه تأخير الفعل مجرى اباحة تعزير الامر و الجاني و تأديب
العموم للمقيقة إذا لم يغلب على الظن هالله فإذا غلب على الظن هالله
حصر ذلك.

(1) في ق: و هو إذا غلب على الظن
فصل 4: نسخ وجبة الأمور

إذا نسخ وجبة الأمر جاز أن يُجْبَه عليه الجواز.

وقال بعض المتاهبين: حسبما قاله أبو محمد لا يجز ذلك.

ودليل على ما تقوله أن الأمر بالفعل يتضمن وجبة جواز.

وجواز - و الجواز المذكور له أنه قد يكون جازاً أو لا يكون واجباً

و حال أن يكون واجباً ولا يكون جازاً - لأنه يستحب أن يوفر

يفعل ما لا يجوز له فعاه - ومن ثم الجائزه لا ما واقع الشرع.

فلا حاجة لذلك و نسخ الوجبة خاصة بتقى على حكم في الجواز.

لا أن نسخ لم يتغلب بالجواز، وإنما تعلق بالواجب دونه.

فصل 5: السائر و السائر الممنوران

بسم رحمة الله ومغفرة

السائر والسير الممنوران

(1) رفعت نَفْحَان بنَهَة بين مم مغفر

و قال بعض المتاهبين السائر مخاطب بالسير دون الجواز.

و قال الكرش السائر والسير في مخاطبين بالسير ومغفر.

و الدليل على ما تقوله أن السائر لو كان مخاطب بسيرة ثم تاب

سيرة من ترهذه تلو كان غير مخاطب بتولية لما تاب عليه في الحاضر.

لذا لم مخاطب بالسير لم تثبت عليه.

فصل 6: الكفار مخاطبين باللائنان

لا خلاف بين اللائنان أن الكفار مخاطبين باللائنان واللائنين

(1) رفعت: بسم الله وتعال

(2) فنحات: في مم مخاطب بالسير لم تثبت في حال حضرة

(3) 2/336

(4) قرآن

57: (1)
مذهب مالك رحمه الله انهم مخالفين بالسم والملوة والزكاة وغير ذلك من شرائع الإسلام (ب)
وقال محمد بن خيزيمة (ق/21- ب) ليسوا مخالفين
بشي من ذلك رحلا لله تعالى فما سلكن في سقر قالوا
لم نكن من المُسلمين ولم نكن نعمل السكين
فأخبر الله تعالى ان العذاب حق عليهم بترك الابن والملوة والملوة
ففصل 2: امر الله عليه السلام وحمله على الوجوب
إذا قال الصحابي رضي الله عنه امرأ رسول الله صلى الله عليه
 وسلم بذلها وكذا ونثنا عن كذا وكذا وجب عمله على الوجوب
و حكى من أبي بكر بن داود أن لا يعمل على الوجوب حتى
ينقل الله (ب) لنظ الرسول عليه السلام
وما قاله ليس بصحب لأن معركة الامير في غير طريقة اللغة (د)
و اذاكنا نحن في اللغة والشديد بين الامر وغيره ينزل أمر القيس
والتابعه وان نحن نحن يقول ام بيكر وعبر رضي الله عنها أول ولاحي
لكونها من المُحبوب ولا يتقرر بذلك من أهل الدين والفضلاء.

(1) في ل : بعم
(ب) في : الامام
(ج) في ق : الينا
(د) في : لأن معركة الامر لا تعرف من غير طريقة اللغة
(ر) في ن : من أمر الدين
باب 3: سائل النبي (الذي ذهب إليه) السنة

إن الأمر بالشيء يعنني من إصداده وان النبي عن الشيء أوص

بإحد اصداد

واني النبي ينقس تسن: (1) النبي على وجه الكراهية
(2) النبي على وجه التحريم
(3) أن النبي إذا ورد وجب حلة على التحريم إلا أن

تعتنى به تقرية تنزهه من ذلك إلى الكراهية
(4) النبي إذا ورد دل على شاذ النبي عن

وإذا قال جماعة القضاة من أصحابنا وغيرهم

وإذا قال القاضي البحكر لا يدخل على ذلك

والمدلي على ما نقوله اتفاق الآية من الحجة فإن بددهم

على الاستدلال يعبر النبي في القرآن والسنة على شاذ العقد

النبي عنه كاستدالهم (1) على زين (1)

1) فساد عقد الزيادة تعالى تملاه ونروا مايق من (2) البيا

2) وفي النبي عليه السلام (3) من بيع الذهب بالذهب (23) متفاقدًا

3) وأحتجاج ابن عمر في تحرم نكاح الشرك ونفاده

للقاء تعالى لا تتحاور الشرك (4) (4/3-1) وغير ذلك مما

لا يحسن كثير (ب)
باب 3: المسمى والخصائص
فصل 1: القاض المسمى

قد ذكرنا أن المحترف الظاهرية أحيى محتالاً منه خبران:
(1) قاض و
(2) جماع

وقد تكلمنا الأوامر والكلام ماهية المسمى وله القاضية منها:
(1) لفظ الجمع كالآليامين و هو شهود و الإبرار و الفقراء و
(2) القاضي الجنس كالحيوان و الابن
(3) و القاضي النفي كقولنا ما نأتي من أحد و
(4) اللفظ البسيطة (1) كـ "فيهن يباع" و "لم" نيا لا يعقل
(5) للآلة الملفد إذا دخل على الفيلرم و الأم نحو فتيلت الرجل
(6) و الإنسان والشرك

مهما إذا ورد ائتم أمن:
(1) مهما أن ورد به أحد بعينه و ذلك لا يكون الاشياء قدر
(2) و الثاني أن يرد به جميع الجنسي فإذا ورد عربان القرائن

دل على جميع الجنسي و يدل و ذلك على ذلك ائتم أمن على أنه مادرة بالعينه أو تقيد الذين
الجنس - إذا لم يكن عيد حل على استئصال الجنس و الا كان ذكرة و
من النواة الاضافة إلى باتيج الإضافة إليه من القاضي المسمى نحو قوله
عليه السلام في سأبة الخص الزكاة (10)

(1) أي أنه لا تدخل معانيها ولا تأمل مشاهد التعري كمساء الشرط
فصل 2: حكم الناظر العصم

إذا بُيت ذلك ناظر ولو رد ضد من الناظر العصم المذكورة وجب حيلمه على عمومية و لا خصوص إلا أن يدل الدليل على تخفيس بين ما تبينه الدليل وقال القاضي أبوكير يتوقف فيها لا يحمل على عموم ولا خصوص حتى يدل الدليل على المراد بها — و قال أبو الحسن ابن السائب يحمل على أقل ما تبينه الالناظر والدليل على ما تقوله من قدماه من كونه (١/٩-١) معرضاً وأنا تكون محقة إذا انتهت استخراط الجنس فليس ما يقع تحتها من قنطرة ولم يرد بها جميع الجنس لكان تكسر لا يغير المراد بها عن قنطرة إذا قد بُقى من جنس ما يقع عليه هذا اللقظ (٢) فلذلك تنا أن للفظ العصم إذا تكسر لا يقضي استخراط الجنس لأنه لو انتهى استخراط الجنس كان معرقاً —

فصل 3: تخفيض الناظر العصم

م/٤۴-٤ با (م/٤۴-٤) فإذا دل الدليل على تخفيض الناظر العصم بقى في يتواجد اللقظ العام بعد ذلك التخفيض على عمومه أيضاً يُحتج به كما يحتج به لا يغني عنه و ذلك نحو قوله تعالى، و أِبْعَادِ الْمُرَكِّبِينَ (١٤)
فان هذا النحو يقتضي أن يقبل كل شريك ثم قد خس ذلك
دان من من تقبل من أهل الجزية من أهل الكتاب بحق الباقي على
ما كان عليه من وجوب القتل نحنبه فيه في وجوه مثل المشركين غير
من قد خرج بالتخصيص الذكور - وكذلك:
(1) لو ورد تخصيص آخر لباقي بقى اللفظ العام على ما كان
على قبل التخصيص -
(2) ويجوز أن يرد التخصيص والبيان مع اللفظ العام و
(3) يجوز تأخره منه إلى وقت فعل العباد و
(4) لايجوز أن يتاخر من ذلك الوقت -

فصل 4: أهل الجم اثنان
اهل الجم اثنان عند جماعة من أصحاب مالك
و حك المحقى ابن الطيب ابنة مذهب مالك رحمه و
و قال بعض أصحابنا وأصحاب الشافعى أهل الجم الثلاثة -
و الدليل على ما ذهينا اليه (ب) تولى تعالى :
(1) و داوود و سليمان إن يحكمان في الحريان لا تنتمي فيه
ق/40 - ب) فتم اللفظ وكنا لحكمهم ناهدين (24) ق/40 - ب
(2) و تولى تعالى - اذهبنا بآياتنا اننا مختصمون
و حكي أنه مذهب الخليل وسهله وانشا في ذلك تول التابعه
و مهمين قذفين مرتين - ظهرنا مثال ظهور الترسين (25)

(ب) ففي ق ما ذكره

(25)
فصل 5: القاطع الجمع

اذا ورد للقاطع جميع الذكر لم يدخل فيه جمعي اليونت الا
بدلاؤها

لكل طاقة لقاطع ما يختص بها في اللغةـ قال الله تعالى
"أن السلمين والسالمات والسموت و السموت (20)" وقال بعض
اهله اللغة ان الوا في الجمع السالم يدل على خصة انيا و علىـ
على (1) الذكران و (2) السلمة و (3) الرفع (4) اجمع
و (5) من يفعل نادر يجوز ان يقع تحت اليونت الا بدلاؤها لا يقع
حتى م لا يمثلا لبدلاء

فصل 6: يجعل كل لقاطع على متفسره

اذا ثبت ذلك فقد يرد اول الغرام وآخرة خاس ويرد
آخرة غرام و اوله خاس " يجب ان يجعل كل لقاطع على متفسره و
لا ينتمي بسواه و ذلك نحو قول حماسه (31) و المطارات ويتون بالتفصيل
ثلاثة تروي (31)

وهذا عام في كل مطارة مدخل بيا رجمية كاتب او بطه
ثم قال بعد ذلك و بمولتين (م/5 1) أحق بردهن
في ذلك (32)

وهذا خاص في الرجمية
و مما خاص اوله وم اخريه توله تملاء 0 أيها اليه ما اذا طلقم
النظرية: فطلمهم لمدة (24) سنة.

فصل 7: إذا تمارض لفظان في أوان عام وعلم

إذا تمارض لفظان في أوان عام وعلم في الناس على الناس سواء كان

الناس متقدم أو متأخر

و قال ابوقعنة إذا كان العام متأخرًا (25) 1 0 5 1 ثم

نسبة الناس المتقدم على العام

و الدليل على ذلك مثل ما روى من النبي عليه السلام أنه

قال لا علاقة بعد المصير حتى تجرب الشكور

فاقض ذلك فكل سلالة بعد المصير

ثم قال من ثم عن سلالة أو سنباء فليس لها إذا ذكرها

فاضل بهذا اللبف الناس السليمة من جملة السلالة النبيلة

عندما تعد المصير سواء كان الناس متقدم أو متأخر

و قال ابوقعنة إذا كان الناس متقدم نسخة العام المتأخر

و عن كثرة العام متقدًا و الناس سلالة في نسخة العام على الناس

و الدليل على ما نقوله أن الناس يتناول الحكم على وجه لا

يحتل التأويل والعام يتناول على وجه يحتل التأويل نسخة الناس

أوله...

فصل 8: إذا تمارض اللفظان بما لا يمكن الجمع بينهما

(1) و إذا تمارض اللفظان على وجه لا يمكن الجمع
بينما فان علم التاريخ فيما نسب المتقدم بالتأخر
(3) وأ جنح ذلك نظر ل ترجيح احدهما على الآخر بوجه
من وجه الترجيح التي تأتي بعده
(4) فان امكن ذلك وچي المجير الى ما يرجع
(4) فان تحذر الترجيح في احدهما ترك النظر فيهما وعدل
اله سائر ادلة الشرع ما دل عليه الدليل اخذ به
وان تحذر الشرع دليل على حكم تلك الحادة كان
الناظر لا يمكن بأن يأخذ بأي فتيان دا الحذر أو المجير اذ
ليس في المقل حذر ولا اباحة

فصل ١: يجوز تخليص العمل للقرآن بغير الواحد

(1) يجوز تخليص عمل القرآن بغير الواحد وعلى جميع الفتيا و
(2) يجوز تخليص عمل السنة بالقرآن وتخليص عمل القرآن
ق/٥٠(٥٠) وإخبار الاتحاد بالقياس الجلي والخفي
لأن ذلك جمع بين دلائل. ومت امكن الجمع بين دلائل كان
أول من اطراح احدهما واخذ بالآخر لأن الاذلة انا اختفتًا
للأخذ بها وحكم ينفيها فلا يجوز اطراح شيء منها ما امكن
استعماله.
فصل 10: يقع التخسيس بمعنى من أعمال النبي عليه السلام
(1) وقد يقع التخسيس أيضاً بمعنى من أعمال النبي عليه السلام وقرار على الحكم و/or جرى مجرى ذلك
(2) ولا يقع التقسيم بذهب الراوي
وذلك مثل ما روي ابن عمر عن النبي عليه السلام أنه قال التباغان بالخير طامضت (26)
و قال ابن عمر الكرز بالابدان
ذهب اصحابنا و اصحاب الشافعیین إلى أنه يقع التقسيم. بذلك
و ذهب ماک رحمة الله عليه أنه لا يقع التقسيم. وهو الصحيح
لأن الاحکام اما تونبخ(26) من قول مajo الشريع ولا يجوز ان يطعن
فقول مajo الشريع لقول غيره.

فصل 11: ائتم اللظ المالم الوارد ابتداء

هذا الكلام في اللظ المالم الوارد ابتداء 6
فإن الوارد على سبيل ناهه على خرين:
(1) مستقل بنفسه و
(2) غير مستقل بنفسه
(1) إذا المستقل لا ينقل نفسه مثل ما يرى من النبي عليه السلام
(2) قال السائل عن بير بداعة فقال الماء طهر لا يجهزه — في (27)
يختلف هذا النظيف العام اختلاف احجامنا فيه تزويج من ذلك رضي الله عن أن يهاجاه على سببه ولا يفعل على عميه ولا رفع عليه إياها أنه يحمل على صعبه ولا يهاجاه على سببه (ق/1-2) وأمه ذهب اسميل القاضي وآخر احجامنا...

فهذا الدليل على ذلك أن 가능성 متعلقة بلفظ ساحب الشرع دون لأن لفظ ساحب الشرع لواقدد لتملك به الحكم والسبب لواقدد لم يطلق به الحكم.

فيجب أن يكون الاحكام بما ي يتعلق عليه الحكم دون ما يتعلق به الحكم.

وأما الاستثناء بنفسه فهذا مثل ما يتعلق به الله عليه وسلم من بيع الرطب.

بالنسبة للفوز الرطب إذا وجد فالله تعالى نعم فالله تعالى نعم.

فهذا الجواب يشير على سببه ويجبه في خدمة وعده.

ولا خلاف في ذلك تعلمه...

باب 5: احكام الاستثناء

فصل 1: أقسام الاستثناء

وما يشمل بالخمس ويجري مجاز الاستثناء هو على ضرير:

(1) استثناء يكون بالخمس.

(2) استثناء لا يكون بالخمس.

Nama الاستثناء الذي يكون بالخمس تمثل ثلاثة أضراب (1)

(1) استثناء من الجنس

(2) استثناء من غير الجنس و

Nama الاستثناء من الجنس كلها تكمل رايت الناس إلا زدا

(1) في م: ضرير
(11)

وأما استناداً من الجملة فتقول زيداً إلا أنه -
وأما استناداً من غير الجملة فلا تقع عليه التحسيس -
لاته لا يخرج من الجملة بعدما تناوله وإذا أنه يجوز -
وثال ابن خير مضدة لا يجوز -
ودليلنا قوله تعالى: وما كان المسلمان ينتقلون من -
الأخطاء (11)
و الخطا (م/5-6) لا يقال فيه للمسلمان ينقلون ولا ليس -
له إن ينقله لأنه ليس يدخل تحت التحقي (م/1-2) و قال النابغة (80)
وقت فيها أميلان (ب)AMILANAA (ه) (ب) (س) (د)
ال إلا (د) وارى لا يثبت على تاليرى تالخوف بالظلمة الجلدل -
فصل ٢ : الاستناد الشامل

الاستناد الشامل: عمل من الكلام معروف بعدها على بعض.

يجب وجهه إلى جميعها عند جملة ارحاينة -
و قال القاضي أبوكر فهم يذهب الوقف -

(ب) أميلان : وقت النماي من بعيد الموار إلى الغرب
(ج) البرج : ينبط الراية و يكون الوجهة دخالة القرى والمزاج.
(ح) النون: حول الخيل ليذهب الخيل
(س) مظاهر: الأرض التي قد حارب فيها لا غير مشروع المحرز.
(م) الجبل : الأرض المنفيه المعه من غير حجارة.
و قال المتاخرون من أصحاب السحيلة بين الجبل الأقرب المذكور اليهود.
و هناك ذلك قوله تعالى: فاجعلوا عينين جلداء ولا تقبلوا لهم شهادة إبداً، و لا تقبلوا هزائمهم إلا الذين كابروا، ومن بعد ذلك (ع).
و الدليل على ذلك أن المعثور بعضه على بعض بعشيحة الصذكر جميعه باسم واحد ولا يفرقون عندم بينه.[
قال القاضي زيد: أوصراً بالخلدة، و بينهم من قال: واضرب هملاً العت.
و إذا كان ذلك كذلك فلو ورد الاستثناء عقب جملة مذكورة باسم واحد لورد إلى جميعها.
لكن ذلك إذ ورد عقب نافاطف بهدف على بعض: [و قد اجتمعنا]
ان الاستثناء واقع على جميع الجملة.

باب 1: حكم القيد والملهلات.
حكم أداء الله
القيد ينقع بثلاثة أشياء:
(1) الغاية و
(2) الفرح و
(3) السعة.

واما النهاية (ق 27-1) فتولك ان كن زيدا فابدا حتى يرجع
الحق - نلوا ان تقد الفرح بالرحيم الى الحق لا تفني ذلك
فبه ابداً -
واما الشرط فتولك من جاء من الناس فاعطوه درهماً لقبل ذلك
بالشرط -
واما المئة فتولك أعط الترنيين الرضوان فيد سفة الإيمان و
لو لا ذلك لا تاتقي اللطف كل ترشي
فاذآ تبت ذلك وورد للطف مطلق وقيد فلا يخلوا من ان
يكونا (1) معه (1) من جنسين او (2) من جنس واحد

(1) في ق: يكون من جنس واحد او الغ.
فان كانا (ب) من جنسين (ب) فلا خلاف انة لا لكل المطلق على
القيد - لا تقييد الشهادة بالمدالة لا يبتغي تقييد زنرية القيد
بالايمان
و لان كانا من جنس واحد (د) كان تعلقت بسبين مختلفين
تحوأن تقييد الزنرية في القيد بالايمان و تعلقت في الظهار فإنه لا
م / 6 - ب يقبل المطلق على القيد (م / 6 - ب) عند أكثر اصحابنا الا بدليل
بذلك ذلك -
و قال بعض اصحابنا و اصحاب الآثبيز يقبل المطلق على المقيد
من جهة وضع الله
و الدليل على ما تقوله ان الحكم المطلق غير موقت - و اطلاق
المطلق بتكتفي به الشهادة و كما ان صنف المديد يكفي في الاطلاق
عندما قلوب تقييد المطلق لأن من جنسه ما هو طزيد لوجب اطلاق
المديد لأن من جنسه ما هو مطلق و أما إذا كانا مختلفين يجب واحد
قل أن تود الزكاة في موضع مقددة بالصمم و ترد في موضع آخر

(ب) غير ق : كان
(ج) غير ق : من جنس واحد
(د) غير ق : كان من جنسين فلا يطلق
هذه المبارة كاملا ظاهر للاطباء العلماء
مطلقه فإنه لا يصح عند اصحابنا أيضا حمل المطلب على المفسد
و من اصحابنا من اوجز ذلك (١) و يرد في موضوع
الكلام عليه ان شاء الله تعالى.

باب ٢ : بيان حكم المجمل

قد ذكرنا ان الحقيقة على ضعيفين:
(١) ضعيف و (٢) ضعيف.

و قد مر الكلام في المطلب: و الكلام علينا في المطلب.
و جملة ان المطلب تلا يفهم المراد به من فراء و يقتصر
على المجمل البيان إلى غيره
كنزل عمليا اورا حقية عن حقيقة(١٢) فلا يفهم المراد
بالحق من نفس النطق ولايد له من بيان يكشف من جوهر الحق و قدره.

فلا أرى مثل هذا و يجب انتقاد وجب به أن يرد بيانه نجيب امثاله.

و قد اختلف اصحابنا في قوله تعالى.
(١٢) و اتناكراكاه ٤٤

(١) اختام ورق النسخة لـ ٢ - ١ - المش نفر موجود في
النسخة الى حيث حدث المرسل من باب السنة.
(2) كتب عليكم السمع (44) و
(3) اللهم على الناس حج البيت (64) و
(4) أحل الله البيع و حرم الرياء (41)
تذهب ثم منا مجانا إلى أثنا محلة.
و قال أبو محمد بن نهر (87) هم محلة إلا قوله.
و أحل الله البيع و حرم الرياء. (42) فأنه عام.
و قال ابن خزيمة مصادق كلها عاما.
ليجب حملها على سوابق لا الخمس الدليل - وهو المريح.
و الدليل على ذلك أن كل لنظ من هذه الألفاظ يختص في
اللغة جنباً جناها فلاعالمنة مسناها، الدعا. فإذا ورد هذا اللظ
كان افعالاً ما يقع عليه هذا الاسم من الدعا إلا ما خمس الدليل.
لكن الشرع قد خص منه دعا مخصوص به افعال مختلفة من
ركوع و سجود وغير ذلك - و الميم هو، الامساك. لا خمس.
قد خص منه افعالاً مخصوصاً من افعال مخصصة على واقم مخصوص.
و الزكاة (م/326) هو النطاقة، والحم هو، القديم. وكان
ذلك تقول حالا، و اكنوا المشركين (338) الذي يختص بكل مشارك
ول خص الشرع من ذلك اتباعا من المشركين.
باب 8: بيان الاتساع الزيارية

تميل 1: معنى المشرف

و ما يحمل بهذا الباب الاتساع الزيارية
و معنى قولنا عزيز ان تكون اللائحة موضعة في كل اعمال
لم يصب اغلب اعمال في بعد ذلك الجنسية
1) نحو قولنا دابه هو اسم موضوع لكل مادب ثم غلب عليه
عرف الاستعمال في نوع من الحيوان دون غيزة
2) وكذلك قولنا: ميلة هو اسم لكل دما
ل اللائحة ثم غلب عليه عرف الاستعمال في نوع من الدما
على وجه مخصوص

تميل 2: الاسم المشرف

إذا توجه ذلك اسم الاستعمال يكون من

مثالية أو جنب

احدهما اللائحة نحو قولنا دابه
ولكن البريء نحب قرناً علاءً و
سمى وحج - و
الثالث عرف العامة كمسية أهل الكتاب
الديوان - زياط ومسية أهل الأبل الخطاب
زياط وفسيير ذلك -
فانا ورد شيء من الالتفاظ العزيزة - يجب
حيله على ما عصر بالاستعمال ليس من
جهة التنسي وردت بهما -
(1) سورة العدد آية 12
(2) سورة يوسف آية 82 - مراد هامنا اهل القرى يدف مستر نحاد
(3) سورة الإسراء آية 514 - الراد اخي النوري اهون
(4) سورة بني إسرائيل آية 24
(5) سورة الممكلة آية 65 - الناظر 6 ايمان 5 جتان الذل 6
(6) بإنا الاستمارة
(7) سورة البقرة آية 448
(8) محمد بن خيبر مندات : هو محمد بن أحمد بن عبد الله، كتبت أبو عبد الله - شفقة على الأهرام وله كتاب كبير في الخلاف وله كتاب في أصول اللغة وكتاب في احكام القرآن
(9) وقد قال نبي اللهما أبو الهول، لم يسمع له في علماء العراق ذكرنا وكان يقام الكلام ويتفرق اهله حتى يودي وذن الى
(10) دائرة التلغمين من أهل السنة (ابن طفيل ديباج الذهبي
(11) 244 هـ - 130 هـ)
(12) داود الإسماعلي : هو محمد بن داود بن علي بن خلف الإسماعلي
الظاهری (٤٥٢ هـ / ١٠٢٨ مـ / ١٠٤٢ هـ) ولد بغداد و
تعدى بها للقرى و تولى بها - من ثقاته المسول إلى مصرة
لاصول ٦ تقسيم في القرآن وتختلف نصاب الدحابه وغيرهم
(ابن خلكان ٦ رويات الأعيان ٣ : ٣٠٠ ه تأهله ١٩٦٨)

(٩) سورة البقرة آية ٢٨٨ -
(١٠) آية ٤٤ -
(١١) سورة التوبة آية ٥ -
(١٢) سورة الحائدة آية ٢ -
(١٣) سورة بني إسرائيل - ٥٠ -
(١٤) سورة حم السجدة آية ٤٠ -
(١٥) سورة ستم آية ٤٢ -
(١٦) سورة البقرة آية ٤٣ -
(١٧) سورة النور آية ٢٧ -
(١٨) أبو الحسن بن السبأ : في نسخة ميدريد في سائر المواقع
أبو الحسن بن السبأ ، ولكن النسخة الطيبيّة أثبت الاسم
كما ذكرنا هو لم يوجد ترجمته -
(١١) أبو الفرج : هو عبد الله بن الطبيع ٥ أبو الفرج : من ظماه
المجد، ويسمع العلم، ذكر التصنيف خبير بالفلك تولى في
في ٤٣٢ هـ / ١٠٣٢ م (الجزئيّ للعلامه ٠٦: ٤٣٧)
(٢٠) سورة الأعراف آية ١١ -
(٢١) سورة السفر آية ٩٩ -
سورة البقرة آية ٢٧٨

(٢٤) سورة البقرة آية ٢٧٨

من عبادة بن سعيد أن رسول الله صلى الله عليه وسلم قال:

لا تبيعوا الذهب بالذهب... الخ.

شكة السابع ٥٤٤ هـ.

سورة الرعد آية ٢١١

(٢٥) سورة الرعد آية ٢١١

١ - بحبس ٠٤ الصنعي ١٥٠ هٰـ.

٢ - بخليج الصنعي ١٤٦١ هـ.

سورة التوبة آية ٥

سورة الإسراء آية ٢٧

سورة النجم آية ١٥

سبيحه ٥ الجزء الثاني، حلقة ٢٠٢٠ قاهره ١٣١٦ هـ.

سورة الإحزاب آية ٤٠

سورة البقرة آية ٢٤٨

لا تبيعوا الذهب بالذهب... الخ.

سورة الطلاق آية ١

الخازى، الجزء الأول، ص ١٢٢ مدنى ١٩٣٨ هـ واليبيتي ٥.

الجزء الرابع ص ٨٩ حيدر آباد، دكك ١٣٥٠ هـ.

لا تبيعوا الذهب بالذهب... الخ.

شكة السابع ٥٤٤ هـ.

سورة النساء آية ١٢
(27) أبو محمد بن عمر بن أبي بكر محمد بن عبد الله بن محمد بن نصر بن ونا الأودني - امام اضاحي الدائم في مصر - اتم مثلا في مدة 9 و توفي في شهر ربيع الأول سنة خمس وثمانين و خمسين سنة متزوج بالدهن بكلا يار (ابن حلفان) ووفيات الامام 232 - 341 هـ/ 948 - 1058 هـ

(28) سورة النقية 6 آية 5
الفصل الأول: أسماء السنة

السنة الواردة من النبي عليه السلام على ثلاثة أحرف: 

(1) اقوال و
(2) اعمال و
(3) اتراث

وقد تقدم القرار في الأقوال والأعمال هاهنا في الأفعال 

و هي تتم، تقدم: 

(1) الأول (1) ما يفعل بيانا للعمل
فتحك حكم العمل في الواجب أو النذب أو المنع أو الاحبة. 

(2) و الثاني ما يفعله ابتداء (روى) أيضا على شرطين:
(1) [إذا] هذا يكون فيه حقية 
نحوان يلائى أو ينضم

نهاذا تع اختلف محايدنا فيه و ذهب ابن الفضول والإبراهيم
و غيرها الهما: انها محدودة على الواجب.
و قال ابن البصبي على النذب.
و قال الفاضل أبو بكر مم على الالتزام (1).
و الأول امتحان
و الدليل على ذلك قوله تعالى "و اتبعوه لعلكم تبتين" (2)
و الأمير يقضى الوجوب و قوله "فليحذر الذين يخالفون من امر
و الأمير" (م/ 7-2) حقيقة على الفعل و القول و يدل
على ذلك من جهة الاجماع رجوعهم إلى قول عائشة رضي الله عنها لما
اختلوا في وجوب الفتح الفصل من الفقه الختائمين تعلقه انا و رسول الله
عليه وسلم و فائتنا (4) و أخذ به جميع الصحابة و الزُّ两类
(2) و اما الفعل الثاني فهو ما نهى فيه
 نحو الاكل و الشرب و اللياس
فانه يدل على الاباحة
و قد ذهب بعض اصحابنا الى أنه يدل على الندب نحو الاكل
باليمين ه فتايدا التحمل باليمين و هذا عل حاتن الندب هاهنا ليس
في نفس الفعل و انا هو في علة الفعل و تلك ثوابه.

فصل 2: الاقرار النبي عليه السلام
و اما الاقرار " كان ينبغي لحفرة النبي عليه السلام فعل
و لا يتكبر "
فان ذلك يدل على جواز لأنه عليه السلام لا يتكبر مختلف
و ذلك نحو ما روى من النبي عليه السلام لائمه من الصحابة
اثنين فقال له ذو اليدين اقتربت السلاة أم سنت برسول الله و لم
قسمة 3: (باب احکام) 48- الخبرین عليه السلام

الخبر هو الوروف للمخبر عنه
و هو ينقسم إلى قسمين:
(1) حق و
(2) كذب
فالذي هو الوروف المخبر عنه على ما هو به
واذا ثبت ذلك فإنه ينقسم أيضاً إلى قسمين:
(1) تواتر (2) آحاد
(1) تواتر: ما وقع العلم بخبره ضرورة من جهة الخبر عنه
(2) آحاد: لما خبر الاحاديث بما قهر من التواتر
وذلك لا يقع به العلم وانما ينغلب من الجهل بحق الصحابه
فبناية للنظر على الخبر يانان خطأ وان كان فيه يجوز عليه الخلط والبهاء
كالناهدي

(36) قال:
وأصل الصحيح劲اً كلامه عليه الصلاة وسلام
لا يقع به العلم وانما ينغلب من الجهل بحق الصحابه
فبناية للنظر على الخبر يانان خطأ وان كان فيه يجوز عليه الخلط والبهاء
كالناهدي

(37) قال:
وأصل الصحيح يقود على العلم يانان خطأ وان كان فيه يجوز عليه الخلط والبهاء
كالناهدي
و قال ابن خزيمة مئاد: يقع العلم بخير الواحد
و الأول عليه جمهرة الفقهاء

فصل 4: الساند

إذا ثبت ذلك فإنه (أي الخير) على خوين:
(1) مسند
(2) مسند
فالصدوق ما أهل استاده
و هو يجب العمل به كل الشرع ورد بذلك واتكر العمل به
جموعة من أهل البعد.

و الدليل على ما قلنا أنه لا ينفع من جهة المثل أن يجيبنا
الباري بالعمل يخير من يلبه (م/8-1) على ظننا ثقة و اثنا.
و إن لم يقع له العلم بعدة كنا تعبتنا بالعمل بحافة الداهنين
إذا غلب على ظننا ثقتنا وان لم يقع لنا العلم به ثقبًا و لذلك
يرجع كثير من الشهود عن شهادته بعد كلها و بعد اتخاذ الحكم بها
مما يقوله في ذكر ذلك من الناس والمسلمين:

الإحباب

(1) كجروج عمر بن الخطاب من شرع بخير عبد الرحمن بن عوف
و اخوه خزيمة اليموس (1) بخير و
(2) رجوع السلمية إلى خير عافية في الفصل من التغاب
الخاناتين (2)
(3) إدخال عثمان في السكون يخير الفريضة بنت مالك (8)

وغير ذلك ما لا يحمي أثرة

فصل 5: البرسل

وأما البرسل فهو "ما اقطع استاده" فاختير فيه يذكر بعض رواية

ولا خلاف أنه لا يجب العمل به إذا كان البرسل غير منذر.

ق/17-2

فذا كان (1) شهدوا لا يرسل إلا من التوقيث كأولهم الطبق النخلي

وأب السبب فإنها يجب العمل به عند مالك وابن حنبل [سعود]

وأب النافعية لا يجب العمل به إلا أن يكون مرسل/ابن السبب

خاصة فإنه اعتبرت مسألة فوجدتها مستحيلة

والمدليل على ما نقله أئمة السدر الأول على [نغل] البرسل

وكان ذلك يبطل الحديث ولا خلل الإرسال فبين (ب) إرسال وإن بلغنا

ذلك من أبو عوفة وابن عباس والبراء بن عاصب وابن عمر وعم بن

الخطاب وغيرهم [من الحيدة] وأكثر التابعين و من بعدهم

قال محمد بن جبريل الطبري انداد البرسل يدعة ظهرت من بعد

المتين

وإبناً فأنه لا نظر بين مخلص مالك بن السبب وغيره إذا كان

البرسل ثقة محتمراً لأن الشافعي أن كان لم يأخذ من مرسل سعيد

الإبل احتاج به استاده ثم يأخذ ببرسله واذا اخذ بالسند ولا يعني

لقوله اخذ برسل سعيد وان كان أخذ ببرسله لا يذه من ما

(1) النص العربي في النسخة الحديثية سقط منه شيء من هذا لفظ

(ب) لا يشترطه لأب السدر لا يذكر

(ب) في البكاء اتفاق السدر الأول على نقل التوجه ولوكأن ذلك يبطل الحديث لمدخل...
فـ ـ 6 : رواية الخبر و ترك العمل به

(1) إذا روى الرجل الخبر و ترك العمل لم يضع ذلك وجوب
العمل به عند [أبو صاحب] بعض أصحابنا و قالو سامح إلى جنحة
أن ذلك يبطل وجب العمل به و الدليل على ما نقله أن خير النبي عليه السلام إذا ورد وجوب
على الصحابي وغيره استنادهالألا أن يبدل دليله على (ق/8-1) نسخه
(2) و ليس إذا تركت بكرا بما يسقط وجب العمل به من
بلغه
و لذلك استدلتنا بخبر ابن عباس في أن الآية إذا اعتت تحت جح
خبرت بخبر ببريرة أنها بيعت نافع تحت عبد نفائر (أ) و أن كان مذهب
ابن عباس أن بيع الآية طلاقاً (ب) \n
(أ) في م : أن بريرة بيعت نافع تحت عبد نفائر (ب) صاحب النمل نور الدين رضي الله عنه
فصل 7: رواية الخبر مع اتفاق الروية عنه

اذ روي الرواي الخبر فاتكره الضيوع عنه فان ذلك على ضربين:
(1) احدهما ان يوقف فيه و ينك
(2) والثاني ان يقطع على (ب) انه لم يبدهة.
ناما ان ذهب الوري عنه فاقد ذهب جميع اصحابنا و اصحاب
ائي حقيقة و اصحاب الشام الى وجب العمل به
و ذهب الكرخي الى أنه لا يجب العمل به
و الدليل على ما تقول ان نسيانه لا يكون أكثر من موته و نده
اجمعنا على أن موته لا يسقط العمل به كذلك نسيانه.
و اما إذا قطع انه لم يحدث به فهو على ضربين اضافية:
(1) احدهما ان يقول " هو في روايتي لم احدث به الراوي".
(2) وأما إذا قال " لم اروه على هذا لا يجوز الاحتجاج به
جملة - لن الرواي عنه ان كان كاذبا فقد بطل الخبر من جهة و ان
كان مادقا لقد بطل أيضا لأخباره انه لم بره.

فصل 8: رواية العدل الثابت
رواية العدل الثابت أشهر بالحق و الانتقان (لا) الزادة في

(ب) في ق: بانه (ب) في ت: لم بيره
(ج) في ق: الحافظ الشافعي
الخبر على رواية غيره محول بها خلقًا لبعض أسماء الحديث في تولهم لا يقبل ذلك على الإطلاق (د)

و لبعض المتلقية في تولهم تقبل الزيادة من المعدل على الإطلاق.

و الدليل على ما نقوله أنه لو شهد شاهدان لرجل على خبره بالخبر أو شهد شاهدان آخرون بالذكورة و خمسة خان بالزيادة تلك الخبر و لانه لو اتفقان لنقل خبر لعندها في ذلك الخبر إذا انفرد به بمنشئ من زيادة في الخبر.

نص_1 : يجب الحمل به ما نقل على وجه الإجازة

يجب الحمل بما نقل على وجه الإجازة

وه ذال عامة اللقب

و ذال ذال الظهر لا يجوز الحمل بالإجازة إلا ان تكون منالة أو يكتب إليه الخبر أن الكتاب (الثاني) و الديوان الثاني بمقدمة من ذلك من روائي عن كان قارو ذلك على " والدليل (ق/8-ب) على ما نقوله ان من كتب إليه غيره " أن ديوان المرجع أو غيره و الكتاب الممكنية رواية عن [زيد] قارو عينه اذا صح عندك 

بحتاج إلى ثبات الكتاب [المرجع] عندن إلى نقل الثقة - ثم يحتاج في تصحيح كتاب المرجع و العلم بأنه مسائل لاهل الخبر له النقل

الثقة أيضا تتحمل له الرواية بعد ثبات ذلك عنده من طريقين

(د) لا تقبل الزيادة من المعدل
باب ٢: ذكر النسخ والنسخ

فصل ١: تفسير النسخ

النسخ هو إزالة الحكم الثابت بالشرع المقدم بشرع متأخر

و ذلك أن النسخ والنسخ لابد أن يكونا حكين غرعيين

خلاصة النائل من حكم الآبل والسائق بعد خبره واحتمال موجه تانه

لا يسي لسخاً

فصل ٢: النسخ من جهة النقص أو الزيادة

إذا تمت ذلك نادى نقص بعض الجملة أو غرش من شروطها فقد

(1) أي لولا الخطاب الدال على إزالة الحكم
(ب) أي كان الحكم الثابت بالخطاب المقدم
(ج) أي استمر في جميع الأزمنة المشتقة
ذهب أكثر الفقهاء إلى أنه ليس ينسخ - وقال بعض الناس هو نسخ.
وذلك الزيادة في النسخ - قال إسحاق ابن عيينة هو نسخ.
وقال ابن عيينة و إسحاق الثاني ليس نسخ.
و قال ابن عيينة أن كان التنقش من المبارة أو الزوايدة فيها [فيها] خير.
حكم المزيد في النسخة أو التنقش معها حتى يجعل ما لم تكن عبادة ثانية بنفسها.
عبادة ثانية أو قرة مستقلة أو يجعل ما كان عبادة شرية غير شرية فهو نسخ.

كما أن يزاد في الملاية التي هي كتبmun ركتمان أخرون ثم هذا
بكون نسخاً لأن الركتمان الأولين حينئذ لا تكون [ق/9-1 ] حالة شرية.
و ذلك إذا ورد الأمر بالصلاة الروحية أن تدل الركتمان قائله نسخ
إياها لأن الاربع ركتمت حديثاً لا تكون ملأة و
و ما إذا لم تشير الزيادة ولا النقصان حكم النزد عليه و
لا التنقش منه ليس نسخ.

مثل أن يبور في حد شارب الخمر بارمين ثم يبور [قيمة] نباثين فإن هذه الزيادة لا تبطل [م/1-ب] حكم النزد عليه لأنه
إياها لأن الركتمان الأولين لا أجزء من الأربعين ولا لنفسهما.
لو حضر اربعين بعد الأمر بالصلاة لأن أجزء من الأربعين وليست عليها.
إن اراد أن يتخ الباثنين أو الذي امر باربع ركتمان فإلى الركتمان لا تجزيه
إياها لأن الركتمان حتى يبتدع اربع ركتمات، وكذلك لو امر بجلد ثمانين
لا يكون نسخاً لجميع الحد و إذا كان نسخاً لاربعين فقط.
فصل ٣: النسخ لا يدخل في الاختيار

ذهب جمهور الفقهاء إلى أن النسخ لا يدخل في الاختيار.
و قال طائفة يدخل النسخ في الاختيار.
و الصحيح من ذلك أن نفس الخبر لا يدخله النسخ - لأن ذلك لا يكون نسخاً وإنما يكون كذباً لأن تثبت بالخبر حكم من الأحكام.
جاء أن يدخل النسخ.
فصل ⁴: جواز نسخ العبادة بطلباً.

يجوز نسخ العبادة بطلباً و بما هو أخف منها و أقيل عليه جمهور الفقهاء.
و جمع نسخ العبادة بما هو أقيل منها.
و الدليل على ما نقول أن الباري تعالى قد أوجب على السلف.
و إذا كان أن يبتغي التعبد بما هو أقيل عليهم من حكم الإلـ.
جاء أن ينسخ منهم العبادة [بما هو أقيل عليهم منها].
فصل ⁵: التشريع و حكمًا.

إذا وردت الثلاثة متضمنة حكماً واجباً علينا من تحريم أو فرض.
أو غير ذلك من العبادات فاغتنم باعتلاهما.
نقل نبي الحكيم:
(1) أحد هما ما تضمنه من العبادة 4
(2) والثاني ما الزيناء من حنظها وتعليمها.
وذلك بسماة (ق 10-1) ما لو تمضى (1) الخبر حكيم
و اخوهما سم وأخرى مسألة.
إذا نثبت ذلك جائز نسخ الحكم ونظام التلارة وجز من التلارة
ويبقى الحكم.
فأما نسخ الحكم ونظام التلارة فهو نسخ حكم الخبر حكيم.
المم أو الندية من اطاق السبب ونظام السيدة للوالدين.
(12) ولذلك، تجسدها عند النبي محمد صلى الله عليه السلام.
و من ذلك الشافعي.
و الدليل على ذلك أن القرآن وخبر التواتير كلاهما في مطوع
بصحبه و ماذا جاز [أنا] ينسخ القرآن بالقرآن جاز أن ينسخ بالخبر
التواتير و مما بين ذلك أن قوله تعالى موجهة للوالدين.
(1) ننسخ بما روي من (ق 10-1) الذي عليه
السلام أنه قال إن الله تعالى قد أعطى كل ذي حق حقه فلا وهمية
لوارث.
فسلال: نسخ السنة بالقرآن.
و يجوز عند جميع القنوا نسخ السنة بالقرآن.
و من ذلك الشافعي.
و الدليل على ذلك ما برد من القرآن.
(1) سلالة الكوفة بعد ان نثبت بالسنة تخليها، إلى أن آمن و
(2) نتأكد الخبر الصحيح، نأخذ التلارة.
نظر السجد الحرم

(٤) و توله ثعالب لا تترجمون إلى الكفار (١٤) بعد ان تؤثر على السلام برد من جامع من المسلمين اليوم

فصل ١: نسخ القرآن والخبر الفشائر بخبر الآخراء (١)

يجوز نسخ القرآن والخبر الفشائر بخبر الآخراء
وقد ممنعت ذلك طائفةٍ
والدليل على ذلك ما ظهر من تجول أهل قرية إلى الكعبة بغير الواحد ووقد كانوا يمرون استقبال بيت المقدس من دون النبي عليه السلام خروراً إلا أنه لا يجوز ذلك بعد زمن الرسول عليه السلام للإجماع.

فأما اللقيان فلا يوج النسخ به جملة

فصل ١٠: الديعارة الماضية

ذهبت طائفة من أهل بناء وآخرون إلى ختيمة ونافسٍ (٧) ان شريعة من (كان) قبليًا لأئة لنا الا ما دل الدلائل على نسخه و قال الناسن يبرك وجماعة من أهلنا بالشع من ذلك ودلائل على ما نقوله

(١) ترده تعالى أولئك الذين هد الله فيهما مائدة (١٠)

(١) في ق: نجعل بينيتا عليه السلام
نامنا باتباعهم

(2) و قوله تعالى ز شرع لكم من الدين ما وسَّى به نوها و الذي اوجينا اليك (11) الآية
(3) ولا تقتروا فيه (17)
(4) وما رأى من النبي عليه السلام أنه قال "من نام عن الملاحة أو نسيها فلجهلها اذا (18) ذكرها
(5) فأن الله تعالى يقول "تأم الملاحة لذكرى (19) و انا خرطب بذلك موسى عليه السلام نأخذ به (1) النبي عليه السلام

(1) في قوله تعالى نبينا عليه السلام
الدالة

(1) حنى التوفيق - فلا يحمل على الوجوب ولا على النذب الا بدليل
(2) سورة الإعراف 5، آية 152
(3) سورة التوبة، آية 21
(4) مشكاة الصحابي ص. 841، دهلي 1360
الفاطم الحديث: رأى قال رسول الله صلى الله عليه وسلم
إذا خرج ختان الختان وجب الفصل ثم أنه ورسول الله صلى
الله عليه وسلم قامبلنا
(5) مشكاة الصحابي ص. 826، دهلي 1360
(6) إذا ف بث الجزية ص. 353، دهلي 1360
(7) و لم يكون عمر اخذ الجزية من المجوس حتى شهد عبد الرحمن
بن عوف أن رسول الله صلى الله عليه وسلم اخذها من المجوس هجر
(8) إذا ف. 41
(9) إذا ف 1389، باب العدد
(10) من هيئة ابن كعب أن الفسيرة بنت ملك بن سنان وهي اختت
ابن محمد الخديري اختبرها أنها جاء إلى رسول الله صلى الله عليه
وسلم تساءل أن ترجع إلى أهلها ف اتهمها بن خدمة نان دروبها خرج
في طلب عبله القوا نقلت تأثع ناس خلت رسول الله صلى الله عليه
وسلم أن ارجع إلى أهلها فان دروبها لم يتركه في منزل يملكه ولا تقدم
قالت قال رسول الله صلى الله عليه وسلم: "نعم، فاتحري فحت إذا كنت في الحجرة أو في السجد، فانطلق فقتلك في بنيت حتى يبلغ الكتاب أبجاه.
قالت اعتمدت فيه أربعة أشهر وعشر.

(1) إلما 5 286 ه. د. 1934 –
(10) أديب الصرفي: هو محمد بن عبد الله أبيكر المصري (النوري 1926/1346هـ) أحد المهتمين ومن كبار الفقهاء الشافعية - اخذ الفقه عن ابن العباس بن شريف - حاكم أبيكر القدر، إن أبيكر المصري كان أعلم الناس بالاحسان بعد الشافعي - له كتاب منها 4، البيان نسب دلائل الاحسان على اصول الإحكام في اصول الفقه وكتاب اللفائض، و
تولى ببع الخمس لشان بعين من ربع الآخر منه 320 هـ. (أ - ابن خلكان،

(11) السنن إبناود 6: 40 (كتاب الوصايا) كابورون 1346هـ.

(12) سورة البقرة آية 1416 –
(13) سورة السجدة آية 5: 10.
(14) سورة النحل آية 49: 6.
(15) سورة الأعلى آية 12.
(16) ابتداء

(17) البخاري 6: 196 ه. د. 1328.
(18) البيهقي 3: 347 و حيدر آباد كن 1350هـ.

(19) سورة طه آية 14.
الاجتماع

فصل 1: حجية الاجتماع

اجتماع الأمة على حكم الحادة دليل شرعي (1)

نجيب السهير الي ما اجتمع عليه و القطع بحثه خلاصه للنامية

و الدليل على ذلك:

ق/10 ب

(1) قول تعالى "و من يشاقق الرسول (ع/10 ب) من بعد ما تبين له الحدي و يتبع في سبيل المومنين"

(2) نزل ما تولى و ندله جهنم و ساءت معيرا

نور الله تعالى من اتباع غير سبيل المومنين فكان ذلك أمرًا بإتباع سبيلهم

فصل 2: ما يعرف به الاجتماع

فإنما تائت ذلك فائدة على ضعيب

(1) خامس

(2) عاشر
فيجب احترام اتفاق العلماء في كل العلماء والعلماء.

من الأحكام التي لا يعلم العلماء بها فلا احترام فيها بخلاف العلماء.

و بذلك قال جمهور الفقهاء.

و قال الفقيه أبو بكر: "يجب احترام العلماء في ذلك كله.

والدليل على ما نقول أن العلماء يلزمهم اتباع العلماء فيما ذهبوا إليه - ولا يجوز لهم خلافهم في ذلك بمثابة أهل العلم مع من ينتمون في حال أهل العلم الثالث فالأول لائتمان من أهل العلم.

و الاختلاف.

ثم ثبت أنه لا احترام باتقال أهل العلم الثالث مع اتفاق أهل العلم الأول فإن لا يحترم باتقال العلماء مع اتفاق العلماء الأول وآخرين.

فصل 3: احترام الاتفاق باتقال جميع العلماء.

لا يعتقد الاتفاق إلا باتقال جميع العلماء.

فان شذ منهم واحد لم يعتقد احترام وذهب ابن خزيمة مقداد أن الواحد والاثنين لا يعتقد بهم ودليل على ما نقول تولد تقاليا و لا اختلاف فيه من شيء فحكمه إلى الله(4) - وقد وجد اختلاف"
هذة قواعد جماعة الفقهاء غير داود ابن على الامام الحنفی فنانه
قال: إجماع أهل المحاية حجة دون إجماع المومنين في سائر الاعصار.
و دينینا قوله تعالى: لا إجماع إلا على حق و من يثاقب الرسول من بعده ما ثبمن
له البديع.... الآية (4)
و إذا ثبت أن غير المحاية يشاركون المحاية في هذا إلّام وجب
فمبل ٢: اجتماع اهل المدينة

فما اجتماع اهل المدينة يتخلل اصحابنا هذا الفظ -
و أنا قول (ب) دال رحلة الله وحقق اصحابه على الاحتجاج
بذلك فيما طريقة النقل

كمثلة الادان و الصاعر و ترك الجهر يسمع الله الرحمن الرحيم

ى الفريضة وغير ذلك من المسائل التي طرقيها النقل
واصل العمل بها في المدينة على وجه لا يخشى مثله ، ونقل

نقا طوائرا ، فانا خفمت المدينة بهذه الحجة دون [غيرومان] ساي

البلاد لأنها كانت محظيت فيها و ستمطر الخلافة و اجتماع حديثه بعدد على الله

عليه وسلم - و لو تعيا [مثل] ذلك في ساير البلاد كان حكما

ذلك -

فمبل ٢: اقول المحتاج او الإمام إذا انتشر ولم يعلم له

مخالفان فيه اجتماع

اذ قال المحتاج [أو الإمام ] تولا أو حكم بحكم وظهور
ذلك وانتشر انتشار لا يخشى مثله ولم يعلم له مخالف ، ولا سمع له

منكر نفاه اجتماع و حجة قاطعة

(1) في م : لفظ فصل نائب
(ب) في م : أما قول ملك
(ج) في م : حكما أيضا ذلك
و به قال множествоاءنا و أصحابنا في حنيفة و الشافعية -
و قال القاضي ابن كير
لا يكون اجماعًا حتى ينقل قول كل واحد من الصحابة في ذلك
و به قال داود -
و الدليل على ما نقوله أن الحادة جارية بأنه لا يجوز أن يسمع
العدد الذين و الجم الغفير الذي يسمع عليهم القوطو والمساعد لا
قولا يعتقدون خطأه و بطلانه ثم يسمع جميعهم من أكراه و أظهر
خلانه ه بيل أكثرهم يسمع إلى ذلك و سابق الهه
نادر ظهير قول و أسفير و انتشر و بلغ الناس الأرض و لم يعلم
له خلافان، فعلم أن ذلك الوكيل ضح ضم يه و اقترار عليه لما
جرب به الحادة
ولولا ذلك لم يسمع اجماع ولا تثبت به حجة إلا بعد أن يرى
الاتفاق على حكم الحادة من كل واحد من اهل العلم في عم الرأي
و بطل الاتفاق و بطل الرأي
و بطل الاجتهاد به لا استحالة و وجود ذلك في مسألة من مسائل
م 11 - ب (م / 11 - ب) الأصول أو الفروع كما لا يعلم البحر اتفاق علماء عصرنا
في جميع الأفكار (1) على حكم حاده بل أكثر العلماء لا يعلم وجود هم
في العلم.
ف إنما 8: اختلاف المعاهدة على قولين
(ب) في كلا كليماً.
إذا اختلف الذين في حكم حاده على قولين لم يجز.
 kond: انعقاد الاجماع من جهة القياس

يُحدد أن ينعقد الاجماع على حكم من جهة القياس في قول كافة.

القضايا

وذهب ابن خزيمة منداد إلى أن ذلك لا يُقح وجوده فلو وجد

فلو وجد لكان دليلًا.

و قال داود لا يُقح ذلك وهذا بين يديه على أن القياس

ليس بدليل وسياست كلم على ذلك إلا (ق: 12 - 1) شاء الله تعالى.

(1) في م: إنا
(2) في م: أجل الزيد
(3) في م: و سياست القياس فيه
الاجتماع

(1) قال أبو الأصحاب الشيرازي من أمام الثاقبة في عبد أبي الوليد الباجي،: الإجماع حجة في جميع الأحكام الشرعية كالمبادئ والمعاملات واحتمال الدعاء والفنون وغير ذلك من الحلال والحرام والفتاويا واحتمال

(الشیرازی) 5 اللحیم 1045 هـ قاهره 6

(2) سورة النحس آية 110 -

(3) الإجماع حجة من جهة أقوال النبي صلى الله عليه وسلم أيضا - قوله: الله السلام

(1) لا تجمع أشي على الخطيئة - روى

(2) لا تجمع أشي على الفضالة وقوله: الله السلام

(3) من قارن الجماعة ولو قد شبر فقد خلق رقية الإسلام من عينه -

(4) من نبي عن الشذوذ وقيل:

(4) سورة السورة آية 10

(5) أبو تمام: لم يوجد ترجيح أن الوالف لا يستعمل اسم في أسائر الكتاب سوى الكنيسة 6
(٦) قال الشيرازي: "لأن اتفاق من علماء العصر على حكم الحادثة
فناشبة الصحابة - وذكر نوله النبي عليه السلام - لا يخلو عنـ
من قائم لله عزوجل بحجة - (اللمع ١٣٠٥ ٢١٠ هـ تأريخ ١٣٢٥)
إنا الرواية في الصححين - لا تزال طائفة من أيض ظاهرين
على الحق لا يدرهم خلاف من خالفهم و يעזده من أئمهم موجودون في
كل آسار ولا تختص بعض الصحابة
(٢) سورة النساء آية ١١٠ -
الجَمَعُ الشَّمْشَانِي

معقَدُ الامْنِقَالِ
منقول الاصـبـل

باب 1: أقسام الخطـاب

قد ذكرنا ان الأدلة الشرع على ثلاثة أضرـب: ـ
(1) اصل و (2) معقول اصل و (3) نشـبهـاـل الأصل.
و قد نتد القول (1) في الاصـل و الكلام حاـنان في معقول الاصـل ـ
و هو ينقـس على ريفيـتهما: ـ (1)
(1) لحن الخطـاب و
(2) فجر الخطـاب و
(3) الحصر و
(4) معنى الخطـاب

مـثل 1: لـحن الخطـاب

فلا لـحن الخطاب فهو "الضمر الذي لا يتم الكلام إلا به" ـ
و هو ما خوذ من اللحن ـ و هو ما يبدأ في عرض الكلام من
معنى ـ ـ

(1) في م: وقد مر الكلام
رب ف ك: تـسبيـن
نحو قوله تعالى "وي من كان منهم مريما أو على سفر فعدة من اية اخرى (1) فتبين لائحة فعدة من اية اخرى في هذه حجة يجب الصير اليها و العمل بها وقد يلحن بذلك ما ليس منه و هو ادعاء ضمير يتم الكلام دونه - نحو استد للات prova ان الامام محلة الحياة لقوله تعالى "قال من يحي العظام و هي رم" فيقول الحكفي المراد بذلك من يحي أصحاب العظام و مثل هذا لا يجوز فيه تقدير مضر الا بدليل لاستقلال الكلام دونه -

فصل 3: نحو الخطاب

وأما الضرب الثاني وهو نحو الخطاب "فهو ما يفهم من نفس الخطاب من فيه المتكلم يعرف اللغة هو نحو قوله تعالى "ولكن لا تقل ليما انت ولا تنكرهما (2) فهذا يفهم منه من جهة اللغة بالمعنى من الضرب والنشر وما يجري مجرى النسي على ذلك في وجوه العمل به والسير اليه (م/12-1)

فصل 3: الحصر

م/12-1 واما الضرب الثالث وهو الحصر فله فظ واحمد وهو انا " (3)

وذلك نحو قوله عليه السلام " انا الولاء فمن اعتق (4)

نظام هذا النطق يدل على ان فبر المعتق لا ولاء له -
فهذا النوع من الاستدلال يبقى عند أهل النظر دليل الخطاب.

وقد ذهب إلى القول به جماعة من احبابنا واحباب الشافعي [وعلى
جهته جماعة من احبابنا واحباب الشافعي]، وأي حنيفة و هو المبحَّر
الآن في الحكم بصفة في بعض الجنس يليه تعليق ذلك الحكم

في النسخة في 6 على من

(1) الكليات النافية في م، 6، تلك

(2) الزكاة في غ.
بما وجدت فيه تلك الصلة خاصة - و بيني الباقي لن حكم السكرت عنه -
طلب دليل حكم في الشرع -
بدل على ذلك ما روى البخاري عن الشيباني عن عبد الله بن
ابن سعد النبي عليه السلام عن الحج الأحمر تكل أشترى نبلي
قال لا (1) - فوجه الدليل منه بأنه ليس على الحج الأحمر - ثم ذكر
أن حكم البلقين حكم - وهو من أهل العلم - فلما جاز التعليق بدليل
الخطاب لوجب أن يحكم له بالمخالفه - و لا يتعلق الحكم بالجر الأحمر
 خاصة -

باب ٢: إحكام القياس

فصل ١: متعن القياس

واما الضرب الربع من ممنول الامل فهو متعن الخطاب وهو القياس
وجده -

القياس "عمل أحد المعلمين على الآخر في اثبات حكم أو استقاطه
بامر جامع بينهما "

و هو دليل شرئ عند جميع العلماء -

و قال داود يجوز التعبيد به من جهة المكلف إلا أن الشرع معه
منه -

و الدليل على ما ذهب إليه جماهير أهل العلم ( ق/ ١٣ -١) قوله
"فزوجنا فاعتبنا يا أولي الآيات "
فصول 2. اثبات القياس وما جمل حجة فيه (٤)

(١) وما يدل على ذلك قوله تعالى:

 ما فرطنا في الكتاب من شيء

ونحن نجد احكاماً كثيرة ليس لى ذكر في القرآن ولا في سنة
النبي عليه السلام. مثل رجل له دينار وقى فيه كبيراً لغيره فلم يستطيع
على اخراجه، و مثل ثوب أبيض لرجل وقى في قدر الصيف فكل صيده و
حسن و غير ذلك

و لا يجوز أن يراد بالاثناء أنه نس على حكم كل حادة في القرآن
و إذا أراد به أنه نس عليه بعض الاحكام، في قال (القرآن) على
سائر الأدلية فيه، أكان ذلك بنزلة أن ينس في القرآن على جميع
الدلائل التي أحوال على الأحكام فيها القياس لذا نجد احكاماً
كثيرة لا طريق إلى اثباتها إلا بالقياس والرأي - كالاحكاماً التي ذكرناها
وما شاكلها (٢) وما يدل على ذلك من جهة السنة:

(١) قوله عليه السلام لعمر حين سأل عن القبلة للسما - رأيت
لو تضمنت أكاذيب عليك من جناح، قال لا - قال فقيم إذا؟
(2) قرر للخنم في تفعيل ارتفع لو كان على أبيك دين اكتس فيه؟
ثالث نعم - قال نحن الله أحق (15) أن يقضى
(3) قوله أيضاً للذين اكترن ولده هل كل من ابن؟ قال نعم - قال
نما الوالداً؟ قال حم - قال قبل بها من أوق؟ قال نعم - قال أي ان
نرى ذلك؟ قال عرق نزه - قال فلعل هذا عرق نزه (11)

وغير ذلك ما لا يحس كثرة-
ق/ 12 ب (3) وما يدل على ذلك علمها (ق/ 12 ب) أن المحابهة رضوان الله عليهم
اختلافوا في مسائل كثيرة جرت بينهم فيها مواقف مشيرة وبرامجات كبيرة
كاختلافهم في توبيت الجدة مع الآخرين و اختلافهم في الحرم و الحرم
و السهر و السهر
فالا يتخلو ذلك من ثلاثة أحوال
(1) أما أن يكون في هذه الأحكام المختلف فيها تس لا يحتل التاويل أو -
ظهر يحتل التاويل أو
(2) يريد ذكر بحكمها جملة
ويسحيل أن يكون فيها نس يحتل التاويل و لأنه لو كان لجار الخلاف
اليه الموافق له فأنقطع الخلاف وثبت الإجماع على الحق
(12 - 1) و يستحيل (م/ 12 - 1) أن يكون فيها نس يذهب على جميعهم - لان ذلك
اجتاع منهم على الخطأ ولا يجوز هذا - ولو جاز ذلك لجار أيضاً ان يذهب
عليهم شريعة وملوت وصيام وعبادات قد تبع عليها صحح للشفع و هذا باطل
بانتفاض من المسلمين -
ويستحيل أن يكون في ذلك دليل لا يحتل التأويل لاته
لو كان ذلك لوجب يستقر المادة أن ينزع كل مخالف لظاهر الذي
تعلق به وبين احتجاج منه ولا يحتج بالرأى والقياس - لأن السند
والمحتج لما يحتج بما ثبت عنهه بحكم - ولا يعدل عند المناطرة
واقتاد أثبات الحق الملبس بدليل ولا حجة عنه ولا عند خصم
ولما رأينا كل واحد منهم احتج في ذلك بالرأى والقياس دون
مذكر ولا مخالف علمنا اجماعهم على القول ببسط القياس والرأى
(4) وما يدل على ذلك اجماع الصحابة على احكام كثيرة من جهة
القياس والرأى

كإجماعهم:

(1) على امة أبي بكر بالقياس والرأى
(2) وأجماعهم على امة عثمان وغير ذلك ما أجمعوا عليه
(3) و من ذلك خبر عمر بن الخطاب رضي الله عنه أنه خرج لل
النام بمحاب النبي عليه السلام فلما بلغ شرخ بلغه أن النبي، رفع بالثام
بها فاستشار المهاجرين الأولين نافتعلوا عليه - فنجم من قال له آري
ف/412 إلا غير من قدر الله - و منهم من قال له لا تقدم ببسط أمحاب
رسول الله صلى الله عليه وسلم على النهاة - ثم دعا الانصار فافتعلوا
كاختلاف المهاجرين قيلهم - ثم دعا من حضر من مشيخة قريش من
مهاجرة الفتح فلم يختلفوا عليه وآمره بالوجود
ون لم يكن منهم أحد ذكر في ذلك آية من كتاب الله ولا حديثا
من رسول الله صلى الله عليه وسلم فأشار كل واحد منهم برأيه وما
إذا اجتهدنا اليه ولم يذكر عليه أحد فعله فقال على رضى الله عنه أن
مباح على ظهر فاصحبا عليه
فقال له أبو عبيدة بن الجراح: أتراك من قدر الله؟ فقال: لolk
عبر لو غيرك قالاً أبا عبيدة ثم نفر من قدر الله أن تدر الله-
أرائت لو أن رجل أبلاً في واد له مدرتان إحداهما خصبة والاخر جدية؟
أليس أن رعا الجدية رعاها بقدر الله وإن رعا (م 12-پ) الخصبة
رحا بقدر الله؟
فاءعترض عليه أبو عبيدة بالراوي وجاوه عمر بالراوي و لم يختص
أحد مما في ذلك بكتاب الله ولا سنة رسول الله صلى الله عليه وسلم ولا اجماع-
ثم نصبت هذه القصة وذاعت و لم يكن من المسلمين من انكر
على أحد منهم القول بالراي
وما أعلم أن ستسلية يدها الاجماع فيها اثبت في حكم الأجماع عن
هذه المسألة-

فصل 2: حد القياس

بافق النصان على نائبه يضحى أن ثبت به الحدود
و القياسات والأباد
وقال أبو حنيفة لا يجوز أن يثبت شيء من ذلك بالقياس.
وما قاله ليس يصحح لان الإثية عامة في الأمر بالاعتبار ولا يجوز
ان ينهي الا يدلل-
النمل: 4. الفئة المواجهة

الملة: نقلة عندنا صحيحة

تحدد مدة التفاعل في الدينار والدرهم أنها أسول الأثنان وقيم المثلثات.

وقال أصحاب أبي حنيفة ليست صحيحة

و الدليل على ما تقوله أن القياس أمارة شرعية فإنا لن يكون خاصة

ومع عام كالخبر.

فصل ٥: الاستحسان

وذكر محمد بن خزيمة مددان أن مسنى الاستحسان الذي ذهب

الله بعض أصحاب مالك رحمه الله وهو القول بقرية الدليلين.

مثل (قيق ١٤ ب) تسمي بيع الحرايا من بيع الرطب بالتسو

للسنة الوديعة في ذلك (١٣) لأنه لا يوجد شرع في إباحة بيع الحرايا

بخرصا نمزا لما جاز له من بيع الرطب بالتسو.

و هذا الذي ذهب إليه هو الدليل وانما ساء استحسانا على

حق معنى الوضايعة. ولا ينتج ذلك من شرع كل مثنا.

والاستحسان الذي يختلف أهل الأصول في اثباته هو "اختيار

القول من غير دليل ولا تقليد.

وذهب بعض البحرين من أصحاب مالك و أصحاب مالك رحمه الله

الإثباتات.
ومن من عيقتنا العرائين والشتاقين
والدليل على ما نقوله أن هذه سائرة للقياس بخير دليل فوجب
أن يبطل امل ذلك إذا فزى بجرد البهوى

فصل 6: الذراع

مذهب مالك رحم الله النجع من الزراع وهم:

* السؤالها التي ظهرها الأباحة ويتصل بها إلى فم المحضر.

* وذلك نحو أن تبيع العلمها بياينة إلى أجل ثم تشتري بها خمسين

نقدا يتصل بذلك إلى بيع خمسين مثلا نقدا بياينة إلى أجل

وأكل الزراب أبو حنيفة وانونى (ي/ 10 - 1) ينـ العموم

والدليل على ما نقوله:

1) قوله تعالى عزوجل "وسلهم القرية التي كانت حاضرة البحر اذ يعدون في البيت اذ تا (14) تمام".

فوجه الدليل من هذه الآية انه تعالى حسم عليهم الاصطيااد بين البيت واباحه في سائر الأسابيع تناولوا يحصلون عليها إذا جاءت يوم البيت ويسعون عليها السلاك ويتكلون إنهم من الأطياب يوم البيت و

2) إنما يدل على ذلك أيضا قول تعالى "يا إيها الذين آتوا لا تقولوا رامنا وقولوا انظرنا واصمعوا (15) "

فوجه الدليل من هذا أنه نحن اليهود من أن يقولوا راما لنا كأن

اليهود يتصلون بذلك إلى سب النفي عليه السلام نحن من ذلك اليهود.
ور أن كانوا لا يتصدون به ما منع من أكله
(4) وإ▏اقن ذلك ايجا▏ال الصحيدة و ذلك ان عمر بن الخطاب
رضي الله عنه قال يا ابيا الناس ان النبي عليه السلام قبض ولم يفسكر
نا الرا ناترحا البناء (14) و الربوة -
(5) و تول مايطر رضي الله عنها لما اشتري زيد بن ارتم من
اهم ولده جارية بديناء طاقة الى الحطلق و بايما منها بماة نفدا ابلغوا
زيدا أنه قد ابطل جهاده مع رسول الله صلى الله عليه وسلم ان لم

(4) وقال ابن عباس لما شلت عن بيع الطعام قبل ان يستوفي
درهم بدرهم و الطعام (18) مربعا

فصل 8 : الاستدلال بالقرآن

يجوز الاستدلال بالقرآن
و قال أبو حامد الأسفريين (4) لا يجوز -
و الدليل على قولنا ان النحل اذا قال لا يحيل الشعر الريح ،
لا يستحل لو حله لما جاز اخذ من الحيوان حال الحياة مع السلمامة
و علما ان النحل لا تحله كالريث في هذا الاستدلال صحيح لأنه لو ولت
الحياة الشعر و جاز اخذ من الحيوان حال الحياة لان تنصت العلة

فصل 8 : الاستدلال بالقرآن

يجوز الاستدلال بالقرآن عند أكثر اصحابنا
قال أبو سعيد (25) بن عمر يجوز ذلك و يقال (21) الحزن،
و الدليل [؟] على ما نقوله أن كل واحد من اللفظين المستترتين له
حكم نفسه و يجوز أن يفرد بحكم دون ما قارنه ولا يجوز أن يجمع بفيهما
الأ بديل كـ ما لو وردتا مترتين.
(1) سورة البقرة آية 184
(2) سورة ليسين آية 78
(3) سورة بنى إسرائيل 23

هذا الحديث روى عن عائشة من الناظر الأثناة: انا (واعبائل) ارادة أن نشترى جارية ثم تفقتا - قال اهلها لم ننكسبوا على ان لا لناسا لنا فذكرت ذلك رسول الله صلى الله عليه وسلم فقال لا ينتمك ذلك نائمة لاولاء لمن اعتق (مسلم الصحيح)
جزء الثاني حديث 141 ، القاهرة 1324 هـ / 1906 م.
(5) على السنن 6 كثر العمال 6 : 618 حديث 2711 ، حيور آباد
(6) 1/4/1324 ع
أيضاً 5 : 221 حديث 2062

الناظر الحديث: عن سليمان البيلاني عن عبد الله بن أي ابي ابي قال سمعت رسول الله صلى الله عليه وسلم ينمي عن الجدر الأخضر يعني النبي في الجهر قال وايا بابا قال لا ادرى -
(7) سورة الحشر آية 2
(8) الداروين 6 السنن 6 : 1216 كتاب التفسير دمشق 6 1348 هـ
(9) سورة الارام 38
(10) الداروين 6 السنن 6 : 446 كتاب المناسك
(11) ابن ماجه 6 السنين ، كتبه 6 1310 هـ
و رد الحديث في ابن ماجه من هذة النواضق : عن أبو هريرة
قال جاء رجل من بنى نزار إلى رسول الله صلى الله عليه وسلم فقال
يا رسول الله إن أمراً و술ت غلاباً أسوأ فقال رسول الله صلى الله عليه
و وسلم هل لك من أبل قال نعم قال نما الراية قال عبر قال هل تبينا
من أوق قال إنها أوق قال قال يا ذلك قال على عرق تزعمها
قال و هذا لعل عرشاً تزعمه -
(12) مسلم : الصحيح 6 : 1640 - 41 ، كتاب السلام (98)
قاهرة 6 1375/ 1955
(13) سورة الأعراف آية 112
(14) سورة البقرة آية 104 -
(15) ابن ماجه 6 السنين ، كتبه 6 التجارب 6 1310 هـ
عن عمر بن الخطاب قال إن آخر ما نزلت آية الربا و أن رسول
الله صلى الله عليه و سلم لم يفسرها لما نذموا الربا والربيع -
ابن إثير الجزري 6 جامع الأصول 6 ، 478 - 479 ، قاهرة 6
1386/ 1965 -
(16) أبوداوود 6 السنين ، 128 ، كتاب البينيع 6 كاشف 6 1366 هـ -
... قال قال لابن عباس لم ت قال الآثري أنهم يتحملون بالذهب و
الفضة نكسي -
(17) أبو حامد الأنصاري : هو الشيخ أبو حامد أحمد بن أبي طاهر
طاهر محمد بن أحمد الأنصاري ( 955/ 1344 ) اصله الإفرائين
من بلدة خراسان بنواحي نيشابور - قدم بغداد في سنة 323هـ ودرس الفقه بها إلى أن توفي ليلة السبت لأحداث بقايا من الشوال سنة 406هـ ببغداد - و ألف كتاب همها « لأصول الفقه » و مختصر في الفقه » الرقيق » و غيرهما

(11) ابن خلكان، وفيات الأعيان، 6: 1: 101-6، تأهله 1287هـ/ 1868م

(12) أبو محمد بن نصر: هو أبو بكسر محمد بن عبد الله بن محمد بن نصر بن ريتا الأردنی. أمام أصحاب المناقشة في عمرو - توفي في شهر ربيع الأول سنة 385هـ ببغداد - و دفن بكلا باغه

(13) ابن خلكان، وفيات الأعيان، 6: 2: 346-6، تأهله 1448هـ

(24) الزلزلي: هو أسسيل بن يحيى بن اسماعيل بن عمرو بن اسحاق

(25) أبو إبراهيم الزلزلي (160/768 - 175/791) من أعلام المناقشين - ممن تبوأ بين زملائه بكر، وهي تقبله مشهودة - كان ماهما غالبًا جنبه الأئمة في مصر - كان كتبه كثيرة - منها: الجامع الكبير، الخصص

المختصر، الشفاه، السائل المبهر، الترقيب في العلم، والوثائق وغير ذلك - و توفي في شهر ربيع في سنة 164هـ ببغداد ودفن بالقرب من ثوبين للإمام الشافعي رضي الله عنه بالقراءة الصغرى

(26) ابن خلكان، وفيات الأعيان، 6: 192، تأهله 1287هـ/ 1868م

الاعلان 6: 1: 222)
الجزء الثالث

الصحاب الجماعي
باب 1: حكم استصحاب الحال

فصل 1: أقسام استصحاب الحال

قد ذكرنا أن أدللة الشرع ثلاثة أحرف:

(1) اصل و
(2) مسكون الاصل و
(3) استصحاب الحال

و قد (م/14-ب) أن الكلام في الاصل ومسكون الاصل و الكلام

هما في استصحاب الحال و هو على ضرورتين:

(1) إحددها استصحاب حال المعقل و ذلك "اذا ق/15-ب" ادها في السلالة اخذ المعقل كحا هنا و اداا الاخر الباق على حكم المعقل و ذلك مثال أن يطلال المالك من وجبال البتة نقل الاصل

براة الصلة و طريق استعمالها الشرع (1)
نون ادعا شرب يوجب ذلك فعليه الدليل - 
و هذه طريقة صحيحة من الاستدلال - 
(2) و الثاني استضاح حال الاجتاع - 
و ذلك مثل استدلال 
(3) داد,on ان الوالد يجوز بيعها 
(4) لاتنا قد اجتمعنا على جرزال بيعها تقبل الحبل، فإن ادا 
المعن من ذلك بعد الحبل فعليه الدليل 
(5) و هذا غير صحيح من الاستدلال، لأن الاجتاع لا يتناول 
موضع الخلاغ، وإنما يتناول موضع الاغراق - وما كان حجة فلا يحم 
الاجتاع به ( الا ) في موضع الذي لا يتناوله(1) كالفاظ صاحب الشرع 
إذا تناولت موضعا خاصا لا يجز الاجتاع بيا في الوضع الذي لا يتناوله - 

نصل 2: الاباحة والتحريم بالعقل 

إذا نبت ذلك فليس في المجل حظر ولا اباحة وإنما فثبت الاباحة 
و التحريم بالشرع، فالناريت تلالة بحلل ما يشاء، ويحرم ما يشاء - 
هذا قول جمهور اصحنا 
و قال (الابرهية الاشياء) في المجل على الحظر - 
وقال ابن النور الثاني الاشياء في المجل على الاباحة - 
و والدليل على ما نقول أنه لو كان المجل يوجب اباحة شيء من 

(1) في يم - يوجد فيه.
هذه الإيحاء أو حذر أو استحالة أن ينقل الشرع بما يقتضيه من العقل لا استحالة ورود الشرع بما يتافي العقل كما يستحيل أن يرد بنفي أن الاثنين أكثر من الواحد

فصل 2: رجب الدليل على من ادعى

من ادعى تثبي حكم وجب عليه الدليل كما يجب على من اعترف -

و قال داود لا دليل على النافع -

و الدليل على ذلك قوله تعالى، و قالوا لن يدخل الجنة إلا من كان هدايا أو نعماً تلك اعترف، قال هاتوا برهاكم أن كتم صادقين

فصل 4: اعمال المجتهد

صفة المجتهد

(1) أن يكون عارقاً (15-1) بوضع الادعاء بمواضيعاً من جهة

العنوان

(2) و يكون عالماً بطرق الإيجاب و معرفة الموضعة في اللغة و الشرع

(2) و يكون عالماً باصول الديانات و أصول الفقه

(4) عالماً باحكم الخطاب من العلم و الأواخر والتأليف و النفس

(5) عالماً باحكم الكتاب

(6) عالماً بالسنة و الآثار و الإخبار و طرقها و الشريعة بين

(15-1)
في الاحاد.

فصل 6: الترجيح في اختبار الأحاد

ترجيح في اختبار الأحاد يراد لقوة غلبة الظن بأحد الخبرين عند تعارضهما ودليل على صحة ذلك اجاع السلف على تقديم بعض اختبار الرواة على اختبار سابهم من بينهم الحفاظ والضبط والاهتمام بالموضوع.

فصل 7: الترجيح في الاستدلال

إذا ثبت ذلك فالرجيح يقع في الاختيار الذي يتعارض و لا يمكن الجمع بينهما ولا يعرف الناشر منهما في حصل على اظهار ناسخ في موضوعين:

(1) احدهما الاستدلال و (2) الثاني المشن.

(1) إذا الترجيح في الاستدلال فعل ارجل: (2) فاما الترجيح في الاستدلال فعل ارجل:

(1) الأول أن يكون أحد الخبرين مريبا في قصة مشهورة متداركة.
عند أهل النقل و يكون المحلور له ماريا من ذلك فيقدم الخبر المرؤى في
قاعة مشهورة
لا أن الفنوس إلى قبوله اسكن راظن في صحته أغلب
( 2 ) و الثاني ان يكون الراوي احد الخريجين احفظ و احفظ
و راوي الذي يعارضه دون ذلك و ان كانا جميعا يحفظ بقولهما فيقدم خير
احفظهما ( ق / 16 - ب ) و احتفظا
( 3 ) و الثالث ان يكون رواة احد الخريجين أكثر من رواة الخبر
لاخر فيقدم الخبر الكثير الرواة
لا أن السهو و الخطأ ابعد من الجماعة و اقراه الى الواحد
( 4 ) و الرابع ان يقول راوي احد الخريجين حسبت رسول الله
عليه و سلم و الآخرين يقول كتب النبي صلى الله عليه وسلم الى
فيقدم خير من سمع النبي عليه السلام
لا أن الساع من العالم اقوى من الاخذ من كتابه الوارد
( 5 ) الخامس ان يكون احد الخريجين متفقا على رفع الى رسول
الله صلى الله عليه وسلم و الآخرين متفقا فيه فيقدم المشتق عليه
لا أنه ابعد من الخطأ و السهو
( 6 ) السادس ان يكون ( 4 ) أحد الخريجين ( م / 10 - ب )
( 1 ) الكلمة التالية في م = 000 الخير
( 2 ) على الباحث في 600
مختلف الرواية عن حديث الحكم و نفيه و رأى الخبر الآخر لا يختلف
الرواية عنه و من يقم أحد الأئمة فيقدم رواية من لم يختلف عنه
لأن ذلك دليل على حفظ الرواية عنه وشدة اهتمامهم بحفظ ما رواه
كان أولاً -
( ٢) السبب أن يكون رأى أحد الخبرين هو صاحب القصة و
الملحق بها و رأى الخبر الآخر يبني نقيض خبر صاحب القصة
لأنه أعلم يظهرها و باطنها و آخذ اهتماما بحفظ حكمها.
( ٨) الثاني أطابق أهل المدينة على العمل يجب أحد الخبرين
نكون أولاً من خبر من يخالف عمل أهل المدينة
لأنه موسع الرسالة و جمع المحبة فلا يتصل العمل بها الا بباح
الرواية -
( ١١) التاسع أن يكون أحد الروايتين أشد تقنيتها للحديث و احسن
نسخة له من الآخر نقدم حديثه عليه -
لأن ذلك يدل على شدة اهتمام له (١٠) بحكمه و يحفظ جميع أموره -
( ١٠) الحاشر أن يكون أحد الاستاديين سالماً من الاضطراب
و الآخر مطلياً نكون العالم أولى
لأن ذلك دليل على اتقان رواته و حفظ جملته -

(١٠) في م ٢ الفتيانه
(11) الحادي عشر أن يكون أحد الخبرين يوافق ظاهر الكتاب، 
والآخر يخالفه يكون الوافق لظاهر الكتاب أولٌ (ق/12-1)

نص 3: توجيهات الشيوان

قد مضى الكلام في الترجيح من جهة الاستناد والكلام مثلاً 
في الترجيح من جهة الدين 
و ذلك على وجه:

1) إذاً احدها يسلم أحد الشيوان من الاضطراب والاختلاف 
و يكون ذي الحديث المعذر به فقط وبين مختلفاً فيه尼كون السالم من 
الاضطراب أول

لأن ذلك دليل على الحنول والاستناد

2) الثاني أن يكون ما تضمنه أحد الخبرين من الحكم منطقياً 
والآخر محتملاً له – فيوجه ما نطق بحجة 
لأن الغرمن فيه البين والمقصور فيه أجل

3) الثالث أن يكون أحد الخبرين مستقل بنفسه والآخر غير 
مستقل بنفسه فتكون مستقل بنفسه أول
لاستقل بنفسه بينقين الرواد به وغير المستقل بينه .. لا يتقين 
الرواد به الا بعد نظر واستدلال 

4) الرابع أن يستعمل الخبران في موضوع الخلائف ليكونا أولًا 
من استعمال أحدهما واطلاق الآخر.
للإجابة على نية السبب، أذهب إلى اليوم، بدأنا بخصوص، في حين أن السؤال، أيضاً، الذي كان يbindung لنا، دعا إلى الإجابة عليه.

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الآن في ذلك اطراح أحد الدلائل واستعمالها أولى (م/11-1)

من اطراح ادحها

(6) الخامس أن يكون أحد الدلائل متنازعًا في تخsilه و
الآخر منتقلاً في تخsilه - ليكون مشيئ بالحمل مال يجمع على تخsilه
أولى -

(6) السادس (1) أن يكون أحد الخبرين لا يقصد به بيان
الحكم وآخر يقصد به بيان الحكم - فيكون ما يقصد به بيان الحكم
أولى - لانه آباعد من الاحتمال -

(7) السابع أن يكون أحد الخبرين ميؤلاً في الحكم والآخر
غير ميؤل فيه ليكون الميؤل الأول

(8) الثامن أن يكون ادحها ورد على سبب والآخر على غير
سبب - فيقدم ما ورد على غير سبب على الولد على سبب
لان معارضة الخبر الآخر يدل على أنه ينحرف على سبب -

(9) التاسع أن يكون أحد الخبرين قد قض به على الآخر
في موضوع الجمع (1) من المواضع فيكون أولى من في سائر المواضع -

(10) الحاشر أن يكون أحد الجمييع واردًا بالباطل متنازلاً
ويئات مختلفة فيكون أولى مما روى من أخبار الاحاد يلطف واحد
لأنه أباعد من الخلط والسهو والتحريف -

الكلمة النافية في م - ١٠٠ الجمع ١٠٠ -
فصل 4: ترجيحات المسائل

قد مضى الكلام في ترجيح الأخبار - والأكلم هامأ في ترجيحات المسائل (العوان) - وذلك إنه قد يتعارض قياسان في حكم واحد جامع، ويلزد القاع بين املين - يصح حكم على احدهما بعقل مستنطن محتوى ويعطى الحكم على الثاني بعقل مستنطن محتوى - نحتاج النظر إلى ترجيح احدي الاهلتين على الآخر -

1) إذا لم يكن أحد الاهلتين منهما عليها والاخر

غير منسوبي عليها، فإنما الصوبي عليها
لا ينفع دليل على صحتها...

2) إذا لم يكون احدي الاهلتين لا تمود الى 1) اصلها

بالتخصص، وثاني تمود على اصلها بالخصوص فالتلك لا تمود عليه.

(1) في م 67 على
املها بالشامي نتفق لا يوجد على لائحة بالشامي الأولى
لا أن التمليك بالشامي الأولى قطعا أو نظرا
(2) الثالث أن تكون أيدي العلتين مؤقاتة للفظ الأول و
الآخرة مخالفة له (2) تقدم البراقة -
لا أن الامل شاهد بلحظة -
(4) الرابع أن تكون أيدي العلتين مبكرة مبكرة و الآخرى
مباشرة غير مبكرة (م/م 16 - ب) تقدم النكبة -
لا أن الامل إذا اعترفت وعكت علبة على الظن (3) تعلن الحكم بها
يوجد بها وعدم يبعدها -
(5) الخامس أن تكون أيدي العلتين تشهد لها أصول كثيرة
و الآخرة لا تشهد لها إلا اصل واحد - فما تشهد له أصول كثيرة أولـ
لا أن غلب الظن إذا تحمل بشهاده الأصول وكلها كثرما تشهد بها
من الأصول غلب على الظن صحتها -
(6) السادس أن يكون أحدهما قد رفع إلى اصل من
جنسه والآخر رفع إلى اصل من غير جنسه - يكون نظير من رد القلق
الجنسه الأول -
لا أن القلق نظير على جنسه أول من نظير على مخالفة -
(7) السابع أن يكون أيدي العلتين مؤقتة أو منتظرة من والدته أو
(1) غير موجود في ق -
(2) غير موجود في ق - علبة على الظن
(٥) إن الناس أن تكون أعجوبة الملتين ملثمة واختلفة خاصة لمن تكون العامة ولا أن تكون أعجوبة الملتين مثيرة لجهنم.

(٦) فالأنس أن تكون إحدى الملتين بوضع من أصول منصوص عليها ولا الأخرى فالتهمة من أصل لم يبت عليه فيكون المنتزأ من أصل منصوص عليه أولى.

(٦٥) الحادي عشر أن تكون إحدى الملتين أتى ابنا، وآخرة كثيرات الأوصاف وتقدم القليلة الأوصاف.

(٥٦) لأنها أم غيرها ولأن كل وصي يحتاج في إثباتها إلى غرب من الاجتهاد وكل ما استغلف الدليل من كثرة في الاجتهاد كان أولى.

و الله أعلم.

كملت الأذكار لأبي الوالي البايحي في اصول الفقه بحمد الله.

حسن مصون.

و ذلك في يوم السابع من رمضان المعظم عام اثنين و تسعين.

وبعثة على يد الفنير إلى الله تعالى الحسن بن سعود الحجي الشناوي.

قرر الله له و نوالديه والملتين ابنيه، والصلاة والسلام على سيدنا محمد وآل الله وصحبه وسلم كما رسول الله تعالى.

من الصحابة جميعهم.

(١) في النسخة في اثارة.
استنادا إلى حالة المعتقل:
(1) استنادا إلى حالة المعتقل، فهو المرجع إلى براءة الدعوة في الأصل.
و ذلك طريق ينزع إليه المجتهذ عند عدم ادلة الشرع ولا ينتقل عنده إلا بدليل دليلى ينقل عنه ذنوج دليلان من ادلة الشرع. تنقل عنده سواء كان الدليل نظرا أو مفهوما أو نجا أو ظاهر...
1228 هـ
(الشیرازی، اللحمه۶ ۴۸۱ - ۶۳ ناهرة ۱۳۲۸ هـ)
النهائي للكتاب "الإشاره في علوم الفقه"،
ال콕وليا MS، مدريد، إسبانيا، ص. 168.
AL-I'SHARAH FI USUL AL-FIQH

i.e.

A GUIDE TO THE PRINCIPLES OF MUSLIM JURISPRUDENCE

BY

QADI ABU AL-VALID AL-BAJI AL-ANDALUSI

(403 A.H./1012 A.D. - 474 A.H./1082 A.D.)

EDITED AND, TRANSLATED WITH INTRODUCTION AND NOTES

BY

TUFAIL AHMAD QURESHI

SUBMITTED TO

THE UNIVERSITY OF SIND, HYDERABAD, SIND, (PAKISTAN)

FOR PH.D. DEGREE

1302/1979.
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(1) *Asl*, the root,
(2) *Maqul Asl*, the intelligible meaning of the root,
(3) *Istishab Alal*, association with the prevailing conditions.

(I) AL-ASL OR THE ROOT

Kinds of al-Asl or the root: (a) *Al-Kitab*, the Book;
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I

INTRODUCTION

(i) The life of Abu al-Walid al-Baji.
(ii) A Survey of Muslim Jurisprudence.
(iii) The manuscript.
A - THE AUTHOR

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I- BIRTH AND ANCESTORY OF AL-BAJI

BIRTH:

Abu al-Walid Sulayman ibn Khalif ibn Sa'd ibn Ayyub ibn Warith al-Tujibi was born in the year 403 A.H. / 1012 A.D.

Ibn Bashkuwal (494/1100-578/1182), an early biographer on al-Baji, narrates two statements about the exact date of his birth. The first statement is that of Abu 'Ali al-Ghassani, who reports directly from al-Baji and says that he (al-Baji) was born in Dhu al-Qa' dat 403 A.H. The second is the letter of Qadi Muhammad ibn Abu 'al-Khayr who says that Abu al-Walid al-Baji was born on Tuesday in the middle of Dhu al-Qa' date 403 A.H.

All the biographers of the later period have followed Ibn Bashkuwal.

(1) Ibn Bashkuwal, K. al-Silah, Cairo, 1374/1955 Vol. I: p. 198-9;

(2) Ibid.
BIRTH PLACE:

The birth-place of al-Bājī is the city of Bedajoz or Batlyus—an old Roman city (Pax Augusta) in the province of Lower Spain, where al-Tujīb and its sister tribes were settled in great numbers.

He is however, generally known as al-Bājī, because, as al-Maqarrī says:

"Al-Bājī originally belongs to Bedajoz, but his grandfather migrated to Bajah near Seville."

The statement indicates that Abu al-Walīd was born in Bedajoz and migrated to Beja with his family members in his infancy. The Tujibites of Bedajoz had near relations at Beja.

Al-Zarāḥi, therefore, appears to have mistaken in his opinion that Abu al-Walīd was born in Beja.


Beja or al-Bajah was conquered by Musa in 93 A.H, probably between March and May 711 A.D. It was very famous for its tan-yards and manufactures of cotton goods; the territory abounded in silver mines. It is now a city located about 95 miles in south eastern side from Portuguese capital Lisbon or Lashbūnāh.

**Origin of His Tribe:**

Al-Bajah's tribe, al-Tujib, took its name from a lady, tujib, wife of Aghras ibn al-Sikkun ibn Aghras ibn Kindah, the grandfather of the tribe, Kindah, a branch of Kahān who descended from the " qahtan," deriving their origin from qahtan ibn sina ibn yaghjāj ibn ya'rib ibn qahtan. The principal stock of Tujib tribe qahtanites, according to some genealogists like ibn Hāmū, were the descendants of Nūḥ. To some others like al-Bukhārī, they were the sons of Ismā'il. Al-Kindah, the principal stock of the Tujibites is well known in the history of the Arabs.

The ancestors of the Kindites settled in Yaman and Hadramawt. In course of time they spread all over the central parts of the Arabian Peninsula and established

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Arab States before Islam.

Kindah State was owned by Kindah Tribe who were the principle stock of Tujibites, the tribe of Abu al-Walid al-Daji.
there Kingdom. This Kingdom (of the Tujibites ancestors) later on became a powerful dynasty known as "Kindah state", extending its boundaries to Najd on the north; Yamn on the south; Amman on the East and Hijaz on the West.

The Kindites were great conquerors and builders of cities. Their dominion in Yamn and other parts of Arabia continued down to the seventh century of the Christian Era. They were the only rulers who received the title of Hulik, King, in the Arabian Peninsula.

**Islam in the Tujib Tribe:**

The principal stock of the Tujib Tribe, al-Qahtan, like the other ancient Arab tribes believed in a planetary astral system in which the cult of the Moon-god prevailed. The Moon-god was known as Sin, Wadd (love or lover), Almaquh (the health giving god) and Amu (paternal uncle) etc., in these tribes.

Under the Himyarite Kingdom Judaism spread in Yamn and Najran and in course of time some qahtani tribes accepted the religion of Musa.

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The first Christian mission was sent by the Roman Emperor in 356 A.D. and landed on the soil of south Arabia. This mission was headed by a theologian, Theophilus, and followed by several missionaries. Some Qahtanites, like some of their opponent Arab tribes, thus, accepted Christianity as their religion.

At the advent of Islam, the Qahtan tribes of the Yemen, including the Tujibites, believed in the old planetary astral system and Judaism. But a large number of these tribes adhered to Christianity when the message of Islam spread in every corner of the Arabian peninsula, people from different parts began to visit Madinah to hear the teaching of Islam directly from the prophet. Some Qahtanites of the Yemen also went to Madinah and met Muhammad, the Messenger of Allah (may peace be upon him). Among them, al-Ash'ath ibn Qays, ibn Ma'di-Karab ibn Mu'awiyah al-Kindi, an amir of Khar'ib (Hadrâmát) also visited Madinah with his seven friends. Al-Ju'ádi (d. 586 A.H.) in his Tabagát says that he married 'Umm Furwah, the sister of the first Caliph, Abu Bakr.

(13) Ibid., p. 62.
(14) Al-Ju'ádi, Tabagát al-Fugahát al-Yaman, Cairo, 1957, p. 11; the statement of al-Ju'ádi reads: و تزوج الأشعث بن قيس اختي أبي بكر المديق، رضي الله عنه، و اسمها أم تروه وأولم على عرسها ولديه الشهور.
As al-Qahtani and 'Abd al-Qays were also among those Yemenites who accepted Islam. The Holy prophet had given a letter of "political protection" to these Yemenites, as mentioned by al-Bulādhurī in his work, 

(15) 

Futuh al-Buldān, (the Conquest of the Cities).

He (the Prophet) also wrote a letter to the political authorities of the Yemen inviting them to accept Islam. 

This letter, al-Bulādhurī has mentioned in these words:

بسم الله الرحمن الرحيم

من محمد النبي رسول الله

الي (،) الحارث بن عبد كلال و (٢) شج

بن كلال و ال (٣) النعيم بن ذي رعين (٤) معاني (٥) همSON

اما بعد : فإن الله قد هداكم بهدایته ان اصلحتم و اطعتم الله

و سوله اتثم السلواة و اتتهم الزكاة و أعطتم من المغان خمس الله و

و شم النبي و حفظه وما كتب الله على المرحين من المصدر من المنارة عشر ما سقت

العين و سقت الساء و ما سقي بالضرب نصف المجر

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(15) Al-Bulādhurī, Futuh al-Buldān, Cairo, 1350/1932, pp. 70, 80; he says;

لما بلغ أهل اليمن ظهور رسول الله صلى الله عليه وسلم و علم

رقعة منه و فوادهم كتب لهم كتاب باتقرارهم على ما أصلوا عليه

من أمثالهم و رضيهم و فزاؤهم أ. 

(16) Ibid, p. 82.
on the request of the delegation of al-Qahtan (the principal stock of al-Tujib) and other Yemenite tribes, the Holy prophet deputed some of his companions (Sahabah) to preach Islamic tenets in these tribes. Ibn Sa'd, in his Tabaqat has given the biographies of twenty-nine such companions who went to Yaman played an important part in spreading Islam and settled there. He also mentions the name of thirty-four Muhaddithin (upto 4th tabaqah) who taught the Qur'an and Sunnah to the Tujibites and their fellow tribes.

SETTLEMENT OF TJUBITIES IN SPAIN

After the conquest of Spain Arab tribes left the abodes of their forefathers for settling in the Spanish peninsula. This migration, as Dr. Munis has rightly observed, was "a search for better place and dignity", among these settlers both the Qahtanites and the Adanites were great in number. The qahtanites, says al-Maqqari, were about fifty-two tribes and thus, constituted the overwhelming majority of all settlers in Iberian peninsula. Ibn Ghailb calls them 'jann al-Qaffir or the multitudious crowds of Spain.

(18) Ibid., Vol. V, pp. 535-48
(19) Husain Munis, Fair al-Andalus, Cairo, 1959, p.270
(20) Al-Maqqari, Nahj al-Tib, Cairo, 1302 A.H. Vol. I.
(21) Husain Munis, Fair al-Andalus, p. 369; وهم جم الخيف بالأندلس.
Al-Tujib, the family tribe of Abu al-Walid Baji, also migrated with her sister tribes. Dr. Husain Munis has drawn a chart indicating the places of extension of these tribes in Spain. This illustration shows that Tujibites were settled in Seville (Ashbiliyah), Barcelona (Barshilunah), Beja (Bajah), Saragossa (Sarqustah) and Badajoz (Batliyus). (22)

Socio-political position of the Tujib family

In pre-Islamic period the ancestors of Tujib family had the political supremacy in Yaman, Hadramowt and other southern parts of Arabia. They held the important posts in the administration of the earliest phase of the caliphs in different places of the Muslim state. Having an overwhelming majority in Spain they played an important part in making the socio-political history of the Muslim Spain. Al-Tujib, the tribe of al-Baji, had a considerable share in these efforts. In the latter period (in the 5th century of Hijra), Tujibites though had their own dynasties in Spain, yet they held the key posts in Umayyad administration.

During the reign of Hakam al-Muntasir (350 A.H./961 A.D./966 A.H./971 A.D.), Anbi Ibn Hakam, a Tujibite Amir of al-atayub (Qila’ih Ayub) was holding the office of the Chief Minister. Yahya Ibn Muhammad, another member of Tujib family was the minister of that Umayyad sultan. Sahib al-shurtah al-wusla (almost equivalent to the Deputy Inspector General Police) was an important post in the

(22) Ibid, pp. 372-377; see also chart.
civil administration, Ibn Muhammad, 'Abd al-'Aziz Ibn Hakm and 'Abd al-Rahman Ibn Yahya were the members of Tujib family each one of whom was holding this important post in those days.

The members of Tujib family, besides their important role in civil administration, also played a great part in Spainish judiciary. Al-Maliki (713-793 A.H) in his *Tarikh Qudat al-Andalus* (History of the Judges of Spain) has mentioned some names of Tujibite judges like, Muhammad Ibn Ahmad, known as Ibn al-Hajj Yahya (24)

Ibn Zayd and 'Abd Allah Ibn Muhammad.

The family of al-Baji did not produce, merely politicians, administrators and judges, as we find a large number of scholars belonged to this family. Ibn al-Farad (d. 403 A.H) in his *Tarikh al-Ulama wa al-Ruwat bi al-Andalus* (History of the scholars and narrators of Spain) has discussed the biographies of some scholars ancestors of Abu al-Walid al-Baji, among them Ahmad Ibn Muhammad, better known as al-Kashkiniyami, Sa'id al-A'naqi, 'Abd Allah Ibn Fatah, 'Abd Allah Ibn Muhammad, 'Abd Allah al-Ziyat, Yahya Ibn Yazid, Yazid Ibn Yahya were the prominent scholars.


(25) Ibid., p. 43.

(26) Ibid., p. 127.

About al-Baji's father we find only one reference in Ibn Hayyan's work, *Al-Muqtabas fi Akhbar Bilad al-Andalus*, which indicates that al-Baji's father, Khalaf Ibn Sa'd was holding some key position in the court of the ruler of Gonzalo (Chinda Shalab) and at one stage appeared as the ambassador of this court in the court of Hakam al-Muntasir, the Umayyid Ruler on Saturday, the 17th of Shawwal 363 A.H. (about forty years before the birth of al-Baji). The statement of Ibn Hayyan reads:

"On Saturday 17th of Shawwal the Caliph al-Hakam held a meeting in al-Zahra palace to receive the ambassadors of different countries who gathered at the entrance waiting for admission to the Caliph's presence. The minister of the Caliph and dignitaries of chamberlains were also usually present. The protocols and guards were standing to the inside and outside the palace ....... then there admitted two ambassadors, namely al-Qawmus Sulayman and Khalaf Ibn Sa'd from Gonzalo."

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II - EDUCATION

AL-BAJI'S EDUCATION IN SPAIN:

Abu al-Valid al-Baji received primary education in Beja in some local mosque as says al-Muqarran:

"The Andalusians do not build separate places for their education. They learn all science in mosques on payment."

In his time Cordova had developed into a centre of higher studies. Al-Baji was also attracted to the Spanish capital for higher education. Ibn Bashkuwal has named three scholars with whom al-Baji studied Hadith and law — (i) Qadi Yunus ibn 'Abd Allah, (ii) Abu Muhammad Makki ibn Abu Talib al-Maqqari and (iii) Abu Sa'id al-Jafari. Among them Yunus ibn 'Abd Allah (338/950-429/1038) had a very important position. He worked as the Judge of Badajoz and Cordova, Minister and adviser to Hisam ibn Muhammad, Khatib of Jam' Zohra, and member of the Shura council. He also wrote a commentary on al-Malik's al-Muwatta' under the title of "al-Maw'ab."

Al-Baji's stay in Cordova was for about six years. Hence, he is also called "al-Qurtubi" by no less an authority than al-Kutubi and Ibn al-'Imad.

(35) Al-Maqqari, Nash al-Tib / Vol., p. 101, Cairo, 1392 A.H.
(36) Ibn Bashkuwal, K. al-Silah / Vol., p. 197, Cairo, 1374/1955
(37) Zirakhi, al-A'lam / Vol., p. 345-6, Cairo, 1378/1959.
Among other teachers of al-Badi in Spain were, (i) Abu d-Ashbagh, (ii) Abu Muhammad al-Maliki (355-448 A.H), (iii) Abu Shukri and (iv) Muhammad ibn Isma'il as has been mentioned by Ibn Bashkuval (39) and Ibn al-'Imad.

TRAVEL TO MECCA:

A common practice of the Muslim scholars of the Middle Ages was to make direct contact with prominent Ulama and living authorities. Abu al-Walid al-Badii following this practice, left his motherland to come in direct contact with the living authorities of his period. He left Spain, as held by his biographers, in 426 A.H./1034 A.D. and visited Mecca to perform Hajj and reached the holy city probably in Shawwal or Dhi al-Qa'dah and performed his first Hajj in the same year.

At Mecca he met the eminent Malikite scholar Abu Dharr al-Harawi known as Ibn Samak. 'Abd ibn Ahmad ibn Muhammad ibn 'Abd Allah ibn 'Afar al-Ansari or Ibn Samak was well-acquainted with the Ulama of Hijrat, Sarakhs, Balkh, Marw, Basrah, Baghdad, Damascus and Egypt and their legal and theological views. Al-Badii therefore, enjoyed his association and stayed with Ibn Samak for three years (up to 429 A.H.) In all he performed Hajj four times. During this period he also travelled with his teacher to Sarawat.
Biographers like Ibn Bashkuwal and Ibn al-'Imad also mention (i) al-Matuu'i, (ii) Abu Bakr ibn Sahtuyah, (iii) Ibn Muhaddhab, and (iv) Ibn Muhammad al-Warrad among those with whom al-Baji studied at Mecca.

Though the biographers are silent about his visit to Medina — the city of the Prophet and the great centre of the Malikite school. It is obvious that he must have definitely visited Medina.

**ARRIVAL IN BAGHDAD**

Baghdad in those days was the centre of different schools of Law. Al-Baji paid a visit to this city to meet the living authorities of the legal schools.

During his stay in Baghdad he was benefited by (i) Abu al-Tayyib Tahir ibn 'Abd Allah al-Tabari, a famous historian and Shafi'iite Jurist, (ii) Abu Ishaq Ibrahim ibn 'Ali al-Shirazi, (iii) Abu 'Abd Allah al-Hasan ibn 'Ali al-Saynawi, a Hanafite Judge (Qadi) from whom he learned the Hanafite Jurisprudence, (iv) Abu al-Fadl al'Arus al-Maliki, and (v) Abu 'Abd Allah al-Daghani. The famous historian and narrator, Hafiz Abu Bakr al-Khatib al-Baghdadi was a contemporary of al-Baji and was living in Baghdad at the time of his arrival. They have narrated ahadith from each other.

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(42) Ibid.
At Baghdad al-Baji held numerous majalis and dars, attended various intellectual gatherings and delivered many public lectures. His popularity among the higher intellectual circles can be judged by the following event.

His eldest son, Abu al-Qasim, once came to Baghdad and was introduced to the Chief Judge al-Shashi by Abu 'Ali al-Sukkarah in the words, "this is the son of the Shaykh of Spain". The chief judge said, "Oh, he must be the son of al-Baji." Passing three years in the intellectual atmosphere of Baghdad al-Baji left the city in about 431 A.H./1040 A.D.

IN MASAZ:

Al-Baji, then proceeded Mawsil where he met the great scholar, Abu Ja'far al-Sammani. It "under his guidance that al-Baji", says al-Maqari, became more well grounded in theology, hadith law, and other sciences. He stayed with al-Sammani for one year and left the town in about 432 A.H./1041 A.D.


AS JUDGE OF HALAB:

Al-Bajī's travels are discussed up to his arrival at Mawṣil by most of the historians, thereafter the chain of his journey is not systematically traced. Ibn Baṣḥkuwāl, (d. 578 A.H.) an early biographer on al-Bajī, merely mentions his visit to Damascus and Egypt, as the places where he went after Mawṣil. But the historians of later period like Ibn Khallīkān (d. 681 A.H.) and Ibn Farhūn (d. 709 A.H.) are of opinion that al-Bajī went to Halab where he was appointed Judge of the city. Geographical route supports the view that after Mawṣil he went to Halab.

IN DAMASCUS:

After performing his duties as Judge in Halab for about one year, al-Bajī came to Damascus, the seat of the Syrian school of law. He met the prominent jurists like, (i) 'Abd al-Rahmān ibn al-Tayūrī, (ii) Ibn Ghalīb and (iii) al-Sināṣīr, and learned from them. His period of stay is not determined by the authorities.

(45) Ibn Khallīkān, Maṣā'īl al-'Ayān, Cairo, 1367/1948 vol, 15, p. 142. Ibn Farhūn, Ḫibāl al-Mudhakhar, Cairo, 1381 A.H, p. 120.
IN EGYPT:

while passing through Egypt he stayed with
the Egyptian Jurist Abu Muhammad ibn al-Walid from
whom he learned law and jurisprudence.

In the list of about thirty teachers of al-Baji
the biographers like Ibn Bashkuwal and Ibn al-'Imad
mention the names of scholars as, (i) Abu 'Abd Allah
Muhammad ibn al-Suri, (ii) Abu al-Hasan al-'Atiqi,
(iii) Abu al-Najib al-Arwani, (iv) Abu al-Fatah
al-Tanjiri, (v) Abu 'Ali al-'Atfah and (vi) Abu
al-Hasan ibn Zayd al-Hurrah without mentioning their
native cities. It can, however, be said that al-Baji
also learned from these scholars obviously during his
travels to the east.

The total period of al-Baji's stay in the east,
is unanimously determined as thirteen years, out of which
he spent eight years in Mecca, Baghdad, Mawjiil and Halaab.
The remaining five years were spent in Damascus, Egypt
and places which are not mentioned by the historians.
He, thus, returned to his native land, Spain in 439 A.H/
1047 A.D.

pp. 197-8; Ibn 'Imad, Nhadhat al-Mudhdbhab,
III - TEACHING CAREER

EARLY PERIOD OF TEACHING:

The life of this great jurist, says Ibn Farhun, started in a state of destitution. After his return to Spain, he began to write legal documents and deeds, employed to manufacture golden thread by hammering gold pieces, to be used in silk garments. He also earned his livelihood by presenting his verses to his rich admirers. Besides these occupations for earning his bread, he devoted his time in teaching students and writing books. "When he delivered lectures", says Ibn Farhun, "signs of handling the hammer could be seen on his palms. He continued his struggle so much so that his scholarship was recognized, his writings became well known, his position in society established and he became favourite the rich and chiefs."

Regarding al-Bajis dars, Ibn Bashkuwal states that about three thousand students attended his lectures, which is undoubtedly a sign of his popularity among the Spanish intelligentsia. Abu Ali ibn Sukrah, one of the attending scholars of his dars, remarks:

Ibn Farhun, Dihaj al-Hudhbahah, Cairol: 1351 A. H. P. 120; ول ودوده الأدق علّا في ديناه حتى اختنا في سيرته إلى الفضاء... كان يتحول خرب ورد الذهب للعنزل والأبراب ومن عشق الوثائق... والأن بيزخ للاثر، فإن يدعو البطرية إلى أن يحافظ وشمرت تأليف في حرفه (47) ونظم جاهه

Ibn Bashkuwal, K. al-Salah, Caio, 1374/1955, Vol I, P. 190; كان يحضر مجلس سليمان رحم الله ثلاثة آلاف رجل للتمتع منه...
"I never saw a scholar like Abū al-Walīd, and I never found a man like him in keeping his personality and commanding respect and reverence in meetings. He was (50) one of the Imāms of the Muslims."

PLACES OF TEACHING:

About the places of his teaching, Dr. Husain Munis says:

"On his return to Spain he taught in the cities of Saragossa, Valencia, Murcia and Dénia."

Although Dr. Munis does not mention his sources, the usual trade routes of Al-Bāji’s period confirm Dr. Munis’s statement that Al-Bāji first settled at Murcia. His part-time profession of embroidery might have led him to Murcia which was famous for the garments made of wool, cotton and silk. Al-Bāji thus started his education career at Murcia. From here he went to Dénia—(Biniuim of Roma) a port city on the eastern soil of Spain. After sometime he settled at Valencia— a port and the (53) third largest city of Spain. His stay at Saragossa was evidently at his old age, as he was in this city as a teacher and judge. This post was naturally offered to him

(50) Ibid.
(52) 'Abd Allah Annan, Al-Athar al-Andalusiyah al-Baqiyah, Cairo, 1375/1956 p. 74.
(53) Ibid., p. 68
when his fame had spread and he had earned his reputation, as a jurist. He must have, therefore, stayed at Saragossa after his stay at Murcia, Dénia and Valencia.

STUDENTS:

Among his students are enumerated some great authorities of Spain, who are well-known for their vast knowledge and scholarship. The names of some important pupils of al-Bāji are mentioned below:

(1) Husayn ibn Muhammad Abu 'Alī al-Sadafi

(444/1052-516/1122); A well-known jurist and muhaddith studied with al-Bāji at Saragossa, worked as the judge of al-Meria, travelled to the east and wrote some books.

(2) Muhammad ibn Walid al-Tartushi; A famous jurist, better known as Ibn Abī Randaqah, studied with al-Bāji at Saragossa, travelled to east and wrote several books like, Mukhtasār Tafsir al-Thalabi, al-Kabir fī masa'il al-Khilaf; Fī Tahrim jubn al-Rum, Siraj al-Muluk, Bid'u 'al-Umur, Sharah Risalat ibn Abī Zaydun etc.

(3) Muhammad ibn 'Abd al-Rahman alias Ibn Ghibrin; An eminent jurist and the judge of Jevelli, went to Saragossa in 467 A.H. and studied with al-Bāji. When his master (al-Bāji) left Saragossa for Al-Meria he also travelled with him till al-Bāji died in 474 A.H. He then stayed for sometime with his son Abū 'al-Qasim.


(56) Ibid. Vol. III, pp. 155-6
(4) Husayn ibn Muhammad al-Ghassani, al-Jayyani; a popular muhaddith of Cordova, studied hadith and its allied sciences with al-Baji, and wrote books on the rijaal of Sahibayn namely, Taqyid al-Muhall, and Tamyiz al-Mushkil.

(5) Khulayy ibn 'Abd Allah al-'Abdi (437/513), a judge of Vallenica, studied with al-Baji probably in Vallencia as he hailed from the same city.

(6) Sulayman ibn Abu 'al-Qasim Najah; A prominent scholar and the author of many books on Quranic philosophy, studied with al-Baji either in Vallencia or in Denia, as he lived both the towns.

(7) Khalaf ibn Mufarraj ibn Sa'id al-Kinani; A Shafi'ite jurist and a judge also studied with al-Baji.

(8) Khalaf ibn 'Umar ibn Khalaf ibn Sa'id ibn Ayub (d. about 560 H), nephew of al-Baji, was the inhabitant of Saragossa, studied with his uncle al-Baji in Saragossa and became the judge of the city.

(57) Ibid., Vol., III p. 148.
(59) Ibid., Vol. 3 p. 200.
(61) Ibid.
Ahmad ibn Sulayman al-Baji (d. 493 A.H/1101 A.D)

His son and a prominent jurist was also his student. After
al-Baji’s death he narrated his books to the students
as his successor. He also travelled to east and met the
authorities of different subjects and wrote some books.

Ali ibn ‘Abd Allah, Ibn Mawhab (441/1050-532/
1138) : A well known commentator (mufassir) and jurist of
al-Meria, studied with al-Baji in his last days at al-
Meria and narrated his books to al-Ashbili for his
al-Fihrist, wrote a commentary of al-qur'an.

Isa ibn Muhammad ibn Sa'id Abu al-Asbagh,
better known as Ibn Muzayyin (d. 445/1054). After a number
of battles with al-Mu'tadid ibn 'Abbad, Ibn Muzayyin founded
his own dynasty in 440 A.H. and assumed the little
of al-Mu'azzaf. Under the Umayyads he was a judge. He
studied jurisprudence with al-Baji and also narrated his
books to al-Ashbili, the author of al-Fihrist.

Shu'ayb ibn 'Isa, Naqqari al-Ashja'î (d. 536/1143
An author and also a narrator of al-Baji's works.

'Abd al-'Amir ibn Khalaf, ibn Mudir al-Azadi
(d. 544 A.H.) : A teacher and well known jurist of Cordova,
studied with al-Baji and narrated his books to the students

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This brief introduction of some of the students of al-Baji indicates that his disciples earned name and fame as jurists, muhaddith, writers, amirs and judges of Spanish peninsula.
IV - WORKS OF AL-BAJI

HIS BOOKS IN AL-ASHBILI'S AL-FIHRI

For the first time detailed informations on the works of al-Baji have been provided by KhalIfah al-Asbibi (502/1108-575/1176). In his al-Fihrist, we find the following minor and major works:

(1) al-Isharab 'ila mar'ifat al-Usgul wa al-waj'dah fi ma'in al-Dalil: This book was transmitted to al-Asbibi through four sources, (i) Abu Bakr 'Abd al-'Aziz ibn Khalaf ibn Mudir al-Audi with whom his father read the book and from whom al-Asbibi heard, (ii) Abu al-Asbagh 'Isa b. Muhammad b. 'Ali b. Bahr in whose presence the book was read while he (al-Asbibi) listened; (iii) Abu al-Nasab 'Ali b. 'Abd Allah al-Nazhab permitted him to narrate the book, and (iv) Abu Muhammad Abu'ayb b. 'Isa al-Naqqari personally gave him the permission for its narration.

The book is generally known to the authors of the later period as, "al-Isharah fi usul al-Fih". Its one manuscript is preserved in the Library of al-jama'a al-Azhar (Egypt) and the other in Scorial, Madrid (Spain).

(2) Abkam al-Fusul fi ikkam al-Usgul: This book was also transmitted to al-Asbibi by (i) Abu al-Asbagh by way of reading and permission and; (ii) Abu al-Nasab by way of permission of its narration.

(68) Ibid.
(3) Al-Hudud: The book is on Jurisprudence and was narrated to al-Ashbili by (i) Abu al-Asbagh and (ii) Abu al-Hasan.

Ibn Farhun writes the full title of this book is, "al-Hudud fi ugul al-Figh".

(4) Hain'ah al-Janiz: this book was also transmitted to al-Ashbili by the same authorities.

(5) Al-Tasadd id 'ila ma'rifat tawh al-tawhid: This book also reached al-Ashbili by, (i) Abu al-Asbagh and (ii) Abu al-Hasan by way of permission from Abu al-Walid al-Baji.

(6) Al-Tabyin 'an Sabil al-Muhtadin: Al-Ashbili got this book through, (i) Abu al-Asbagh from whom he read some parts of it and was permitted to narrate its whole text, and through (ii) Abu al-Hasan by way of permission. They transmitted the book directly from al-Baji.


(69) Ibid, P. 256
(70) Ibn Farhun, Dibaj al-Mudhebbah, Cairo, 1351 A.H. p.12
(72) Ibid.
(73) Ibid.
(74) Ibid.
(8) Al-Ta'dil wa al-Tairih liman Kharrain 'anhu al-Bukhari fi al-Sa'ih: This book was transmitted to al-Ashbili also through (i) Abu al-Asbagh and (ii) Abu al-Hasan.


Ibn Farhun mentions its exact title as, al-Sunan fi'l ri'as wa al-Zuhd wa al-Wak.

(10) al-Mustataq fi Sahih al-Muwatta: The book was transmitted to al-Ashbili through (i) Abu al-Asbagh by way of personal realisation of the book, and (ii) Abu Muhammad Shu'ayb b. 'Isa al-Maqqari by way of permission. These authorities had been narrated the book from Abu al-Walid the author of this book.

Ibn Farhun thinks that this book is actually the summary of al-Baji's work, al-Istifa fi Sharah al-Muwatta.

(76) Ibid, p. 277
(77) Ibn Farhun, Dibaj al-Mudhozahab, p. 122
(78) Al-Ashbili, al-Fihrist, p. 86
(79) Ibn Farhun, Dibaj al-Mudhozahab, p. 121
(11) **Tabyin al-Minhaj fi tartib al-Hijaij**: The book was narrated to al-Ishbili through (i) Abu al-Asbagh and (ii) Abu al-Hasan by way of permission from al-Baji.

Ibn Farhun in his **Dibaj al-Mudabab** mentions the title of this book as "Tabyin al-minhaj", and a different book entitled, "al-Siraj fi 'ilm al-hijaij".

(12) **Fihrist**: The jurist Abu al-Walid also prepared a collection of the known books. This collection reached al-Ishbili through (i) Abu Muhammed b. 'Isa al-Maqari, (ii) Abu al-Asbagh and (iii) Abu al-Hasan by way of permission and reading.

(13) **Wasiyat al-Qadi Abu al-Walid li ibnayf**: Abu al-Walid al-Baji explained and transmitted his will to (i) Abu al-Asbagh with whom al-Ishbili read it, and to (ii) Abu al-Hasan from whom he got the permission of narrating the same.

Though ibn Bashkuwal (494 A.H.) and Ibn Khallikan (608-681 A.H.), are among the early biographers of al-Baji, they do not give a comprehensive list of al-Baji's works. The former mentions his one book only while the latter states only three books which al-Ishbili included in his al-Fihrist.

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(80) **Al-Ishbili, al-Fihrist**, P. 256.
(81) Ibn Farhun, **Dibaj al-Mudabab**, P. 121.
(82) **Al-Ishbili, al-Fihrist**, P. 429.
(83) **Ibid**.
BOOKS INTRODUCED BY LATER AUTHORITIES:

Ibn Farhun (d. 799 A.H) in his al-Bibli, el-
Mudhakkab has given a detailed account of al-Baji's
works. He rather introduces some other books which al-
Ashbili has left, namely;

(14) al-Ishtifā' fi sharh al-Muwatta: A very
comprehensive commentary of Imam Malik's al-Muwatta.

(15) al-'Ilm: This work also relates to al-Muwatta,
Ibn Farhun thinks that this is a summary of al-Baji's
al-Muntaqab.

Isma'il Pasha in his, Asma' al-Muallifin wa
ather al-Mu'asayin mentions its full title as 'Al-'Ilm
fi al-Muwatta which he says contains five volumes.

(16) Nas'ulul-Khilaf: In the opinion of Ibn Farhun
the book was not completed by Abu al-Walid al-Baji.

(17) Al-Muntaqab fi 'ilm Malik ibn Anas: An
incomplete work of al-Baji.

(84) Ibn Farhun, Bibli al-Mudhakkab, P. 121

(85) Ibid.

(86) Isma'il Pasha, Asma' al-Muwallifin wa ather

(87) Ibn Farhun, Bibli al-Mudhakkab, P. 122.

(88) Ibid.
(16) Al-Muhaddhab fi Ikhtisar al-Mudawwana

(19) Sharh al-Mudawwana;

(20) Ikhtilaf al-Muwatta;

(21) Masa’il Ikhtilaf al-Zawiyin fi al-Mudawwana;

(22) Mukhtar al-Mukhtasar fi masa’il al-Mudawwana;

(23) Tafsir al-Qur’an: An incomplete commentary of the Holy Qur’an


(26) Fi wasi al-kasa;

(27) Fi Ghzal al-Rijal;

(28) Tahdib al-Madhahib;


Al-Maqari (d. 1041 A.H., 1632 A.D.) transmitted the same books in his Nash al-Tib as described by his preceding biographers. He only adds one book in his list, entitled;


(89) Ibid.

(90) Ibid.

(91) Ibid.

(92) Ibid.

(93) Al-Maqari, Nash al-Tib, Cairo, 1302 A.H. Vol. 11, p. 354;

قال ابن هلال رأيته في الإسكندرية كتاب النخج والنسج لم يتم;

و قال بعضهم أنه صف كتاب المعايي في شرح الموطأ نجاة عشرين مجلدات من النظير.
POETARY

Al-Bâji besides his contributions in the field of religions learning, has a share in the Arabic poetical literature of Spain. But since no divan or a collection of his poetry has survived it is evident that most of his poetical works perished.

The early biographers like Ibn Bashkuwal (494/1100-578/1182) and Ibn Khallikan (968-981 A.H.) have mentioned only the following quatrain (ruba'i) which the later authorities have repeatedly quoted (94) in their works:

اذا كنت علم علماً بلينًا
بان جميع حياتي كساء
فلم لا يكون شنياً بهما
وجعلها في صلاح وطاعة

The famous historian of Seville al-Fatâh
Ibn 'Abd Allah known as Ibn Khâqân (480/1667-528/1134) in his Galâ'id al-Ijawân, mentions besides the above quatrain the following two elegies of al-Bâji which (95) he wrote on the death of his sons:

رُوُزُ اللَّهِ نِيَرَنِ أَسِتَكَا بَلْدَة
فَوَادِي لَقَدْ زَادْتِ التَّبَادِلَ فِي الْقَرْبِ
وَالذَّلِقَ مَكَونَ النَّزَابَ بِالْمَرَّتَبِ


ما نجد من صحب و اسعد من صحب
ولا روح بريج الصاعن اخي كرب
ولا خست فتى الى البارد العذب
كنا اضطر محور على المركب الصعب

احمد ان كنت بعدك صابرًا
وزنب تقل بالي اادي محسود
فلقد علمت اني يك لا حق
له ذكر لا يزال يخاطري
فاذانظرت فشوه متخيبٌ
و اذا اصحت فصوته شرهم
و بكل نبر ورقة و تلهم
ودعه يا ساك موليك ممَّم
ا رسول و اناهج تدمْها

Yaqut al-Hamawi (574/1178-626/1229) in his Mu'jam
al-'Udabā', repeats the same elegies with an addition of the
following quatrains;

(96) Yaqut al-Hamawi, Mu'jam al-'Udabā, Caire, 1357/1938,
1) ما قال عهدى بالديار و انناس
أنسى معاهدها أس و شمل
لوكبت أنيات الديار صابنة
دك المنا بفتنها و الجسد

2) ليس عندي شخص النسيب بعظيم
فني و فيه كشف نفس
إن نه امتقال لـالجدد
و الانتظار امتقالة لقصده

3) عباد استعيد الـدهـراآيا
بأنفس ناقة النعائم
محيـدهن ضدن كل عـديد
حتى تتحفة به الحساب


Al-Kutubi (d. 784 A.H.) in his *Fuwat al-wafayat* (98)
includes a new quatrain which reads:

تذكُّرُ من نهلكَ ثم لاَكِفيكَ
لذي الذنبُ عن هولِ بم الحسابِ

فأمسَ الله يغفِّرُمنا
تجد لفسكَ سرَ الْمَسْذَابِ

Al-Maqqari (d. 1041 A.H./1632 A.D) amongst the latter authorities has mentioned some more verses in his *Nafh al-Tib*. He narrates that once al-Baji visited the lecture room of Abu 'Ali in Baghdad.

It was a rainy day and all students of 'Ali except one were absent because of the inclement weather.

This student was as usually busy with his work. Realising his unusual devotion and concentration in his studies al-Baji expressed his appreciation in the following (99) verses:

وَبيَتَ للجَدَدِ وَالسَّاعَونَ قد بُيِّنُوا
حد النفوس وَالنُّوادِمُ إلََِّا الزَّنَاد

وَكَابَدَا الجَدَدَ حتَّى مَلَّ اكْتُرَهُمُ
وْعَانَتِهِ النَّجَدَ مِن رَأِي وَمِن جَنَّا

At another place al-Naqqārī quotes a poem (100) of al-Naṣrī that reads as follows:

آروء على النيل الهدى - مراهم
فست عليه في النهال شاهداً
فلله ما ضمت من رميان
ما ضمت تلك الربي والطينازل
ولَالتمتنانَل inglés و ابـرَزت
إذف لتثليل الحمي و انا مسحل
اشتارت البيا بالفرّام سا جيـر
وابية ماما جِمِّ نواحٍ

Another verse of his reads:

مش زين الكمام والكرمل
سقاء الله من صوب النمسام

(100) Ibid., Vol., I. p. 362.
(101) Ibid.
Al-Maqqari also quotes another qutrain:

وزال النطق حتى ليست تلقى
شي ينحو برود للسلام
وزاد الأمر حتى ليس الا
سخ البالاذى او بالسلام

Ibid
V - DEBATES WITH CONTEMPORARIES.

INTRODUCTION OF ZAHIRITE SCHOOL IN SPAIN.

The theological and legal views of Dawudi ibn 'Ali al-Ishahani (d. 297 A.H.), are known as 'al-Madhhab al-Zahiri'. The people of Spain were the followers of the Malikite school. The Zahiri school was first introduced into Spain by a student of Dawud, 'Abd Allah ibn Muhammad ibn Qasim Hilal (d. 272 A.H., 885 A.D.), a Malikite scholar, who had gone to the east in the middle of third century A.H., and returned to the country as a Zahiri jurist with the writings of his teacher Dawud. Baqi ibn Mukhallad (d. 276 A.H.), Muhammad ibn Mas'ud ibn Sulayman Abu al-Khiyar (d. 428 A.H.) are from those early Zahiri jurists who have a great contribution in spreading this school in Spain.

Ibn Hazm

Ibn Hazm (282/994-454/1063) was originally a Malikite scholar, then remained a shafiite for sometime. He was influenced by his teacher Abu al-Khiyār and became the follower of the zahirite school in 419 A.H./1029 A.D. within a very short period Ibn Hazm earned his fame as the Imam of zahirites and the founder of their sub-sector, Hazmiyah. Al-Bajjī returned to Spain in 439 A.H. Thus for a period of twenty years he spread his views. Ibn Farhun states:

When Abu al-Walid arrived in Spain, he found Ibn Hazm over there (spreading his views). Everyone in Spain who had knowledge together with the jurists failed to face him in theological debates and thus a group of people became devoted to his ideas. Ibn Hazm arrived in Mallorca, stayed there and a group of its inhabitants also accepted his views.

(104) Ibid., p. 215.
(105) Ibn Farhun, Dībāj al-Mudhakir, Cairo, 1351 A.H., p. 121.
DEBATES OF AL-BAJI WITH
IBN HAZM

Ibn al-Abbar (d. 659 A.H.) has stated how and where Ibn Hazm and al-Baji held theological discussions. Writing on a Mallorcan jurist, Muhammad ibn Sa'id Ibn al-Abbar says:

"Ibn Sa'id arrived in Mallorca and started teaching law and jurisprudence, when Ibn Hazm entered Mallorca, Ibn Sa'id wrote about the situation to Abu al-Walid al-Baji. He made the journey from a Spanish port and attacked him [106] dual from the city."

Ibn Farhun states about the activities of al-Baji:

"When Abu al-Walid came to know that the theologians have failed to face Ibn Hazm in Mallorca, he went to him and debated with him and refuted his ideas. [107]"

He held a number of debates with Ibn Hazm...

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In the light of these statements, it is sure that (i) al-Baji returned to Spain when Ibn Hazm was debating with the Malikite jurists in Mallorca, (ii) on the invitation of Ibn Sa' id al-Baji journeyed to the island to debate with Ibn Hazm.

The debates of al-Baji and Ibn Hazm, observe Ibn Farhun and al-Maqqari, were mostly of the theological nature, like the questions of 'Umarah al-Qada' al-kitab ila al-Quraysh fi yawm Hudaybiyah (letter to Quraish on the day of Hudaybiyah), Wajib al-Khilafah (necessity of caliphate) etc.

Ibn Hazm's fiery and fervent conversations are very well known, we also find some interesting dialogues of stricture between them. "I am greater than you in the struggle for knowledge," said Abu al-Walid, when you acquired it you spent your nights in the light of golden candles (in the palace) and when I acquired knowledge I woke up whole night in street in street light", Ibn Hazm replied, "No Sir, this goes against you because you learned in such an atmosphere which you were trying to change for one I was already in (i.e. wealth and social position). But I acquired knowledge when I had nothing to worry for except to learn purely for the

(108) Ibid., al-Maqqari, Nasih al-Tib, VII, I, P. 358. A detailed account of these issues can however be studied in Ibn Hazm's books al-Filal (I:88; IV: 208) and Nasr'Al (PP. 19-31).
betterment of this life and the life hereafter."
Besides such heavenly conversations Ibn Hazm had a great regard for Abu al-Walid and looked upon him as leading scholars of Malikite school. He is reported to have said that:

"After 'Abd al-Wahhab if there were no other scholar among the malikites than Abu al-Walid al-Baji, it was not matter for them."

The later authorities like Ibn Sa'id al-Maghribi (610/1214-688/1286) are of opinion that Ibn Hazm nevertheless was a dominating personality having fervent nature, but he could not succeed in spreading his school due to the dynamic campaign of al-Baji. In the words of Ibn Sa'id al-Baji:

"Qul li-n-nihi wa-kawn sahaba 'ilajahi kéeb, thus, he (Ibn Hazm) cut the sharpness of his tongue and be it felt from his position and al-Baji became the cause of burning his books."

(109) Al-Maqqari, Nash al-Tib, Vol. I, p. 358; the text of this dialogue reads:

VI - CONTEMPORARY POLITICS AND AL-BAJI.

POLITICAL CONDITIONS OF SPAIN BEFORE HIS TRAVEL TO THE EAST.

Spain up to the beginning of 5th century A.H. was a great political power of Umayyid Dynasty. On the north, the state met the borders of seven Christian kingdoms namely (i) Barcelona (ii) Cordovia (iii) Aragon (iv) Navarre (v) Leon (vi) Portugal and (vii) Pallars. On the remaining three sides, the state was surrounded by the Atlantic Ocean and the Mediterranean Sea.

As al-Baji (403-474 A.H.) lived through the century under reference his interest in contemporary political affairs was quite natural. Before his travels to the east, he witnessed the following important events.

(1) The local aghas of his native province, Seville were quarreling among themselves for power because of the weak centre of Cordova. Their repeated strifes and disputes disturbed the normal life of the area. The people getting tired of these aghas, gathered together and selected three men as members of a Council to administer their affairs. This Council consisted of (i) Abu Bakr Zubayri, the author of the famous lexicon "Mukhtasar al-'ayn" and the teacher of the Umayyid Caliph Hisham (ii) Muhammad ibn Barnak al-Hani, and (iii) Abu al-Qasim Muhammad, the provincial Chief Judge (of Seville) as a member and also the head of the Council. Thus a Government
of democratic type was established. This happened in 414 A.H/1023 A.D. when al-Bazi was yet a school going boy in Beja.

(2) Al-Bazi arrived in Cordova for higher education in about 418 A.H., when Hisham III (d. 427/1036) was made the head of the dynasty. Al-Bazi to the end of this last ruler of the house of the Umayyid in Cordova in 422 A.H/1031 A.D. Moreover being the student of Yunus ibn 'Abd Allah (338/950-428/1038) the Minister and advisor to Hisham III and a member of the shura council, al-Bazi understood the contemporary political affairs through his teacher.

(3) The people of Cordova met together and decided to entrust to Ibn Muhammad al-Jahwar was a man of experience and wisdom. The author of Arabian Spain refers to the statement of Hisham about the administration of al-Jahwar as follows:

"It must be said of Jwrf that although he administered the government and provided for the security of the capital, though he assumed in very respect the authority of the supreme ruler, he took none of the insignia of the Khilafat, but ruled as none of his predecessors had done, declaring that he held the command until one more deserving of it or having better titles to the empire, should make his appearance, when he would immediately resign all authority and power into his hands.

(113) Ibid.
He, thus, ordered that the palaces of Bani Umayyah should be kept in the same state as they had been under the regular Government and that the doorkeepers, the servants and guards should be stationed about the gates of them as in former times. He himself never inhabited them but resided at his own private house in the city."

Abu al-Walid al-Bahi had been a spectator of this form of Government till the year 426 A.H./1034 A.D. when he left Spain.

Jahwar as a sincere person tried his utmost to make this dynasty a "Federal state". For that he wrote to Qadi Abu al-Abbad, Ruler of Seville, al-Mundhir, Ruler of Saragossa, and Ibn al-Dhi al-Nun, Ruler of Toledo, but none of them listened to him and the poor fellow died in the month of Safar 435 A.H. i.e. September 1043 A.D.

Al-Bahi returned to the homeland after thirteen years i.e. 439 A.H./1047 A.D. The political situation was entirely changed. The Muslim Spain was divided into the following fifteen petty Kingdoms or Reves de Taifas of different tribes and amirates:

1. Banu 'Abbad : Seville.
2. Banu Jahwar : Cordova.
5. " " : Almeria and Larda.

AL-BAJI’S POLITICAL ROLE:

We do not find the details of al-Baji’s political activities in the historical and biographical works. They simply mention his role very briefly, Ibn Farhun says:

"The tribal chiefs used him (al-Baji) for the (political) negotiations between them and he used to accept their gifts as he commanded their honour and respect."

The statement of al-Maqari, throws some more light on al-Baji’s political role and reads:

"لَا نَدَمٌ (ال bäjjë) من الشرقي إلى الأندلس، فقد عاش ثلاثة عقود، طلوك الطرق اجتهابًا يمثّل في بنين، لاقى بالفعل، وهو يطلب في الظاهر، ويستطيل على الباطن، ويستديرن نزه، ولم يجد شيخًا فان الله تعالى يباذيه من نيته."
"when al-Baji reached Spain from the east after thirteen years, he found the petty kings divided in groups striving with each other. He then tried to make compromise between them. They (kings) were kind and polite to him externally, internally they were very unfair and thus they cooled down his endeavour (to finish their strife) and nothing could come out of his effort. But Allah the Almighty will indeed reward al-Baji's intention."

From these statements we arrive at the following conclusions:

(i) The petty kings of Spain had confidence in Abu al-Walid al-Baji.

(ii) They were divided in political groups.

(iii) They used al-Baji to bridge the political gulf between them.

(iv) In diplomatic negotiations each of them tried to prove himself innocent and just on his stand, desirous of solving his disputes with others. But internally every king was jealous of his opponent trying to mould the situation into his favour through al-Baji.

(v) Thus, they nullified the mission of Abu al-Walid al-Baji. Al-Baji's political activities as a matter of fact started at the time he entered into the service of al-Muqtadir (d. 474/1081), the Hudite Ruler of Saragossa, Al-Maqṣari states;

Then al-Muqtadir bi-Allah invited him. He lived with him at ease and in his horizon his virtues shone forth, his books and methods became prominent, his swiftness on the ways of guidance was manifested. Al-Muqtadir was proud of having him in his court, preferring him to others and was giving him full facilities. At the time of his arrival in the court, al-Muqtadir paid him great respect and gave him a distinguished place." (117)

Al-Baji's political activities cannot be determined unless one has a clear picture of the disputes and strife of the petty kings. Some important disputes and events are therefore mentioned here:—

(1) In the last days of Umayyid rule al-Mundhir Mansur Yahya al-Tujibi (d. 414/1023) was the Governor of Saragossa who in 410 A.H./1020 A.D. declared its independence and thus founded "Tujibite dynasty". In 431 A.H., 1039 A.D., Sulayman, a Governor of a neighbouring province attacked Saragossa and founded the Hudite Kingdom. His son al-Muqtadir (rule, 438/ 46 to 474/1082) invited al-Baji to his court considering him not only a great jurist and theologian but also a wise and noble member of Tujib family whose grandfather Sa'id was an ambassador and good diplomat. Al-Baji undoubtedly tried to settle the political disputes of al-Muqtadir and the disputes of other kings as well.

(2) Al-Muqtadir (d. 474/1081) was always afraid of Yusuf al-Tujibi, the former ruler of Saragossa, who had established his amirate in Larda and was preparing himself to take back his kingdom. He therefore concluded military pacts with his neighbouring Christian States of France and

(117) Ibid. I : 357.
Barcelona. They, without missing the golden chance of dividing and destroying the Spanish Muslim, sent their troops to Saragossa and promised all sorts of assistance.

Knowing this, Yusuf al-Tujibi came out with a huge army, blocked all the roads and besieged Saragossa city in 443 A.H./1051 A.D. Al-Muqtadir inspite of the Christian troops seemed helpless. But Yusuf al-Tujibi fortifying all his defensive positions and winning all sorts of favour of the local (tujibites) population, however, gave up the siege and went back without any battle. Historians do not mention the reason of his withdrawal.

(3) Muzaffar al-Tujibi (rule, 424/1033 to 460/1068), the King of Badajoz, cut off his diplomatic relations with his neighbour state, Seville. The main cause of their strife was that Ibn 'Abbad, the King of Seville, had helped Ibn al-Tujibi, the ruler of Valencia against Muzaffar al-Tujibi. This strife later on resulted in some battles between the two kings (of Badajoz and Seville) in 443 A.H., 1051 A.D.)

(4) We also find the Muslim ruler of Toledo, Cordova and Seville combating with each other. 'Abd al-Malik (rule, 450 to 461 A.H.), the ruler of Cordova, contrary to his predecessors, was a man of bad habits and was not liked by his people. King of Toledo taking the advantage.
MUSLIM SPAIN OF 5TH CENTURY SHOWING PETTY KINGDOMS REYES DE TALFAR DURING AL-BAJI'S PERIOD.

| (1)       | Saragossa, Banu Tujib & Banu Hud. |
| (2)       | Daroca, Banu Razim.               |
| (3)       | Valencia, Small Amirids.          |
| (4)       | Cuenca, Banu Qasim.               |
| (5)       | Toledo, Banu Dh al-Nun.           |
| (6)       | Ganda, Small Amirites.            |
| (7)       | Lora, Banu Tujib & Samaiah.       |
| (8)       | Granda, Banu Bihari.              |
| (9)       | Cordora, Banu Jakhir.             |
| (10)      | Malaga, Banu Hammad.              |
| (11)      | Jerez, Banu Birzil.               |
| (12)      | Swille, Banu Abbad.               |
| (13)      | Huelva, Banu Bahriz.              |
| (14)      | Silves, Banu Mu'azin.             |
| (15)      | Badajoz, Banu Tujib.              |
of the situation attacked and besieged Cordova. Ibn Abbad, the King of Seville (rule 434/1042 to 461/1068), also joined them but no battle was fought.

(5) The amirates of al-Tujib tribe were not united. Al-Muzaffar, King of Bedajos, had some strifes with the Tujibite ruler of Valencia and they also fought between themselves.

(6) Small kings like Muhammad b. 'Abd Allah al-Barzali of Qarmanah, Hamud, Ruler of Jaysar, Badiz b. Habus, King of Granda, and others were petty neighbours of Seville and had a number of battles with this state. Ibn Khaldun thus has rightly observed that these Rulers externally were under the pressure of their big neighbour, Seville but internally they were making alliances with the Christian states to save their petty Kingdoms.

Al-Baji perhaps tried his level best to unite the petty Kings of Spain so that a strong Muslim Centre may be established in the peninsula. But al-Maqqari, as we have stated earlier, has rightly observed that the petty Kings cooled down his effort (mission) and nothing was achieved:

و يسردون نزاعا ولم ينجز

Another tragic event, which proved more disappointing to al-Baji, was that when in 456 A.H., 1064 A.D. al-Hustadir, the Ruler of Saragossa (of which he was the chief judge), was entangled with Muslim kings (and al-Baji was trying to compromise). The Christian Ruler.

(120) Ibid, p. 366.
Arvesh attacked Berbister, a city near Saragossa. al-Nuqtadir could not pay his full attention/entered the city. About one lac muslims were slaughtered and their houses were looted and burnt. Despaired of the political situation, al-Baji left Saragossa.
VII - AL - BAJI'S LAST DAYS.

SETTLES IN ALMERIA:

Abu al-Walid al-Baji passed his last days in Almeria — a beautiful city and an important port on the East Spanish Peninsula. Al-Baji chose this place perhaps for the fact that a petty tujibites dynasty ruled over it. Moreover, it had developed into a rendezvous of scholars and intellectuals. The date of his arrival at al-Marjānah can easily be determined by the following statement of qādi 'Iyād:

"He (Qādi Muḥammad b. 'Abd al-Rahman better known as Ibn Shirbīn) went to Abū al-Walid al-Bāji in 469 A.H. and stayed with him at Saragossa. He then travelled to Almeria till the latter died after they had lived together for four years."

DEATH

About al-Baji's death Ibn Bashkuwal (d. 678 A.H.) says:

...
"I have read in the handwriting of our Shaikh Qadi Muhammad b. Abu al-Khayr (Allah may bless him), he says, Qadi Abu al-Walid died in Almeria on the night of Thursday between two 'Isha prayers (maghrib and 'Isha) the last night of the month of Rajab and was buried in Rabat on the sea-shore on Thursday in 474 A.H. His Janazah prayer was led by his son Abu al-Qasim."

Ibn Khallikan (d. 81 A.H.) however, states as follows:

و توأمة بالمريما ليلة الخميس بين الشهرين تاسعة عشرة رجب سنة أربع وسبعين ورابعة ودفن بالقرب على طرف البحر وصل عليه ابنه أبو الناسم

"He died at Almeria between Maghrib and 'Isha prayers the night of the 19th Rajab 474 A.H. and was buried in Rabat on the sea-shore. His Janazah prayer was led by his son al-Qasim."

But al-Kutubi (d. 454 A.H.) and Ibn Farhun (d. 799 A.H.) amongst the later authorities are of opinion that al-Badi died in 494 A.H./1101 A.D. This date cannot be considered correct for the following reasons:

(1) Al-Kutubi's *Muwat al-Wafayat* is in fact an appendix of the *Wafayat al-Mayan* of Ibn Khallikan. The year of al-Badi's death according to him (Ibn Khallikan) is 474. The change of illustration in the original text thus does not seem logical.
(11) The editor of *Fuwat al-Wafayat*, Muhammad Kuhfyyuddin 'Abd al-Hamid differs from the statement of al-
Kutubi and prefers the date of al-Baji's death 474 A.H.
(127) Al-Baji's son Ahmad Abu al-Qasim died in 493 A.H. It has been established earlier that Ahmad Abu al-
Qasim led the janazah prayer of his father and worked as teacher in his place.

Al-Naqqari *bi-rukn al-nasr* (d. 1041 A.H./1632 A.D.) summing up the statement of his predecessors says:
و توفي في الشهر أحد عشر بقيت من رجب و قبل ليلة النضير
تاسع رجب و قبل تاسع عشر سفر سنة أربع و سبعين و أربعان

"He died in Almeria on the 19th of Rajab.

It is said that he died in the night of Thursday. It is also said that he died on 19th of Safar in 474 A.H.

It seems therefore definite that al-Baji died in 474 A.H./1082 A.D. which is further confirmed by the authorities of the later period.

CHILDREN:

As stated by the biographers al-Baji had three male children. His two sons, whom he loved very much, died before him. Their ages and the place of their death are not determined, but the verses written on their elegy indicate that they were adolescent and young.

(130) Ibn Khqaqân in his book, *Gulistân al-I'ayan*, mentions these elegies with the remark:
له برتي ابنه وابنه مختار بين ورداقين وناظري الذهير واسحاري
His third son Abu al-Qasim Ahmad attained some eminence like his father. Ibn Bashkuwal states in his al-Silah:

روى عن أبيه مصمم روايته وتواليها وخلفه في حلقته بعد وفاته، وأخذ عنه أصحاب أبيه بعدئذٍ، وأخذ بفرطه عن حائط بن محمد الحقلي، وابن حيان، وكانا فاضلاً ديناً من أنفس الناس واعلامهم. اخبرنا عنه غير واحد من شيخنا ورفيقنا باللهجة والجلالة، ورحل إلى الشرق وحج، وتوأى جدة منصرفه من الحج سنة 117. 

He narrates from his father (al-Bajji), most of his narrations and hadith and his books. He succeeded his father in his days and the pupils of al-Bajji studied with him afterwards. He also learned from Hatim Ibn Muhammad al-'Uqayli and Ibn Hayyan in Cordova. He excelled in faith and learning and was most learned and intelligent of the scholars. Many of our authorities have praised his sagacity and dignity. He travelled to the east and performed Hajj and died at Jedda while returning from his Hajj in 493 A.H.

Ibn Farhun gives more details about him and says:

كان أبو النسيم من أهل الدين، وفضل علية علم الأصول والأخلاق. شغل على أبيه وخلفه في حلقته بعد وفاته، وأخذ عنه أجمل من أصحاب أبيه كأبيه على الصدري، وأخذ عنه الجهاني، وأخذ له أبوه في أجل أحدهما في الأصول، فتذهب وآلف كتابه في مدارك النظرة، وكتب في النظر، وكتب في الدين، وكتب في الربا، وكتب بالعربية، ودخل في كل ما كتبه أبوه، وأخذ به. ودخل في الشرع، ودخل في البخاري، ودخل في صحيح ابن ماجه. ثم انتقل إلى الشرق، ودخل في سائر التأفة، بما سمعوه أو ما لم يسمعوه. ورحل إلى البحر، ثم انتقل إلى جزيرة اليبيل، ثم حج ناك بحدة بعد أن عرضه من السجن ثلاث سبعين سنة اسماءه.
"Abu al-Qasim was a man of faith and excellence. He was interested in the principles of jurisprudence which he studied with his father and succeeded him in the Madrasah after his death. His father's prominent students like al-Qadi studied with him al-Jiyani (a great muhaddith) also narrated from him. Al-Baji permitted his son to edit his books on principles of jurisprudence. Abu al-Qasim followed these works and then wrote his own books (i) Mi'yar al-Nazi', (ii) Kitab Sirr al-Nazr and (iii) Kitab al-Burhan. He took nothing from the property left by his father, as he was generous. And he travelled to the east and entered Baghdad where he stayed for about two years. He then proceeded to Basrah and lastly to some islands of al-Yaman where he settled down. Then he performed Hajj and on his return he died at Jeddah in 493 A.H./1100 A.D."

Kahhalah on the authority of Haji Khalifah and al-Qadi has recorded the same about Al-Baji's son Ahmad. (133)

Abu al-Qasim.

II. USUL AL-FIQH OR THE PRINCIPLES OF LAW

MEANING OF JURISPRUDENCE: 

Man being a social creature needs a society which develops a 'rule of conduct' for its organization and administration. This rule of conduct distinguishes the just action from the unjust ones. Whether the actions relate to one individual or more or belong to one community or a number of communities these are regulated by any one of the following rules of conduct:

(i) The Moral Law or the rule of natural right and wrong.

(ii) The Physical Law or the expression of uniformities of nature.

(iii) The Conventional Law or the rule agreed upon by the persons to regulate their conducts towards each other.
(iv) The Customary Law or the rule which the persons have set for themselves and to which they voluntarily conform their actions.
(v) The Technical Law or the rule which fulfills certain purpose in order to attain a certain end.
(vi) The Imperative Law or a rule imposed upon individual by some authority which enforces obedience to it.
(vii) The Civil Law or the rule of the land and the state.
(viii) The International Law or the rule of the nations.

Ass such rules of conduct are generally known as 'Law', Lex and Jus or Juris in Latin, فض in Arabic, droit and loi in French and recht or geset in German, which exists in society either in a concrete form or in an abstract shape.

The study of law is known 'the General Law' and technically termed as Jurisprudence. The work jurisprudence is the composition of two Latin words; Jus or Juris i.e. law, and prudencia i.e. knowledge or science. In a generic and primary sense, words jus and lex bear the meaning of (Law) but their tropical or secondary use draws a distinctive line between these terms. Thus the central idea of juridical theory is not lex, but Jus; Jurisprudence, therefore is "the knowledge or skill in law, the science which treats of human law in general, the philosophy of law."

The analytical study of the legal expositions (whether existing or non-existing) legal sources, scientific divisions of law, legal history and the methods of legislation, provides the data for legal theory, legal concept or the principles of Law.

**THE MUSLIM LAW OR FIGH:**

Law has been Islam's primary expression of faith; the relationship of a Muslim to his community is determined by his affiliation with one of the recognized school of law. In a sense, Islam has got its own statutes, legal sources with their scientific divisions, methods of legislation and a vast legal history. Muslim Jurisprudence is, therefore, science of "the roots of Muslim Law" generally known as *Usuli al-Figh*.

In *al-Qur'an* as well as in *al-Hadith* (the first and basic sources of Muslim Law) the word *Figh* has been used frequently, not in its technical sense, but in the sense of 'understanding', and 'realisation'. The Qur'anic verses نمازُ الْعَالِمِينَ "We have detailed our revelations for a people who have understanding", and لَيْتَنفِقُوا فِي الْدِينِ "that they may gain understanding in al-`Ummah", indicating the same sense. A well known hadith: من يَدْرِجُ اللَّهُ بِهِ غَيْرَ يَدْرِجُهُ فِي الْدِينِ whomsoever Almighty Allah intends to do good, He makes him capable of understanding al-`Ummah", also bears the same sense of 'understanding'. The Holy Prophet (may peace be upon him)

(3) *Al-Qur'an*,

(4) *Ibid*.

(5) *Mishkat al-Masabih*, Delhi, 1350/1932, p.32.
blessing Ibn 'Abbas used the word Fiqh saying,
اللهم نقم في الدين
(6) "O God give him understanding in the
Religion". Once some beduine requested the Holy
Prophet for deputing someone to their tribe "so that
we (they) may understand the Religion, (al-Din) from
them,
لنتقدم في الدين
(7)

All these or such Qur'anic verses and narrations
of ahadith are the examples where Fiqh connotes the
meaning of "understanding" especially "the understanding
of the Religion or al-Din."

For understanding of general subjects (including
al-Din), the word 'ilm has been used in al-Qur'an
and hadith literature. The very first revelation
begins with the massesage of 'Ilm أتراكب الاكرم الذي علم بالقلم
علم الإنسان، ما علم
"Read! And They Lord is most Generous, who taught
man by the pen, Taught man what he knew not"; and such
other Qur'anic verses use the word 'ilm in the
sense of "general understanding (of things) or their
knowledge. Numerous ahadith in the chapter of the
Knowledge (Bab al-'ilm) are explicitly used in the
same sense. Hadith أطبر العلم من المعدالي "Acquire 'ilm
(10)
(Knowledge) from the cradle to the grave."

(6) Ibid.  
(7) Ibid.  
(8) Al-Qur'an, 96: 4-6  
(9) Ibid., 2: 32.  
(10) Mishkat al-Manabih, Delhi, 1360/1942,  

and hadith, "Acquire 'Ilm (Knowledge) even if it to be obtained from China"? are two examples of the sense.

The distinction between 'Ilm and 'Fiqh, as observed in the above discussion, is that 'Fiqh may be called 'Ilm, but 'Ilm may not be termed as 'Fiqh. For the scholarship of 'Umar two separate words 'Fiqh and 'Ilm have been used in a report which shows that the Fugaha, did not dare speak in the presence of 'Umar, the second caliph, because of his domination on them by virtue of his 'Fiqh and 'Ilm'. Legal verdicts (Fatwa) of the judges were commonly called 'Fiqh (of those judges). 'Umar once in his speech at Jabiyyah said, "Let him who desires to seek 'Fiqh go to" Nu'adah b. Jabal (d. 150 A.H.)

**Usul al-Fiqh or Principles of Muslim Law**

Legal knowledge of the Shari'ah is composed of two parts:

(i) Usul, and

(ii) Furu.

Usul (Pl. usul) literally means root, origin and principles Furu (Pl. Furu') is the consequence of a principle or a branch of a root. The whole Muslim Law with all its details relating to 'Umar wasa la Yajum

(11) Ibid., p.
(legality or illegality) deals with Furu' and is termed al-Fiqh, the law, and all the basic concepts and theories relating to these Furu' (of Muslim Law) deal with usul and is thus called usul al-Fiqh or the principles of Muslim Law.

Imam Abu Ishaq al-Shirazi (d. 476 A.H.) in his Book al-Luma' defines the terms as follows:

"Al-Fiqh is the knowledge of the Laws of Shari'ah, the method of which is the individual reasoning; whereas, Usul al-Fiqh are the indications on which al-Fiqh (i.e. Shari'ah Law) is based."

Muhammad al-'Amidi (d. 631 A.H.), elaborates the terms and defines the technical meaning of al-Fiqh saying:

"Al-Fiqh precisely means a thorough knowledge of the particular decisions of the Shari'ah obtained by insight and reasoning."

"Usul al-Fiqh" he says, are the principles of Fiqh, which encompass Shari'ah laws within their dimensions; the nature of this encompassment is brevity and not in detail."

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Muhammad Na‘ruf al-Dawalibi, a modern jurist, defines the terms, usul and al-Fiqh, as follows:

أصل الشريعة هو ما يبنى عليه ذلك الشيء والمراد هنا في
 FileStream 65

اصطلاح هذا العلم الدليل... الفقه لغة هو العلم النجم والمراد به

العلم بالاهمال الشرعية —

philologically, the _aql_ is the root of a thing on which it is based. Technically here it means 'the proof'. In the lexicon _Al-Fiqh_ means, the knowledge and the understanding and here it means, 'the science of

the _Shari'ah_ laws.'

He then establishes the definition of _usul al-Fiqh_ and says:

هو العلم الباحث في ادلة الاعمال الشرعية وفي جوهر

دلالته على تلك الاحكام...

"Usul al-Fiqh is a science that deals with the evidences of the _Shari'ah_ laws and effective causes of

the formation of these laws."


II. THE EARLY PHASE OF THE MUSLIM JURISPRUDENCE.

LEGAL STRUCTURE DURING THE TIME OF THE HOLY PROPHET:

THE REVELATION OR AL-KITAB: The Holy Prophet was asked to decide the matters in accordance with the revelation of Almighty Allah. "Lo! We revealed unto thee the scripture with the truth, that thou mayst judge between mankind by what Allah showeth thee": (19) "He was then asked, "not to be a pleader for the treacherous," and "Judge between them by that which Allah hath revealed, and follow not their desires away from the truth which hath come unto thee."

These Qur'anic injunctions indicate the fact that al-Kitab (the revelation) was considered the main and original sources of Law, even the prophet was to follow it strictly.

(19) Al-Qur'an, 4: 105;

(20) Ibid;

(21) Ibid, 5: 484;

ناحكم بينهم بما أنزل الله ولا تتبع اهواءهم عصا جالس من الحقيق.
THE PROPHETIC SUNNAH: The revelation or al-Kitab was the fundamental source of legislation which was explained to the mankind through the life and conduct of the Holy Prophet. Thus whenever the Holy Qur'an asks the believers to obey Allah's commandments, it also instructs them to follow the prophet; "Obey Allah and obey the Messenger." (22) "But Nay, by thy Lord, they will not believe until they make thee judge what is in dispute between them," (23) and whosoever obey the Messenger, (24) obeyth Allah.

This is because the believers have in the prophet of Allah an excellent model. (25)

And it became the binding upon the believers that: (26)

"And it becometh not a believing man or a believing woman, when Allah and his messenger have decided an affair (for them) that they should claim any say in their affair, and whosoever is rebellious to Allah and His messenger, he verily goeth astray in error manifest."

(22) Ibid, 4:59;
(23) Ibid, 4:60;
(24) Ibid, 23:26;
The prophetic conduct (al-sunnah) is therefore strictly followed by the companions and recognized as the basis of Shari'ah Law. Technically the prophetic Sunnah comprised the actions (af'al), the expressions (nawz), and the approvals (Taqwilat) of the Holy Prophet.

LOCAL CUSTOMS AND USAGES OR 'URF, TA'AMUL AND 'ADAH: Islam claims that its message is not novel. It conveys the message of Abraham, the great ancestor of two holy lands, the Land of Bayt al-Lahm in Jerusalem and the Land of Bayt Allah in Mecca. It is "the faith of your father Ibrahim. He hath named you Muslims." (27)

The local custom and usages of these areas were more or less sanctified by Prophet Ibrahim and practised by his descendants. But his message was changed and corrupted at a later stage. The Holy prophet thus adopted good customs making them al-sunnah and discarded those which were harmful to the society.

A brief account of the Arabian customs of both types are given below:-

(1) FAMILY LAW: In family laws the customs of Khitbah i.e. negotiation for marriage engagement, Mahr i.e. dowry, Nikah i.e. marriage contract Talaw i.e. dissolution of marriage by husband, Khulaf, i.e. dissolution of marriage by wife, Zihar i.e. dissolution


ملة أبيكم إبراهيم هو سنم السلمين
of marriage by the husband by saying the words, "the back of his wife resembled the back of his mother." 'Ila, i.e. dissolution of marriage by the husband by swearing that he would have nothing to do with his wife, which were in vogue in Arabia, were retained by Islam. Similarly after the divorce, the 'iddah i.e. waiting period was strictly observed. Marriages in the shape of mut'a i.e. temporary marriage, shighar i.e. giving one's daughter or sister in marriage to another man in consideration of the latter giving his daughter or sister in marriage to the former, and kathrat al-indiva i.e. polygamy or marrying more than one wife, which were recognized institutions in the Arab society, were also retained by the Qur'an or Sunnah.

(2) Trade Law: In trade law too, several forms of sales were already established as customs. For instance

(i) Nugasada i.e. sale of goods for goods or barter system, (ii) Bayd i.e. sale of goods for money, (iii) Sarf i.e. sale of money for money, (iv) Salam i.e. sale in which the price is paid in advance, (v) Murabaha i.e. sale at the cost price, (vi) Wad'a i.e. sale at less than cost price, (vii) Bayt bi ilan al-Haj i.e. sale by throwing a stone (articles of sale were exposed, the buyer threw a stone and whichever article it hit, became the property of the buyer), (viii) Mulmasah i.e. sale by touching the goods, (ix) Mushababah i.e. sale in which the article is thrown to the buyer indicating the completion of the sale.
(x) Musanabah i.e. sale of dates on tree; (xi) Muhalaqah i.e. sale of wheat as standing crops; (xii) Bay'al-waafa' i.e. sale of article by saying to the buyer, "I sell you for the debt which I owe you on the condition that when I repay the debt you will give back the article to me", the article thus could not be used without vendor's permission; (xiii) 'Arbun i.e. sale of articles by depositing a portion of price on the approval by the purchaser and payment of the balance within a stipulated period, failing which the transaction may be cancelled and the amount deposited may be forfeited, etc. etc.

(3) AGRICULTURAL LEASE: In agricultural lease rent was paid either in money or a part of the produce or wheat. If the supply of seed and other expenses for cultivation were the lessee's responsibility, the lease was termed Muhabarrah. If these expenses were born by the Lessee it was called Musara'ah. Leases of fruit gardens for a stipulated period were also executed and known as Musarqat.

(4) LOAN TRANSACTIONS: Some institutions for advancing loans were also established. These loans were of various nature such as Riba' i.e. usury, Gadd i.e. loan without profit, and Farisah i.e. loan of money or articles temporarily to be returned to the donor, free of interest.

(5) PENAL LAWS: In penal laws punishments of Jaldah i.e. flogging, Ga'a' vadd i.e. cutting of hands, Rahe
i.e. stoning, qisas i.e. death for murder, eye for eye, and so on, nizam i.e. compensation to the heirs of the murdered in place of death penalty, with the consent of the heirs were also of pre-Islamic origin.

(6) JUDICIAL PROCEDURE: In the procedure of dispensing justice, the practice of shahadah i.e. witness, qāsim i.e. oath, nākām i.e. arbitrator, etc. were also found in different forms.

An analytical study of Islamic Law of the later period indicates that the local customs and usages of the people of the conquered lands were accepted and incorporated in the Islamic law provided these were not against qur'ān and sunnah. Such other customs and usages as were incompatible with the social structure of Islam, were either totally rejected or adopted with the modifications according to the qur'ān and sunnah. On this issue Imam Abu Yusuf's opinion is given below:

و قَالَ ابن يوْسِفْ: اِذَا كَانَتْ مِن بَلَادِ سَنَةَ اَحْمِجَةٍ فَذِلَّتْ مَا يُنْفِرَهَا اِلَى اِسْلَامٍ لَّمْ يُنْفِرَهَا اِلَى اِسْلَامٍ لَا يُنْفِرَهَا اِلَى اِسْلَامٍ لَا يُنْفِرَهَا اِلَى اِسْلَامٍ لَا يُنْفِرَهَا اِلَى اِسْلَامٍ لَا يُنْفِرَهَا اِلَى اِسْلَامٍ لَا يُنْفِرَهَا اِلَى اِسْلَامٍ لَا يُنْفِرَهَا اِلَى اِسْلَامٍ لَا يُنْفِرَهَا اِلَى اِسْلَامٍ Lā yunfirah al-islam lā yunfirah al-islam lā yunfirah al-islam lā yunfirah al-islam lā yunfirah al-islam lā yunfirah al-islam lā yunfirah al-islam lā yunfirah al-islam lā yunfirah al-islam.

Ancient non-Isra'ili customs, if not repugnant to the Shari'ah (qur'ān and al-sunnah), would not be rejected by the Muslim state. (26)

Imam Sarakhsi (d. 483 A.H.) discussing on al-'urf i.e. usages, says:

"If a custom is well known and established among the people (not repugnant to Qur'ān and Sunnah) it is as valid as Nisāma."

**Reasoning and Ijtihād:** Personal reasoning and analogical deductions are allowed by al-Qur'ān, The Qur'ānic verse:

"for each one of you we have made a path (shari'ah) and a method (minhaj)," supports this contention.

The Holy prophet on various occasions relied on the decision of his reason. Once the prophet was asked by a person whose father had died without performing the Hajj, whether it was necessary for him (son) that he should perform the Hajj on behalf of his deceased father for the salvation of his father's soul. The prophet put a counter question said, "what do you think you would have done, had your father died with a debt against him". The prophet naturally wanted the person concerned to pay the debt of his father in the first instance and then perform Hajj for the deceased provided the deceased was wealthy.

On the occasion when Mu'ādh (a famous companion) was sent to the Yemen as Governor, the prophet (may peace be upon him) asked him:

"According to what should you judge?"

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Mufadhd replied:

"According to the Book of the Gog (al-Qur'an),"

"And if you find nothing therein?"

The reply was, "i.e. according to the tradition of the Messenger of God (al-Sunnah)."

"And if you find nothing therein?"

"I shall interpret with my reason", was his answer.

And thereafter the prophet said:

الحمد لله الذي وفق رسول الله لما يرضى رسول الله

"Praise be to God who has favoured the messenger of His Messenger with what His Messenger is willing to approve."

The dialogue indicates that the Holy Prophet permitted reasoning lost of all. We find numerous other instances which indicate that the companions (Sahabah) used reasoning as the source of law in the absence of Nabi.

THE LAW (FIQH) DURING THE PERIOD OF SAHABAH

FUNDAMENTAL SOURCES: After the prophet period i.e. 10th Hijra (632 A.D.) there starts the era of the Companions, sahabah, for whom a narration of the Holy Prophet reads: "My Companions are like the guiding stars, whoever will follow them, will find the right path." This period is also the period of the rightly guided caliphs or Khulafa' al-Rashidun.

Legislation or law-making in this period was based on the same guidelines which were approved by the law-giver, Sahib al-Shar'ah; Al-Qur'an and al-Sunnah were regarded as jus sacrum and the gist of all sources, Al-Qur'an as the text (Nass) and al-Sunnah as its explanation (Sharh).

CONSULTATION OF CALIPHS OR SHURA AL-KHULAFAH: The main and primary method of solving the new sociological problems was Al-Shura or Consilium. The Caliphs used to consult the respectable members of different classes of people (on important issues). Representatives from the first emigrants Al-Muhajerun, Al-Ansar, the original citizens of Al-Madinah,

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{33} Mishkat Al-Masabih, Damascus, 1382/1962, Vol. III, p. 219. This hadith has been narrated by Razin and considered as sahih. Another hadith reported by hadrat 'Umar in this connection reads as follows:

ومن عمر ابن الخطاب قال: سمعت رسول الله صلى الله عليه وسلم يقول - سألت ربي عن اختلاف الرأي بين معني تأويل النص والكل نور. النبي عنده معاهم عليه من اختلافهم نفع الذائج علیاً هدى.
al-Awta, the great companions, Aalilah Sahabah, famous tribes of Arabia, Gahil al-Arab and the jurists, 'al-Yuqabah' etc. Imam Abu Yusuf has given an account of such consultation. He has for example recorded the shura (consultation) of Hadrat 'Umar before he decided not to distribute the lands of Syria and Iraq along with other war spoils.

Before promulgating his injunction Hadrat 'Umar consulted the first emigrants (almuhajirin al-Awalum). Then he called the Ansar - five from 'Awa and five from al-Khazraj and having consulted these people (34) he decided the case.

When Hadrat 'Umar was on his way to Syria and arrived at al-Sargh, he was informed of the plague that had broken out in the Muslim camp. After consulting Hadrat Abu 'Ubaydah, the Commander-in-Chief of the Muslim forces in Syria, and other army chief in the (35) Muslim camp, Hadrat 'Umar decided to return to Medina.

So there are numerous instances which indicate that the Caliphs used to consult the representative of different sections of the community (al-‘Ummah) before deciding socio-legal issues. It was a sort of Senatus-Consulta.

**DECISIONS OF THE CALIPHS OR AQDIYAH AL-KHULAF‘A**. The Caliphs being ‘ulama‘ or incharge of the affairs of the community, had the power to issue orders, a power implied in the Qur‘anic verse: "Obey God, His prophet (36) and those incharge of your affairs".

The orders of the Caliphas, therefore, were their rulings as well as their "personal reasoning (Ijtihad)" in accordance with the prevailing conditions. For instance forty lashes as punishment for wine-drinking was fixed apparently, but Abu Bakr and later on increased to eighty lashes by ‘Umar and ‘Ali.

These rulings of the Caliphas may, however, be classified into three main categories;

(i) Decisions made as Head of the state in the capacity of supreme Qadi which may legally be termed as decreta or adaaya.

(ii) Injunctions or instructions issued to the Governors and other officials in different religic-political or legal matters i.e. Mandata or Ahkam.

(iii) Written answers to the questions submitted to the caliphs either by the officials or by the citizens. These written letters being documents, were very important and called Edicta or Rasa‘il and Kutub.

VERDICTS (ADDIYA) OF THE JUDGES: During this period the Muslim state spread up to Iran, Iraq, Syria, Egypt and areas where the directives of the Caliphs could not reach immediately in time. The judges in these areas decided the cases in the light of the sources of Law, and in their absence they used their own reasoning (Ijtihad). These verdicts of the judges played an important role and became a valuable record for the later jurists, which may legally be termed as Addivah or Magistratuum Edicta.

JURISTIC OPINIONS OR ARA' AL-FUQAHÀ: We have mentioned in a preceding discourse that the Holy Prophet recognized the validity of personal reasoning (Ijtihad) and analogy (Qiyas) in the absence of the explicit text (al-Nass al-Zahir). Qur'anic verses like, "For every one of you we have made a path and a method," and, "Allah intends for you the case and does not intend any difficulty for you," support this contention. The companions, therefore, exercised personal reasoning (Ijtihad) and gave their individual views, Response predication, on certain legal matters. And so they had difference of opinion in some cases.

On the question of Qur' (monthly cours of a woman), for instance, the jurist companions held different views.

(37) Al-Qur'an, 51: 48: لكل جعلنا منكم سيرة و ولاdj
(38) Ibid, 2: 185: يزيد الله بكم العمر ولا يزيدكم العمر
For determination of the waiting period of a divorced woman the qur'anic injunction is, "women who are divorced shall wait, keeping themselves apart for three qur'as", 'Umar, 'Ali Ibn Ma'sud and Abu Musa al-Ash'ari are reported to have held that qur'ah (sing. qar') means, "menstruations" (Hayd) while 'Aishah, Zayd ibn Thabit and ibn 'Umar are reported to have established that qur'ah, means "the period of purity between menstruations (athar)".

This difference of juristic explanation of the word qar'ah however, affects the duration of "the waiting period" i.e. 'iddah. According to the former view the waiting period of a divorced woman will be completed after the completion of the third monthly course, while according to the latter view this period will be over as soon as the third course starts.

In 'Ibadat, 'Umar and 'Ammar, for example, differed in a journey, concerning the mode of Tayammum for janabat, necessitating the major purity i.e. ghusl.

It is, however, clear from the above instances that the difference of opinion among the companions arose in the details and minute descriptions of 'Ibadat (worships), Mu'amalat (civil law) and 'Uqubat.

A statement of 'Umar II throws light on the validity of such differences:

"I do not like that the Companions of the Prophet should not disagree, because were there one view only
the people would have suffered hardship. Surely the
companions are the leaders to be followed. Now, if one
follows the view of anyone of them, he follows a desire-
able view. In other words the companion opened the gate
of making endeavour and allowed disagreement in
reasoning. It is sure and certain that had they not
kept the door of Ijtihad open the jurists would have
been put to great difficulty. Allah, the Almighty,
has, therefore, enriched the Ummah with their different
views in the details of Law .......

Professor Nas'um, referring to a Qur'anic verse
(i.e. V: 49), has rightly observed that: "the believers
are therefore, at liberty to adopt most useful and
easiest possible way to practise the teachings of
Islam and to popularise them among mankind for their
betterment."

Summing up it can be said that during the period
of Sahabah, the Book of Allah (al-Qur'an) and the
Prophetic Sunnah were explained through Shura
(Senatus consulta), decisions of al-Khilafa' (Caliphic
Mandates), Naz'ir al-Qadaya (Magistratum Edicta),
and Ara al-Fuqaha (Responsa Prudentium).

Appearance of Law Schools:

During the caliphate period owing to territorial
conquests on the expansion of the Islamic state, the

(40) Al-shatibi, Al-I'tidād, Cairo, 1332 A.H, Vol. III,
P. 11; the statement reads:

(41) Nas'um, S.H. Ikhilaf al-Fuqa'ah, Vol. 1, P. 5.
jurist companions (Sahabah) and their successors (Tabi'īn) spread in different regions. These learned people naturally had to take the responsibility of administrators, judges and theologians in their respective regions. Dealing with the daily administrative problems, judicial verdicts in personal laws and rational explanations of the Muslim doctrines they came across with the customs, private law (Jus Privatum) as well as the public Law (Jus Publicum) of their respective regions. So, in different socio-geographical situations they endeavoured to solve their day to day problems in accordance with the Shari'ah Laws. Same were the difficulties of the Tabi'ī Jurists who followed them and tackled their problems in accordance with the injunctions of al-Qur'ān and al-Sunnah and the Ijtihad of the Sahabah. The jurists of this period were also required to give preference (tajjud) to one and a particular hadith out of different kind of ahadīth (traditions), just to assist them in their Ijtihad (individual reasoning) and Qiyas (analogy), in Istighab al-Hal (in commensurate with the situation) and Masalih Mursalah (the intended welfare of the community).

The Muslim jurists of this period may be divided into the following three, "Regional Schools of Law".
HEJAZI SCHOOL: Mecca and Medina, being sacred places, were the great seats of learning. This jurist of these cities and their surrounding areas formed the Hejazi School of Law:

Among the Meccans the following jurists are famous:

(1) 'Ata ibn Abi Rabah (d. 114 A.H.);
(2) Amr ibn Binar, (d. 126 A.H.).

Among the Medenites the following jurists are very famous:

(3) Urwah ibn Zubayr (d. 93 or 94 A.H.);
(4) Sa'id ibn al-Mussayib (d. ca. 94, A.H.)
(5) Abu Bakr ibn 'Abd al-Rahman (d. 94, 95 A.H.)
(6) Ubayd Allah ibn 'Abd Allah (d. 98, A.H.);
(7) Kharijah ibn Zayd (d. 99 A.H.);
(8) Sulayman ibn Yasar (d. ca. 107 A.H.);
(9) Al-Qasim ibn Muhammad, (d. 107 A.H.);

These jurists are generally known as, "the seven jurists of Medina." Beside them the following are also known:

(10) Salim ibn 'Abd Allah ibn 'Umar (d. 106 A.H.);
(11) Ibn Shihab al-Zuhri (d. 124 A.H.);
(12) Rab'iah ibn 'Ali 'Abd al-Rahman (d. 136 A.H.);
(13) Yahya ibn Sa'id and,
(14) Malik ibn Anas (d. 179 A.H.).

Imam Malik is the last exponent of this school.
IRAQI SCHOOL: This school was divided into the seats of (i) Basra and (ii) Kufa; the famous jurists of the Basra centre were;

(1) Muslim ibn Yasir (d. 108 A.H.)
(2) Al-Hasan ibn Yasir (d. 110 A.H.), and
(3) Muhammad ibn Sirin (d. 110 A.H.)

Amongst the Kufan jurists the following are well known:

(4) Alqama ibn Qays (d. 62 A.H.)
(5) Masruq ibn al-Ajda (d. 63 A.H.)
(6) Al-Awsad ibn Yazid (d. 75 A.H.)
(7) Shurayh ibn al-Harith (d. 78 A.H.)
(8) Ibrahim al-Nakhi (d. 96 A.H.)
(9) Al-Sha'bi (d. ca. 103 A.H.)
(10) Hammam ibn Abi Sulayman al-Ansari (d. 120 A.H.)
(11) Abu Hanifah, (d. 150 A.D.)

Nu'man ibn Thabit known as Abu Hanifah is the last and famous jurist among the Iraqi ones in this period.

SYRIAN SCHOOL: The following famous jurist belong to this School:

(1) Qadiga ibn Dhuwayr
(2) Umar ibn 'Abd al-Asiz (d. 101 A.H.)
(3) Makhul (d. 113 A.H.)
(4) Al-Awsa'i (d. 157 A.H.)

Among the Syrian jurist al-Awsa'i is the last.

It should be noted here that these succeeding jurists (Tabi'i Fuqaha') derived their legal knowledge
from the Companions (Sahabah) living in their respective 
areas. The jurists of Medinah for instance derived their 
legal knowledge mostly from the reports and verdicts 
(Patawa) of Hadrat 'Umar Ṣallālullāhū wa sallam), 'Aīshah 
Ṣafīah (Ṣafīah Ṣallālullāhū wa sallam) and Ibn 'Umar Ṣallālullāhū wa 
sallam), while the jurists 
of Kufa had it from the judgments and opinions of Hadrat 
'Ali Ṣallālullāhū wa sallam) and Ibn Mas'ūd Ṣallālullāhū wa 
sallam).

Another fact to be noted is that the disciples of 
these succeeding jurists (Tabi'i 'Uṣūlī) associated 
themselves with their own masters. Muhammad Al-Shaybānī, 
Abu Yusuf, and others for instance, refer to Imam 
Abū Hanīfah as the authority of all their writings Ibn 
al-Qasim, Ziyād al-Lakhmī, Yahyā al-Laythī and other 
pupils of Malik refer to Imam Malik as their authority. 
And so did the disciples of Al-Awzā'ī and later on the 
students of Al-Shāfi'i and Ahmad Ibn Hanbal. Thus there 
appeared the four schools of law viz, Hanafi, Maliki, 
Shāfi'i, and Hanbali.
III - JURISPRUDENCE IN MUSLIM SPAIN

THE EARLY PHASE

Muslim forces in the command of Tariq ibn Ziyad landed on the soil of Spanish peninsula on 28th of Ramadan 92 A.H./30th April, 711 A.D. The invasion of Musa ibn Nusayr almost completed the conquest of Spain in 93 A.H. (42) 712 A.D. After the conquest the army as well as the civilian officials with thousands of their subordinate staff settled in the land. Many Arab tribes also migrated to Spain and settled there. This was the period of young Sahabah (the Companions) and al-Tabiten (the Successors). These virtuous scholars and their disciples laid the foundation of intellectual activities in Spain. A brief account of the early Spanish scholars is given here.

THE COMPANIONS OF SAHABAH

This was the period of those Sahabah who were youngest in the time of the Prophet. It is presumed that some Sahabah (Companions of the Prophet) might have visited this land (Spain). We find only one name of a Sahabi, al-Munaydhir who visited Spain. A mention about al-Munaydhir's life and visit to Spain is also found in the works of biographers like Ibn 'Abd al-Barid ibn Bashkuwal, Ahmad

Ibn Rushd and al-Maqqari. "The Sahabi (al-Munaybhi)," says al-Maqqari, "first settled in Africa, at the time of the conquest he entered Spain in the suite of Musa." This Sahabi narrated the hadith of the Holy Prophet to his Spanish students amongst whom 'Abd al-Rahman, better known as al-Jubayli is very famous. The early Spanish jurists and theologians were greatly benefited by this companions of the Holy prophet.

THE SUCCESSORS OR AL-TABII'IN: Musah ibn Musayr, the conqueror of Spain was himself a successor (tabi'i). Some learned tabi'i landed on this peninsula along with him and some came afterwards and settled there. About their number the historians have different views. In Habib is of opinion that three tabi'is entered into Spain, Ibn Bashkuwal in his work entitled, al-Tanbih wa al-Ta'yiin li-majmudakhala al-Andalus min al-Tabii'in mentions as many as eighteen tabi'ii. Other writers enumerate the number as twenty. The highest number according to al-Maqqari is ten.

(44) Ibid.
(45) Ibid., Vol. II, p. 130.
(46) Ibid.
A brief account of some of the Spanish tabi'in is given below:

(i) Ḥanāfah al-San'āni, a student of Hadrat 'Ali, entered Spain with Musā ibn Nusayr. Originally he was a native of Ṣan'ā a village in Syria, Al-Maqari, on the authority of Ibn al-Muqaffa, says that Ḥanāfah settled in Saragossa where he laid the foundation of the great mosque of the town. The inhabitants of Saragossa as he says, were very much proud of his being tabi'i among them. He died in 98 A.H. and worked as a governor of Saragossa for some time.

(ii) Abu 'Abd Allah 'Ali ibn Rabah al-Lakhmi was another tabi'i, who was born in 15 A.H. (733 A.D.), the year of Yarmuk. He was ordered to join the army of Africa after he incurred displeasure of the Umayya Caliph. He remained there till the invasion of Spain and Musā took him into his suite. He thus entered to Spain and settled there.

(47) Ibid, Vol I p. 130; Vol. II, p. 52;

(iii) Hayat Ibn Raja al-Tamimi, the narrator of hadith.

(49) also entered Spain.

(iv) Hayyan Ibn Abu al-Hubla, a mawla of Banu 'Abd al-Dar, is the narrator of hadith reporting from 'Amir Ibn al-Aas, Ibn Abbas and Ibn 'Umar. He entered Spain with Musa and settled there. He was one of those jurists whom caliph Umar Ibn 'Abd al-'Aziz sent to Africa for teaching Islamic law and theology to the people. He also held a post in the Government of Egypt.

(v) Al-Mughirah Ibn Abu Bardah also entered Spain in the suite of Musa. He was a student of the famous Companion Abu Hurayrah and narrated hadith from him. The hadith reported by him are also found in Malik's al-Muwatta.

(vi) 'Abd al-Rahman Ibn Mughith (secretary of Abd al-Rahman al-Bakri) also came to Spain with Tariq and played an important part in the conquest of Spain.

(vii) Hayat Ibn Raja.

(viii) Iyad Ibn 'Utubah al-Fihri.

(ix) 'Abd 'Allah Ibn Samasah.

(x) Manfur Ibn Khuzamah.

and other such learned tabi'i came to Spain and settled there. They spread the knowledge of the Qur'anic injunctions (ahkam) and the Sunnah of the Prophet in this peninsula and helped the people grow in learning and become at a

(49) Ibid.

(50) Ibid.


later stage "learned jurists of Spain."

INTRODUCTION OF MALIKI LAW IN SPAIN:

The intellectual activities of the early Spanish scholars, as a matter of fact, had their roots in Syrian theological and legal schools, as most of the officials as well as the intellectuals who settled in Spain, had had their educational training in Damascus, the capital of Syria. In general Spanish students who followed their teachers strictly, visited Damascus, Aleppo (Halab), Emessa (Homs) and other Syrian seats of learning to complete their education. Al-Maqqari observes:

اعلم أن أهل الامدالس كانوا في القدم على مذهب الازبع واهل
النهاي اول الفتح .......

"Remember that the Andalusians followed the school of al-Awza'i and that of the Syrian jurists in the former times, right from the conquest."

It is, however, doubtful that al-Awza'i was exclusively followed by the Syrians settled in Spain, for Imam Malik wielded a greater influence on the jurists of Andalus than Imam al-Awza'i. This is further established on the basis of the following evidence:

(1) Abu 'Amr 'Abd al-Rahman Ibn Muhammad al-Awza'i, the great jurist and the founder of the Syrian school of Law, was born in 88 A.H./706 A.D.; (and according to some biographers in 93 A.H./711-2 A.D.),

He, according to ibn Khallikan, died on Sunday the 29th Safar 157 A.H./21st December 774, A.D. His teaching period (if it is accepted that he started teaching his students as an 'Imam or 'the great jurist' at the age of thirty) must be about forty years. It is thus established that his juristic career lasted from forty years, i.e. 117-157 A.H.

(ii) Imam Malik is the contemporary of al-Awza'i. He was born in Madinah in 93 A.H./712 A.D. and died in Rabi' al-Awwal, 179 A.H./795 A.D. If, like al-Awza'i, his career as is presumed, started from the age of thirty as an 'Imam or 'the great jurist', Malik must have started his own legal system in 123 A.H. which lasted during his lifetime until 179 A.H.

(iii) A biographical survey of the Spanish jurists shows that the jurists who studied with al-Awza'i, also went to al-Madinah and acquired knowledge from Malik. This is confirmed in the case of Ghani ibn al-Qays and a number of other jurists.

(iv) The Spanish jurists who met Imam Malik were about nineteen (their brief accounts are given afterwards). Most of them were contemporary of al-Awza'i; two or three died even before Imam Malik. They, after their return to their land (Spain), narrated al-Muwatta of Imam Malik to their students.

(56) Ibid. VII, III, P. 248.
On the question as to who first narrated al-Muwatta in Spain, Qadi 'Iyad, among the early authorities, has mentioned two names (i) Ghazi Ibn al-Qaymi (d. 177 A.H.) and (ii) Ziyad al-Lakhmi (d. 173 A.H.). Dr. Husain Munis on the authority of Ibn al-Qutiya (58) has established the same view.

(v) Right from the conquest of Spain (in 93 A.H./711 A.D.) up to the death of Awza'i (167 A.H.), the people of Spain followed the Syrian jurists. At the time which Imam Malik died (179 A.H.), Hisham I (R. 172 A.H./788 A.D. to 180 A.H./796 A.D.) was the ruler of Spain. He was a great admirer of the Imam and was under the influence of Ziyad al-Lakhmi, a great jurist and a disciple of Malik.

Al-Maqqari's statement "earlier the Andalusians followed the Syrian (Jurists)", is therefore a fact beyond doubt, but it is very difficult to accept his view that "they (Andalusians) thousand followed the school of al-Awza'I." Al-Awza'i's legal school hardly lasted for fifty years if the time is reckoned from the death of al-Awza'i until the establishment of Maliki school as state law.

SPANISH DISCIPLES OF MALIK:

To establish the fact that some Spanish jurists met Imam Malik, studied with him, and narrated al-Muwatta to their Spanish students (as mentioned supra para 4) it is necessary to recall their activities

(58) Husain Munis, al-Mu'jam al-Andalusi, p. 116
in brief, Qadi 'Iyad's work, Tarikh al-Madarik wa-
tagrib al-Masalik li marifat al-'am madhhab al-Malik,
provides a comprehensive list in these respects.
'Iyad (d. 544 A.H.) has divided these jurists into
following three tabagat:

(i) Those who were of the age of Malik, had
their own place in scholarship, met him to
narrate from him and died either before
him or soon after his death. These are
called al-tabagat al-'Ulā or the first
group.

(ii) Those who had been his student for a long
period, had the opportunity of living with
him as his pupil, and narrated from him.
They are mentioned under al-tabagat al-wusta
the middle group.

(iii) Those who joined the Imam in his last days
or were very young at the time of his death.
These disciples of Malik are placed under
al-tabagat al-Sughra or the lowest group.

**AL-TABAGAT AL-ULÀ OR THE FIRST GROUP:** This group
consists of the following jurists:

(1) Ziyad b. 'Abd al-Rahman al-Lakhmi known
as Ibn Shabbūn; He belonged to Cordova. Hearing about
Malik he visited al-Madinah and narrated al-Muwatta
from him. Qadi 'Iyad on the authority of al-Shirazi
says that during his stay in al-Madinah, the Medinan
scholars called him "the jurist of Spain". An interesting
story has been narrated by 'Iyad from Abu Bakr al-Maliki.
Once Ziyad entered the chamber of Malik where Ibn
Kinanah, another jurist, was present. The latter did not
know Ziyad. So he asked Ziyad about his country, Ziyad

(59) Qadi 'Iyad, Tarikh al-Madarik, Rabat, 1960, 
Vol. III, p. 117.
gave him the answer. Ibn Kinanah then said, "Who is the leading jurist of your country?" "I myself and others like me," replied Ziyad. Ibn Kinanah then started questioning him on some of (the most difficult legal problems). Within a few moments he realised the scholarship of Ziyad, and kept silent. The ruler of Spain, Hisham I (d. 180 A.H./796 A.D.), was very much influenced by his scholarship, admired his virtues and piety. He offered him the post of judge (Qadi), but Ziyad refused to accept the post.

Ziyad died in 173 A.H. before the death of Malik (179 A.H.) in Cordova. He advised his favourite student Yahya to see Imam Malik in al-Madinah.

(60) Ibid, the words of this story read as follows:

حکی ابی‌عبد‌الملک از زیادا قدم الدینه فدخت علی مالک
و وعده ای بن کتاله علم یپره این کتاله فاضل ای بن کتاله
عن بلده نذره - نالم من تقه بلدکم؟ نال آ فاطم ونحو ذلك


(ii) Al-Ghazi Ibn al-Qays was an Umayyid scholar from Cordoba. He went to the east and was benefited by the great authorities like al-Awsa'i, Ibn Jurayj, through ibn Zayd and Muḥammad ibn Wardan. He then went to al-Madinah, narrated al-Muwatta from Imam Malik and learnt the Qur'anic recitation (Qira'at) from Naṭi ibn Abu Na'im, a Qari of al-Madinah. After his return to Spain, he was offered the post of Qādi (Judge) but he refused it. His two sons, 'Abd Allāh and Muḥammad, and other scholars like Ibn Hābit, Asbagh ibn Khalid, 'Uthmaṇ b. 'Abd al-Muṭṭaṣim are his students. He died two years before Malik in 177 A.H.

(iii) Sa'id ibn 'Abd al-Muṭṭaṣim (d. 180 A.H.) is another jurist who met Imam Malik and narrated al-Muwatta from him. He belonged to Toledo and was the jurist-consult (Mufti) of the city. After his return to his city he was appointed as Qādi of the school of Malik.

(iv) Sa'id ibn Abu Hind, Abu 'Uthman also belonged to Toledo. He visited al-Madinah and met Imam Malik. Qādi 'Iyād on the authority of Aḥmad ibn 'Abd al-Barr and Ibn Haṭṭāsh says that Imam Malik gave him the title of 'Hakim al-Andalus', when he returned to the country he was appointed as minister. 'Iyād, referring

(64) Ibid., Vol. III, p. 113.
(65) Ibid., Vol. III, p. 123, the statement of Ibn al-Harīth reads:
to *Kitab al-Qadat*, by Ibn Harith says that he was also *appointed* as the judge (Qadi) of Toledo.

It is, however, understood from these two statements that soon after Sa‘id’s return he was appointed as Qadi (Judge) and then after some years he was made Wazir (Minister).

About the date of his death ‘Iyad has received two versions Abu Sa‘id al-Sadaq states that he died in 200 A.H while Ahmad says that he died in the days of ‘Abd al-Rahman (d. 172 A.H./788 A.D.) before the death of Imam Malik.

(v) Yahya Ibn Hudur al-Qaysi was among the jurists of Cordova. He was a student of Sufyan al-Thawri. He visited al-Madinah and narrated from Imam Malik ‘Iyad has not mentioned the date of his death. From his biography it is evidently understood that he was alive in 187 A.H.

AL-TABAQAT AL-WUSTA OR THE MIDDLE GROUP: In the second category (al-Tabaqah al-Wusta) of the Spanish disciples of Imam Malik, Qadi ‘Iyad has mentioned the following nine names:

(i) Qarmus Ibn Abbas (d. 200 A.H.) was a jurist of Cordova who first received his education from the learned jurists Ibn al-Thawri, Ibn al-Jurayj, al-Layth and Ibn Rashid then went to al-Madinah and narrated


hadith from Malik, Qadi Abu al-Walid al-Fandi

(99) considers him in the first group (al-Tabaqah al-Ula).

(ii) The most famous among this group is Muhammad b. Sa'id b. Bashir. Originally he belonged to Bajah and was educated in Cordova. After his return from al-Madinah he was appointed the chief judge of Cordova by the Ruler al-Nakam I (180 A.H./796 A.D. to 206 A.H./822 A.D.) Ibn al-QutTyah says that Muhammad b. Sa'id was the best and learned jurist and was very strict in his judgments.

(iii) Talut ibn 'Abd al-Jabbar al-Mufare was another disciple of Malik who also belonged to Cordova.

(iv) 'Abd al-Rahman ibn Musa al-Hawari another jurist of this group belonged to a village of Marur city, then settled in Isttenja and was educated from al-Asma'T Ibn 'Ayniyah and Abu Zayd. After his return from al-Madinah he was appointed as judge of his own city.

(v) 'Abd al-Rahman ibn 'Abd Allah was another chosen pupil of Malik who narrated al-Muwatta' from him.


(vi & vii) Hasan and Hamzah, the two sons of 'Abd al-Salam al-Salami were also the students of Imam Malik. They went together to learn from the Imam and lived with him about seven years. They belonged to Saragossa.

(viii) Shabtun ibn 'Abd Allah al-Ansari (d. 212 A.H.) the Qadi of Toledo was also the student of Imam Malik.

(ix) Another jurist Muhammad ibn Yahya as Fatis ibn 'Um'm Ghaniyah is also mentioned among the disciples of Malik. He belonged to Cordova. 'Iyad on the authority of Ibn Harith says that the famous judge Ibn Bashir, (a jurist of this group) consulted him in his judgements. About his death 'Iyad has given two narrations. In the first, he says that he died after 206 A.H. while in the second, on the authority of Yahya b. Yahya, he says that he died about 208 A.H.

(x) Dawud ibn Ja'far, another jurist of this group, was educated by Ibn 'Ayniyan and Nu'ayiyah b. Salih. He went to al-Madinah and narrated from Imam Malik. He was appointed as Qadi of Qala'ubiyah. Nu'mar b. Qays says that about three thousand ahadith have been narrated from him.

(74) Ibid.
(75) Ibid.
AL-TABAQT AL-SUGHRA OR THE YOUNG GROUP: In this group Qadi 'Iyad has enlisted only one name, the famous jurist Yahya al-Laythi. Originally he belonged to a Barbar tribe educated in Cordova and narrated Muwatta of Imam Malik from his teacher Ziyad al-Lakhtiy known as Shabtun who directly narrated it from the Imam. On the advice of his teacher Ziyad, he left Andalus to see Imam Malik at al-Medinah. Al-Maqari says that Yahya left Spain at the age of twenty-eight and arrived at al-Madinah a few months before the death of Malik and lived with the Imam till he breathed last. Qadi 'Iyad, al-Maqari and other historians have narrated a very interesting incident during his stay with Malik. They say that once Imam Malik was delivering lecture to his students. Suddenly there was a cry that an elephant was passing. Everybody attending the lecture left the class-room to see the elephant except Yahya Imam said, "Why did you not go outside to see the elephant? It is not found in your country." Yahya replied, "I have come from my country to see you and to learn from you and not to see an elephant." Malik was very much impressed to hear the answer and said, "This is the wise-man of Spain." So Yahya narrated Muwatta from Imam Malik. After his death Yahya visited Mecca and studied with the Meccan jurists like Sufyan and others. He also went to Egypt and narrated

(79) Ibid, Vol. III, pp. 379-94; Al-Maqari, Nash al-Tib, Cairo, 1302 A.H. Al-Maqari narrates the story in these words:

(79)
from Layth ibn Sa'id and 'Abd Allah ibn Wahab. On his return to his native land he was appointed Chief Qadi of Cordova. After rendering great service to the Maliki school of law this great jurist died in Rajab 234 A.H.

SPANISH RULERS ADMIRE THE MALIKI SCHOOL:

Imam Malik lived in a period when the Umayyid dynasty was founded in Spain. Its founder 'Abd al-Rahman al-Dakhil (rule, 133 to 172 A.H.) and his son Nisham I (rule, 172 to 180 A.H.) were the contemporaries of Imam Malik. The illustrious Imam always asked his Spanish disciples about the morals of the Rulers of this Muslim dynasty lived in a simple way and observed the shar'iah Laws strictly, he prayed for them.

Pascual has mentioned a quotation from 'Abd al-Nabdh al-Mukhissar wan Kitab mirat al-Zaman fi tawarikh al-A'wan which reads as follows:

"Malikh once asked an Andalusian doctor, 'Abdul Rahman's habits and mode of living.' The doctor answered him, 'Abdul Rahman wears woolen cloth, eats rye-bread and fights for the cause of God'. The Doctor began to enumerate other good qualities upon which Malik was so much pleased that he exclaimed "لَيْكَ بِنَبِيَّ رَحْمَتُهُ مُنْبِئٞ بِهِ " May the Almighty God ornament our Harem with him ..."

(80) Ibid.

(81) Pascual, the History of the Muhammadan Dynasties in Spain, New York, 1964, Vol. 1, p. 403. Pascual has rightly disagreed with the author's View that the Legal school of Imam Malik was made as the state Law of Spain during the reign of 'Abd al-Rahman.
For Higham, the son of 'Abd al-Rahman (r. 180 A.H.), the same words were said by Imam Malik to Ziyad al-Lakhami, Ibn Shabbun (d. 173 A.H.), a prominent Spanish jurist. Al-Maqqari narrates them in these words:

"Higham followed the model of the Caliph 'Umar ibn 'Abd al-'Aziz. He appointed his trusted men in different provinces and their task was to investigate the conduct of the administrators directly from the citizens and to submit confidential reports to Higham. If any of his officers was convicted for committing unjust or any sort of corruption, he would deprive him from his post and the officer was treated as disqualified for public service forever. When Ziyad ibn 'Abd al-Rahman (a famous Spanish jurist) reported such habits of Higham to Imam Malik, he said, "May the Almighty preserve his life and make him one of our select!"

These remarks of the illustrious Imam were naturally reported to 'Abd al-Rahman and his son Higham, and they were naturally inclined towards the legal school of Malik, and thus some Malikite jurists were appointed on judicial posts during the reign of these rulers. For instance, Sa'id ibn 'Abdus (d. 160 A.H.), Ibn Abu al-Hind (d. 200 A.H.) and Shabbun ibn 'Abd Allah (d. 212 A.H.) etc., were appointed as Judges in the

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(82) Al-Maqqari, Nafh al-Tib, Vol. 1, p. 158
(83) Qadi 'Iyad, Tarikh al-Madarak, Rabat, 1965, Vol. III, p. 113
(85) Ibid, Vol. III, p. 344
province of Toledo. 'Abd al-Rahman al-Hawari was appointed the Judge of 'Astanjah, and Dawud ibn Ja'far as the judge of Qalanburayah.

The great Spanish Malikite jurist Ziyad al-Lakhmi better known as Ibn Shabtun, was offered the post of Chief Justice by the ruler Hisham but he refused. But when Ziyad was forced to hold this office, he left Cordova. After realizing the fact that this virtuous and pious jurist would not like to hold any position in the Government, Hisham desired that Ziyad may advise the Ruler in legal matters. Qadi 'Iyad (d. 544 A.H.) in the biography of Ziyad al-Lakhmi says:

"Ziyad was pious jurist, Hisham offered him the Judicial office. He refused and left Cordova, on which Hisham said, 'He or all peoples are not like Ziyad; or else nobody would have been the pupils beak like Ziyad, the dearest of the people of this world, with whose instruction the people of the world would have been fulfilled. Hisham was very much impressed by Ziyad and respected him and sought his guidance and advice on theological and legal questions and feared him."

PROCLAMATION OF MALIKI SCHOOL AS STATE LAW:

The legal school of Imam Malik was proclaimed as the state-law of Spain during the reign of al-Maham, the third Ruler of Umayyid dynasty. Al-Maqqari in this connection remarks that Dula al-Hakim bin Hisham bin 'Abd al-Rahman bin al-Hakim bin Ziyad bin al-Hakim bin 'Abd al-Rahman, the author of this book, amongst the people of Córdoba. Ziyad was the most well-known among the students of Malik, who was the third Caliph of the Umayyad dynasty. His legal school was proclaimed as the state-law of Spain during the reign of Al-Maham, the third Ruler of Umayyid dynasty.
"During the reign of al-Hakam ibn Hisham ibn 'Abd al-Rahman al-Dakhil (rule 180 A.H./796 A.D. to 206 A.H./822 A.H.), the third ruler of the Umayyid dynasty, the legal judgement was converted according to the opinions of Malik and the Medinite Jurists ....... And this change was brought by the orders and the authority of al-Hakam.

After Maliki School was declared as the state-law during the time of al-Hakam, Yahya al-Lazthi (d. 234 A.H.), the most favourite student of Ziyad al-Lazthi and a direct disciple of Imam Malik, was appointed as Chief Judge of the state. He played a great part in popularising the Maliki School of Law.

Ibn Hazm has criticised the enforcement of Maliki School in Spain and has discussed Yahya's efforts in these words:

"There are to Legal Schools, which from the very beginning spread through power and prejudice the Hanafi School and the Maliki School. Abu Yusuf was appointed as Chief Judge (Qadi al-Qudat) of the Muslim state which extended from the most remote provinces in the East to the frontiers of Eastern Africa. He favoured the Hanafite Judges to perform the duties of a judge in different parts of the state, exactly the same policy was adopted by Laythi in Spain. Furthermore, when the eminent Jurist gained the favour of Sultan (al-Hakam), his legal opinion were accepted and no Qadi was ever appointed without his consent. Having

sole authority in a very short time the administration of Justice was completely in the hands of the friends and disciples of Yahya or some other eminent scholars of Maliki School.

The charge of Ibn Hazm is proved absurd for the following reasons:

(1) It has been already stated that the disciples of Imam Malik started narrating his al-Kuwatta in Spain during the very life of Imam Malik. Thus up to the death of Yahya al-Layhi in 234 A.H. for nearly one hundred years the Maliki school was constantly taught in Spain with the result that the school became deeply rooted among the Muslim masses of the country.

(2) Even before Yahya there were numerous Malikite Jurists who held the judicial posts. Yahya cannot, therefore, be charged of favouring his disciples or friends unduly.

(3) Hakam's father Nizar, the second ruler of the Umayyid Dynasty, was already impressed by Maliki Law. He requested, rather forced Ziyad al-Lakhmi to accept the post of Chief Judge of Cordova. But on his refusal he made him his adviser on judicial matters. 'Abd al-Rahman I also respected the illustrious Imam. It, therefore, can be said that the rulers were already under the influence of Maliki.
Jurists due to the distinctive and honourable personality of Imam Malik.

(4) In the Abbaside period the political as well as intellectual activities shifted from Damascus to Baghdad. Spanish people being Arabs in origin, were naturally inclined towards the Hijazi jurists. They were more traditionalists (ashāb al-Hadith) than the Iraqi jurists who were alleged by their opponents as rationalists (ashāb al-Ra'iy).

Thus it was quite natural for the people of Andalus to follow the School of Malik.

(5) As the Umayyid rule ended in Syria and their dynasty was re-established in Spain naturally their connection with the jurists of Syria grew weak. Moreover, Spanish jurists performed Hajj ceremony and made frequent contacts with the Meccan and Medinite jurists. This became a usual feature every year. Thus right from the teaching career of Imam Malik (93 to 170 A.H.) up to the death of Yahya al-Laythi (d. 234 A.D.), Chief Judge of Cordova, hundreds of jurists were benefited by the Hijazian and the Malikite School.
IV - JUDICIARY OF SPAIN

KHITTAH AL-QADA:

"The Judicial department or Khittah al-qada," says al-Naqqari, "was the most important one to the common people as well as to the dignitary of Spain."

Dr. Husain Munis describes this office (Khita al-Qada') as next to the Spanish ruler in dignity, repute and powers.

Al-Nawardi (d. 450 A.H.) has described the following main functions of this department:

1. Settlement of disputes.
2. Restoration of fundamental rights.
3. Execution of prescribed punishments.
4. Execution of will.
5. Administration of endowments.
7. Control over the Aqaf Treasury.
8. Control over the subordinate courts, their staff and watching their conduct and activities.

(91) Al-Naqqari, Nafh al-Tib, Cairo, 1302 A.H. Vol. I P. 101v
(92) Husain Munis, Fa'ir al-Andalus, Cairo, 1959, p. 639.
The Muslim rulers though appear to be despots in their territories were, as the history bears witness very submissive to the injunctions of the Shari'ah and strictly followed and implemented the judgements of their own appointed Qa'idi's — a precedent which is hardly available in the history of other nations of the world. The prevailing system of judiciary and courts of judges of the most modernized countries of today, does not seem to be free from some sort of exploitation and bias, and hardly accessible to the commonalty who are unable to pay the required fees. On the contrary courts of the Muslim Judges were always open to any man demanding justice and fair dealings without paying any fee or undergoing any hardship.

Judiciary in Spain was always independent, and so we find numerous examples of it in the judicial history of Spain.

(1) Qa'di Muhammad ibn Rawd convicted a favourite officer of al-Mansur, the Ruler. The officer (Muhammad) appealed in the court of caliph al-Mansur against the conviction. But the caliph giving his judgement said:

"O, Muhammad he is a judge and if he be right in his judgement it is not in our power to resist his authority or oppose his sentence. You are now to return to your jail and confess the truth which will set you free."

(2) Qadi Ibn Bashir (d. 823 A.D.), the Chief Judge did not hesitate to pass judgement against the Amir and made him pay compensation to a suitor.

(3) On another occasion Qadi Ibn Bashir refused to accept the testimony signed by the Ruler who had to appear in the court to give his evidence before the Chief Justice.

(4) The Judge of Almeriah gave the stay orders in case of construction of the palace of the Ruler al-Mu'tadid b. Samadidh till the payment of the encroached land of an orphan was made.

HEAD OF THE JUDICIARY:

In the Muslim camps of Spain Judicial head was to begin with called, Qadi al-Jund, Judge of the Troops. But when the Muslims established their dynasty in Spain, the head of the judiciary was known as Qadi al-Jama'ah, the Judge of the Muslim Community. This title, says, Dr. Munis was used by 'Abd Al-Rahman al-Dakhil and the first Qadi al-Jama'ah was Yahya b. Yazid. Later on he was called Qadi al-Qudat, Chief of the Judge or Wazir al-Qada, Minister of the judiciary.


(96) Ibid.


As stated by Dr. Husain Munis the Chief Justice in Cordova was an important personality in the fields of learning and politics. The history of Spain cannot be completed or correct without the history of its judges.

Qadi al-Jama'ah or Chief Justice was appointed by the Khalifah himself. His rank was that of a minister. Being the chief of judiciary he was the appointing and controlling authority of all judicial courts. As the Supreme judge, he was the highest legal authority and used to hear the appeals and the cases of serious nature. For legal verdicts a panel of jurists known as "Hajlis al-Shura", advisory council or "Ashab al-Rayah" used to assist him. The panel of consultants, according to Ibn Hayyan held their seats just next to the Chief Justice in official ceremonies.

Besides his powers in civil, criminal and administrative matters, he enjoyed some powers in matters relating to revenues. The treasury, Bayt al-Mal of Spain, was of two types:

(100) Husain Munis, Fajr al-Andalus, p. 640.

(i) **Khazinat al-Mal** or **Bayt al-Mal**, the treasury of general public wealth of Muslims and non-Muslims. The head of this treasury was called **Khazin al-Mal** or **Sahib al-Makhzan**.

(ii) **Bayt al-Mal lil-Muslimin**, the treasury of the Muslims, for dealing with **wafq** and orphan properties; its head being the Chief Justice. The main treasury of **Bayt al-Mal lil-Muslimin** was kept at Cordova mosque and its key were in the possession of the chief Qadi. No one was empowered to draw any amount from this treasury except by the order of the court of the Chief Judge. Even if the Caliph needed some amount due to shortage of funds in the general treasury (**Bayt al-Mal**), he had to make a request to the Chief Judge. It was purely upto his discretion to sanctions an amount for the purpose requested for.

The office of the Chief Qadi was generally located near the Cordova mosque. In official ceremonies and selected gatherings he was considered amongst the **ayyan al-khassah** and held his seat with the Ministers. Ibn Hayyan describes a certain ceremony as follows:

قد الأمير إبر الحليل هشام لأكابر الخلفاء من أهل الدولة بقتصر نزمه ٠٠٠٠ وتوصي إليه فيه الوزير فترفع واين يدية وتعال من بسات الخلافة في الجامع مهد بن الحاصل بن سليم

—

The Ruler Abu al-Walid Hisam, one of the great caliphs of the dynasty, sat in Cordova palace.... the Ministers came and took their seats in front of him.......... and they were followed by the Chief Justice Muhammad ibn Ishaq, among the chosen (103) dignitaries.

In another place he states the arrangement of the officials in the Caliph's court saying:

"Wazirs according to their ranks, then Chief Justice (104) Muhammad Ibn Ishaq."

Judiciary of Spain was divided into four courts:
(1) Qadi' al-Adalah, Court of Justice.
(2) Qadi' al-Intisab, Judicio-Administrative Court.
(3) Qadi' al-Askar, Military Court.
(4) Qadi' al-Ma'asilim, Judicial Court.

QADĀ AL-‘ADĀLAH:

Judicial courts of Spain were organized on the basis of administrative units. Since Cordova was the capital of dynasty, the judicial chief, Qadi al-Qada also held his offices at Cordova. The following were his subordinate courts.

(1) Qadi al-Kurah: The state was divided into small provinces called Kurah. The head of the civil administration of a Kurah was called wali. The head of judiciary of one Kurah was called "Qadi al-Kurah.

(103) Ibn Hayyan, al-Muqtabas, P. 153.
who was directly responsible to the Chief Justice or Qādī al-Jāmā'ah of Córdoba, we find the names of some Qādī's of different Kurās in al-Muqātabas, their tours and presence in the official ceremonies.

At one place, a statement of transfer reads as follow:

"On Saturday Asghār b. Qasim b. Qasim b. Arba'ah was sent back to his former posts and Ahmad b. Muhammad b. Murūj was transferred from the judgeship of Ṣhīḏahunah, Ṣhīḏahunah and Ṣakīrān to the judgeship of Kurāh Ra'yāh in the place of Khalīd b. Nishām."

(2) Qādī al-Balād: Civil administrator of a big city and its surrounding areas was called Ḥakīm or Ṣāḥib al-Balād while its judicial head was known as Qādī al-Balād. Dr. Munis calls this administrative units as aqlīm and says:

Ibn Hayyan has also mentioned some names of the Qādīs of such areas.

(105) Ibid.

(106) Husain Munis, Fāṣir al-Andalus, P. 579.

(107) Ibn Hayyan, al-Muqātabās, P. 73.
(3) 'Adil: Magistrates of small villages or one or two mahallas of a big city were known as 'Adil. In the beginning they acted as notaries, and the witness of good repute. Later on they were chosen as 'assessors' to assist the judges. In case a judge ever vacated his office, sometimes it so happened that the assessor appointed by the qadi won the favour of the head and continued in the court as judge.

On the occasion of official ceremonies they were also invited and had their seats with the judges and jurists. Ibn Hayyan has mentioned their presence in a number of ceremonies.

(4) Sahib al-Mawarid: To decide the disputes of inheritance, wills, guardianship of minor heirs and maintenance of orphans' properties, separate courts were set up whose judge was called Sahib al-Mawarid, resembling the modern Court of Wards. These courts were mainly located in big cities. The cases and properties in the small towns were looked after by Qadi al-Balad of the area.

(5) Qadi al-Dhimmiyin: Non-Muslims or dhimais were subject to their personal laws. Thus in each city a Qadi was appointed from its own people, who was empowered to decide the cases of marriage, divorce, inheritance, non-Muslim waqf, etc., of his area.

But the cases relating to general (state) laws of the non-Muslims and the disputes between Muslims and non-Muslims were dealt with by the judicial (Muslim) courts of the (Ili) Dynasty.

To provide the legal assistance for the judges, the institution of *ifta* was also established. In the absence of any codification of Islamic Law the Qadis were vested with powers of interpretation. But in complicated and doubtful cases the Qadis referred the matter to a jurist-consultant. These *fuqaha* and muftis, according to Ibn Hayyan, commanded honourable position and were invited with the judges on important occasions.

**QADA AL-IHTISAB**

Responsible officials of the civil administration also had some judicial powers. This office can be compared with that of the modern Ombudsman. In the beginning these officials were also under the Qadi but later on they were separated from judicial duties because of heavy duties in their respective departments. Although while taking a decision on any offence relating to their department, they were acting as 'judicial Qadi' their judgements, in case of dispute, were referred to the judicial authority (Qadi) of that area. Thus the matters came under one judicial subordination i.e., the Chief Justice or Qadi al-Jama'ah. Some of the important courts of Qada al-Ihtisab or Judicial-Administrative Courts were as follows:

(111) Ibid.
(112) Ibid., p.
(1) **Sahib al-Madinah**: Administrator of City

Sahib al-Madinah, in the beginning was also called Sahib al-Layl, the night-guard and Sahib al-Shurtah, the police Chief, and he was always a Qadi, holding the charge of judiciary, civil administration and police. But later on (in 10th century) these departments were separated and the position of Sahib al-Madinah became as Hakim or deputy wali of a Kurah (province). His judicial powers were similar to those of the city magistrate but in case of legal dispute the final verdict lay with Qadi al-Balad. He dealt in generally with the cases relating to the Government servants, bribery, revenue, assaults labour, criminal breach of trust, cheating, mischief, criminal trespass, sales, forgery, breach of contract etc, etc.

(2) **Muhtasib**: A separate department to control the affairs of commerce and industry was established; its head was known as Muhtasib and wali al-Ahkim al-hisbah. He decided the cases and awarded the punishment of flogging and fine. The nature of his cases was fraudulent use of false weights, adulteration of food, drink and drugs, making of false coins, etc, etc.

(3) **Sahib al-ahdath**: Shurtah or ahadith was the police department and dealt mostly with a law and order situation and cases of criminal nature. The head of the
city police was Sahib al-Shurtah, having the rank of a Qadi. The provincial police chief was known as Sahib al-Shurtah. The heads of police performing their duties as Qadi, were dealing with the cases like those of theft, murder, robbery, dacoity, wine drinking (114) rape, kidnapping conspiracy, etc. etc.

QAD' A' AL-'ASKAB.

To maintain discipline and to decide the cases of army personnel, a judicial system was set up in the troops. In every unit of the army there was a Qadi or military judge. These military courts were under the Qadi al-'Askab, the Judge of the troops, who was responsible to the Central Chief Justice.

QAD' A' AL-MAZALIM.

Judicial powers, as we have seen, were divided among the civil and judicial officers. Departmental checks were introduced in the Civil as well as Judicial departments for the eradication of corruption and malpractices. But in case a department or an influential official made use of a legal issue for personal gain, two types of Operational Courts were set up in every kurah, viz.:

1. "Sahib al-Mazalim", for hearing the complaints and claims against the officials of the civil administration; and;

2. "Sahib al-Radd" for hearing the complaints against the judgments of the judicial Qadis.

(114) Ibid.

(115) Ibid.
Later on these courts were merged under one heading called, "Java al-Mazalim", the Operational or Tribunal Courts. In every Kurah one court of Sahib al-Mazalim was established which worked under the direct control of a wazir in the centre called wazir Sahib al-Mazalim, the Minister of Operational Judges. Complaints and cases against the small officials were heard by Sahib al-Mazalim in Kurah while complaints against the higher officials were heard by wazir Sahib al-Mazalim himself.

Ibn Hayyan has mentioned a case against the dismissal of a Governor (Wali) of Seville saying:

وَفِي يَمِين الْاثْنِينِ صَدرُ شُوالِ مِنْهَا خَرَجَ الكِتَانُ بَيْنَ الْخَالِرَينِ سَعِيدُ الْمَسْرُوْلِي عَنْ وَلَائِهِمْ كَوْرَةَ عَشِيْبَيْةَ نَحُو الْوَزِيِّرُ سَاحِبُ الْبَلَامُ عِبْدُ الرَّحِمَنِ بْنِ مُوسَى بْنِ حَدِيرِ الْمُرْسَلِ لَاشِيْبَيْيِ لِجَنَةَ مَا نَفْضَوْا اِلَيْهَا مِنْ حَيَّةٍ عَلَيْهِمْ لَيُقِهَ مَنْ الْمُتْظَلِّمِينَ مَنْهَمْ وَيَسْحَبُونَ عَلَيْهِ مَا نَسَبَوْا إِلَيْهِ مِنْ نَظَالِمَمْ نَيْصَفُ مَنْهَمْ وَسَنْ أَسْتَعْمِدُوا عَلَيْهِ مَنْ حَائِيِهِ وَخَتِمُهٍ

"On Monday the 1st Shawwal Makhun Ibn Khal Sa'id who had been dismissed from the Governorship of Seville Province went to meet Minister for Mazalim, 'Abd Al-Rahman b. Nusa b. Hunayf who had come to Seville for investigation of the complaints of its inhabitants against injustice done to them and enquiring into the allegations against the Governor and his officers. So he (Minister for Mazalim dispensed justice as regards the complaints against him (Governor) and his officials and subordinates."

V - AL-BAJI AS CHIEF JUDGE

PARTICIPATION IN JUDICIARY:

The early biographers of al-Baji merely describe him as a qadi and do not provide further details.

Ibn Khallikan (d. 581 A.H.) and Ibn Farhun (d. 799 A.H.) are of the opinion that during his stay in the east (116) al-Baji was appointed as a judge (qadi) of Halab (Syria).

In Spain when his fame reached far and wide and his juristic repute spread the rulers of different petty states made use of Al-Baji's legal and juristic sagacity. Ibn Farhun says:

"... و شعرت تأليفه فعرف حقه وعظم جاهه وقرب من الرؤسادن و استمطوع في الأمانات و القضايا.

... His writings became well known, his position in the society was well established and he became nearer to the rulers and chiefs. They utilized him in deciding the trust and judicial cases."

But Ibn Farhun does not mention as to who first utilized the abilities of al-Baji and how was he selected.

(116) Ibn Khallikan, Nafayat al-A'yan, Cairo 1357/1948, Vol. II, p. 142; Ibn Farhun Biwi al-Mudhharshab, Cairo, 1351 A.H., p. 120.

(118) Ibid.
for judiciary. Al-Maqqari supports him by saying:

"Then al-Muqtadir bi Allah invited him. With him at ease and in his horizon his virtues shone forth, his books and methods became prominent, his swiftness on the ways of guidance was manifested. Al-Muqtadir was proud of having him in his court, preferring him to others and was giving him full facilities. At the time of his arrival in the court, al-Muqtadir paid him great respect and gave him a distinguished place."

The above statement explains the nature of his post in judiciary, the time and place of his appointment.

Since the ruler of the state of Saragossa, Ahmad b. Sulayman, Sayf al-Dawlah, al-Muqtadir billah (Rule 438/1046 to 474/1081) invited him to his kingdom and issued him the appointment letter from his own office, his appointment was naturally for the post of Qadi al-Quda, Chief Justice of Saragossa.

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As al-Muqtadir invited him after Al-Baji won name and fame for his knowledge of jurisprudence, he must have gone to Saragossa after having his debates with Ibn Hazm in Mallorca and after his stay for some years in Denia, Valencia and Murcia. His exact date of appointment, however, cannot be determined. He was probably appointed after 450 A.H.

JURISDICTION OF THE POST:

As the head of judiciary, he was responsible to look after the affairs of the judiciary of the Kingdom of Saragossa which in those days was divided into seven administrative provinces called iqilim (a city and its surrounded areas). These iqilim were as follows:

1. Iqilim al-Madinah (i.e. Saragossa): the jurisdiction of this iqilim was from the gate of Saragossa to Melilah;

2. Iqilim ’Abbad Palace: it was from the iqilim of the city up to the boundaries of Tortosa;

3. Iqilim Qutandah: This iqilim was situated about sixty miles from the city of Saragossa;

4. Iqilim Zaydun: This iqilim was surrounded by Tortosa, Vellencia, Tedmir and Beria;

5. Iqilim Baltush or Pletsos: This iqilim started from a village Muela up to Saragossa city, spread over 20 miles;

6. Iqilim Qantush: It also spread over 20 miles from the Nueva city to Abreh river;

7. Iqilim Shalum: This iqilim was located on the western side of the Saragossa city near a village Cabanas up to
In every iqalim there was a separate judge, having the status of Qadi al-Balad under the direct control of al-Baji, while every Qadi al-Balad had his subordinate courts according to an established judicial structure of Spain.

Retirement from Judiciary

His exact date of retirement is not mentioned by the biographers. Qadi 'Iyad says that Qadi Ibn Shibrin, a student of Al-Baji, joined him at Saragossa in the same year (i.e., 469 A.H.) and also travelled with him to Meria and remained with him till (Al-Baji died in 474 A.H.). It, therefore, appears that al-Baji left Saragossa after 469 A.H.

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(121) Husain Munis, Fajr al-Andalus, Cairo, 1959, pp. 464-5.

C - THE MANUSCRIPT

DESCRIPTION OF THE MANUSCRIPT

'Abd al-Walid al-Baj'i's al-Isharah fi usul al-Fiqh or, as mentioned by al-Ashbili in his al-Fihrist,
'al-Isharah 'ila ma'rifat al-usul wa al-wajarah fi ma'na

(i)
dail has survived in two manuscripts; one preserved at
Escorial, Spain, and the other in al-Maktabah al-
Azhariyyah, Cairo.

(i) ESCORIAL MANUSCRIPT: The Escorial manuscript
is included in a volume having four other works under
the Call. No. "MS. Arab No. 1107 Escorial". The volume
consists of 167 folios in all. The collection opens
with the work Kitab al-Khilaf by al-Baghdadi, a book
on jurisprudence containing 68 folios. The second work
is Ibrahim al-Shirazi's Kitab al-Luma', on principles
of Muslim jurisprudence and runs up to folio No. 117.

Al-Isharah fi usul al-Fiqh, is the third work
in this collection and starts from folio 118 and ends
with folio 133 having 16 folios in all. The remaining
two works are Batlayusi's "Kitab al-Isu wa'l-Musamma",
and Kitab al-Tanbih 'ala al-Ma'na wa al-askab allati
aylabat al-Khilaf bayn al-Muslimin fi arr'ihim wa
madhabihim.

The whole collection is transcribed by one Katib (scribe) in "maghribi" script. The text of the book al-Isharab is clear and legible. The script is however difficult to read; and it needs some labour to acquaint one-self with the Maghribi script. On collation it is revealed that the Cairo manuscript is complete in all respects but lacks one sections entitled only the scribe does not mention his own name anywhere in the collection nor does he give the date of transcription. We find only one remark on the last folio of the fourth book viz. al-Iṣām wa-l-Mussammae which reads as follows:

"Ṭalāḥ al-Rashīd ibn 'Abd al-Rahman ibn al-Bustānī, of the city of Barūsah (d. 858 A.H./1454 A.D.), author of Tarajim al-‘Ilmām, a work on the Hanafite jurists and historians, read this collection which must have transcribed before his death in 858 A.H./1454 A.D.

The microfilm of this manuscript is now preserved in the library of Islami Research Institute, Islamabad, (Microfilm No. 333). It was brought from Escorial Museum, Madrid, by Dr. M. Sīhī Maṣūmī in 1964. An enlarged photostate copy of the same is also available in the Institute (photostate No. 130).

(iii) CAIRO MANUSCRIPT: In his Fihrist al-Nakhtūtāt al-Mussawara ma‘nī, Sayyid Fuwād has described another manuscript of al-Isharab. This copy is preserved in al-Azhar under "Ṣūyul al-Fīqu (170) 5786." (Al-Naktabah al-
azhariyyah). The cataloguer has written a note on the last page of the manuscript which indicates the date of its preservation in photostat shape and reads as follows:

"The photostat copy was completed at the Department of Geography in Kulliyat al-Adab at the University of Fustat I Cairo on Tuesday 11th of Ramadan 1386 A.H./29th of July, 1967 A.D."

The manuscript contains 17 folios (from 17 to 45) of the size 14 x 18 cm., written in 'maghribi' script which is difficult to read. This is an incomplete copy and abounds in lacunae. About five sections (Fusul) are missing at the beginning of the book and about eight others in the middle, on the top of the last folio, some one has written:

(45 leaves with different lines). This agrees with the details given by the cataloguer of al-Azhariyyah on its proforma.

The scribe mentions his own name and the date of transcription in the colophon preserved at the end of the book:

کتبُهُ الإِشْتَرَاةُ لِإِيَّاَيُّ الْوَلِيدِ الْبَاحِجَيْنِ فِي أَحْوَالِ الْلَّهِ وَخَصْمِهِمْ
وعمَّتْ - وَوُلَدْكَ فِي عُمْرٍ الثَّانِي مِنْ رَمَضَانِ المَنْصُوبِ وَعَمَّتْ وَخَصَمْتَ
عِنْدَ الْإِلَهِ يَطِلُّ الْحَسَنِ بِمَسْأَلَةِ الدَّوَاهِ الْمَكْتُوبَةِ عَلَيْهِ وَلَوْلَدْهُ
وَالسُّلْطَانِ امْنَى، وَالْحَلْوَاءَ وَالْحَلْمَيْنَ عَلَى سُبُطُ مَعْدُوَانَا وَمَحَيْنَا وَسَلَمَ تَبَلَّبَا
كَثِيرَنَّ مِنْ يَوْمِ الْجُدْوَانِ، رَبِّي الأَمَانِ، تَحْلُوْلَهُ عْنَانَةَ الْحَمْسِينِ -

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"The book al-Isharab by Abu al-Walid al-Baji on the principles of jurisprudence completed with thanks to Allah and with the best of his assistance. And this on 7th day of Ramadan 792 A.H. (28th July, 1392 A.D.) at the hand of Al-Hasan Ibn Mas‘ud al-Hajj al-Mutakawi ........."

The manuscript is available in Pakistan both as a microfilm and a photostat copy in the Library of Islamic Research Institute, Islamabad, obtained obviously from Cairo in 1970 and preserved under Microfilm No. 340 and photostat No. 155. The work was published on the margin of Qunan al-Fayd from Tabard in 2314 A.H. and found defective in transcription.

**THE AUTHENTICITY OF THE MANUSCRIPTS**

The book of al-Baji is narrated by his son Ahmad Abu al-Qasim, a pious jurist of Spain. He also narrated all other books of al-Baji directly.

Ibn Farhun provides more information and says:

وزأخذ عنه اجْلَة من اضْحَابِ إبْنِهِ كَابِي عَلَى المَدْفَنِ - وَحَدَثَ عَنْهُ - وَأَزْنَهُ لَمْ يَوْهِنَّ إِلَّا إِلَّى أَصْلُ كَبِي فِي الأَصْلَ فَنَبْغَهَا وَأَلفَ كَبِي مَهْدِي النَّظَرِ وَكَبِي سَرْ النَّظَرِ وَكَبِي البَرْزَانِ.

"His father's great students like al-Salafi studied from him. Al-Juyani (a prominent jurist) and Muhaddith also narrated from him. His father permitted him to edit his books on principles of Jurisprudence. On the same style he wrote his book (i) Mi‘yar al-Nazar, (ii) Kitab Sirr al-Nazar and (iii) Kitab al-Burhan ............

(2) Ibn Farhun, Dibaj al-Mudhhahab, Cairo, 1351 A.H. P. 40.
By transmission through different narrators, the book reached the hands of Khalifah al-Ashbili (503/1118-575/1179), who mentioned it in his al-Fahrist. He maintains the classical technique of the narration and provides the sources as to how and from where this book was narrated down to him.

THE TEXT OF THE MANUSCRIPT:

The text of al-Isharah begins with the following sentence:

أداة الشرع على ثلاثة أضرب - أصل و مقول أصل، واستصحاب

"The sources of the Shari'ah Law are of three kinds (i) the Root (ii) the Intelligible meaning of the Root and (iii) the association with the prevailing conditions."

The classification as a matter of fact is logical and rational. By al-Aṣl or the Root, he means the fundamental and basic sources which according to him are (i) al-Qur'an (ii) al-Sunnah and (iii) Ijma al-'Ummah.

By Ma'qul al-āṣl, the author means all those legal method which are derived from the Root.

Al-Hal or the association with the prevailing conditions are very important in the opinion of the author and thus he precisely discusses this source of the Shari'ah Law in the book.

The first part contains mainly the words of expression: the imperative and the prohibition, the exemptions, the common usage, the prophetic Sunnah,
the abrogator and the abrogated and various sections regarding the consensus of the community.

The second part deals with the rules regarding analogy, juristic equity and other discourses relating to reasoning etc.

The third part is devoted to discussions on the use of intellect in Shari'ah statutes, rule regarding the burden of proof, descriptions of a mujtahid, presence of chain of narrators text and meaning etc.

Imperfections of the Construction:

A cursory glance of the manuscript leads a person to notice the following blemishes:

(a) The author, as stated earlier, has divided the book in three parts. At the end of each part he should have given some sign to indicate the end of the part. But he uses the words تتم الجزء الأول (first part completed) after the discussion on al-Sunnah instead of putting these words at the end of the first part-after the discourse on al-lama'. Moreover in the beginning of the third part he uses the words (Chapter on the decision of Association with the prevailing conditions) which seems to be a wrong arrangement.

The author does not use (باب) in the two preceding parts; hence it is not a chapter but a part of the preceding chapter.
(b) Some discussions are left out without any title of Bab or Fasl like the discussions on (i) Masa'il al-Nihy (ii) Hukm al-Nutlaq wa al-Muqayyad (iii) Dhikr al-Nasikh wa al-Mansukh (iv) Ahkam al-Qiyas (v) Tarjihat al-Mutun, etc.

(c) Similarly, the words Bab and Fasl at some places are wrongly inserted. For instance one title of a chapter (Bab) reads باب المسألة Under which the author had discussed دليل particulars and general words and rules regarding them. Its exact title may however be مسلم الخصوصية instead of مسلم خصوصية!

THE CONTEMPORARY MANUSCRIPTS.

The technical defects in the MS. of al-Ishara mentioned above cannot apparently be traced to the author. The juristic literature, specially on principles of Jurisprudence, was generally of the same style during that period. This can be proved if we study some contemporary works like: (i) Al-Asrar fi'l-Ugul wa al-Faru and (ii) Al-Ashr wa tajaddum li'l-addillah by a Hanafite Jurist al-Dabusii (d. 432 A.H.) (iii) Al-Fiqh wa al-Muttafiaqiqh by Khatib al-Baghdadi (d. 463 A.H.), (iv) Al-Khilaf and (v) Al-Udab by Muhammad ibn Husayn al-Farra (d. 458 A.H.) (vi) Al-Luma' fi usul al-Fiqh and (vii) Al-Tabsirah fi usul al-Shafiyyah by a

(3) G/M, folios, 3-b; 6-a; 9-a; 12-a; 15-b.
(4) Ibid., folio No. 4-a.

These and similar contemporary works were compiled either in detailed (mutawwai) form or precise (mukhtasar) form, 'Al-Iṣbārah fī usūl al-Fīqḥ' by al-Bājī (d. 474 A.H.) is in fact clearer and more systematic, logical and exhaustive than the mukhtasar works on the subject of that period.

The author, as we have stated earlier, has classified and introduced the principles of Jurisprudence in a few words. His method of presentation is quite rational. He first introduces a discourse, defines a term or mentions a rule, secondly, he gives his own opinion and the existing opinions or differences of the jurists thereon. Thirdly, he provides the evidences from Qur'ān, Sunnah, Ijmāʿ and Qiyās, as the case may be, supporting his view or the rule under discussion.

The concise, rational and logical approach and systematic method of presentation are the main characteristics which distinguish al-Iṣbārah fī usūl al-Fīqḥ from other contemporary works on the principles of Muslim Jurisprudence.
II

TRANSLATION

(1) Aṣl — the Root.

(ii) Maʿqul al-Aṣl — Intelligible meaning of the Root.

(iii) Istiḥāb al-Hal — Association with the prevailing Conditions.
NAME OF THE BOOK:
A GUIDE TO THE PRINCIPLES OF MUSLIM JURISPRUDENCE.

NAME OF THE AUTHOR:
ABU AL-WALID SULAYMAN IBN KHALAF AL-ANDALUSI AL-BAJI
( D. 474 A.H. )

COLOPHON: 792 A.H.
NO. OF FOLIOS: 575
SIZE: 14 x 18. S.M.
NOTE: IT IS PART OF THE VOLUME NOS. 29/45.

The above abstract is taken from Cairo, manuscript, but in M/Ibn, Al-Isharab by al-Baji.
المكتبة المصرية: أصول الفقه (١٧-٢٠)

المؤلف: عبد الحليم خان

الناشر: جمعية الملك فيصل

الطبعة: الثانية

الملاحظات: هذه نسخة مطبوعة

تاريخ النسخ: ١٨٦٢

عدد الأوراق: ٨٠

الأطلاع: صفحة نسخة ١٨٩٤

الكاب المكتبة: حاصل الملفة

المؤلف: عبد الحليم خان

الناشر: جمعية الملك فيصل

الطبعة: الثانية

الملاحظات: هذه نسخة مطبوعة

تاريخ النسخ: ١٨٦٢

عدد الأوراق: ٨٠

الأطلاع: صفحة نسخة ١٨٩٤

الكاب المكتبة: حاصل الملفة

Librarian's note on Cairo MS, of "Al-Isharah fi usul al-Fiqh".
In the name of Allah, the Merciful, The Compassionate, Allah may have blessings and peace upon Muhammad and his family, With Thy assistance, Of Allah!

The Sources of the shari'ah are of three kinds:

(1) Asl, the Root.
(2) Ma'qul Asl, the intelligible meaning of the Root.
(3) Istishab Hal, Association with the prevailing conditions.

As for the Asl, Root, it consists of:

(i) Al-Kitab (the Holy Qur'an), (ii) al-Sunnah (the prophetic Behaviour) and (iii) Ijma' al-'Ummah (The Consensus of the Ummah).

The Ma'qul al-Asl, (The Intelligible meaning of the Root) is, however, Lahn al-Khitab (the tone of expression).

As for Istishab Hal, (Association with the prevailing conditions), it stands for Istishab Hal al-'Aql, (Association with the accompanying conditions based on the intellect).
A. AL-KITAB OR THE BOOK

CHAPTER I

KINDS OF EXPRESSIONS

SECTION I: THE SECONDARY MEANING (AL-MAJAZ).

Having ascertained the sources of Shari'ah, the
Book (of Allah) contains two kinds (of expressions):

(1) MAJAZ OR SECONDARY MEANING; and,
(2) HAQIQAH OR REAL MEANING.

Majaz or the Secondary Meaning is "a word which
is used for other than its own meaning", and is of four
kinds:

(1) SUPERFLUOUS (ziyadah), as in the expression of
Allah the Exalted One, "And because of their
breaking their covenant:" (being superfluous).

(1) Al-Qur'an, 5: 12.
(ii) OMISSION (Nuqṣan), as says the Exalted One, "Ask the (people of) township," (the last word being omitted).

(iii) CHANGE OF ORDER (Taqdīm wa Tawkīr), like the expression of Allah, "who createth then disposeth, who measureth then." (the last word being omitted)

(iv) METAPHOR (Isṭīʿārah), like the expressions of Allah; (a) "Say (unto them), Evil is that which your belief enjoineth on you," (b) "And lower unto them the wing of submission through mercy," and (c) "Lo! worship preserveth from lewdness and inequity."

(Imān, Janāb al-Dhull and al-Salāt have been metaphorically expressed as agents).

Some (Jurists) argue that al-Majāz is used under dire necessity, while Allāh, the Exalted, is above it.

(2) Ibid., 12: 83.
(3) Ibid., 87: 4-5.
(4) Ibid., 2: 93.
(5) Ibid., 17: 24.
(6) Ibid., 20: 45.
we do not agree (to this) because the eloquent on
the contrary use Majaz, instead of the real expression
(Haqiqah), although the latter is more idiomatic and
rhetorical than the former.

They further argue that the whole Qur'an is true
(Haqq); it is, therefore, impossible that anything which
is true is not real. The answer is that this (statement
also) is not correct, surely a true object may not be
real for some reason. This is why either of the two
(the real and what is not real) can be combined with
the opposite of the other, and hence, it is true to say,
"a lion is in the house", when there is a brave man in
the house"; and it is false to say, "Zayd is in the
house", when there is nobody inside the house.

Muhammad Ibn Khuwayz Mandad, one of our
authorities and Dawud al-Asbahani hold that it is not.

(7) Muhammad Ibn Ahmad Ibn 'Abd Allah, Khuwayz Mandad
was an Iraqi jurist, studied with al-Abhari, wrote
some books on jurisprudence like, K. Kabi' fi al-Khilaf,
K. fi urgul al-Fiqh and K. fi Ahkm al-Qur'an etc.
(Ibn Farhun, Bibli al-Muhdakhab, Cairo, 1329 A.H.,
P. 260).

(8) Muhammad Ibn Dawud Ibn Ali Ibn Khalaf al-Asbahani
(235/850-297/910), was a famous Zahirit jurist of
Baghdad, wrote some books on jurisprudence,
(Ibn Khallikan, Wafayat al-'Ayâm, Cairo, 1948,
right to say that the Qur'an contains 'Majaz' (Secondary expression) meaning of an as we have already made clear.

SECTION 2 : REAL MEANING (AL-HAQIQAH).

As for the "Real Meaning" (Haqiqah) it is "a word which is used for its (designed) meaning."

Haqiqah is of two types;
(i) DETAILED (Muffassal).
(ii) CONCISE (Mujmal).

The Muffassal is that word "which conveys its full meaning by its expression only and does not need further explanation".

This again is of two kinds:
(i) IMPOSSIBLE (Ghayr Muhtamal) and
(ii) PROBABLE (Muhtamal).

As for Ghayr Muhtamal, it is "the text alone which is raised to the highest point of explicitness". Such as the expression of Allah. "women who are divorced shall wait, keeping themselves apart, three (monthly) courses." (9) This is a Nass (clear text) and the word three (3) bears no other probable meaning.

Thus, when such a clear text occurs it must referred to and acted upon unless there is something abrogating or contradicting.

(9) Al-Qur'an, 2 : 228
"Al-Ishārāt fī usūl al-Fiqh", by Qādī Abū al-Walīd al-Najjār,
SECTION 3: THE PROBABLE WORD (MUHTAMAL)

The Muhtamal is that word "which bears two or more meanings".

Muhtamal is of two forms;

(i) EITHER, it is less explicit in one of its probable meanings than the rest. For instance, your expression "colour" is equally applicable to white, black and other colours, and is not explicit for one particular colour; it applies to the rest of colours. Now when somebody, whose command is binding upon you says, "dye this cloth", and if the order implies choice (on your part) and you dye in any colour, you would be obeying his order. But if he intends a particular colour, you cannot execute the order unless he explains the colour he wants; and the explanation cannot be delayed till the time of executing the order.

(ii) OR, the word is more explicit in one of its probable meanings than the rest, like Zahir (explicit) and Aama (general) words.

SECTION 4: EXPLICIT WORD (ZAHIR).

The Zahir is, "a meaning which strikes to the hearer immediately and is the same which the word has been coined to convey on its utterance", for instance the imperative words, as Allah says, (1) "Establish worship and pay Zakat."

(10) Ibid. 2: 43.
"gave the Idolators." So whenever this (kind of) word occurs, it will be treated as a commandment ('amr). Sometimes however it may intend:

(i) Ba'hat, Permission as Allah says, 

And when ye have left the sacred territory, then go (13) hunting (if ye will);

(ii) Ta'jiz, to make someone incapable of something as the expression of Allah:

He ye stones or iron.

(iii) Taḥdīd, caution, as Allah says, 

Do what ye will Lo! He is Seer of what he do.

(iv) Ta'ajjub, exclamation, as you say, 

How good is Zayd," or as they say concerning the expression of Allah,

"see and hear them on the day they come unto Us".

But the imperative word in these examples is more explicit than its other probably meanings.

Thus the "explicit" word (al-La'iz al-Zahir) will indeed be applied to commandment ('amr) except when there is definite indication that it means something other than commandment. The word will then change from its explicit sense to what is indicated.

(13) Ibid, 17 : 50.
(14) Ibid, 41 : 40.
(15) Ibid, 10 : 38.
CHAPTER II

THE IMPERATIVE OR AL-’AMR

SECTION I: IMPERATIVE (AL-’AMR) AND ITS KINDS.

Now it is established that al-’Amr means, "demand for action; an expression of superiority or annoyance or insistence."

Al-’Amr is of two kinds:
(1) OBLIGATORY, Wajib and
(2) RECOMMENDATORY, Mandub Ilayh.

Wajib necessarily is that imperative, "disregard of which necessarily results in the infliction of some punishment, e.g. the expression of Allah.

\[ \text{16) Establish worship and pay Zakat.} \]

And Mandub Ilayh is that imperative disregard of which does not necessarily results in the infliction of some punishment, like the expression of Allah.

\[ \text{17) Write it for them if ye are aware of aught of good in them and bestow upon them of the wealth of Allah which He hath bestowed upon you.}\]

\[ \text{(16) Ibid}, 52.\]  
\[ \text{(17) Ibid, 172.} 363,\]
The imperative word (lafz al-'amr) is generally more explicit in indicating wajib than Hudub. (H/3a).

Thus, wherever the imperative word occurs free from any indication, it definitely means "Wajib", and 'Hudub' is understood only when an indication is there.

But Qadi Abu Bakr suggests that it (imperative word free from indication) indicates neither wajib nor Hudub till there is an indication to decide its indicated sense.

Abu 'Abd Allah ibn al-Khar and Abu al-Faraj (C/1b) hold that it (imperative word free from any indication) would mean Hudub and would not mean wajib except by an indication.

The proof of what we say is the expression of Allah, 

"What hindered thee that thou didst not fall prostrate when I bade thee." Allah chastised Iblis and rebuked him for not obeying Allah's order of prostrating himself.

If the imperative word (lafz al-'amr) free from indication did not mean wajib (obligation), Iblis would not have been taken to task for disregarding the action which was not obligatory on him.

SECTION 2: PARADIGM OF IMPERATIVE AFTER PROHIBITION

(Al-Hażır).

Wherever the imperative word ( "اللَّهُ") or do occurs after the prohibition it indicates obligation in accordance with its original sense.

(18) Ibid. 7: 12.
Some of our (Malikite) jurists are of the opinion that it indicates \(\text{al-Ibāḥat}\), 'The permission.' A group of Shafi'i jurists also holds the same view.

The proof of our viewpoint is our agreement on the fact that the simple Imperative expression demands obligation. The imperative expression (in the verse quoted in the above section) is simple. It, therefore, indicates obligation and its meaning is not at all affected by the precedence of prohibition, as is the case when 'amr precedes prohibition.

SECTION 3: ABSOLUTE IMPERATIVE (\(\text{amr al-Mutlaq}\))

(1) \(\text{amr al-Mutlaq}\) does not demand immediate execution.

This is therefore held by Qādi 'Abū Bakr Muhammad ibn Khūways al-Mandad. He says that this is the view of the Western Malikites. Most of the Malikites of Baghdad hold that it demands immediate execution.

The proof of our view is the fact that the word (do-jannāt) only includes time taken for execution of an order just as the information of an action also includes time. If, for example, a certain person informs that he is standing, he will not be considered a liar if his qiyām (standing) occurs after his report. Similarly, if someone is asked to stand he will not be considered indifferent to the order if his qiyām (standing) occurs afterwards.
(2) Having ascertained this, Wajib (obligatory) if performed with delay, is of a nature in which the action has to take place necessarily; when (in the opinion of the author) the addressee (C/2a) will not be obeying an order or will delay it to the extent of no action, then just as the Imam can punish the culprit and the teacher can punish the boy, the punishment may be awarded only if it is assured that the punishment would not cause death. But if he is sure that the punishment would cause death, it is prohibited.

SECTION 4 : ABROGATION OF THE IMPERATIVE ( NASKH WUJUB AL-'AMR)

Whenever Wujub al-'Amr is abrogated, it may be regarded as a proof for indicating permission (Jawaz). Some of our authorities including Qadi Abu Muhammad hold that it is not (considered) permissible.

The proof of our view point is that the order for an action demands (i) obligation for action and (ii) its lawfulness. Lawfulness or Jawaz can be inferred from 'Amr (the imperative) only. The imperative sometimes means permissible (Ja'iz) and not obligatory (Wajib). It is absurd that what is Wajib (obligatory) is not Ja'iz (permissible), since it is impossible that the order is given for doing an action which is not lawful (Ja'iz). Here 'Lawful' means, "what agrees with the Shari'ah".
Now when it is established that wujub (obligatory) is particularly abrogated, the expression remains valid in its decision (hukm) of permission (jawaz), because the abrogation (nashkh) does not concern permission (jawaz), it only concerns wujub (obligatory) and nothing else.

SECTION 5 : THE TRAVELLER AND THE PATIENT.

The traveller and the patient are under the commandment of fasting in the month of Ramadan, but have been given the choice of fasting during Ramadan or in some other month.

Some of our authorities hold that the traveller is under the commandment of fasting but not the patient (M/3b).

Al-Karakhî says that the commandment of fasting is not addressed to both.

The proof of what we say is that if the traveller fasts he will be rewarded for his action and his fasting will fulfill the obligation. But if he is not under the commandment of fasting, he will not be rewarded. As the menstruent is not addressed to the commandment of fasting, she will not be rewarded.

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(19) 'Ubayd Allah ibn Husayn Abu al-Kasas (260/874-340/952) al-Karakhî was a well known Iraqi Jurist and the leading authority of Hanafite school; he wrote some books of jurisprudence and died in Baghdad, (Zirak, al-âlî, Cairo, 1378/1959, Vol.4 P.347.)
SECTION 6: DISBELIEVERS (KAFIRS) ARE UNDER THE COMMANDMENT OF BELIEF (IMAN).

There is no disagreement among the 'Ummah on the point that Kafirs are under the commandment of Iman.

The explicit view of Imam Malik (C/2b) is that they (disbelievers) are addressed to fast, to pray, to pay Zakat and to follow other Islamic Laws. Muhammad Ibn Khuwayns Mandad (on the contrary) holds that they (Kafirs) are not under the commandment of any Islamic Law.

The proof of what we say is the expression of Allah: "What hath brought you to this burning? They will answer; we were not of those who prayed, nor did we feed the wretched."

Allah, the Exalted has thereby informed that the punishment is to be inflicted on them (the disbelievers) for disregarding Iman (belief), Sadakah (poor tax) and Salat (prayer).

SECTION 7: THE COMMANDMENT OF THE HOLY PROPHET(May peace be upon him) OR ('AMR AL-NABI).

When a companion of the Holy Prophet says that the Holy Prophet (may peace be upon him) ordered us to do so and prohibited us from a certain action, it is to be applied to najib (obligatory).

(20) Al-Qur'an, 74: 42-43
It is said that Abu Bakr ibn Dawud does not apply the same to \textit{wujub} (obligatory) unless of the Messenger of Allah (may peace be upon him) is reported to have made it \textit{wujub}.

What Abu Bakr holds is not correct, since there are many lexicographical methods to know the commandment. We mostly argue and distinguish between imperatives and other moods through the lexicographical expression of 'Imrāyla'ayā and al-Nabīghah, but it is better and more apt to argue with the expression of Abu Bakr and 'Umar (may Allah be pleased with them) as they were most eloquent Arabs, and also because one achieves faith and excellence by following them.

\textbf{C H A P T E R - I I I}

\textbf{The Objects of Prohibition}

The confirmed views of the \textit{Ahl al-Sunnah} is that an order of doing something means, prohibition of its opposite and prohibition of something means doing of its opposite.

Prohibition (\textit{Nahy}) is of two kinds:—

(i) prohibition in so far as the object is disliked or \textit{Nahy 'ala vajh al-Karaha}.
(ii) prohibition in so far as the object is unlawful or Nahy 'ala wajh al-Tahrin.

Whenever Nahy occurs, it is to be applied to Tahrin (voide) except when prohibition is accompanied by an indication it would turn to karahiyya (dislike).

When prohibition, Nahy is there it indicates a state of corruption in the forbidden object.

This is what has been said by the majority of the Jurists from among our authorities and others. Qadi Abu Bark, however, says that it does not indicate the state of corruption.

The proof of what we say is the agreement of the Ummah, the companions and their followers on the fact that the prohibition (Nahy in the qur'an and the Sunnah alone indicate the voidness of the prohibited contract. For example, they agree on the voidness of the contract of usury (Ribā) owing to the injunction of Allah, "And give up what remaineth (21) (due to you) from usury". And the prohibition (M/4a) of the Holy Prophet (may peace be upon him) from selling gold in exchange of gold at an enhanced rate. Again Ibn 'Umar declares it unlawful to marry the polytheist women and believers in its voidness because of the injunction of Allah, "Wed not idolatress" (C/3a) and a number of other instances which cannot be surrounded here.

(21) Ibid., 2: 276; (22) Mishkat al-Masabih, Delhi, 1932, p. 245; (23) Al-Qur'ān.
CHAPTER IV

ON GENERAL SENSE OR AL-’UMUM

SECTION I: WORDS OF THE GENERAL SENSE OR ALFAZ AL-’UMUM.

We have mentioned that the word having more than one meaning which is explicit in a certain meaning, is of two kinds:

1) IMPERATIVES, Awpim; and

2) GENERAL SENSE, ’umum.

We have already discussed Imperatives (Awamir).

Here the discourse is on words of general-sense which has expressions:

i. Plural words (Lafz al-Jam')

Like the words, al-Muslimun (the faithfuls), al-Insanun (the believers), al-Abrar (the pious) and al-Fajjar (the profligate).

ii. Genus words (Alfaq al-jins).

Like the words al-Naywan (the animal), and al-‘ibl (the Camel) etc.

iii. Negative words (Alfaq al-Nahy).

Like the expression,  لا جاءني (No one came to me).
iv. Equivocal words (Alfax al-Mubhamah).
Like the words ḥa (he, who) for the rational, b (that which) for the irrational, and ḍ (whichever) for both, ḏ (when) for time and ṣ (where) for space.

v. Common Noun (Singular), when preceded by definite article (Al-Iṣm al-Mufrad bi'l-Alif Lam).

Like our expression, al-Rajul (the man), al-Insan (the human being) and al-Mushrik (the polythiest).

whenever this form (Iṣm al-Mufrad) occurs, it aims at two things:

(1) It may mean only one with indication to specify it.
(2) It may mean the whole of the genus, when there occurs no indication.

The proof of this viewpoint is the admitted fact that these (Alfax al-Mufrad bi'l-Alif Lam) are definite (Ma'rifah) either by "determination" (al) or by "encompassing the genus" (الاجتماع المقصود).

In the absence of "determination" ('ahd), it will be applied to encompassing the genus, otherwise it will be regarded as indefinite (Nakirah).

(vi) Relative Words (Alfax al'Iḍafah).
Like the expression of the Holy Prophet : نسبي: "Zahat falls on pasturing sheeps and goats".

SECTION, 2: RULE OF THE WORDS OF THE GENERAL SENSE.

After establishing this whenever a certain word of general sense as mentioned above occurs it will be applied to its general sense except when an indication particularises its meaning. It would then mean the same thing which is indicated.

Qadi Abu Bakr holds that the word would remain confined to its meaning and would not be applied to its general or particular sense till the actual meaning is indicated.

Abu al-Hasan ibn al-Mu'farab says that it would be applied to the minimum of what is understood by these (general) words.

The proof of our viewpoint is the same as already discussed (C/4a) viz words of General Sense ('Am words) become definite (Naw'arifah) when they encompass the genus, and distinguish the meanings which belong to such words from those which do not belong to them. If the whole genus is not meant then the words undoubtedly remain indefinite (Naw'Kirab) and would not distinguish between the meaning which belong to them from those which do not belong to them. On this very basis we say that when a general word is indefinite it does not encompass the whole genus; had it encompassed the whole genus; it would be definite (Naw'tifah).
SECTION 3: PARTICULARIZATION (TAKHSIS) OF WORDS OF GENERAL SENSE (‘AMM).

When (M/4b) there is an indication of particularizing the words of general sense, the general word will remain (after particularization) in the same state as if it was not particularized. It will also be used as an evidence as if it were not particularized in any respect.

For example Allah, the Exalted, says, "slay the idolaters". The word لجی (slay) demands killing of every polytheist, but it has been particularized by the prohibition of killing those اهل الکتاب (the people of the Book), who have paid the poll tax (Jizyah), since the verse is an evidence for the obligations of killing the polytheists excepting those who have been excluded by the said particularisation.

Similarly, if another specification (of a general word) occurs, the rest of the General Word (lafz al-‘amm) will appertain all its meanings which it indicated before specification.

It is permissible that particularization and explanation may occur along with the general word. It is further permissible that the action on the particularised order may be delayed. If, however, the time of action is specified, the delay will not be permitted.
SECTION 4: THE MINIMUM NUMBER OF THE PLURAL (AL-FAR \- \- AL-JAM) IS TWO.

According to a group of Malikite scholars the minimum number of the plural is 'two'.

Qadi Ibn al-Tayyib states that this is the view of Malik. Some of our authorities and the Shafi'ites, however, hold that the minimum number of plural is 'three'.

The proof of what we have held is the expression of Allah:

"... دارُ و سبلان البحكان في الحرث فإذ علّقت فيه فلاماقم وانا لكم كاهدين...

"and David and Solomon when they exercised their judgment concerning the crop when the sheep of people strayed therein and we were witness to their judgement" (C/4b).

and his another expression,

"Go then both of you, with our signs, we are with you and we hear".

It is narrated that this view (i.e. minimum number of plural is two) is also held by Khalil and Sibwayh. They (both) received the following verse (of

Himyan ibn Quhafah) in their support:

"و هم منا فنا من بني مدين - خذرا ما كن كلا طورا السجن

'The two deserts were waste and barren; their backs were like the backs of shields.'

(26) Ibid, 21:70.
(27) Ibid, 26:10.
SECTION 5: PLURAL WORDS.

Whenever a masculine plural occurs it does not include the feminine group except in the case of an indication, since each group (masculine and feminine) has a particular word specified by the language. Allah says:

"Surely, men who submit themselves to God and women who submit themselves to Him and believing men and believing women."

Some of the linguists hold that the way of al-Jam' al-Salin indicates five objects:

(i) Tadhkir (masculine),
(ii) Salamat (freedom from defect),
(iii) Ra' (nominative case),
(vi) Jam' (plurality) and
(v) Aql (rationality).

Thus it is not possible to apply it (i.e. wa al-Jam' al-Salin) to a feminin (mu'a'mnath) except by an indication. Similarly it does not apply to what is rational, or irrational except by an indication.

SECTION 6: APPLICATION OF WORDS.

This having been established, it is sometimes found that statement is primarily general (A'am) and is subsequently particular (Khass). In the same way that which may appear particular, in the beginning,
may turn out 'general' subsequently. Thus a word will necessarily be applied to its appropriate meaning without considering anything else. Take for example the expression of Allah, "And the divorced women shall wait concerning themselves for three menses". This expression is general ('Amm) to every divorced women who has completed three menses (Quru') whether she has been divorced with a *Raji' Talaq* (Revocable Divorce) or *Ba'in Talaq* (Irrevocable Divorce). Afterwards, Allah says, "And their (husbands) have (M/5a) the greater right to take them back within the period".

This injunction is particular (*Khass*) for the woman who is divorced with a *raji' Talaq*.

As for the statement which is primarily general ('Amm) and subsequently particular (*Khass*), the example is the expression of Allah, "O, Prophet, when you divorce (your) women, divorce them for prescribed period".

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(31) *Ibid.*;

SECTION. 7 : VARIATION OF PARTICULAR (KHASS) AND GENERAL ('AMM) WORDS.

When two words khass and 'amm vary, the 'amm will be based on 'amm (the general sense) and khass will be based on khass (the particular sense), — no matter if it precedes or comes afterwards.

Imam Abu Hanifah says when ('amm general) is preceded it abrogates the preceding khass (particular). For instance it has been narrated that the Holy prophet (may peace be upon him) said, "There is no prayer after the 'asr' prayer till the sun sets. This Hadith nullifies all prayers after the 'asr'."

In another Hadith the prophet said, "Whosoever falls asleep without saying his prayer or forgets his prayer, he should perform his prayer when he remembers it." Now, this particular expression obviously excludes the forgotten prayer from the expression that forbids all sorts of prayers after the 'asr'; no matter whether the particular expression (al-khass) was given out primarily or subsequently.

Abu Hanifah holds that: (i) when the particular (khass) precedes (in time), (C/la) it is abrogated by the general ('amm) — which is expressed afterwards. (ii) If the general ('amm) is agreed upon and the particular (khass) is controversial, the general will be preferred to the particular.

(34) Ibid.
The proof of what we have said is the fact that the particular (Khasa) contains the decision in a way that allows no interpretation, whereas the general ('Amm) gives a decision which admits interpretation. Hence, the particular (Khasa) is preferable.

SECTION 6: CONTRARIETY BETWEEN TWO WORDS.

(1) When two words vary in their meanings so much that it is not possible to harmonise them, and their dates (of expression) are known, the preceding one will be abrogated by the following one.

(2) If their dates (of expression) are, however not known then the reason for preferring one over the other will have to be examined to fix the preference.

(3) If it is possible to do so (to find same reason to prefer), the preferred one will be taken.

(4) If it appear difficult to prefer one to the other, neither of the two will be considered, and a probe will be made into the rest of the evidence provided by the Shari'ah to find an indication to considered in that case, since reason ('aql) cannot decided the lawfulness or unlawfulness (in its own discretion).

(5) If, however, it becomes difficult to find an indication in the Shari'ah evidence, the investigator will have the choice of acting on either of the two—the prohibiting one or the permitting one, as he wishes.
SECTION 9: PARTICULARIZATION (TALÍHIS) OF THE GENERAL ('AMM) SENSE OF THE QUR'ÁN WITH KHABAR AL-WAHID

(1) The general sense of the Qur'án can be particularized by 'khabar al-wahid' (a hadith transmitted by one rawi). This has been held by the majority of the jurists.

(2) The general sense of the sunnah can also be particularized by the Qur'án, (Qiysh).

(3) The general sense of the Qur'án and Khabr al-Abad or those hadith which have been reported by a single Sahabi can be particularized by explicit and implicit reasoning (Qiyas al-Jali wa al-Khafi).

This (particularization) in fact is to harmonize the two evidences. When harmonization of the two evidence is possible it is better to abandon one and take the other, since the evidence are taken into consideration for giving decisions. It is, therefore, not legal to abandon a single evidence as long as it is possible to act upon it.

SECTION 10: PARTICULARIZATION THROUGH THE ACTIONS (AF'AL) AND APPROVALS (IQRA') OF THE HOLY PROPHET.

(1) Particularization can be caused by certain other means i.e. by the actions (al-Af'āl) of the prophet (may peace be upon him) and by his approval of a decision (al-Iqra' 'ala al-Hukm) and so on.
(2) Particularization will not be caused by the view of the narrator (madhhab al-Rawi) like the narration of Ibn 'Umar concerning the hadith in which the Prophet said, "The buyer and the purchaser have the right of choice so long they have not parted". (3/5b). Ibn 'Umar said, "parting in bodies" is meant.

Some of our authorities and Shafi'ites have, however held that this can cause particularization. Malik does not agree with this and holds that this will not cause particularization. His view is correct, since the decisions are to be derived only from 'the authority of the Sharī' (Sahih al-sharī', i.e. Holy Prophet) and it is not legal to abandon the view of the authority of the sharī' for the sake of a view uttered by somebody else.

SECTION. II : CLASSIFICATION OF THE WORDS OF THE GENERAL (' Allison) SENSE ON THE BASIS OF CAUSE (Sahab).

This discourse relates to the general ('Allon) word that occurs in the beginning (Ibtida').

As for that which precedes a cause (Sahab), it is of two kinds:

(i) Independent by itself, Mustaqill binafsihi and,
(ii) Not independent by itself, Ghayr mustaqill binafsihi.

(35) Mishkat al-Masshib, Delhi, 1323 A.H., p. 244;
As for Mustaqqill bi Nafsihi, it is like that hadith which has been narrated from the Holy Prophet (may peace be upon him) that when he was asked concerning the bir buda'ah, he said, "The water is pure, nothing pollutes it." (36)

Now, concerning the above mentioned words of the general sense (‘Amma lafz), our authorities (Jurists) have difference of opinion. It has been narrated from Malik that this kind of word is confined to its cause and is not applicable to its general sense. It has also been narrated from him that such a word will be applied to its general sense and will not be confined to its cause. This latter view has been held by Qadi Isma'il and most of our authorities. The proof of this is the fact that decisions (Ahkam) are based on the word of the authority of the shari'a (the prophet) and not on "cause", since the word of the authority of the shari'a indicates the decision while the cause (by itself does not) indicates a decision. It is, therefore, necessary to consider only that which concerns the decision and not the "cause".

As for Shayar mustaqqil bi nafsihi, it is like the Hadith in which the prophet (may peace be upon him) was enquired about the sale of rutab (juicy or green date) in exchange of tamar (dry-date). The prophet thereupon asked, "Does rutab lose its weight when it is dried?" They said, 'Yes'. He said, "Then do not" (sell rutab in exchange of tamar). By this answer it is established

(36) Ibid., p. 55;
(37) Ibid., p. 245;
that "cause" has been taken into account in determining "particularization" and "generalisation" and we do not find disagreement on this issue.

CHAPTER V

THE EXEMPTION OR AL-ISTITHNA‘

SECTION 1: KINDS OF EXEMPTION (AL-ISTITHNA‘).

Among the things which are related to particularization (al-Takhsis), Istithna‘ or (exemption finds a place. This is of two kinds:

(1) Exemption by which particularization (takhsis) is affected, and

(2) Exemption by which particularization is not affected.

"Exemption by which particularization (takhsis) is affected" is again of two types:

(i) Istithna‘ min al-ginis or Exemption from the genus and,
(ii) Istithna‘ min al-jumlih or Exemption from the sentence.

The example of Istithna‘ min al-ginis is like our expression, "I saw the people except Zaid" and that of Istithna‘ min al-Jumlih is, "I saw Zaid
except his hand.

As for Istithma' min ghayr al-jins it does not affect particularization (takhsis), as nothing can be excluded after having been comprehended by the sentence. But, in my opinion it is possible to particularize a part thereof. Muhammad Ibn Khuyaz Manadad, however, says that it is not possible. Our argument is the expression of Allah: "It does not become a believer to kill a believer unless it be by mistake." For mistake (Khaṭa') is something about which (M/6a) it cannot be said that the believer will commit it or that he will not commit it, as it does not come under taklif (C/6b) (obligation of doing or not doing).

Makhīhāb says:

Nūn fīhā mīlātanā ilāmā aqīma fi al-wā'itha lam aqīma min al-jin.

الآلاء وآلاء لآلاء لا إيطام ظن الله

In the first example, Zaid, an individual, has been exempted from the people (al-Mus), the genus. In the second sentence, istitma' al-nafs; word "his hand (Yadahū)" has been exempted from the sentence līrayhā, which expressed, "I saw Zaid", except his hand (Yadahū).

Al-qur'ān, 4: 93.
"I stood amidst the ruins (of the dwellings of my beloved) for a while asking them (about the inmates). They were obviously unable to utter a reply. Then there was nobody in the dwelling except the tent peg, the canal, the tank which I could find at the dark and stiff ground."

SECTION 3: ADJOINING EXCEPTION (ISTITHNA' AL-MUTTASIL.)

Istithna' muttasil is a "function of speech (in which) a part depends upon another part". It must be referred back to the whole speech in the opinion of our authorities.

Qadi abu Bark prefers in this respect to keep quiet. Later Hanafites, on the other hand, say that it will be referred to the nearest part of the speech.

The following verse is cited by way of example:

"Flog them with eighty stripes, and never admit their evidence (thereafter) and it is they who are evil-doers."

The proof of this view is the fact that the portion which is interdependent (or the portion some of which depends upon some other) is treated as if the whole of it has been mentioned under one name. According to them (the Jurists) there being no difference between the saying "you beat Zaid and 'Amr and Khalid."" and the saying, "you beat all the three."

when the matter stands like this and the 
istithna' (exception) occurs after a particular speech 
in which some part depends upon some other, we (the 
Jurists) unanimously hold that the exemption i.e. istithna' 
refers to the whole speech.

CHAPTER- XVI

THE FUNCTION OF MUTALAQ (ABSOLUTE) AND MUQYYI'D (CONDITIONED)

To the khass (particular) and 'Amm (general) 
are also related the mutlaq (absolute) and muqyyid 
(conditioned). We shall now, by will of Allah, explain 
their effects. The muqyyid is considered as by the following 
their conditions:

(1) Al-ghayah (The End),
(11) Al-gharat (The stipulation) and
(iii) Al-gifat, (The Attribute).

As for al-ghayah or the End (C/7a) you say (for 
instance): "Beat Zaid continuously till he resorts to 
the truth"; "Now, had the beating not been conditioned 
with "resorting to the truth" it would have meant "beating 
without end."
The case of al-shart or the stipulation is as you say; "whoeverser from the people comes to you, give him a dirham". The order is conditioned with a shart (stipulation) of "coming".

The case of the gift or the attribute is as you say, "Give the believing Quraishites". The Quraishites have been conditioned with the attribute of "believing". Had it not been so, the word would have meant every Quraishite.

Having established this, whenever Mutlaq (the absolute) and Nuqayyad (conditioned) words occur, they will be either of one genus or of two genera.

(1) In case they belong to two genera then there is no disagreement in the matter that Mutlaq (absolute) will be applied to Nuqayyad (conditioned). For instance the condition of (dispensing) justice in case of giving evidence does not make the condition of 'faith' or Imam.

(2) If they belong to one and the same genus and are related to two different causes, then Mutlaq according to the majority of our authorities, will not be applied to Nuqayyad except when it is demanded by an indication.

Its examples are the cases of 'Ragabah' (M/Ωb) in case of murder, and Ḱabir in case of divorce.
some of our authorities and the followers of al-Shafi'i, however, held that the Mutlaq will be applied to Muqayyid in so far as lexicography indicates.

The proof of what we have said is the fact that a Mutlaq, Hukm (an absolute decision) is not a Muqayyid, or conditioned one. So the application of the 'Mutlaq' requires the negation of any condition (taqyid) just as the Muqayyid necessitates the negation of Itlaq (the state of absolute).

Thus, it is necessary to declare Mutlaq a Muqayyid, because the Mutlaq belongs to the Muqayyid, similarly an Muqayyid will be considered a Mutlaq because they belong to the same jenus.

(3) But when the Mutlaq and Muqayyid are related to a single cause such as Zakat which is conditioned (Muqayyid) with Fasting and occurs as absolute (Mutlaq) in different places then, according to the majority of our authorities, it is not necessary to apply Mutlaq to Muqayyid.

On the contrary it is considered necessary by some of our authorities. This (issue) will be elaborately discussed in its own place, if Allah, the Exalted, wills so.
CHAPTER VII

ON THE FUNCTION OF MUJMAL (CONCISE)

we have already mentioned that al-Haqqah is 
(real word) of two kinds:

(i) Mufassal or explained

(ii) Mujmal or unexplained (Concise)

The discourse on the Mufassal (Explained) has already been recorded. Here the discussion is on Mujmal, "Precisely the mujmal is," a word which does not make its intention well understood and needs something else for clear diction.

For instance Allah's expression: "...and pay the due thereof upon the harvest (13)." Here the word Haqq itself does not clarify its sense and needs an explanation to clarify its genre and value. So whenever such a case occurs, it is necessary to believe it as a obligation (wajib) till it is explained hence necessary to be followed.

(42) Ibid, 6:142.
our authorities have, however, differed in the (meanings of the following) expression of Allah: 

(43) "And pay the Zakat"; (44) "Fasting is prescribed for you."

(45) "And pilgrimage to the House is duty unto Allah for mankind", and

(46) "Allah permiteth trading and forbiddeth usury."

Some of our authorities are of the opinion that these above (verses) are Mūjmal (concise), Abu Muhammad ibn Nasr holds all the above verses are Mūjmal except the verse: 

which is 'āmm (general).

Ibn Khūwayz Mandād says that all the above verses are 'āmm (general) and it is necessary to take them in their general meanings except that which is particularized by an indication. The last is the correct view.

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(43) Ibid., 2: 110.
(44) Ibid., 2: 123.
(45) Ibid., 3: 97.
(46) Ibid., 2: 275.
The proof of this view is the fact that each one of these mujmal words in the lexicon indicates a particular sense: galát, for example, means prayer, whenever this word occurs it will be followed by doing that which is called: "prayer" except when it is particularly used for a specified prayer having particular actions of kneeling down and prostrating oneself and so on. Fasting likewise means "to abstain", but the Sharî'ah particularly uses it for an abstention from specified objects in a specified time. Similarly 'Zakât' means (N/78) to "increase" (wealth), and 'Hajj' to the House of Allah in a specified "way". Hence these expressions are like Allah's expression (48)

الشركاء الأربعة "slay the idolaters," which indicates killing of every polytheist, but the Sharî'ah has specified a few kinds of polytheists.

CHAPTER VIII

WORDS OF COMMON USAGE OR AL-'URF

SECTION I: MEANING OF AL-'URF

All that is related to this chapter (the Book) is the discussion of commonly used proper nouns (al-

(48) Al-Qur'an, 9: 5.
"Asma' al-'Urfiyyah). Our expression 'Urfiyyah' means that a word is coined in the Arabic usage for a certain kind of article and then it is predominantly used for a particular type of that very kind of article.

Take for instance the word 'Dabbah' which means all that moves. Then it was predominantly used for a particular kind of animal excluding everything else. Similarly our expression 'Salat' is a noun used in the lexicon for every kind of prayer but now it is predominantly used for a particular kind of prayer performed in a particular manner.

SECTION 2: KINDS OF AL-'URF OR THE COMMON USAGE.

Having established the above the common usage (al-'Urf) is understood in three ways.

Firstly by way of al-Lughah or the Lexicon for instance we say 'Dabbah' (animal).

Secondly by way of the Shariah/Law as we say Salat (Prayer), Sawm (Fasting) and Hajj (pilgrimage).

Thirdly by way of Sunnah or the profession like the example that Ahl al-Kitab call 'diwan' (register) as 'zamam', while camel-
use the same word (Zaman) to mean al-Khitan (a nose-rein of a camel).

When such commonly known words occur, they will convey the sense in which they are commonly used.
B. AL-SUNNAH OR MODEL CONDUCT OF THE HOLY PROPHET

CHAPTER I

ON THE FUNCTION OF THE PROPHETIC ACTIONS

SECTION I : KINDS OF AL-SUNNAH.

The sunnah reported from the prophet (may peace be upon him) falls into three kinds:

(i) AQWAH OR EXPRESSIONS,

(ii) AF'AL OR ACTIONS,

(iii) IQRAR OR APPROVAL.

The discussion on AQWAH or Expressions has already been completed. Here the discussion on AF'AL or "actions" begins. It is divided into two parts:

(1) Firstly the acts done by the prophet to explain the mujmal (concise or unequivocal) expressions. Its function is therefore that of mujmal in cases of wujub (obligation) nudub (recommended) and ibahah (permission);

(2) Secondly the acts done by the prophet for the first time which again are of two kinds:

(a) acts done by way of worship such as prayer, fasting, etc.
Our 'Ulema have disagreed concerning its effect.

Ibn al-Qassari and Al-Abhari and others consider the
action as Wajib, (obligatory) while Ibn al-Hajib holds
it Nudub (Recommended) Qadi Abu Bakr says that it in-
dicates waqf i.e. to consider the circumstances and evidence
to decide in favour of one or the other. The first opinion
is correct, as evidenced by the qur'anic verse: "And
follow him that you may be rightly guided." "The imperative
need (al'amr) indicates the obligation. Another proof
is also Allah's expression", "Go let those who go against
His Command."

The imperative (al-amr) is in fact used for
action (M/7b) and expression. This is based on the
consensus of opinion (of the Companions), as they referred
to the expression of 'A'ishah (Allah) be pleased with her
when they disagreed concerning the obligation of ghusl
(bath) after sexual intercourse without ejaculation that
"the Messenger of Allah and I did it and we took a bath."

(49) al-Abhari: Muhammad Ibn 'Abd Allah Ibn Muhammad
Ibn 'Ali Abu Bakr al-Tasimi al-Abhari an Malikite
authority of Iraq, settled in Baghdad and wrote many
books on Malikite school of law.

(50) Al-qur'an, 7: 155; والليم قرى لملكي محمد علي
(51) Ibid, 24: 64, ظلحا لفؤاد بن رأب
(52) Mshkat al-Nasabih, Delhi, 1310 A.H. P. 41;
ذا فعل عم ...
It was accepted by all Sahabah and (thereupon) taking bāsh (after this action) was considered as obligatory (wajib).

(b) Those actions which are not characterised as devotional such as eating, drinking, and clothing (of the Holy Prophet), and it indicates Sahabah or permission.

Some of our authorities have inclined to hold that these (actions) indicate recommendation (nudub), such as acting with right hand and starting to put on shoes with the right foot. But other (Jurists) declare that this is not correct, because recommendation here is not at all concerned with the action itself. It is only concerned with the description of the action, which is a form of worship.

SECTION 2: THE PROPHETIC APPROVAL (Iqrā')

As for the approval (al-Iqrā') it means that “an action was done in the presence of the prophet (may peace be upon him) which he did not refute”. This undoubtedly is the proof of validity (lawfulness) of the action, since the prophet would not approve something unlawful.

This is for example, like the incident recorded from the prophet that he finished the salat by uttering ' salaam alaikum' and (in the course of prayer) by a companion known as 'Abdul
yadayn' "O the Messenger of Allah! Have you forgotten
or the palat has been shortened?" The prophet did not
forbid him from speaking during the course of the
prayer just to let the Imam understand his mistake.
This indicates the validity and lawfulness of speaking
in the course of the prayer (when it is needed).

SECTION, 3 : THE AKHBAR OR STATEMENTS OF THE PROPHET.

The khabar or statement is "a reported
description", which is of two kinds:
(i) Truth (siddiq), and (ii) Falshood (kidhb).

'Truth' is a reported description which
agrees with its reality (actual wording of the statement).

'Falshood' is a reported description which
does not agree with its reality (actual wording of the
statement).

Having established the above, a Khabar is
again of two types:

(1) MUTAWATIR or continuous transmission unani-
mously reported by the narrators,

(2) 'ANAD or transmission reported by a single
narrator.

Now, 'Tawatur' is that "which is well-known in
the same way as it has been transmitted", such as the

(53) Ibid., p. 92.
unanimously reported information about the existence of Mecca, Khurasan, Egypt and that which has been stated about Muhammad (peace be upon him) and the revelation of the Qur'an.

The Khabar Wahid is that "which falls short of 'tawatur' or continuity." It is not based on mere knowledge and is more based on guess, its listeners guess sound of the words that have been reported. So far as the authenticity is concerned the listeners is open to mistake and omission like a witness. Ibn Khuways Mindad, however, holds that knowledge is attained by Khabar wahid. But the first view is held by most Jurists.

SECTION 4: MUSNAD Khabar.

Having established this, a Khabar is of two kinds:— (1) Musnad and (ii) Mursal.

(1) MUSNAD is "a Khabar in the case of the chain of the narrator reaches the prophet (continuously)."
(2) MURSAL is "a Khabar in the case of which the chain of narrator does not reach the prophet (continuously)."

It is obligatory to act upon it (musnad hadith) Shari'ah (the law) has enforced it.

A group of people of innovation (Ahl al-Bid') has declined to act upon it.
The proof of what we have said is the fact that rationally it is not absurd to act in accordance with the statement of one whom we predominantly consider \((\text{M/8a})\) to be reliable and trustworthy even though we have no knowledge of his truthfulness. This is just as we act in accordance with the evidence of the two witnesses whom we predominantly consider reliable, although we have no knowledge of their truthfulness. It may be that a number of witnesses go back on their evidence after it has been accepted and an order has been issued accordingly.

This is obviously indicated by the fact that the Prophet used to send his governors to different parts of the country, who taught the people the religious affairs and the Divine speech \((\text{the Qur'an})\) and took alms from them. This is also indicated by the consensus of the Sahabah in enforcing \(\text{actions treating it as obligatory on the basis of an individual statement i.e., Akhbar Abud such as:}\)

(i) Umar withdrew his order in complying with the statement of 'Abd al-Rahman ibn Awf, and accepted the \(jizya\) \((\text{poll-tax})\) from the Majus in accordance with his \((\text{54})\) statement.

\(\text{54}\) \(\text{Ibid., } \text{Rah al-jizyah} \text{ p. 353. The words of hadith read as follow:}\)

\(\text{وَلَمْ يَكُنْ مُضَاعِفَةُ الْجَزَاءِ مِنَ الْمُجَسَّمِ رَبِّي عَلَى رَبِّي عَلَى رَبِّي} \)

\(\text{انْ سَوْلُ اللَّهِ مِنَ اللَّهِ وَسَلَّمْ اَطْهَرَهَا مِنَ الْمُجَسَّمِ }\)
Similarly the ṣahabah turned to the statement of 'Ayyishah concerning the obligation of taking bath after sexual intercourse without ejaculation.

(iii) Uthman accepted the statement of al-Faržah bint Ḥalik concerning 'the dwelling' (i.e. wife's performing the iddāt in the house of the husband after his death), and so on; there are innumerable similar cases that cannot be mentioned here.

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(55) \textit{Ibid.}, p. 41;

(56) \textit{Ibid.}, (Bab al-Iddah), p. 289. This hadith has been narrated by Zināt in these words:

\begin{quote}
إذا جاء هذا الخلاف وجه العقل فعلته انا ورسول الله صلى الله عليه وسلم معاذ،
\end{quote}
和完善法律法规

Cairo MS, ṣuṣūl al-Fiqh, 170 (5768).
As for Mursal, it is a statement the 'Isnad' of which are cut asunder and disturbed by only mentioning some narrators.

There is no disagreement on the point that is not obligatory to act according to the (Mursal) (disconnected report) when its narrator Mursal is not cautious, in case its narrator drops none ('Isnad) except (C/7b) reliable narrators like Ibrahim al-Makhafi and Ibn al-Musayyib, it is obligatory to act according to it, as is held by Imam Malik and Abu Hanifah. Imam Shafi'i on the contrary holds that except in the case of Ibn al-Musayyib especially, it is not obligatory to act according to the disconnected (Mursal) hadith, as I examined the 'Mursal' of Ibn al-Musayyib and found them correct in 'Isnad'.

(i) The proof of our view is the agreement of the (people) of the first century on the acceptance of a Mursal (disconnected) hadith. Had it not been so, the hadith would have been declared null and void and the Isra would have been considered harmful in all its cases. This has reached us from Abu Hurayrah, Ibn al-Abbas, Al-Barra' ibn 'Azib, Iba' Umar ibn al-Khattab and other Sahabah, and most of the Tabi'in (those who came after them) and their successors.
Muhammad ibn Jarir al-Tabari says that to refuse mursal hadith is an innovation which prevailed after two centuries of the Hijrah.

There is again no difference between the mursal of Sa‘id ibn al-Musayyib and that of others when the mursal is by common consent, a reliable one. For if Imam Shafi‘i accepted the mursal of Sa‘id, he did so because its isnad were found continuous (mutassil); he therefore, did not accept the mursal, (of Sa‘id without isnad), rather he accepted the mursal (connected hadith). It carries, therefore, no meaning to say that he accepted the mursal of Sa‘id because he found their full isnad. The same is the decision of others.

Another proof that attests acting according to the mursal (disconnected hadith) is our agreement on the fact that Ta‘dil (to declare a narrator trustworthy) is established by the announcement among the people of knowledge that ‘اللد’ (the particular person is trustworthy), without explaining the meaning of ‘الدل’.

So, when it is known that a particular rawi (narrator) drops (uses i'tidal) only a reliable rawi by way of habit or by his own information, his dropping (this rawi) is equivalent to his saying, Ḥā'ī̇s Al-ṣulṭān: "Such and such person has narrated to me this hadith and he is trustworthy," (M/Sb).

We (jurists) are unanimous on the point that if a particular rawi declares this, it is obligatory to follow him in his "ta'dil". Similar is the case when he (rawi) uses i'tidal (i.e. his mursal will obligatorily be followed).

SECTION. 6: THE STATEMENT (AL-KHABAR) WHOSE NARRATOR DOES NOT ACT UPON IT.

When a narrator (rawi) narrates a statement (khabar) but does not act upon it, his forsaking the same will not nullify the obligation of acting upon it. This (view) is held by most of our authorities but some of our authorities and the followers of Imam Abu Hanifah, hold that it is apparently absurd to act according to such statement.

The proof of what we say is the fact that when the khabar (narration) of the Holy Prophet, (may peace be upon him) is reported it is binding upon his companions to follow it except when there is a proof which (C/Sa)
indicates that the khabar (statement) is abrogated. When such narration is left out by somebody it would not nullify the obligation of action for those who receive it. That is why we argue with the khabar of Ibn ‘Abbas in the case of Barirah, who was bought and then set free. She was under a slave (by marriage) and was given choice (after she was set free), whereas, Ibn ‘Abbas considered the purchase of a slave girl (58) amounting to her divorce as well.

SECTION 7: THE STATEMENT (KHABAR) WHOSE NARRATOR REPUDIATES IT.

When a rawi narrates a khabar and the man from whom it has been narrated (al-marwi ‘anhu) repudiates it, the khabar has two aspects. Either the person on whose authority the narration has been related will stop to do anything according to it and doubt (it); or he will assert that he did not narrate it. In the former case, all our authorities as well as the Hanifite and Shafite consider it obligatory to act according to such khabar.

Al-Markhi, however, holds that it is not obligatory to act according to it.

The proof of what we say is the fact that his forgetting the khabar is no more than his death. Now, we

(58) Mishkat al-Masabih, Delhi, 1932, p. 276;
all agree that the death of the narrator does not repudiate the necessary function of the ḥabar. Hence the same is the effect of forgetfulness.

In the latter case, the narrator either means, that the ḥabar is related to him but that he did not narrated it—a case which does not repudiate the obligation of acting according to it in so far as the marāj 'anhu (the authority from whom it has been narrated) is concerned. Or he means that he did not narrate it to anyone a case which cannot at all be argued with. For in case the narrator (i.e. al-marāj 'anhu) is a liar, his ḥabar is absurd per se, and in case he is truthful, the ḥabar again is absurd, as according to him he has not narrated it.

SECTION, 8 : ADDED STATEMENT (KHABAR) OF AN UPRIGHT AND STEADY NARRATOR.

The narration (riwayat) of a statement (khabar) including something in addition (to what has been narrated by others) recorded by a narrator who is upright, steady and well known for memory and perfection is to be accepted and acted upon, contrary to some Muhaddithūn who hold that it is not to be accepted in general. Some jurists, however, are of the opinion that the additional words will be accepted from the just and upright one.
The reason of our viewpoint is that if two persons bear witness to the fact that the man is indebted of one thousand while two other witnesses bear without that he is indebted of one thousand five hundred the additional sum will be considered. Similar is the case with the statement (al-khabar). So if the narrator narrated actual khabar only his khabar (statement) is to be accepted, such being the case, when he has narrated a khabar with some addition, it is also to be accepted.

SECTION 9: STATEMENT (KHABAR) REPORTED BY WAY OF PERMISSION.

To act upon the statement transmitted on the basis of permission, is obligatory. This has been held by the majority of the jurists.

The Zahirites hold that to act upon "the permitted statement" is not lawful except when the permission has been given in writing to its narrator that "such and such book or register containing (C/8b) such number of narrations belong to me and that, I am hereby giving the permission of their narration."

The proof of (M/9a) what we say is the fact that whoever writes to someone that "I have narrated the register of al-Huwatta, from so and so (and he names the person) and now you narrate it from me, when you
find it correct, he needs to assert that the book is with him through the transmission of a reliable authority; then he needs to know the book correctly and assert it as well that it is similar to the original one narrated to him by the reliable one. He thus obtains the narration (riwayat) after asserting that it is with him through two ways. But when the narrator says to him (i.e. to his student) orally, "whatever transmission (hadith) narrated by me is sound in your view, you narrate it from me", in this case, one only needs a reliable statement that the book has been narrated (for the student) by the speaker from a particular person. It is therefore proved to be sound with him through one way only.

Now, it is established and confirmed in the first kind that it is sound to give him permission, — a fact necessary for making the narration more genuine.

Here ends the first part which is followed by the second with the Blessings of Allah and His Assistance. Exalted is He.

(59) This paragraph is only written in the manuscript of Mederid and does not find in Cairo script. The author in the beginning has divided the Shari'ah law into three kinds or sources: — (i) Asl, (ii) Nqul al-Asl and (iii) Iistishab al-Asl. The first kind or part i.e. Asl does not end here; therefore it seems the mistake of the Katib.
CHAPTER II

ON THE DISCUSSION OF THE ABROGATOR (AL-NASIKH) AND THE ABROGATED (AL-MANSUKH)

SECTION 1: MEANING OF THE ABROGATION (AL-NASIKH)

The abrogation (al-Nasikh) means "cancellation of decision of the previous Shari'ah Law caused by another Shari'ah Law that came afterward, if there was no Shari'ah Law subsequently the first one (decision) would have remained confirmed".

In other words both the abrogator (al-Nasik) and the abrogated (al-Mansukh) must be Shari (religious decisions). As for that original decision which remains in effect and (secondly) that which is repealed after its confirmation and enforcement, are not called abrogation.

SECTION 2: ABROGATION (NASIKH) WITH A STIPULATION

This having been established; whenever a part of sentence is dropped or any of its stipulations is dropped,
the majority of the jurists hold that this is no abrogation (Nasik). On the contrary some people hold that it is abrogation. Similar is the case with addition in the naps (the text). The Hanafites hold that it is abrogation while our authorities and the Shafites say that it is no abrogation. If the Qadi Abu Bakr says that "addition" or "deletion" in a certain form of worship (Ibadah) is in a manner that what is not an established form of worship is made an established form of worship, an independent offering, or what is a shar'i (religious) mood of worship is made an irreligious form of worship, then all this is abrogation. For example, a particular prayer of two rak'ats is increased by two more rak'ats; this is abrogation, since the first two rak'ats are now not (C/9a) a religious prayer. Similarly then an order is given that four rak'at salat is to be offered in two rak'ats only, it is also abrogation, as now the four rak'at salat is no salat.

When the "addition" and "deletion" do not recognize the decision about the increased and the decreased one, it is no abrogation. For example if forty floggings are ordered as hadd for drinking wine and then eighty floggings are ordered in the same case, the increase does not nullify the decreased decision. Therefore if forty floggings are awarded after an order of eighty was issued,
fifty would suffice treating the order of eighty as its basis, which may be completed if it is intended.

whereas he who has been ordered to say four rak'ats-prayer, offers only two rak'ats, his prayer will not suffice unless he completes it with two (more) rak'ats, starting it with the intention of four rak'ats.

Likewise if eighty floggings were ordered as the hadd of wine and then it was decreased, this order would not abrogate the whole hadd; it would only abrogate forty floggings.

SECTION 3: EFFECT OF ABROGATION IN THE STATEMENTS (AL-AHKHABAR).

The majority of the jurists are of the opinion that abrogation (nasikh) does not affect statements (ahkhar). But a group (of jurists) says that abrogation does affect the statements. The fact is that a statement (al-habar) itself is not abrogated surely not a case of abrogation but of falsehood. But if a decision is asserted through a statement, feasibility of "abrogation" may be caused.

SECTION 4: ABROGATION OF A MODE OF WORSHIP BY A SIMILAR WORSHIP.

A mode of worship can be abrogated by a similar mode of worship, no matter whether the latter is lighter or heavier. This is held by the majority of jurists.
A section of people (among the jurists) forbids the abrogation of a mode of worship by a heavier one. Our view is supported by the fact that the Creator, the Exalted, has made that which is easy as obligatory for mukall formed legally responsible) and has declared all that is difficult for them unlawful. Thus when it is possible to begin with a mode of obedience which is heavier than the original decision then it will be lawful to abrogate their mode of worship by what is not to their liking.

SECTION 5: RECITATION OF A VERSE (AL-TILAWAT) AND ABROGATION (NAṢṢAH).

When a recited verse (al-tilawat) contains a decision urging prohibition (tahrim), obligation (fard), or some other forms of worship and bids us to recite the same, such a verse possesses two decisions:

(1) The mode of worship contained therein, and

(2) The preservation and recitation of the verse necessitated thereby.

This is like a statement (khabar) (C/0b) that contains two decisions.

(1) Fasting (ṣawm) and (ii) Prayer (ṣalat).

When this is established it is lawful either to abrogate the decision and retain the recitation (of the verse) or to abrogate the recitation (of the verse) and retain the decision.
As for the abrogation of the decision with the continuity of the recitation (of the verse), it is like the decision of abrogating choice between fasting and offering *fidyāh* (compensation) for those who can fast; and the abrogation of *wilāt* (wasiyyat) and the abrogation of offering *adān* (food) before conversing with the Prophet, for parents and near relations, although the recitation of all the verses is retained.

As for the continuity of decision (*hukm*) and the abrogation of the recitation (*tilawat*) of the verse, it is exemplified in the case in which the statements (*al-Akhbar*) prevail that the recitation of verse bidding to stone the married-forceners to death (*Ayat al-Rajm*), is abrogated while its decision is retained.

SECTION 6: ABROGATION OF A MODE OF WORSHIP (I' lADHAN) BEFORE ITS ENACTMENT.

Abrogation of a mode of worship is valid before the time of action. This is a view which is agreed upon by the majority of the jurists. Abu Bakr al-Sayrafi and some Hanafites, on the contrary, hold that abrogation of a mode of worship before action is not valid.

The proof of what we say in Allah's commandment to Ibrāhīm to sacrifice his son; then, the commandment was abrogated before its performance. We have already mentioned that abrogation is withdrawal of a decision that was previously asserted by the Shari'ah.

When the time of the worship is over, it is not free (M/10a) from two possibilities — it was done or not done. If it was done it needed no abrogation, because the action that was ordered was already performed. If it was not done, it is also not to be abrogated, because nobody is asked not to do a certain action on a day that passed away. Further an action in the past does not fall under the legal responsibility (al-taklīf). Hence abrogation is only genuine before the time of worship is over.

As for abandoning an obligatory mode like that of 'Ibadat in future, it is no abrogation, since the time that passed belongs to the 'Ibadat. This action in fact is only to render the like of the 'Ibadat absurd.

SECTION 7: ABRIGATION OF A QUR'ĀNIC VERSE BY ANOTHER VERSE OF A STATEMENT (KHABAR) BY ANOTHER STATEMENT.

There is no difference of opinion among the scholars in the validity of abrogating a Qur'ānic verse by another Qur'ānic verse, khabar mutawāt' (a continuous
hadith by another ḥabar mutawatār, and ḥabar wahid
(hadith narrated by one rawi) by another ḥabar wahid.

The majority of jurists are of opinion that
to abrogate a qur'anic verse by ḥabar mutawatār is
lawful, but Imam Shafi'i denies it. They (the jurists)
argue that both the qur'ān and ḥabar muwatta (i.e., a
transmission narrated by a large number of transmitters
whose agreement on falsehood cannot be conceived of)
are religious decision, the genuine of which is sure
and certain; and when it is lawful to abrogate a qur'ānic
verse by another qur'ānic verse, it is also lawful to
abrogate the qur'ānic verse by a ḥabar muwatta.

What explain this argument is the expression of
Allah "that he bequeaths unto parents
and near relatives," which is abrogated by a statement
narrated from (C/10a) the Prophet who said, (Allah, the
Exalted, has given everybody his due right). So the will
is not (restricted) for an heir (only).

SECTION 8: ABROGATION OF THE SUNNAH WITH THE QUR'ĀNIC
VERSE:

To the majority of jurists it is lawful to
abrogate the sunnah with the qur'ānic verse but it has
been denied by Al-Shafi'i.

(61) Al-qur'ān, 2 : 180
(62) Abu Dawud, al-sunan, Kanpur, 1346 A.H., (Kitab al-
wasayn), Vo, II, P.40;

الله تعالى قد أثبت كل ذي حق جزء لا رمية لؤلؤة
They (the jurists) argue with the case of 'salat al-Khawfi' (to perform prayer at the time of fear) that has occurred in the Qur’an after the establishment of this (salat) by Sunnah.

Similarly, facing to Bayt al-Maqdis was abrogated by Allah’s expression, "turn the face towards to the Inviolable place of worship," and Allah’s expression, "send them not back unto the disbelievers", abrogated the decisions of the prophet for returning those Muslims who came to him (from Mecca) to disbelievers.

SECTION 9: ABROGATION OF QUR’ANIC VERSE AND KHABAR MUTAWATAR BY KHABAR AL-WAHID:

Abrogation of the Qur’anic verse and Khabar Mutawatár is lawful. But a group of jurists rejects it.

The argument is apparently the the fact that the people of the Quba turned to the direction of the ka’bah on the information of one man who came from Madinah. They obviously knew that it was in accordance with the faith of the prophet to turn to the Bayt al-Maqdis, but it was not lawful to turn to the

(63) Al-Qur’an, 2 : 150.
(64) Ibid, 60 : 9.
a Qur'anic verse on the strength of a Hadith

Bāyta Al-Madīn after the time of the Messenger came.

This has been agreed upon by the consensus of the opinion.

So far as "reasoning" is concerned it is clearly not lawful to abrogate anything by "reasoning" or al-qiyas.

SECTION. 12: THE PRECEDING SHARI'AH.

A group of our authorities, the Hanafites and the Shafi'ites, hold that the shari'ah of our predecessors is binding upon us except that which is abrogated by the shari'ah.

Qadi Abu Bakr and a group of our authorities, however, reject it.

The proof of what we say is the expression of Allah:

أولئك الذين هدئ الله فهذا ماتقدم

"Those are they whom Allah guideth, so follow their guidance." This expression bids us to follow them and thereby follow Allah.

Similarly Allah's expressions: (1)

شريعتكم من الدين لا مانع له ولا الذي أوحى إلىك

"He hath ordained for you that religion which He commanded unto Noah and that which we inspired thee (Muhammad)."

(55) Al-Qur'an, 6:91.
(11) And be not divided therein. And also what is narrated from the Holy Prophet (may peace be upon Him):

"Whoever sleeps without saying the prayer or forgets to perform it, he should say his prayer on (N/10b) remembering it", indicate that the previous injunctions are binding on us, for Allah, the Exalted, says

"Establish worship for My remembrance"—a saying with which Moses was addressed and which was adopted by our prophet.”

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SECTION 1: IMPLICATIONS OF CONSENSUS OF THE COMMUNITY ('IJMA')

The agreement of the community on the decision of a certain case is the evidence of the Shari'ah. It is therefore obligatory to act according to what has been agreed upon and to be sure of its soundness, as opposed by the Imāmites.

The proof of this is the expression of Allah, "And whose apposeth (C/10b) the Messenger after the guidance (of Allah) hath been manifested unto him", and "we appoint for him that unto which he himself hath turned, and expose his unto hell - a hopeless journey's. Allah has therefore given a warning for following a path other than that of the believers. Hence it bides to follow their path.

(70) Al-Qur'an, 4: 114;

(71) Ibid, 4: 115;
SECTION 2: MEANING OF THE CONSENSUS OF THE COMMUNITY.

This having been established, the 'Ummah (Muslim Community) consists of two groups:

(i) Al-Khasṣah or the chosen and,

(ii) Al-Jam'ah or the common.

Thus it is obligatory to consider the view of 'the chosen' and 'the common' on the matter in which they have been respectively made legally responsible.

As for the decisions which are only known to the jurists and the administrators such as those relating to 'talāq, divorce, nikāh, marriage, buyu', sales, 'ītaq, emancipation or making a slave free, tadbīr, to promise a slave that he will be free on the death of the master, Kitabah; undertaking, to give a written undertaking to a slave that he will be free on paying a certain amount mentioned therein, jihāyat, crimes, Bahnh, mortgage etc.; there will be no consideration for a disagreement of the common people, 'in such matters as they (the common) are hardly acquainted with them.

This (view) is held by the majority of the jurists. Qādi Abū Bakr, however, says that in all matters the views of the common man will be considered.

The proof of what we say is the fact that it is incumbent on the common man to follow the agreed decision of the learned; it is not lawful for them to oppose the
For, common men stand in this matter like the learned. The learned—being contemporaries of the common man and having the knowledge of those who preceded them, and the people of the latter age excel their predecessors in knowledge and reasoning.

It is, therefore, most apt and reasonable not to consider the views of the common man (al-'Ummah) as against the agreed opinion of the learned.

**SECTION. 3: METHOD OF IMPLEMENTATION OF CONSENSUS OF THE COMMUNITY.**

The consensus of opinion is not enforced until all 'Ulama (learned people of the 'Ummah) agree to it. So, even if a single 'Ulama deviates from the consensus of opinion, it will not be enforced.

Ibn Khwāyah Manhād however says that one or two persons will not be taken into consideration.

The proof of what we say is the expression of Allah, "and in whatsoever ye differ, the verdict therein belongeth to Allah." (72)

Of course, there exists enough difference of opinion among the jurists on this issue.

**SECTION. 4: CONSENSUS ('IJMA') WITH THE LATER OF TIME.**

Whenever the jurists agree on the decision of a case the consensus of opinion is established and its opposition is unlawful without consideration of lapse of time.

(72) Ibid. 43 : 10.
time. This is held by majority of jurists from amongst our authorities and others, Abu Taman, from amongst our authorities and some Shafi'ites, however, hold their view that the consensus of opinion is established only with the lapse of time.

It is argued that the proof of the consensus of opinion is confirmed either by (i) Agreement ('Ijma'), (ii) Lapse (C/lln) of time (inqad al-'aqr), or (iii) Both. It is unlawful to confirm it by 'lapse of time' since (M/lln) it is neither a statement (Qawl) nor an evidence (hujjat). 'Ijma' becomes open to difference of opinion with lapse of time. Both lapse of time 'and agreement' cannot form a proof, as neither of the two can separately be a proof. They will be (considered) a proof when one is related to the other. There remains, therefore, the only possibility that (consensus of the community) is a proof (evidence) which exists with the continuity of time.

SECTION 5: VALIDITY OF THE CONSENSUS (AL-'IJMA') OF EVERY AGE.

The agreement (consensus) of the people of every period is a binding proof or hujjat (of the Shari'ah).

This view is held by the majority of jurists except Dawud ibn 'Ali al-Anbahani, who holds that the consensus or 'Ijma' of the age of the companions
(of the prophet) is an authority but not the consensus of the believers in all ages.

Our argument is the expression of Allah the Almighty, and whose support the messenger after the guidance (of Allah) hath been manifested unto him, when it is established that the companions (Sahabah) have been associated with non-companions (Ghayr Sahabah) in the matter of (i.e., the decision of the former will necessarily be established for the latter as well except when it is indicated that the Sahabas are exclusively meant.

SECTION 6: THE CONSENSUS OF THE MEDENITES ('IJMA')

AHL AL-MADINAH.

Our authorities (Malikites) have generally used the word 'IJMA' Ahl al-Madinah i.e., consensus of the people of Madinah. Imam Malik and his learned companions (student) have exclusively relied on arguing with it, ('IJMA' Ahl al-Madinah) in all the matters relating to transmission.

For instance, the case of the Sahih, the Sahih in prayers (in the Ford prayers) in low tune and similar other matters which are only proved by way of transmission and its continuity (Tawatur).

(73) Al-Qur'an, 4: 114:

ومن يشاق الرسول من بعدنا فإن له الحدي....
and thus continuity is found as a characteristic among the Medinites, because Madina is the place of prophethood, the seat of Caliphate and the Sahabah after the prophet (blessings of Allah be upon him and upon them). If the other towns too shared this merit the same rule would apply to them.

SECTION 7: PROPER OR IMPROPER CONSENSUS (AL-IJMA).

When a companion (of the prophet) or an Imam gives a statement (qawa) or a decision (hukm) which prevails and spreads so much so that nothing like that can be canceled, nor was there known any opponent or denier, then it is "Consensus" (Ijma) and a binding proof (hujjat al-Qati'ah).

This is held by the majority of our authorities, and Hanafites and the Shafites. But Qadi Abu Bakr says (Callb) that consensus of opinion is only valid when the statement of every one of the Sahabah is transmitted. This view is (also) held by Dawud.

The proof of what we say is a custom commonly accepted by the people (Adat al-Jariyah) establishes the fact that a great multitude and a major part of people cannot cooperate and mutually agree on a view which they believe as wrong and absurd, nor can they remain from condemning it and expressing their opposition. Most of them on the contrary, hasten to condemn it and vie with each other (in
doing so. Thus when a view prevails and spreads to the remote corners of the earth without having an opponent, it is convincing that the people's silence amounts their consent and approval of the same, which has been their continuous habit. If it were not so and the consensus (ijma) were to be established as the binding proof with the agreement of each scholar of the age then a certain decision (on an issue) would never be taken by the consensus. Because it is very difficult to establish consensus (of the community) on any issue either relating (H/11b) to the Root (al-Asl) or to the general law (al-far'i) through such method. For instance, on a certain decision in a case that conforms us, we do not know the consensus of the jurists of our own age, since they are dispersed in every corner of the world and we do not know most of them.

SECTION 8: DISAGREEMENT OF THE COMPANIONS (SAHABA)

ON TWO OPINIONS.

when the companions of the Holy prophet (Sahaba) disagree, holding different views on a case, the third view will not be valid. This is the view of all our authority and the Shafi'ites. But Abu Dawud holds that the third view will be valid.
The proof of what we say is that they have agreed only on two different opinions, and are thus united on the point that any view other than the two, is wrong. They have only disagreed in determining the truth in either of the two but have not disagreed in holding anything beside the two, as wrong. Hence, whoever speaks of anything other than the two views, asserts that what is unanimously held by the Sahabah as wrong.

SECTION 9: CONSENSUS IN RESPECT OF REASONING (Qiyas).

According to the majority of the jurists the consensus of opinion on a decision arrived at by analogical reasoning (Qiyas) is valid.

On the contrary Ibn Jarir al-Tabari holds that it is not sound in its existence. In case it exists, it will serve as an evidence (of the Shariah).

David also says that this is not correct. His view is based on the fact that analogical reasoning is not the evidence (of the Shariah). The rational discourse on this (point) (C/128) follows.
PART II

MA'QUL AL-ASL OR THE INTELLIGIBLE MEANING OF THE ROOT

CHAPTER I

KINDS OF EXPRESSION

We have (in the beginning) mentioned that the sources of the shari'a are of three types:

1. Al-Asl, Root.

2. Ma'qul al-Asl, the intelligible meaning of the Root.

3. Istihsab al-Hal, association with the prevailing conditions.

The discourse on al-Asl or Root has already been given. The discussion here is on Ma'qul al-Asl or 'The Intelligible Meaning of the Root' which is divided into four kinds:

1. Lahm al-Khitab or tone of expression.

2. Fahw al-Khitab or purport of expression.

3. Al-Hasr or restriction.

4. Ma'na al-Khitab or meaning of expression.
SECTION, I: TONE OF EXPRESSION (LAHN AL-KHITAB).

La\n\n\nLa\nThe term is derived from the word "La\n\nFor instance, Allah, the exalted says: "And\n\nFor example, we argue that bone is the palm (pillar) of life, as Allah says: "Who will revive these bones (75) when they get rotten". The Hanafis say that the verse means, "Who will revive the people of the bone"? In such a case it is not permissible to assume a hidden meaning without any indication, as the expression is complete without it.

(74) Al-Qur'an, 2: 184
(75) Ibid., 36: 70.
SECTION 2 : PURPOSE OF EXPRESSION (FAHWA AL-KHITAB).

As for the second kind i.e. Fahw al-khitab it is that expression, "which is understood from the expression itself as to what is intended by the speaker in accordance with the usual meaning of the word".

For instance, Allah's expression: "Say not 'die' unto them, nor repulse them but speak unto them a gracious word." 

Thus beating and abusing etc. is prohibited (in this verse) as understood from its linguistic meaning. It is also understood (from the verse) that it is necessary to keep this in view and act according to it.

SECTION 3 : RESTRICTION (AL-HASK).

As for (M/13a) the third kind i.e. al-hask it has only one word 'inna' i.e. only, merely, indeed etc.

(i) For instance, the expression of the Holy Prophet, (may peace be upon him)

"Waali" (relationship of client) belongs only to him who emancipates.*

(76) Ibid. 17 : 23; 

(77) This hadith has been narrated by 'Aishah who who intended to purchase a slave girl for manumission, Al-Muslim records the transmission in these words:

أبنا (ابن عائشة) إرادت أن تشتري جارية سعتها و فلعلها وليها و ديتها ولها و سنتها و ذلك كان على رسول الله صلى الله عليه وسلم فقال لا تجعل له - (Muslim, al-Sahih, Cairo 1374/1955).
This word evidently indicates that he who does not emancipate has no right of *walā'*. 

(ii) Sometimes this expression is used for the assertion of the object of the text and not for the negation of anything else, such as, 

إِنَّ الْعَلَمَ ۖ هُدُيٓاً

"the noble is indeed Yusuf" (Allah's blessing be upon him) and 

إِنَّ الْعَلَمَ ۖ هُدُيٓاً

"the brave is indeed 'Antarah;" 

"In the first expression, it does not intend (C/11b) to negate nobility from other than 'Yusuf and in the second bravery from other then 'Antarah. It only aims at the assertion of 'nobility' for Yusuf and makes him superior to others. 

But the first meaning (item (i) above) with which we began (the discourse) is evident and will not be superseded without any indication.

SECTION 4 : INDICATION OF EXPRESSION (DALIL AL-KHITAB).

According to many authorities, Dalil al-Khitab also relates to the discourse of ma'qu l-al-Asl. Dalil al-Khitab means, "such expression conveying a decision the meaning of which depends on a certain genus (object)". This meaning, to them (those who hold it) demands the negation of the decision (from all that is devoid of it), the meaning being in the genus (object),
For example the saying of the Holy Prophet, "in the grazing sheep there is zakat." This indicates that there is no zakat on other than the grazing ones. This kind of inference is called by the people of jurisprudence Dalil al-Khitab or the indication of expression.

A group of our authorities and shafi'ites have held this view (discussed above), while another group of our authorities, shafi'ites and hanafites have denounced it, and this is correct. Because the connection of the decision with a description in a genus, indicates the dependence of the decisions on that which possesses the description in particular. As for the rest of the genus, its decision remains unknown. An indication (dalil) of its decision will be sought out in the shari'ah.

This (view) is indicated by what has been narrated by Imam al-Bukhari from al-shaybani from 'Abd Allah ibn Abi 'Awfa: The Prophet (peace be upon him) prohibited (us) from the green jar; ('Abd Allah says) I enquired, "Is (it lawful) to drink in the white one?" the prophet said "No."

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The argument here proceeds on the fact that the hadith is a text (magg) on the green jar, but it also mentions that the utility of the white one is same as that of the green, while the Prophet was an authority on the decision. Now, were it lawful to consider, "the indication (dalil) of the expression", it would be necessary to give a contrary decision concerning the white one and the decision would not have been conjoined with the green jar in particular.

CHAPTER II

LAWS OF ANALOGY (QIYAS).

SECTION 1: MEANING OF ANALOGY (MA'NA-AL-QIYAS).

The fourth kind of Ma'qul al-Asl is Ma'na al-Khitab which are the intention of the expression, which in other words is 'Analogy (Qiyas) itself that is, 'application of either of the two known objects to the other to affirm or avert a certain decision on the basis of something common to both'.

And this (qiyas) is unanimously held as a source of the Shari'ah. Dawud however, holds that recourse to analogy (Qiyas) is allowed from the viewpoint of 'intellect' or 'aql but the Shari'ah has prohibited it.
The proof of what has been unanimously held by a group of the learned (C/13a) is the expression of Allah's statement, فَأَخْرِجْنَاهُمْ مِنْ أَيْنَ كُنُونَا "so, learn a lesson, O ye..." (80) who have eyes." The word 'i'tibar' linguistically means "to liken one thing (N/12b) to another and to apply its decision to the other." It is therefore said, مَعَ الْقَلَمِ الْأَخْرَى مَعَ الْقَلَمِ الْأَخْرَى meaning thereby "I have verified their measures and weights". An Interpreter of a dream is therefore called a Mu'abbir. Thus it is said, "I interpreted the dream with a suitable and congenial decision", فَأَخْرِجْنَاهُمْ مِنْ أَيْنَ كُنُونَا I explained it (the dream) with that which resembled it and خَلَفْتُمْ نَزْلَتْنَا I explained the expression of particular person meaning thereby "I used words which agreed with his intention and resembled his expression".

SECTION: 2. ANALOGY (QIYAS) AS AN EVIDENCE OF THE SHARI'AH.

THE QUR'AN: The assertion of analogy is indicated by the expression of Allah, خَلَفْتُمْ نَزْلَتْنَا "we have neglected nothing in the Book." But we find that there are many problems which have not been mentioned either in the Qur'an or in the sunnah of the Holy Prophet (may peace be upon him).

(80) Al-Qur'an, 59 : 2.
(81) Ibid., 6 : 38.
For instance a man possessing a dinar drops it in a lake belonging to some one and (finds himself) unable to get it back; or a white piece of cloth belonging to a man perchance drops in the case rob of a dyer and is fully dyed and beautified, and so on. So, the Qur'anic verse quoted above cannot be taken as a text (Masa'ib) applicable to each and every event that takes place. It is only intended that the verse is a text (Masa'ib) for a particular event and is applicable to all other cases having indications (in common) with this particular event. Thus a decision having been mentioned in the Qur'an (in a particular event) attains the status of a Masa'ib for all that which is similar in nature.

Therefore Analogy (Qiyas) is one of the evidences which determines a decision as referred to in the Qur'an, since we find many a decision that can only be asserted by analogy and reasoning, examples of which have already been mention (in the preceding discussions).

AL-SUNNAH: As for its (analogy's) proof from the Sunnah (we may refer) to (the Hadith in which) the Prophet said to 'Umar when the latter had enquired about the 'kiss' of a fasting man. "Do you see any harm if you rinse your mouth?" 'Umar replied, "No". The Prophet added, (82) "Then what is the harm in it?". Similarly, the Prophet
said to Khath'ama (a woman of the Khath'am tribe),
"do you think that you would have paid a debt which your
son had on him?" She replied, "Yes." The Prophet re-
joined, "It is then most rightfull to pay Allah's debt."

As a further example the Prophet said to him who had com-
plained of the colour of his son, "Have you got camels?"
The man replied, "Yes". The Prophet then asked him about
their colours and the man replied that they were red. The
prophet thereupon enquired whether some of them were of
ash colour and he agreed that some of (their young ones)
were so. The Prophet then said to him, "What do you think?
How did (the red camels) get their young one of ash colour?"
He replied, "It is due to their origin to which they
inclined". The Prophet then suggested that his (enquirer's)
son had also inclined to his origin. The examples are thus
numerous.

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(83) Ibid. (Kitab al-Nahasik), Vol. II, p. 41;
(84) Iba Najah, al-Sunan, Lucknow, 1316 A.H; the words
of this hadith read as follows:

من عادله ين زيبر قال جاهد رجل من طهى خسر إلى رسول الله صلى الله عليه وسلم قل
ل أن ابن اعردد الإسلام وهو شيخ كبير لا يستطيع زول الرجل والج مكوب عليه فاح
جه تلال ابنه أكبر ولده تلال لسان لسان لما كان بايت لوانا على أبكة ود فشصة عن إنا
ذلك يجري منه تلال تلال خادم عين,

In modern English:

"said to Khath'ama (a woman of the Khath'am tribe),
"do you think that you would have paid a debt which your
son had on him?" She replied, "Yes." The Prophet re-
joined, "It is then most rightfull to pay Allah's debt."

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جه تلال ابنه أكبر ولده تلال لسان لسان لما كان بايت لوانا على أبكة ود فشصة عن إنا
ذلك يجري منه تلال تلال خادم عين,
The authenticity of analogy is also proved by the different opinions of the Companions of the Holy Prophet on many issues, since we know that there were verbal discussions, arguments and counter arguments among them (on various topics). They, for example, differed concerning the inheritance of a grand-mother with brothers, ʿawl i.e. reduction of share of heirs, ʿiḥbaʿ i.e. husband's oath regarding his wife, ʿiddah i.e. waiting period of a divorced woman, etc.

These decisions (ahkam) on which the authority have differed are not free from one of the following states:

(i) There occurs a clear text (Nass) for an issue, which needs no interpretation;

(ii) A text requiring interpretation; and

(iii) An issue on which no decision (hukm) has been taken (by Qur'an or al-Sunnah).

It is however, absurd (to conceive) that the decision is based on a Nass (text), which needs no interpretation; since if there was such a Nass the agreeable meaning would have at once been understood and there would have been no disagreement and a rightful Ijma' (Consensus of opinion) would have been established. It is also absurd to conceive of a Nass as the basis of the decision, because the Nass goes against all of them (i.e. the authorities), which is not valid, as it would necessitate their agreement on the absurd. If it is considered lawful then it would also be lawful that they may agree against
the Shari'ah laws like Prayers, Fastings and other
modes of worship which have been explicitly ordered by
the Law-Giver. But this is absurd by common consent of
the Muslims. It is, again, absurd that in the case under
consideration there is an indication which needs no
interpretation, since it is necessary by constant habit
that every opponent should incline to the explicit indi-
cation related (to the decision) withdrawing his own
contention. He should also not argue his opinion with a
reasoning, since an argument is pursued only on the basis
of a decision that is established to him without turning,
at the time of discussion and assertion of truth, to what
stands no proof to either of the two parties.

Since we find that everyone of them argues in
this concern with his own opinion and reasoning without
making any criticism or opposition, we come to know of their
agreement on the genuineness of analogy (qiyaṣ) and reasoning
(Nayyir).

AL-IJMA'!—Another evidence of "qiyaṣ" is the
agreement (Ijma'') of the Companions of the Holy Prophet
on a number of decisions which they based on analogy and
reasoning. For example:

(i) their agreement (Ijma'') on the leadership of Abu Bakr
with their considered opinion and reasoning;

(ii) their agreement on the leadership of 'Uthman, and a
number of other matters on which they agreed.
A similar example is the story of 'Umar ibn al-Khattab (May God be pleased with him) that when he travelled to Syria with the Companions of the Holy Prophet (May Allah peace be upon him) and arrived at Sarh, he was informed of the plague that had spread in the area. He consulted the Muhajirin al-Awali (the first emigrants) who differed in their opinions. Some of them asked him (6/14a) not to run away from the decree of Allah and, some other advised him not to proceed with the surviving Companions of the Holy Prophet to the (place of) epidemic. He then called the Ahl (the Helpers) who also differed as the Muhajirun had done earlier. Lastly he called those who were with him from among the elderly Quraishites, the emigrants of al-Fath (those who took part in the victory of Mecca), who, however, did not differ and suggested him to return (to al-Madinah). Now none of them (on this occasion) mentioned any verse from the Holy Book or a Hadith from the Holy Prophet (may peace be upon him) in this concern. Everyone of them, on the contrary, gave his own opinion and the result of his own reasoning, while nobody disliked their dead. 'Umar thereupon announced saying "I will start (my journey) next morning". The Companions, therefore, came to see him off (on the following morning).

(85) Muslim, al-Sahih (Kitab al-Salam), Cairo, 1375/1955, Vol. IV, p. 1740-1.
Abu 'Ubaydah ibn al-Jarrah (the chief of the army) spoke to 'Umar, "Are you fleeing away from the Decree of Allah?"

'Umar said, "Did anyone other than yourself say this, O' Abu 'Ubaydah? Yes, we are fleeing from one Decree of Allah to another Decree. Don't you see that when a man possesses a herd of camels in his valley, one end of which is barren and the other end fertile and he leads his (M/138) herd to the barren side or the fertile side, he does so by the Decree of Allah?" Abu 'Ubaydah thus criticized him with his reasoning and 'Umar replied him with his own reasoning: neither of them argued in this case with the Qur'an or Sunnah or consensus communis (Ijma').

This story then spread far and wide and there was not a single Muslim who criticized them for using their reasoning (al-Baji), therefore, do not know any better case of Ijma' than the one under discussion.

SECTION 3: ESTABLISHMENT OF LAWS THROUGH ANALOGY (QIYAS)

When it has been established that Analogy (Qiyas) is an evidence of the shar'I'ah, it is lawful to establish al-Hudud i.e., the Limitations or Penal Laws; al-Kaffarat i.e., the Atonements; al-Mu'awarat i.e., Salutations and al-Abdal i.e., the Substitutions through Analogy or Qiyas.

Imam Abu Hanifah holds that it is not lawful to establish anything of this kind by Analogy. His view is,
however, not correct because the verse (of Qur'an relating to analogy) is general in urging considerations and cannot be particularised without any evidence.

SECTION 4: WELL-KNOWN AND BASIC CAUSE (AL-I'LAT AL-WAQI'FAN)

According to us (the Malikites) reason ('illat) is valid and sound.

For example the reason of the prohibition of excess in dinars and dirhams is the fact that these are the roots on which processes and coasts of the perishable objects depend. But the Hanafite authorities do not consider the 'illat (reason) as sound.

Our argument is what we have said before that Analogy (Qiyas) is an evidence of the Shari'ah which may be particular (Khas) and general (Awn) like a statement.

SECTION 5: JURISTIC EQUITY (ISTIHAN).

Ibn Khuwayn al-Mandad has mentioned that the meaning of al-Istihsan which has been adopted by some Malikites is "to hold an opinion (based) on the strongest reason". For example particularising sale of unplucked fruits of palm trees (C/14b) from the sale of rutab (Juicy dates) in exchange of tamar (dried dates) due to the Sunnah available in this concern. It is sure that were there no decision of allowing the sale of the unplucked dates in exchange of tamar, it would not have been lawful, since it
would have been like the sale of rutab in exchange of
tamar. This is to what the jurists have inclined to treat
as proof and evidence and call it Istihsan. And this is not
impossible concerning a right known as the
Istihsan does not repudiate any custom or any established
root of a business.

The jurists differ in establishing Istihsan which
means "to assume a view without proof and precedence",
some authorities of Basrah from among the Malikites and
Hanafites have asserted it while our Iraqi authorities
and the al-Shafi`ites have rejected it.

The argument in favour of what we say is the fact
that such Istihsan challenges reasoning without argument;
it is therefore obligatory to nullify its very root when
it is used whimsically.

SECTION 6: USE OF LEGAL MEANS (ZARAI).

Imam Malik prohibits the use of legal means
(Zarai). It denotes a matter which is apparently lawful
but is used (with a twist) for doing what is not lawful.

For example you sell an article at one hundreded
on credit for a period, and then you purchase the same
article at fifty in cash. This case is used as a means for
selling fifty (mithqal) in cash and one hundreded on credit.

The use of legal means (Zarai) has been allowed
by Abu Hanifah and al-Shafi`i (M/14a).

The proof of our viewpoint is the expression of
Allah, the Exalted, "Ask them (O' Muhammad) of the
township that was by the sea, how they did break the sabbath, how their big fish came unto them, visibly upon their sabbath day and on the day when they did not keep sabbath came they not unto them.

The verse indicates that God has prohibited fishing on sabbath day for the Jews and has allowed it on all other days. The Jews, therefore, used to surround them (fish) on the sabbath day and closed their outlets and declared, 'we have been prevented from fishing, but we do it on all other days.' This is (C/15a) the form of Zarai' or the 'use of legal means'.

The other proof that also proves our viewpoint is the expression of Allah. 'O ye who believe, say not (unto the prophet), "Listen to us" (Ru'in), but say, "look upon us" ('Unzurna) and be ye listeners.'

In this verse the believers have been prohibited not to say (to the Holy prophet) "Ru'ina" (listen to us), because the Jews used this expression for abusing the Holy prophet (may peace be upon him). Hence the believers were prohibited from this though they had not intended the same meaning due to which the prohibition was issued.
The agreement (Ijma') of the Sahabah also indicates not to use "Kari'ah".

(i) Umar ibn al-Khattab said, "If people, The Prophet expired and did not explain to us 'Riba'. You therefore avoid 'Riba' (usury) and Paybah, (doubt),

(ii) When Zaid ibn Arqam purchased a slave girl from his 'Umm Walad for eight hundred on credit (and promised to pay when he would get next endowment) and sold her at one hundred in cash, (hearing this) Hadhrat 'Ayshah asked her (Zaid's 'Umm Walad) to inform him (Zaid) that he nullified his struggle (Jihad) in the company of the Holy Prophet if he did not repent on this action.

(iii) Ibn 'Abbas said when he was asked about selling food for a few dirhams before paying a dirham (the price), while there was scarcity of food was delayed.

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SECTION. 7: ARGUMENT WITH REVERSE MEANING.

To argue with the opposite meaning (Istiddl bi al-'aks) is valid. Abu Hamid al-Asfara' in, however, holds that it is unlawful.

The proof of our view is the fact that one who argues (al-Mu'allal) says that the hair is devoid of soul, because were there soul in the hair it would not have surely been lawful to remove it from the living animal. We, therefore, know without any doubt that it is devoid of soul like a feather. This kind of argument is valid since had it been so that life was there in the hair and it would have been so that life was there in the hair and it lawful to take it off a living animal the argument would have been self contradictory.

SECTION. 8: ARGUMENT WITH PRESUMPTION (AL-QAR'AIN).

To argue with the contention of facts (al-qur'an) is not valid to all our authorities.

(91) Abu Muhammad ibn Nasr holds that it is valid;

(92) Al-Muzani also holds the same opinion.

The proof of our viewpoint is that either of the two conjoined words has its own value. It will be correct if one of the two conjoined words is particularized through an indication. It is, however, not valid to combine both these words except with an indication that they were issued separately.

Al-Muzani: Isma'il ibn Yahya ibn Isma'il ibn Marw ibn Ishaq Abu Ibrahim al-Muzani (175/791-264/878) was an Imam of Shafi'ites, belonging to Egypt, since he was from Muzaynah tribe, he was therefore known al-Muzani. He wrote several books on jurisprudence like: (i) al-Jami' al-Kabir (ii) al-Jami' al-Saghair, (iii) al-Mukhtar, al-Mukhtasar, (iv) al-Manughur, (v) al-Masa'il al-Mutabirah, (vi) al-Wahtulq etc. etc. He died in Ramadan 264 A.H. and buried on the side of the grave of Imam Shafi'i.

PART III

ISTISHAB AL-HAL

I.e.

ASSOCIATION WITH THE PREVAILING CONDITIONS

CHAPTER I

ASSOCIATION WITH THE PREVAILING CONDITIONS

SECTION I: KINDS OF ASSOCIATION WITH THE PREVAILING CONDITIONS. (ISTISHAB AL-HAL).

We have mentioned (in the beginning) that the evidences of the Shari'ah are of three types:

1. Aṣl i.e. Root,
2. Ma'qul al-Aṣl i.e. intelligible meaning of the Root.
3. Istishah al-Hal i.e. Association with the prevailing conditions.
The discourse on the first two (Root and the Intelligible meaning of the Root) has already (M/14b) been recorded. In this place the discussion is on “Association with the prevailing conditions” or Istishab al-Hal which is of two kinds:

(i) Istishab al-Hal al-Aql or Association with the prevailing conditions on the basis of intellect. This means that, “when either of the two opponents argues (C/15b) in a case in favour of a certain decision of the Shari‘ah, the other insists to remain on the decision of the intellect”. For example, if you question a Malikite about the obligation of al-witr and he replies that the aim and object is to acquit of one’s responsibility (on the basis of intellect), its method is prescribed by the Shari‘ah.

Thus whoever claims of Shari‘ah and makes it obligatory to be followed, the burden of proof lies on him and this is the genuine way of argumentation.

(ii) Istishab al-Hal al-Ijma’ or Association with the prevailing conditions based on consensus. This may be illustrated by the argument of Dawud in favour of the sale of an ‘Umm Walad’ on the basis that we agreed on the validity of her sale before pregnancy.

Now whoever claims contrary to this (Consensus) and prohibits the sale of a slave girl, it is then for him to prove his premises. Such kind of argument is not valid, because the consensus (Ijma') does not appertain the case of disagreement (on the contrary) it only appertain the case of agreement.

A proof is only advanced in favour of the occasion is similar to the occasion for which the proof has been used for similar occasion. The words of the law giver appertaining to a particular occasion shall not (for example) be used as an argument for an occasion that is not relevant.

SECTION 2: PROHIBITION (TAHNIN) AND PERMISSION (IBAHAT) ON THE BASIS OF INTELLECT ('AQL).

Having established this "it is not the function of the intellect to prohibit or to permit (anything)", lawfulness and unlawfulness are only defined by the Shari'ah. For Allah the Exalted declares lawful whatever He wishes and declares unlawful whatever He wishes.

This is the view of the majority of our authorities. Al-Abhari holds that according to the intellect things are (on the side) of prohibition, while Abu al-Faraj al-Maliki holds that in the judgement of intellect things are (on the side) of lawfulness.
The proof of our viewpoint is the fact that if the intellect necessarily makes any object lawful or unlawful, the shari'ah cannot oppose the decision of the intellect since the shari'ah cannot sanction anything that opposes reason. Because it is not possible for the shari'ah to deny that two is more-than-one.

SECTION 3: THE BURDEN OF PROOF LIES UPON THE PLAINTIFF (MUDDA'I).

Whoever claims denial of a certain decision (of the shari'ah) the burden of proof shall lie upon the plaintiff, as it (the burden of proof) lies upon him who asserts it (a decision of the shari'ah). Dawud, however, says that the burden of proof shall not lie upon the denier.

The argument in favour of our view is the expression of Allah: "And they say: None entereth Paradise unless he be a jew or a christian. These are their own desires. Say: Bring your proof (of what ye state) if ye are truthful."

SECTION 4: DESCRIPTION OF MUJTAHID:

A mujtahid is described as one who:

1. knows (C/10a) the application of arguments to their places on the basis of intellect;
2. possesses the knowledge of the method of affirmation and the method of construing in a language and the shari'ah;
(3) Is learned in the principles (roots) of faith and the principles of law. He should also possess the knowledge of rules (Ahhām) of the address (al-Khitāb) consisting of words indicating general meanings (Umm), commandments (awamir), prohibitions (Muhāy), the explained (Hufasal) and unexplained (Mujmal), the text of the Quran and the Sunnah (Nass), the abrogation (Naskh) and the nature of the consensus of opinion (Ijma');

(4) Is aware of the decision of the Book;

(5) Is learned in the Sunnah, practices of the Sahabah (Athar) and those of the Tabi'in, their ways (of narration) and the distinction between the genuine and the defective ones;

(6) Is learned in the views of the jurists (Fuqaha) from among the Sahabah (the Companions of the Holy Prophet) their followers and their successors and all that they agreed upon and all that they differed;

(7) Is well-versed in the orthography, the syntax and the Arabic language, to understand the meaning of the Arabic expression,

(8) Besides these, he should be honest in religion and reliable in faith and superior in dignity.

When all these qualities of a man reach perfection, he becomes one among the Ahl al-Ijtihād and it is lawful for him to give judgement (Fatwa) and is apt to be followed by a common man in whatever Fatwa he issues.
CHAPTER II

FUNCTIONS OF PREFERENCE

SECTION 1: MEANING OF PREFERENCE IN ISOLATED TRANSMISSIONS (AKHBAR AL-ĀHAD).

Preference to a particular isolated transmission (Khābīr Wahīd) means, "the force of opinion in respect of one narration against the other when they contradict each other".

The proof of its soundness is the consensus of the early scholars concerning the priority of the transmission of some narrators as against some others, because of better memory, accuracy in recording and importance of the evidence.

SECTION 2: PREFERENCE OF THE CHAINS (AL-TARJIH FI AL-ĀHAD).

Having established this preference to one of the conflicting akhbars which cannot be harmonized nor is it known as to which is latter and which former so as to declare the latter as abrogator, is found in two places:

(a) Ṣnād, the chain of narrators.
(b) Matn, the text.
As for preference in Isnad, it is for the following reasons:

(1) One of the two Khabars is related in a well-known story usually narrated by the people of tradition (ahl al-Naqil), and the other Khabar is not so. The former is given preference because people accept it with ease and the opinion is strong about its genuineness.

(2) The narrator of one of the two Khabars excels in memory (C/16b) and assertion is to be preferred since the soul relies on his narration and finds comfort and ease in it.

(3) The narrators of one Khabar excel those of the other in number, and therefore that Khabar is preferred, because a bigger group is more prone to avoid negligence and mistake.

(4) The Nabi (Narrator) of the one Khabar (narration) says, "I heard the Messenger of Allah" and that of the other says, "the Messenger of Allah wrote to me". The Khabar of the former is to be preferred, because hearing from a teacher (the learned) is stronger than learning from a written work.

(5) The Nabi's (Narrators) of the one Khabar (narration) unanimously refer it to the Messenger of Allah while those of the other disagree. The former Khabar will, therefore, be preferred, as it is more remote from mistake and forgetfulness.

(6) The Nabi's
(6) The narrators of one Khabar (N/15b) disagree in narrating it from the first rāwi in so far as it asserts a decision or negates it while those of the other do not disagree from its original (rāwi). Hence the latter will be preferred to the former since the latter is indicates of better memory and greater care of memorizing what they heard.

(7) The narrator of one Khabar is himself the hero of the story in which he himself is involved while the rāwi of the other Khabar is unrelated (to the story). Khabar of the former narrator will naturally be preferred, because of his full knowledge of its ins and outs, its importance and the care taken by him for its significance.

(8) The agreement of the people of al-Madinah in practicing according to one Khabar necessarily makes such Khabar preferable to the one opposed by them, as al-Madinah is the place of the Messenger (al-Bisalāh) and the meeting place of the Companions of the Holy Prophet (may peace be upon him). The practice of the people of Madinah is naturally associated with the most sound riwayah.

(9) One Khabar excels the other in sticking to the science of hadith and in diction; it will therefore be preferred, as it indicates its significance for giving fatwa (Judgement) and takes into account all stipulations (required for its soundness).

(10) The isnad (chain) of one Khabar is free from idtirab (confusion) in text or sandd while the other is not. The
former is evidently better than the latter in respect of narration and retaining all its conditions.

(11) One ḥabar agrees with the explicit meaning of the Qur'an while the other opposes it. The former is therefore better than the latter (C/17a).

SECTION 3: PREFERENCE OF THE TEXT (MARJHAT AL-MUTUN).

The discourse on preferring (the text) on the basis of ḥanāfah having been recorded, here is the place for discussing the reasons of preference in so far as the text is concerned:

(1) In case one of the two texts is free from confusion (idtirāb) and difference (ihtilāf), and the opposing one open to confusion and difference, the first is apt to be preferred, because it displays agreement and care in preservation.

(2) When the text of the one ḥabar deals with the decision in words and the other indicates only its probability, the first text will be preferred for its precision and clear purpose.

(3) When one ḥabar is independent by itself and the other is not so the former will be preferred to the latter, since it gives the meaning independently with all surety and the other gives surety only after investigation and argumentation.

(4) In case one ḥabar is employed for in (settling) a disputed matter while the other is left out, the former
is evidently (M/16a) better than latter.

(5) In case the particularization of one general text is not agreed upon while that of the other is agreed upon, the first is better than the second one.

(6) In case one Khabar does not explain the decision (al-hukm) while the other does it; the second one is naturally preferable to the former.

(7) When the Khabar is effective in issuing judgement while the other is not, the effective one (Muna'ithbir) is preferable to the ineffective one.

(8) If a Khabar has a specific reason while the opposing one has no reason, the latter will proceed the former, since former's contention against the other indicates its dependence on its cause.

(9) If a Khabar is preferred in giving judgement against the other in one place, it will enjoy preference to the other in all places.

(10) If a certain meaning is expressed in different words and expressions, it will be preferred to the meaning expressed in the same words narrated by a single Rawi in all ages, since the former is free from error (Qiya), negligence (Sahe), and alteration (Tahrif).

(11) If one Khabar negates any defect among the companions of the Messenger of Allah and the other (C/17b) ascribes it to them, the former will be preferred to the latter, because it suits their excellence, faith and their description and praise mentioned by Allah.
SECTION 4: PREFERENCE OF THE MEANING (TARJİHAT AL-MA'ĀNĪ)

The discourse on preferring the Akhbar (transmissions) has been recorded. Here the discussion is on "preference of meanings" (Causes); Tarjihat al-Ma'ānī. In other words when two reasonings contradict each other in a particular case and the offshoot or the branch (al-Far') vacillates between two roots (asl) it will be lawful to adopt any of these two reasonings and apply it to the other. It is now for the investigator to prefer one of these reasonings, which may take place in eleven ways:

1. One cause ('illat) is supported by the Mass (the text) while the second is not; the former will have preference as the text from the lawgiver (Saḥīb al-Sharī'ah) is the proof of its validity.

2. One cause does not refer to its root in the matter of particularisation, while the other does so; the former is, therefore, better, since the relation to the general is aptly derived in speech.

3. One cause agrees with the basic (asl) word, while the other does not; the former will therefore, proceed, because the asl bears evidence to its word.

4. One cause may be individual (in character),
having a reflection, while the other is not so; the former will be preferred, since when the cause is individual (in character) and has a reflection the opinion will (N/16b) prevail that the decision concerns it (the cause), because the existence and non-existence of the decision (hukm) depends on the existence and non-existence of the cause (al-'illat).

(5) In case one cause is confirmed by many principles (usul) while the other is confirmed only by one principle, the former will be preferred, since the opinion derives strength from the principles which attest if the more it is supported by principles, the sounder will be considered.

(6) One of the two causes refers to an offshoot (far') of a root (asl) of its own 'genre' and the other refers to a root of a different 'genre', the former is then obviously more apt to reasoning than the latter; because reasoning with something resembling to its own 'genre' (genus) is better than reasoning with something contrary to it.

(7) One of the two causes is favourable while the other is contagious; (C/18a) the former will be preferred.

(8) A cause that is common to all its offshoot (issues) is better than the one which is not so.

(9) One of the two causes is general while the other is particular; the former will be preferred,
since more offshoots (Furu') bear witness to its connection with the roots.

(10) If one cause is derived from principles based on a massa and the other not so, the former is better than the latter.

(11) If one cause has less descriptions and the other has more, the former will be preferred, because more offshoots and attributes require their proof and will lead to Ijtihad. But a cause free from more proofs and Ijtihad is better.

And Allah knows the best.

Here ends the Book al-Igharab by Abu Al-Walid al-Haji on the principles of Jurisprudence with the grace of Almighty God and his excellent assistance.

I accomplished the book al-Igharab on 7th day of Ramadan 792 A.H. (28th July, 1391 A.D.). It was transcribed by one, Al-Mas'ud ibn Jamshid al-Haji al-Mutakab needing the help of Allah, the Almighty, who may bless transcriber's parents and all Muslims. Amin. May peace and blessings of Allah be upon Muhammad, his family and his associates up to the last day of judgement. Allah may be pleased with all the Companions of the Holy Prophet! (Amin).
III

(1)GLOSSARY

(11) CHARTS

(111) BIBLIOGRAPHY
(I) GLOSSARY

- 'Adat al-Jarriyah : Enacted custom.
- Addilah al-shari'ah : Sources of the shari'ah.
- 'Adil : Righteous, professional witness, notary, an trustworthy witness.
- Ahl al-Kitab : Those who possess the Book [of Allah].
- Ahl al-Naqil : The people of traction.
- Ahliyyah : Legal capacity.
- Ajir : A person who lets.
- Al-Kitab : The Book i.e. the Holy Qur'an.
- 'Amad : Deliberate intent.
- 'Amal al-Madinah : The judicial practice of the people of Madinah.
- 'Amum : The General sense (of a word or an expression).
- 'Amr : Imperative, Commandment; "demand for action and expression of superiority or annoyance and insistence."
- 'Amr al-Mutlaq : The Absolute Imperative; "which does not demand immediate execution of an action".
- 'Aqar : Immovable property.
'Aqd
Contract.

'Aqlah
Responsible for a payment of compensation (diyat) in cash or in kind, "a person sharing liability with the person who committed homicide or injury".

Aqwal al-Fuqaha
Statements of the Jurists.

Aqwal al-Nabi
Statements, Expressions or sayings of the prophet.

Afa' al-Fuqaha
Opinions of the Jurists.

'Ariyah
Loans of articles by way of accommodation.

'Aqabah
Clang, compare.

Asl
Root, origin, base; first source of the Shari'ah through which the Shari'ah Laws are derive i.e. al-Qur'an al-Sunnah and Ijmā' F

'Awa'
Credit (on).

Ala'ar al-Nabi

'Awl
Reduction of shares of heirs.

'Ayn
Corporal property.

'Ayn Raja
A thing hired.

Badal
Substitution, Consideration.

Bat'ina talaq
Irrevocable divorce.

Batil
Void, nullify invalidity.

Bay'
Sale; "sale of goods for money".

Bay' al-'Araya
A contract of barter in dates.

Bay' al-Dayn bi al-Dayn
Exchange of obligation for obligation.

Bay' al-Muqayzah
Barter.

Bay' al-Ahda
Sale of real property with the right of mortgage and sale of article by making condition by saying to the
buyer, "I sell you for the debt which I owe you on the condition that when I repay the debt you will give the article to me."

Bida'ah: Capital given to another to be used for the profit of donor.

Bid'at: Innovation.

Daf'at: Accuracy.

Daf'at: Necessity. Neaxes deditis; "a claim to rebut the plaintiff's action".

Daf'at: Indication of Expression; "an expression conveying a decision the meaning of which depends on the certain genus (object)."

Daman: Liability, compensation.

Dar al-Harb: Enemy territory.


Darak: Default in ownership.

Darurah: Necessity as a depending element.

Da'wa: Lawsuit, claim; "claiming of one's right in the presence of a judge from another."

Dayn: Debt, claim; "a thing on the debit side of an account."


Dhi (Pl, Addad): Opposite, contrariety.

Diyah: Forum internum, faith, belief, conscience.

Diyat: Compensation on murder to heirs.

Dukhul: Consummation (of marriage).

Fahish: Excessive.
Fahā' al-Khitāb: Purport of expression; "the expression which is understood from the expression itself as to what is intended by the speaker in accordance with the usual meaning of the word."

Fajr (Pl, Fajjar): The profligate.

Faqih (Pl, Fuqaha'): Jurist, specialist in fiqh.

Furū' (Pl, Furū'): Positive or substantive law, offshoot, branch.

Fara'id: Succession in general, portions allotted to heirs.

Fard al-'Ayn: Individual duty; "the performance of which is obligatory for every individual.

Fard al-Kifayah: Collective duty; "the performance of which is obligatory for the community as a whole."

Fasid: Defective, Voidable.

Fasah: Cancellation.

Fatwa: Judgement; "to give a decision or legal verdict."

Fidyah: Compansation (for certain obligation).

Ghalat: Error.

Ghass: Usurpation; "to commit a tort; to take and hold someone's property without his leave."

Ghayah: End, object, aim.

Ghayr Muhtamal: Improbable; "the text which is raised to the highest point of explicitness."

Gins: Genera, object.

Ghurra: Indemnity for causing an abortion.

Habs: Loin; "Retention of a thing to secure a claim."
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hadanah</td>
<td>Care of a child by the mother.</td>
</tr>
<tr>
<td>Hadd (Pl. Hudud)</td>
<td>The fixed punishment, the limits of punishment, Penal Law, Limits.</td>
</tr>
<tr>
<td>Hadr</td>
<td>Persons who are unproctected and against whom no liability.</td>
</tr>
<tr>
<td>Hadyah</td>
<td>Property brought or sent as gift to someone.</td>
</tr>
<tr>
<td>Hajr</td>
<td>Interdiction, those under a legal bar; &quot;to restrain a person from disposing of property at his will&quot;.</td>
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<tr>
<td>Hukm</td>
<td>Arbitration; &quot;two litigating parties employing another person as judge by the consent of both to decide their litigation and claim in Court&quot;.</td>
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<tr>
<td>Halal</td>
<td>Lawful, permissible.</td>
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<tr>
<td>Hamal</td>
<td>Pregnancy.</td>
</tr>
<tr>
<td>Haqiqah</td>
<td>Real meaning; &quot;a word which is used for its (designated) meaning&quot;.</td>
</tr>
<tr>
<td>Haram</td>
<td>Unlawful, prohibited, forbidden.</td>
</tr>
<tr>
<td>Haqar</td>
<td>Restriction; &quot;word which restricts the expression&quot;.</td>
</tr>
<tr>
<td>Haqar</td>
<td>Prohibition (see Haram).</td>
</tr>
<tr>
<td>Hibah</td>
<td>Gift; &quot;to give the ownership of property to another without any reward.&quot;</td>
</tr>
<tr>
<td>Hifz</td>
<td>Memory.</td>
</tr>
<tr>
<td>Hilah (Pl. Hiyal)</td>
<td>Legal device, evation.</td>
</tr>
<tr>
<td>Hizy</td>
<td>Custody of things.</td>
</tr>
<tr>
<td>Hujjat al-Qati'ah</td>
<td>The sure proof, binding proof.</td>
</tr>
<tr>
<td>Hukm</td>
<td>Decision, decree.</td>
</tr>
<tr>
<td>Hukm al-Asl</td>
<td>The original decision.</td>
</tr>
<tr>
<td>Hukm al-Zaqit</td>
<td>Repealed decision.</td>
</tr>
<tr>
<td>'Ibadat al-Thabitah</td>
<td>Established (from of) worship.</td>
</tr>
</tbody>
</table>
Ibaabah

'Iddat

Itdirarr

Idtirab

Ijab

Ijarah

'IJma' ahl al-Madinah

'IJma' al-'Asr

'IJma' al-Sahabah

'IJna' al-Salaf

'IJma' al-'Ummah

'IJna' min jihat al-qiyas.

Ittihad

Ikhtiyar

'Ila'

permission (see also Mubah).

Waiting period of a woman after termination of marriage.

A compelling, a constraining.

Confusion.

Proposal.

Hire, lease, rent.

Consensus of the Madinite Ulema.

Consensus of the (every) period.

Consensus of the period of companions of the Holy Prophet.

Consensus of the early scholars.

Consensus of the Muslim community.

Consensus on the basis of analogy or reasoning.

Individual reasoning, exertion.

Choice or preference to a given opinion.

Dissolution of marriage by the husband by swearing that he would have nothing to do with his wife; oath of abstinence from intercourse by the husband; a variant form of repudiation in which husband by the oath abstains from marital intercourse for four months. If he keeps the oath it has the effect of a definite repudiation.

I'llat

I'llat al-Mut'addiyah

I'llat al-Naqifah

Cause, reason.

The contagious cause.

The well known cause, the basic or sound reason.
'Ijābah bi al-Majr
(Raf)

Inqad al-Ask
Iqalab
'Iqan
Iqrar
Iqrar al-Nabi
Ir'sal
Isnad
Isqat
Istifabal-Gina
Istifarah
Istibra'
Istidal
Istidal bi al-Aks
Istidal bi al-Qura'an
Istihsan
Istighhab al-Māl
Istighhab al-Māl al-Aqūl

An aleatory transaction, sale by throwing: "Buyer throws a stone and whichever article it falls upon becomes the property of the buyer."

Lapse of time.

To annul a contract.

Precision.

Acknowledgement, Confession; "to admit the right of someone against oneself."

Approval of the Holy Prophet (on certain decision or action); "an action was done in the presence of the prophet which he did not refute."

Dropping a name from the Isnad (the chain of narrators).

The chain of narrators (of an hadith).

Relinquishment (of a claim).

Exhausting the Genius.

Metaphor.

Clearance of pregnancy, acquittance.

Argument, inductive reasoning.

Argument with the reverse meanings.

Argument with the presumption or similarities, presumption-of-facts.

Juridic equity; "to hold an opinion (based) on the strongest reason."

Association with the prevailing conditions.

Association with the prevailing conditions based on the intellect.
Istishab al-Mal al-Ijmāʿ: Association with the prevailing conditions based on the consensus of the community.

Ightira': Purchase.

Istithna': Exemption.

Istithna' al-Jumlah: Exemption from sentence.

Istithna' al-Muttasil: Adjoining Exemption; "a kind of speech in which a part depends upon another part."

Istithna' min al-Gins: Exemption from the genus.

'Itq: Manumission; "making free (a slave)."

Ja'is: Lawful, unobjectionable, valid; "an action that is lawful in the Shari'ah.

Jalad: Flogging, (jaladah; "flogging punishment in penal Law").

Jariyah: Slave girl.

Jinayat: Crimes, Torts, delict; "offence against the person".

Jizzyah: poll-tax, taxes on non-Muslims.

Kafalah: Guarantorsip, Bailment; "to add obligation in respect of a demand for something".

Kaffarah: Atonement, Religious expiation, something legally enforced.

Kalam al-'Arab: Arabic expressions.

Karahiyyat: Disliking, duress.


Khabar Muntad: Connected transmission; "a hadith whose chain of narrators reached up to the Prophet".
Khabar Mursal: Disconnected transmission: "a hadith whose chain of narrators (isnad) does not reach the prophet".

Khabar Mutawatir: Continuous transmission: "a hadith which is unanimously reported by the narrators".

Khabar al-Wahid: Isolated transmission: "a hadith narrated by a single rawi ('transmitter').

Khamr: Wine, intoxicating liquide.

Kharaj: Lend tax.

Khusn: Opponent, party to a lawsuit.

Khayy: Particular: "sense (of a word or expression)".

Khilaf: Disagreement.

Khitabah: Negotiation for the marriage engagement.

Khiyanah: Embezzlement.

Kitabah: Undertaking: "to give a written undertaking to a slave that he will be free on paying a certain amount mentioned therein".

Kinayah: Allusion, implicit declaration.

Khiyar: Option; right or reservation.

Khiyar al-'Ayb: Stipulated right of cancelation.

Khul': Dissolution of exchanged by wife; "divorce in which the wife redeems herself from the marriage for an consideration, an exchange of assets for separation.

Laft al-Gins: Generic nouns; "word indicating genus".

Laft al-Izafak: The Genitive word.

Laft al-Mubhimah: Equivocal word.

Laft al-Nihy: Negative word.

Lauh al-Khitab: The tone of the expression; "that part of expression (damir) without which the
discourse (kalam) is not completed."

Li'an
: Accusation (of adultery); "the husband affirms under oath that the wife has committed unchastity or that the child born of her is not his, she, if the accusation arises, affirms under oath the contrary; a kind of dissolving marriage."

Luqtah
: Lost property.

Ma'dhun
: A slave who has been given permission to trade.

Mahr
: Dowry; nupital (wedding) gift.

Majaz
: Secondary meaning (of a word); "a word which is used other than its own meaning."

Majmūn
: The Insane.

Munun
: Honest.

Na'na al-Khitab
: Intention of Kalam, meaning of expression; analogy; "application of either of the two known objects to the other to affirm or avert a certain decision on the basis of something common to both."

Mandub Ilayh
: Recommended; "disregard of which does not necessarily result in the infliction of some punishment."

Mansūb 'Alay
: Supported by the text.

Mansukh
: The Abrogated.

Ma'qul al-'Aasl
: Intelligible meaning of the root; "which is understood by al-qur'aan, al-sunnah, and Ijma' of the muslim community."

Marwi 'anhu
: The real (narrator) from whom the hadith is narrated.

Mashfu'
: Real property subject to pre-emption.

Mashru'
: Recognized by the Shari'ah Law.

Maghala
: The public interest.
<table>
<thead>
<tr>
<th>Arabic Term</th>
<th>English Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>مسالم</td>
<td>Inviolable, protected by the criminal law.</td>
</tr>
<tr>
<td>نازع</td>
<td>Text.</td>
</tr>
<tr>
<td>متبوع</td>
<td>A person of unsound mind.</td>
</tr>
<tr>
<td>مذهب</td>
<td>View; &quot;legal opinion/School of law&quot;.</td>
</tr>
<tr>
<td>معلق</td>
<td>A person released from restraint.</td>
</tr>
<tr>
<td>عائد</td>
<td>pecuniary transactions.</td>
</tr>
<tr>
<td>متناقض</td>
<td>Contradictory.</td>
</tr>
<tr>
<td>مفيد</td>
<td>Effective.</td>
</tr>
<tr>
<td>متناثر</td>
<td>Indifferent; &quot;neither obligatory, recommended nor reprehensible or forbidden&quot;; permissible.</td>
</tr>
<tr>
<td>مباح</td>
<td>The dissolution of marriage by agreement with mutual waiving of any financial obligation.</td>
</tr>
<tr>
<td>نجح ين</td>
<td>Ambiguous (declaration).</td>
</tr>
<tr>
<td>نجاح</td>
<td>sleeping partnership; &quot;a partnership where one finds the capital and the other the labour&quot;.</td>
</tr>
<tr>
<td>مدأ دا'الاية</td>
<td>Defendant.</td>
</tr>
<tr>
<td>مدأ دالي</td>
<td>Plaintiff, claimant.</td>
</tr>
<tr>
<td>مفسر</td>
<td>Detailed, precise, explained, elaboration (of an expression of word); &quot;which conveys its full meaning by the expression only and does not need further explanation&quot;.</td>
</tr>
<tr>
<td>مفاضلة</td>
<td>Unlimited mercantile partnership; &quot;partnership on equal terms&quot;.</td>
</tr>
<tr>
<td>مخير</td>
<td>The bankrupt</td>
</tr>
<tr>
<td>محاكاة (bay')</td>
<td>Sale of wheat in the ears or of a foetus in the womb.</td>
</tr>
<tr>
<td>محقوق</td>
<td>Probable; &quot;a word which bears two or more meanings&quot;.</td>
</tr>
<tr>
<td>محقوق الزيت</td>
<td>Probable which is explicit in a certain meaning.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<td>-----------------------------</td>
<td>-----------------------------------------------------------------------------</td>
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<tr>
<td>Mujazifah</td>
<td>A bargain in the lump.</td>
</tr>
<tr>
<td>Mujmal</td>
<td>Concise, Unexplained (Expression or word).</td>
</tr>
<tr>
<td>Mukallaf</td>
<td>The subject, responsible.</td>
</tr>
<tr>
<td>Mukhabarah</td>
<td>Renting of an agricultural land by paying a portion of the product after harvest.</td>
</tr>
<tr>
<td>Mukhatab</td>
<td>The Addressee.</td>
</tr>
<tr>
<td>Mu'min (Pl, Mumunun)</td>
<td>The believer.</td>
</tr>
<tr>
<td>Kunabasah (Bay')</td>
<td>Gel in which the article is thrown to the boy or indicating the completion of sale.</td>
</tr>
<tr>
<td>Mu'zamaah (Bay')</td>
<td>An aleatory transaction, sale by touching the goods.</td>
</tr>
<tr>
<td>Muqayyada (Bay')</td>
<td>Sale of goods for goods in exchange of good, barter.</td>
</tr>
<tr>
<td>Muqayyid</td>
<td>Conditioned (word).</td>
</tr>
<tr>
<td>Muqayyida (Bay')</td>
<td>Change of specific property with other specific property.</td>
</tr>
<tr>
<td>Murabaha</td>
<td>Rosab with a stated prophet, Transaction on the cost price stating some prophet.</td>
</tr>
<tr>
<td>Murahabah</td>
<td>The age of male or female not in the state of puberty (12 years in case of male 9 years in case of female).</td>
</tr>
<tr>
<td>Nuqata'ah</td>
<td>Rent for waqf land.</td>
</tr>
<tr>
<td>Musaqat</td>
<td>Lease of fruit gardens for an stipulated period.</td>
</tr>
<tr>
<td>Musha'</td>
<td>A thing containing undivided shares.</td>
</tr>
<tr>
<td>Musharikah</td>
<td>Joint ownership, Co-operatives.</td>
</tr>
<tr>
<td>Mushrikat</td>
<td>Poythiest woman.</td>
</tr>
<tr>
<td>Muslim (Pl, Muslimun)</td>
<td>The faithful.</td>
</tr>
<tr>
<td>Mustaqii bi-NafsibI</td>
<td>Independent by itself.</td>
</tr>
</tbody>
</table>
Mutarāh  
Temporary marriage.

Mutlaq  
Absolute (Word).

Mutliqah  
Divorced woman.

Muwakkil  
The person who appoints the agent in his place.

Muwalat  
Contract of clientship.

Musara'ah  
Renting or lease of agricultural land.

Musarā'at  
Moral Laws.

Nafaqah  
Maintenance.

Nafy  
Refusal, detainment.

Nahy  
The (Knowledge of) syntax.

Nahy  
Prohibition, void, unlawful.

Nahy 'ala wajh al-Tahrīm  
Prohibition in so far as the object is unlawful.

Nahy 'ala wajh al-kawāfa  
Prohibition in so far as the object is disliked.

Nass  
Text.

Nasi'ah  
Delay, deferred payment.

Nashkh  
The abrogation: "Cancellation of a previous decision or withdrawal thereof caused by another decision came after wards."

Nasīkh  
The Abrogator (See also Nashkh).

Naqd  
Cash.

Naql  
Tractation, transcription.

Nikah  
Marriage.

Nisyaq  
Forgetfulness.

Nukul  
Refusal (to take the oath for).
Nuqabah: Omission; "word omitted in an expression".

Qabul: Acceptance.

Qada': Forum exterum, the duties of a judge; "Judgement given by a Qadi".

Qadhif: False accusation of unchastity.

Qard: Loan without profit.

Qar' (Pl. Quru') : Mesne period, monthly course.

Qar'nah (Pl. Qara'in): Presumption, similarity.

Qaum: Oath.

Qawl: Statement.

Qawl al-Nabi: Statement or Expression of the Holy Prophet.

Qisas: Retaliation; "punishment of death or injury in view of the same."

Qiyas: Analogy, Reasoning; "application of either of the two known objects to the other to affirm or avert a certain decision on the basis of something common to both."

Qiyas al-jali: Explicit reasoning.

Qiyas al-Khafi: Implicit reasoning.

Qiyas al-Shibbi: Reasubled reasoning.

Rahn: Mortgage, pledge, pawn, security.

Rahn al-Mustahar: To borrow with leave to pledge.

Raji'i Talaq: Revocable divorce.

Raja: Stoning to death, a punishment in penal law.

Ras al-Mal: The capital of a business.

Rawl: Reporter Transmitter, Narrator (of an hadith).
<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raybah</td>
<td>Doubtful (Action)</td>
</tr>
<tr>
<td>Rayah</td>
<td>Opinion, View</td>
</tr>
<tr>
<td>Riba'</td>
<td>Usury, Excess</td>
</tr>
<tr>
<td>Ribh</td>
<td>Prophet from a work or business</td>
</tr>
<tr>
<td>Riwayat 'ala vajh al-iJasah</td>
<td>Permitted transmission, an hadith the permission of which is obtained or given for narrations</td>
</tr>
<tr>
<td>Ruju'</td>
<td>Withdrawal (from the early opinion), revocation, retraction</td>
</tr>
<tr>
<td>Rukn</td>
<td>Essential element, Essence</td>
</tr>
<tr>
<td>Sabab</td>
<td>Cause</td>
</tr>
<tr>
<td>Sabi</td>
<td>Minor</td>
</tr>
<tr>
<td>Sadaqah</td>
<td>Alms, charity</td>
</tr>
<tr>
<td>Safih</td>
<td>Irresponsible</td>
</tr>
<tr>
<td>Sahabi</td>
<td>Companion of the Holy Prophet.</td>
</tr>
<tr>
<td>Sahib al-Sharif</td>
<td>Law giver (usually used for the Holy Prophet)</td>
</tr>
<tr>
<td>Sahih</td>
<td>Genuine, valid, legally effective, authentic</td>
</tr>
<tr>
<td>Sahm</td>
<td>Fixed share of an heir</td>
</tr>
<tr>
<td>Sahw</td>
<td>Mistake</td>
</tr>
<tr>
<td>Salam (Bay')</td>
<td>Sale contract for deliver with pre-payment</td>
</tr>
<tr>
<td>Salat al-Khawf</td>
<td>Performance of the prayer in fear</td>
</tr>
<tr>
<td>Saqim</td>
<td>Defective</td>
</tr>
<tr>
<td>Sarf (Bay')</td>
<td>Sale of money for money</td>
</tr>
<tr>
<td>Shahid</td>
<td>Witness, testimony</td>
</tr>
<tr>
<td>Shari' al-Islam</td>
<td>Islamic Laws</td>
</tr>
<tr>
<td>Shart.</td>
<td>Stipulation, prerequisite, condition, legal formularies</td>
</tr>
</tbody>
</table>
Shighar
: Giving one's daughter or sister in marriage to another man in consideration to the latter giving his daughter or sister in marriage to former.

Sifat
: Attribute.

Suftajah
: Bill of exchange.

Shuf'ah
: Pre-emption.

Sulh
: Amicable settlement, compromise.

Sunnah
: The Model conduct of the Holy Prophet; "Expressions (aqwāl), actions (af'āl) and approvals (iqrār) of the Holy Prophet"; precedence from the prophetic way.

Ta'ajub
: Exclamation, Admiration.

Ta'arud
: Conflict, contrariety.

Tahaqat
: Biographies of Lawyers (Jurists) arranged by Classes or generations.

Tadbir
: Promise; "to promise a slave that he will be free on the death of the master."

Tad'il
: To declare a narrator trustworthy.

Tahdid
: Threat.

Tafriq
: A dissolution of marriage.

Tafqide
: Conflict of equivalent testimonies.

Tahlil
: A device to remove an impediment to marriage.

Tahrif
: Alteration.

Tahrir
: Prohibition; "an action or thing invalid in the Sharī'ah Law."

Ta'jiz
: To show someone incapable of something.

Taklif
: Legal responsibility, obligation of doing or not doing.

Takhy'ir
: Choice.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Talaq</td>
<td>Divorce, repudiation; &quot;dissolution of marriage by the husband&quot;.</td>
</tr>
<tr>
<td>Talaq al-talaq</td>
<td>A form of conditioned divorce.</td>
</tr>
<tr>
<td>Tanaqas</td>
<td>Estopped.</td>
</tr>
<tr>
<td>Taqdim wa takh(i)r</td>
<td>Reversion of an order (in an expression).</td>
</tr>
<tr>
<td>Tarakah</td>
<td>The property (moveable or immoveable) left by the deceased person.</td>
</tr>
<tr>
<td>Tariqah al-Zugh(a)h</td>
<td>Linguistic method.</td>
</tr>
<tr>
<td>Tariqah al-shar'a</td>
<td>Legal method.</td>
</tr>
<tr>
<td>Tarjih</td>
<td>Preference.</td>
</tr>
<tr>
<td>Tarjih fi al-(a)kh(b)ar</td>
<td>Preference in transmissions.</td>
</tr>
<tr>
<td>Tarjih fi al-(a)人民</td>
<td>Preference in chains (of the transmission).</td>
</tr>
<tr>
<td>Tarjihat al-M(a)'ani</td>
<td>Preference in (one or two) meanings.</td>
</tr>
<tr>
<td>Tarjihat al-M(a)tan</td>
<td>Preference in text.</td>
</tr>
<tr>
<td>Tassaruf</td>
<td>Disposition.</td>
</tr>
<tr>
<td>Tawaqquf</td>
<td>Stop to do or say anything.</td>
</tr>
<tr>
<td>Tawliyah ((B)ay')</td>
<td>Sale at the cost price.</td>
</tr>
<tr>
<td>Ta'wil</td>
<td>Interpretation.</td>
</tr>
<tr>
<td>Thamar</td>
<td>Price of a thing mould.</td>
</tr>
<tr>
<td>Thayyibah</td>
<td>A woman separated by death of her husband or by divorce, a girl who is not (w)ar(g)in.</td>
</tr>
<tr>
<td>Thiqah</td>
<td>Trustworthy person.</td>
</tr>
<tr>
<td>`U(h)da</td>
<td>Law of warranty, &quot;guarantee, against specific faults in a slave or animal.</td>
</tr>
<tr>
<td>`U(m)mah</td>
<td>Muslim community.</td>
</tr>
<tr>
<td>`U(m)mah al-(a)(m)mah</td>
<td>The communally: &quot;the common man of the community&quot;.</td>
</tr>
</tbody>
</table>
Ummah al-Khansa : Learned men; "the chosen people of the community".

Umm wa'ad : Female slave who has born a child to her owner.


'Urbun (Bay') : Sale of articles by depositing a portion of price in the condition of approval of the purchaser and deposition of the remaining balance within stipulated period.

Urf : Common usage; "a word is coined for for a certain kind of article and then it is predominately used for a particular type of that very kind of article".


Wadi (Bay') : Sale at less than cost price.

Wadi'ah : Deposit; "commission for holding property in safe custody".

Wajib : Obligatory; "disregard of which results in the infliction of that imperative in some punishment".

Wajib 'ala al-Tasakhkhat : Obligatory (action performed with delay)

Wakalah : To carry a business for someone and to make someone of standing in his place in respect of that business.

Wala' : Relationship of client and patron.

Wali : Legal guardian.

Warathat : Inheritance.

Wasiyyat : Will, legacy.

Warith : Heirer.


Wujub al-'amr : Obligatory Imperative.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wuquf</td>
<td>Abeyance (of right and legal effects)</td>
</tr>
<tr>
<td>Yamin</td>
<td>Oath, undertaking.</td>
</tr>
<tr>
<td>Zahir</td>
<td>Explicit; &quot;a meaning which hastens to the understanding of the hearer from among the meanings which the word bears&quot;.</td>
</tr>
<tr>
<td>Zara'i'</td>
<td>Use of the legal means; &quot;a matter (or problem) which is apparently lawful but is used (with a twist) for doing what is not lawful&quot;.</td>
</tr>
<tr>
<td>Zihar</td>
<td>Dissolution of marriage by the husband saying to his wife that she was like the back of his mother.</td>
</tr>
</tbody>
</table>
### CHRONOLOGICAL TABLE
OF
THE RULES OF UMAKYAID DYNASTY IN SPAIN.

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>'ABD AL-RAHMAN I, AL-DAKHIL</td>
<td>From: Dhi al-Haj 138 A.H. i.e. May, 756 A.D. To: Jamad al-Thani, 172 A.H. i.e. Nov, 788 A.D.</td>
</tr>
<tr>
<td>2</td>
<td>HIGHAM, I, IBN ABD AL-RAHMAN</td>
<td>From: Jamadah al-Thani, 172 A.H. i.e. Nov, 788 A.D. To: Safar, 180 A.H. i.e. April 796 A.D.</td>
</tr>
<tr>
<td>3</td>
<td>AL-HAKAN, I IBN HIGHAM</td>
<td>From: Safar, 180 A.H. i.e. April, 796 A.D. To: Dhi al-Haj, 206 A.H. i.e. May, 822 A.D.</td>
</tr>
<tr>
<td>4</td>
<td>'ABD AL-RAHMAN II, IBN AL-HAKAN</td>
<td>From: Dhi al-Haj 206 A.H. i.e. May, 822 A.D. To: Rabii al-Thani, 238 A.H. i.e. Aug, 853 A.D.</td>
</tr>
<tr>
<td>5</td>
<td>MUHAMMAD I, IBN ABD AL-RAHMAN</td>
<td>From: Rabii al-Thani, 238 A.H. i.e. Aug, 853 To: Safar, 273 A.H. i.e. Aug, 886 A.D.</td>
</tr>
<tr>
<td>6</td>
<td>AL-MUNDIR, IBN MUHAMMAD</td>
<td>From: Safar, 273 A.H. i.e. Aug, 886 A.D. To: Safar, 275 A.H. i.e. July, 888 A.D.</td>
</tr>
<tr>
<td>7</td>
<td>'ABD ALLAH, IBN MUHAMMAD</td>
<td>From: Safar, 275 A.H. i.e. July, 888 A.D. To: 'Safar, 300 A.H. i.e. October, 912 A.D.</td>
</tr>
</tbody>
</table>
(8) 'ABD AL-RAHMAN III.

From: Safar 366 A.H., i.e. October, 976 A.D.
To: Ramadhan, 350 A.H., i.e. October, 961 A.D.

(9) HAKAM II, IBN 'ABD AL-RAHMAN.

From: Ramadhan, 350 A.H., i.e. October, 961 A.D.
To: Safar, 366, A.H. i.e., September, 976 A.D.

(10) HISHAM II, IBN AL-HAKAM II.

From: Safar, 366 A.H. i.e. September, 976 A.D.
To: Jumadah al-Thani, 399 A.H. i.e. March, 1009 A.D.

(11) MUHAMMAD II.

From: Jumadah al-Thani, 399 A.H. i.e. March 1009 A.D.
To: Rabii al-Awwal, 400 A.H. i.e. Nov, 1009 A.D.

(12) SUSAYN.

From: Rabii al-Awwal, 400 A.H. i.e. November, 1009 A.D.
To: Shawwal, 400 A.H. i.e. May or June, 1010 A.D.

(13) MUHAMMAD II. (for the second time).

From: Shawwal, 400 A.H., i.e., May or June, 1010 A.D.
To: Dhul al-Hijjah 400 A.H. i.e. August, 1010 A.D.

(14) HISHAM II. (for the second time).

From: Dhul al-Hijjah, 400 A.H. i.e. August, 1010 A.D.
To: Shawwal, 403 A.D. i.e. April, 1013 A.D.

(15) SUSAYN. (for the second time).

From: Shawwal, 403 A.H. i.e. April, 1013 A.D.
To : Muharram, 407 A.H. i.e. July, 1016 A.D.

(16) 'ABD AL-RAHMAN IV.

From: Ramadhan, 408 A.H. i.e. April, 1016 A.D.
To: Safar 408 A.H. i.e. Jan, 1019 A.D.

(17) (After this ruler 'Ali Ibn Hamud won the political power and ruled on the dynasty from Muharram 407 i.e. July 1016 A.D. to Ramadhan 408 A.H. i.e. April, 1018 A.D.).

(18) (After this member of the House of Umayyah again the power went in the hands of Hamidites and Al-Qasim ibn Humud and Yahya ibn al fit ruled upto Ramadhan, 414 A.H. i.e. December, 1023 A.D.)
(17) 'ABB AL-RAHMAN, V.

From: Ramadan, 414 A.H. i.e. December, 1023 A.D.
To: Dhī Qā'dah, 414 A.H. i.e. March, 1024 A.D.

(18) MUHAMMAD III.

From: Dhī al-Qā'dah, 414 A.H. i.e. March, 1024 A.D.
To: Rabi' al-Awwal, 416 A.H. i.e. May, 1025 A.D.
(Yahya ibn 'Ali, Hanbali Haja, again ruled up to Rabi' al-Awwal 418 A.H. i.e. May, 1027 A.D.)

(19) HISHAAM, III.

From: Rabi' al-Awwal, 418 A.H. i.e. May, 1027 A.D.
To: 422 A.H. i.e. 1031 A.D.
GENEALOGICAL TABLE
ON
THE RULERS OF UNHAYED DYNASTY IN SPAIN
### CRONOLOGICAL TABLE OF THE RULERS OF SABACOSSA STATE (SPAIN)

<table>
<thead>
<tr>
<th>#</th>
<th>Ancestry</th>
<th>Reign</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Bani Tujib</td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>al-Mundhir Mansur b. Yahya</td>
<td>403/201 to 414/1023</td>
</tr>
<tr>
<td>(2)</td>
<td>Yahya Musa'far b. Mundhir</td>
<td>414/1023 to 420/1029</td>
</tr>
<tr>
<td>(3)</td>
<td>Mundhir b. Yahya</td>
<td>420/1039 to 431/1040</td>
</tr>
</tbody>
</table>

| (2) | Bani Hub |                |
| (4) | Sulayman b. Hud al-Musta'in b. Allah | 431/1039 to 438/1046 |
| (5) | Ahmad I b. Sulayman al-Muqtadir b. Allah | 438/1046 to 474/1061 |
| (6) | Yusuf b. Ahmad al-Mutaman | 474/1061 to 503/1080 |
| (7) | Ahmad II b. Yusuf al-Musta'in b. Allah | 478/1085 to 503/1101 |
| (8) | 'Abd al-Malik b. Ahmad 'Imad al-Dawlah | 503/1101 to 513/1119 |
| (9) | Ahmad III b. 'Abd al-Malik Sayf al-Dawlah | 513/1119 to 536/1141 |

(Christian)
SETTLEMENT OF QAHATANITS IN SPAIN

(An abstract taken from Fajr al-andalus by Dr. Husain N Munis)

I. Places Settled by Qahatanit Tribes from Qohat Al-Najm:

1. (al-Mina al-Qahatani)
   - Location:
   - Description:

2. (Wadi al-Khalid)
   - Location:
   - Description:

3. (Wadi al-Ahmar)
   - Location:
   - Description:

4. (Bahr al-Yusuf)
   - Location:
   - Description:

5. (al-Mina al-Qahatani)
   - Location:
   - Description:

II. Places Manned by Qahatanit Villagers:

1. (al-Mina al-Qahatani)
   - Location:
   - Description:

2. (al-Mina al-Qahatani)
   - Location:
   - Description:

3. (al-Mina al-Qahatani)
   - Location:
   - Description:

4. (al-Mina al-Qahatani)
   - Location:
   - Description:

5. (al-Mina al-Qahatani)
   - Location:
   - Description:

6. (al-Mina al-Qahatani)
   - Location:
   - Description:

7. (al-Mina al-Qahatani)
   - Location:
   - Description:
AUTHORITIES MENTIONED IN THE WORK BY AL-DAJI


Abu al-Hasan ibn Muntab:


Khawwayz Mandad: Muhammad ibn Ahmad ibn 'Abd Allah, Abu 'Abd Allah ibn Khawwayz Mandad (d. 390 A.H./1000 A.D.)


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IV

ARABIC TEXT