PRINCIPLES OF JURISPRUDENCE FOR BEGINNERS

*Al-Wadih fi ‘Usul al-Fiqh li’l-mubtadi’ìn*

الواضح في أصول الفقه للمبتدئين

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English Translation

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Preliminaries

Definition of Science of Principles of Jurisprudence

Science of Principles of Jurisprudence is a collection of the general rules that are used in deduction of the legal rules for parallel cases (al-\textit{ahkam al-Shar`iyyah al-far`iyyah}) from its specific indicators in textual sources (al-Adillah\textsuperscript{1} al-\textit{Tafsiliyyah}).

\textsuperscript{1} Adillah means proofs. Its singular is \textit{dalîl} which means certain evidence, proof, authority. Dalil sam`i means traditional authority.
Al-Adillah al-Naqaliyyah means the traditional proofs.
Adillah `\textit{Aqliyyah} means rational proofs.
Adillah \textit{Ijmâliyyah} means the general evidences for the law that contains within them the specific evidences.
Adillah \textit{Tafsîliyyah} are specific evidence.
Let us give examples for it.

Allah Almighty says:

Adillah Shar`iyyah i.e. sources of the law as in the Holy Qur’an, the Sunnah, the Ijma` and the Qiyās. The Holy Qur’an, for instance, is a general evidence, while a verse of the Holy Qur’an pointing to a ḥukm is a specific evidence or the dalil tafṣīli. In the Fiqh technique, the word “evidence” means Shari`ah evidence or Adillah Shar`iyyah i.e. sources of the law as in the Holy Qur’an, the Sunnah, the Ijma` and the Qiyās. Evidence is what gets us to truth, and without evidence there would be no getting at it. An opinion based on prejudice or conjecture is proper only to heretics. A dalīl ẓannī is that which is called probable. (example: Qiyās) A dalīl qat`ī is that which is called positive or definitive.(example: Verse of the Holy Qur’an or the Sunnah of the mutawātir type) A dalīl infirādī is that which is called an individual report.
And be steadfast in prayer; practise regular charity; and bow down your heads with those who bow down (in worship).

[2:43]

This is a specific evidence (dali l tafsili) through which is gained a legal rule of parallel case (hukm shar`iyy far`iyy) and that is:
Obligation to perform As-Salât (Wujub Iqâmat-as-Salât), and
Obligation to give Zakât, and
Obligation to bow down (or submit yourselves with obedience to Allâh) along with the bowers (i.e. Irka` ma`ar-Raki `in.).
The methodology to derive the first rule from the a specific evidence (dali l tafsili) is like this:

(i) Aqimus-salat [Establish prayer] : It is an imperative (’amr).
(ii) wa al-’amru yaqtadi al-wujub. [An imperative requires obligation].
Hence: Iqamatus-salati wajibun. [Establishment of prayer is an obligation].

The methodology to derive the second rule from the a specific evidence (dali l tafsili) is like this:

(i) ’Atuz-zakata [Give Zakat] : It is an Imperative.
(ii) An imperative required obligation.
Hence giving of Zakat is an obligation.
The methodology to derive the third rule from the a specific evidence (dali l tafsili ) is like this:

(i) Warka`u ma`rraki`in [Bow down (before Allah Almighty) along with those who bow down]: It is an Imperative.

(ii) An Imperative requires obligation. Hence offering prayer in congregation is an obligation.

Our statement that Establish prayer is an Imperative and Give Zakat is an Imperative is known from the diction/language (al-lughah) and it is not known from the science of principles of jurisprudence.
As for our statement that an imperative requires obligation. This is the general rule which is inevitable in the matter of understanding a rule (al-hukm). Rather the understanding of a rule is based on it. Hence it is a fundamental principle (qa`idatun `usuliyyatun).

As for the result of this argumentation that is wujubu íqamatissalati (the obligation of establishment of prayer) is a rule of law for a parallel case as it is in a particular parallel matter. It is not from the science of principles in a matter. Rather it is from among the science of law.
In this manner the following rules are the rules of the Science of Principles:

(i) Al-\textit{Nahi yaqtadi} al-\textit{tahrim} [Prohibition requires unlawfulness].

(ii) Al-Sunnah al-Fi`liyyah \textit{hujjatun lil-`ibadi} [Sunnah of action is an authoritative proof for the servants (believers)].

(iii) Al-\textit{IJma` al-Sukuti} la \textit{yahtajju bihi}. [Silent Consensus is not an authoritative proof.]

(iv) Al-Amru bil-\textit{ada`i} laysa `amran bil-qada`i. [Imperative is for in time performance and not for performance after expiry of time.]
Distinction between Science of Principles of Law (‘Ilm al-’Usul al-Fiqh) and Science of Law (‘Ilm al-Fiqh):

Science of law is a body of rules of law applicable to parallel cases relating to actions of human beings in the matter of their rituals, dealings, family relations, offences, relations between Muslims inter se and between Muslims and other persons, in peace and war, etc. The rule of law applicable to these acts is obligatory, or prohibitive or recommendatory
or abhorable or permissible or valid or irregular etc. Thus the science of law is that knowledge that makes it clear for us that five times daily regular prayers during the day and night are obligatory. And the capacity to perform them and the arrival of the time for their performance are from among the conditions precedent for it's becoming obligatory. And to talk during its performance and breaking of the ablution (wudu) etc. are such acts that render the performance irregular. It makes us clear that the eating of the flesh of swine and its fat and all its parts are unlawful.

Thus the science as to what is the address (khitab) of Allah Almighty relating to act of human being is the
Science of Law (\textit{`IIm al-Fiqh}) irrespective of such address being a demand of doing an act or forbidding an act or it is related to its demand or prohibition or validity or irregularity. All this is included in the Science of Law (\textit{`IIm al-Fiqh}). The Science of Law (\textit{`IIm al-Fiqh}) also is the knowledge of the legal evidence of the Book, or the Sunnah or other than these two sources concerning any of such problems.

As for Science of Principles of Law (\textit{IIm Usul al-Fiqh}) it is the knowledge that makes clear for us as to,-

- What is the nature of the legal rules (\textit{\textit{\textit{\textit{\textit{al-ahkam al-shar'iyyah}) in their detailed attributes (\textit{sifat})}?})

- What are the peculiarities of every kind of the rules?
• What is the state of mutual relationship between one kind with another kind (of these rules)?

• What evidence is in our favour?

• What evidence is not in our favour.

• How can we derive a rule from its evidence? For example its derivation from the explicitness of the text of the Qur'anic verse or the hadith of the Holy Prophet (Sallallahu 'alayhi wasallam) or from its understanding or by way of exercising analogical deduction from the two sources or other than them.

• How should we work when the evidence is an act of the Holy
Prophet (Sallallahu 'alayhi wasallam)?

- Who is the person who is competent to deduce (the rules of law from the textual evidences of the sources of law)?

- What are his qualifications for his eligibility?
- What should he do when he comes across a contradiction among the evidences and the like matters for discussion?

The inevitability of the fundamental principle of evidence

As we have said, the fundamental rules are those rules upon which are
founded *al-furu' al-Tashri 'iyyah*. And when the rule applicable to parallel case (*al-hukm al-far'iyy*) needs an evidence for its establishment then a rule is not established without evidence. And a fundamental rule is more in need of proof. It is not permissible to establish a fundamental rule without evidence. Rather it is befitting that a fundamental rule should not be established on the basis of an evidence in which there is some weakness (*du'f*) like a *hadith* of the category of *hadith hasan* etc. This is because on it are founded a great collection of the injunctions. Hence it is inevitable it must be penetrating with strong evidence/proof so that peace of mind is obtained in the matter on which the rules are to be
Sources of Fundamental Principles (*Adillah al-qawa`id al-'Usuliyyah*)

On thorough search of what has been made by the learned in the 'Usul among the Islamic 'Ummah we find that they have relied upon different sources for the establishment of the fundamental rules and have reverted towards four such sources, namely:

Texts of the Book of God Almighty (*Nusus Kitabullahi ta`ala*, i.e. the *Holy Qur'an*);

Texts of the Sayings of the Holy Prophet (*Nusus Nabawiyyah Sallallahu 'alayhi wasallam*);
The Arabic language and its sciences (*Al-Lughatu al-`Arabiyyah wa `Ulumuha*); and

The Intellect (*Al-`Aql*).

Thus the fundamental principle that there shall be no responsibility except according to the capacity is based on the evidence of Allah Almighty's words:

لا يُكِلِفُ اللَّهُ نَفْسًا إِلَّا وُسُعَّا لَهَا مَا كَسَبَتْ وَعَلُّهَا مَا أَكْتَسَبَتْ رَبَّنَا لَأَتُؤْخَذُنَا إِنْ نَسِيْنَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا
Allâh burdens not a person beyond his scope. He gets reward for that (good) which He has earned, and He is punished for that (evil) which He has earned. "Our Lord! Punish us not if we forget or fall into error, Our Lord! Lay not on us a burden like that which You did Lay on those before us (Jews and Christians); Our Lord! put not on us a burden greater than we have strength to bear. Pardon us and
grant us Forgiveness. have Mercy on us. You are Our Maulâ (Patron, Supporter and Protector, etc.) and give us victory over the disbelieving people."

[2:286]

The fundamental principle that an imperative (‘amr) requires obligation is based on the saying of the Holy Prophet (Sallallahu 'alayhi wasallam):

*Lau la 'an ashaqqa 'ala 'ummati la amartuhum bis-siwaki ma' a kulli salatin.*

[Had it not been a hardship for my Ummah I would have definitely ordered them to brush (their teeth) at every prayer.]

(Bukhari and Muslim agreed upon).
The fundamental principle that an imperative requires immediate compliance is based on the principle that the people of the language understand the same meaning of this term. Thus when a master says to his servant: Bring for me some water to drink and the servant delays in obeying the command he becomes worthy of blame.

The fundamental principle is:

ʼIza ikhtalafa mujtahidani fi hukmin fa ʻahadu huma mukhti ʻun.

"Where the two mujtahids differ in their opinions in the matter of a hukm one of the two opinions is erroneous"

This fundamental principle is based on the evidence of reason/intellect/rationale (al- ʻaql) as
the verdict of the reason or intellect is that it is impossible that both the two contradictions are true. One is correct, the other is incorrect.

Compilation of discourses on `Ilm al-`Usul
We have already said that `Ilm al-`Usul is a collection of the general rules that are used in deduction of legal rules applicable to parallel cases (al-ahkam al-shar'iyyah al-far`iyyah) from their specific sources (adillatiha al-tafsiliyyah).
It is not proper to merely narrate these general rules haphazardly. Rather it is inevitable to make their concept and study easy keeping their fixed sequence in tact.
The Usuliyyin have given them different sequence. However we have found unity in the matter of giving examples. It is said by them:

Inna kulla hukmin shar`iyyin far`iyyin la budda `an yakuna sadiran `an hakimin (huwallahu ta`ala) yahkumu bi hi `ala shakhsin (huwa`l-`abd `au al-mukallaf) fi fi`lin min af`alihi yastanbitu zalika`l-hukma min dalilihi shakhsun mu`ahhilun (huwa`l-mujtahidu) bi tariqin mu`ayyinatin wa yurajjihu bainal-adillati `in ta`aradat, thumma yuballighuhi lil-mahkumi `alayhi li yatamaththalhu.

[certainly, every Law (legal rule) applicable to parallel case it is inevitable that it must have been]
issued by a Law giver (i.e, Allah Almighty) to be obeyed by a person (a servant or a responsible person) concerning acts and this legal rule is to be deduced by a competent person (i.e. the mujtahid) in a fixed manner, and given preference between the evidences where those are contradictory and then to convey it to the person subject to it for acting accordingly.]

For this reason we have divided these discourses in nine chapters:

Ch. I Law Giver is Allah Almighty alone.
Ch. II Nature of Law and its classification.
Ch. III Person Responsible to obey Law
Ch. IV Act of the responsible
Ch. V Sources of Law, the Holy Qur’an, the Sunnah, the Ijma`, the Qiyas etc.
Ch. VI Manner of deriving rules from the sources and in it is also mentioned analogical deduction (methodology of al-Qiyas).
Ch. VII Who is competent to deduce the legal rules from the original sources of Islamic Law, i.e. Al-Mujtahid.
Ch. VIII Contradiction in sources and the way of giving preference.
Ch. IX Conveying the law to the responsible i.e. legal opinion. Then will be the mention of Taqlid and the Last Chapter will be on the Fundamental Principles of Deduction.
May Allah Almighty help us in accomplishment of this exercise and keep us sincere throughout by His Grace.

**Growth and development of Science of Principles of Law (\textit{\textsuperscript{Ilm} 'Usul al-Fiqh})**

After the Messenger of Allah (Peace and blessings of Allah be upon him) the companions (\textit{radiyallahu ta`ala `anhum}) came across new events and they deduced legal rules to apply them to those new events. They had lived in the sacred company of the Messenger of Allah (Peace and blessings of Allah be upon him) and thus had seen the revelation coming to him and were aware of the spirit of the law and the manner of its
application by the Messenger of Allah (Peace and blessings of Allah be upon him). They explained as to how the law available in the original text was to be made applicable to the parallel case keeping in view its letter and spirit. For example when Ibn `Umar heard a person forbidding al-tamatu` bil-
Hajj following the prohibition by Hadrat `Umar (radyallahhu ta`ala `anhu) had said: I fear there may be stone fall on ye. I am telling you the Messenger of Allah (Peace and blessings of Allah be upon him) said this and you are telling me that Abu Bakr and `Umar said this. Thus here Ibn `Umar was telling them: al-Tamattu` bil-
Hajj was permissible.
And this was a legal rule applicable to a parallel case. It is used to refute the view of non permissibility and is based on a legal rule that has been made explicit. And that legal rule is:

_Al-Dalilu min al-Sunnati al-Nabawiyyati muqaddimun `ala qauli al-Sahabiyyi_

[An evidence from the Sunnah of the Holy Prophet (Peace and blessings of Allah be upon him) is to be given preference over the word of a Companion (radiyallahu ta`ala `anhu)]

In such a case or situation or circumstance or event even if the companion be of the status of Hadrat Abu Bakr or Hadrat `Umar (radiyallahu ta`ala `anhumaa) his words shall not override the Sunnah
of the Messenger of Allah (Peace and blessings of Allah be upon him).

When *Hadrat `Umar* (radyi`allahu `ta`ala `anhu) appointed *Hadrat Abu Musa al-Ash`ari* (radyi`allahu `ta`ala `anhu) the Chief Justice he instructed him: Know the resembling and similar and exercise your personal judgment. This was an explicit instruction to exercise the process of analogical deduction (al-`Qiyas`). And this is a question of principles.

During the period of *Tabî`in* and after their period the need for deduction (*istinbat*) increased. This was due to increase in events that occurred due to inclusion of enormous countries under Islamic rule. The *Tabî`in* were thus much engaged
in finding the solutions of the new problems from the original sources and exercising *ijtihad*. Imam *Shafi`i* wrote al-*Risalah*, the best book on the subject. In it he described the principles of deduction of the rules from the sources of Islamic Law, namely, the Holy Qur’an, the Sunnah, the *Ijma* and the *Qiyas*. He discussed in it the *nasikh* and *mansukh*, *khass* and *`amm*, and what can be authoritative proof (*hujjatun*) from *Ahadith* and what not.

Thus Imam *Shafi`i* (*radiyallahu ta`ala `anhu*) consolidated in his al-*Risalah* the scattered pieces of this knowledge which was prevalent among the scholars prior to him and recorded it in his al-*Risalah* after deep critical examination thereof and
sifting the truth from the falsehood. He also recorded in the Al-Risalah the controversies of the experts in various dimensions and thus set this science accurately and precisely and made a framework which served as a model to be followed by those who came after him. Thus many writings were compiled on the subject of Usul by the people after him and the Science of Usul developed. The exercise of personal judgment (ijtihad) and deduction (istinbat) from the sources became easy as the injunctions (ahkam) were specified and the sources listed. The ways of deduction were made clear and well set. It became possible to distinguish between false exercise of Ijtihad and the true exercise of Ijtihad. The false exercise
of *ijtihad* was based on false sources and the scholars studied their falsehood and pinpointed the places from where the fallacy entered in such exercise.

[May Allah Almighty bless Imam Shafi`i with vast mercy and make his soul rest with peace in His Vast Gardens.]

**Chapter 1**

The Law Giver is Allah Almighty

(الْحَاكِمُ هُوَ اللهُ ﺃُسْلَمُ)

The Law Giver (الْحَاكِمُ) is Allah Almighty:

Allah Almighty says:
41. see They not that we gradually reduce the land (in their control) from its outlying borders? (Where) Allah commands, there is none to put back His Command: and He is swift In calling to account.

[13:41]

Allah Almighty also says:
40. "If not him, ye worship nothing but names which ye have named,- ye and your fathers,- for which Allah hath sent down no authority: the command is for none but Allah. He hath commanded that ye worship none but him: that is the right religion, but Most men understand not... [12:40]
The right to give law belongs to Allah Almighty as it originates from Him. He is the Creator of all that is besides Him. He is the Originator of them from non-existence. He is the Sustainer of all his creations with His favours. And everything out of them is subject to His ownership and control. Hence from this it follows and transpires that he can exercise His control over them as He wills. It is the exercise of the control by the owner in his dominions. There is no restriction on Him in the matter of exercising His control as He wills. He may award for obedience as an act of His Kindness and reward, and He may punish for disobedience in the Hereafter.
INTELLECT IS NOT A LAW GIVER
(العقل لا يُجزّأ
بِحاکمِ)

Where the intellect measures in a fixed action any benefit it is not an evidence in the Shari`ah and no reward is attached to such an action. Same is the case if it measures a loss (in any action) and no punishment is attached to such action when the Shari`ah has not evidenced it with its unlawfulness. This is so because the intellect is not the Lawgiver. The reward and punishment are attached with the Shari`ah Law (الحكّامُ الشرعیّ).

THE MESSENGER *(SALLALLAHU `ALAYHI WA `ALIHI WASALLAM)*
IS NOT LAW GIVER
(الرّسُولُ صلی الله علیه و السّلامُ لا يُجزّأ
بِحاکمِ)
The Messenger is a preacher (مَبْلِغ) of the commands of Allah Almighty and therefore he is not a Lawgiver. He is the conveyer and transmitter and interpreter of the Law (of God). Allah Almighty says:

21. Therefore do Thou give admonition, for Thou art one to admonish.

22. Thou art not one to manage (men's) affairs.

[88:21 and 22]

Allah Almighty also says:
44. (We sent them) with Clear Signs and Books of dark prophecies; and we have sent down unto Thee (also) the Message; that Thou mayest explain clearly to men what is sent for them, and that They may give thought.

[16:44]
48. if then They run away, we have not sent Thee As a guard over them. 
Thy duty is but to convey (the Message). and truly, when we give man a taste of a Mercy from ourselves, He doth exult thereat, but when some ill happens to him, on account of the deeds which His hands have sent forth, truly then is man ungrateful!
[42:48]

It is also understood from the above quoted verse:

إِنِّ اَلْحُكْمُ إِلَّا ٍلِلَّهِ
The command is for none but Allah.
[12: 40]

That this verse contains an affirmation and a negation. That the command is for Allah is the affirmation; and That the command is not for anyone besides Allah is the negation.

As for the words of Allah Almighty:

إِنَّا آَنَزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَطْوِّرَ بَيْنَ النَّاسِ بِمَا أَرْنَاكَ آَلَلَّهُ ۚ وَلَا تَكُن لِّلْخَافِئِينَ

خَصِيمًا

105. we have sent down to Thee the Book In truth, that Thou mightest
judge between men, As guided by Allah. so be not (used) As an advocate by those who betray their trust;
[4:105]

This does not mean that there has been entrusted to the Holy Prophet (Sallallahu `alayhi wa alihi wasallam) the right to command what he sees. Rather it means : You (Sallallahu `alayhi wa `alihi wasallam) shall apply the command of Allah on what you see. Thus the Divine Command is general and sole (عام مجرد). The Messenger (Sallallahu `alayhi wa `alihi wasallam) describes its application on the individual events and makes it necessary. And that application depends upon his personal judgment and Ijtihad. This
meaning is supported by another verse of the Holy Qur’an in which Allah Almighty says:

وَأَنِّي أُحْكَمُ بَيْنَهُم بِمَا أَنزَلَ اللَّهُ وَلَا تَتَبَعِ أَهْوَآءَهُمْ وَأَحْذَرْهُمْ أَنْ يَفْتِنُوكُمْ عَنْ بَعْضٍ مَا أَنزَلَ اللَّهُ إِلَيْكَ فَإِنَّ تَولَوْاَ فَأَعْلَمَ أَنَّهَا يُرِيدُ اللَّهُ أَنْ يُصِيبَهُم بِبَعْضٍ دُنْوَيْهِمْ وَإِنَّ كَثِيرًا مِّنَ النَّاسِ لَفَسَقُونَ

And This (He commands): judge Thou between them by what Allah hath revealed, and follow not their vain desires, but beware of them Lest They beguile Thee from any of that (teaching) which Allah hath sent
down to thee. And if they turn away, be assured that for some of their crime it is Allah’s purpose to punish them. And truly most men are rebellious. [5:49]

And from then the Sunnah became a legal evidence/proof (dalil Shar`iyy) and not that it was issued by Hadrat Muhammad (Sallallahu `alayhi wa `alihi wasallam) himself; rather it is an indicator towards the commands of Allah Almighty.

IN THE MATTER OF LAW THERE BEING DIFFERENT SOURCES DOES NOT INDICATE THAT ANYTHING IS LAWGIVER BESIDES ALLAH ALMIGHTY
For example where a person says: Consensus is an authoritative proof (الإجماع حجة). It does not mean that where the Ummah agrees upon an affair it makes it a law. Rather it means that when it agrees upon any affair it is an indication that the command of Allah in that problem is that which they have agreed upon. The same will be said about the qaul of a Sahabi and in Qiyas and in Istislah and in Istihsan and other principles of sources from which a rule is derived. According to those who believe in them there are dala’il in them upon the Divine command. And it is not making
obligatory the commands by their own selves. Same is the position of all those affairs whose obedience is obligatory in Shari`ah. It is to be obeyed only when Allah has commanded to obey it.\(^2\) Allah Almighty says:

وَأَنَّ أَحْكَمُ بِبَيْنِهِمْ بِمَا آَنَّزَ اللَّهُ وَلَا تَتَبَعُ أَهْوَآءَهُمْ وَأَحْذَرَهُمْ أَن يَفْتَنُوكُمْ عَنْ بَعْضِ

\(^2\) The objective behind encompassment is that whoso obeys his command inclining towards the Mercy of Allah in the Hereafter and fearing His punishment therein. The truth is that Allah is the One and the Only. And all that is besides it is not binding command for mankind. If he abides by such command it was not a duty imposed by the Shari`ah and in such act there is no reward for obedience nor any punishment for disobedience in the Hereafter. Imām Ghazzali has pointed towards this fact in his book titled as al-Mustaṣfā, Vol.1, p.53.
And This (He commands): Judge Thou between them by what Allah hath revealed, and follow not their vain desires, but beware of them Lest They beguile Thee from any of that (teaching) which Allah hath sent down to thee. And if they turn away, be assured that for some of their crime it is Allah’s purpose to punish them. And truly Most men are rebellious.

[5:49]
THE JURISTS ARE ALSO NOT LAWGIVERS
المجتهدون أيضًا ليسوا حاكمين

A mujtahid when derives a rule in a juristic problem he is not a lawgiver at that time. He is only an informer that it has transpired to him that the divine command in the problem is such and such and according to that as he is informing. Then the law of God commands him to act upon that which is the truth according to his certitude (Zann Ghalib).

EFFECT OF UNDERSTANDING OF THIS RULE
[أثر فهم هذه القاعدة]
One of the effects of the understanding of this rule is that the speaker becomes well established in the statement of the Shari`ah rules. Thus when he says: This is lawful or this is unlawful, he informs that it is lawful made by Allah Almighty and it is unlawful made by Allah Almighty.

Allah Almighty says:

وَلَا تَقُولُواْ لِمَآ تَصَفُّ ٱلْسَّنَٰتُ ۖ حَلَّٓاٗ ۖ وَهَذَا ۖ حَرَّامٞ ۖ لِّتَفَتَّرُواْ عَلَى ۖ ۏاللَّهِ أَلَّذِينَ يَفْتَرُونَ عَلَى ۖ ۏاللَّهِ أَلْكَذِبِبٖ

لا يُفَلِّحُونَ
But say not - for any false thing that your tongues may forth, This is lawful, and This is forbidden; so As to ascribe false to Allah. for those who ascribe false things to Allah, will never prosper. [16:116]

He carries with him a positive evidence of that which he says. And if he has no clear evidence he will restrain from making any statement save where there is necessity and even at that moment he will say: This is my personal opinion or I like that or I dislike that and shall not attribute it to the Shari`ah. This was the manner and etiquette of the leading masters in such like circumstance. Allah be pleased with all of them. The jurist
of the recent time are ignorant of observing this etiquette.

2. It is also an effect of understanding of this rule that we understand that every statement made by a person and attributed towards the Shari`at is not binding on us as mere statement of a person is not its proof. The Shari`at is not proved by the statement of the persons. Allah Almighty says:

قُلْ إِنَّمَا حَرَّمَ رَبِّيُّ اللَّهُ وَهُوَ الْحَقُّ وَأَنَّ الْإِثْمَ وَالْبَغْيَ لَا يَضْرِبُونَ مِنْهَا
Say: the things that My Lord hath indeed forbidden are: shameful deeds, whether open or secret; sins and trespasses against truth or reason; assigning of partners to Allah, for which He hath given no authority; and saying things about Allah of which ye have no knowledge.

[7:33]

And if the maker of the statement is a person vested with authority to enforce Shari`ah like a Judge, a Ruler, a Commander of the Army etc. and he holds a fixed opinion in a problem with diverse views, his
obedience shall be obligatory when it is not repugnant to a Shariah text or definite basis. On following this manner Allah Almighty says:

59. O ye who believe! obey Allah, and obey the Messenger, and those charged with authority among you. if ye differ in anything among yourselves, refer it to Allah and His
Messenger, if ye do believe in Allah and the Last Day: that is best, and Most suitable for final determination.

[4:59]

Question for the Students: What is your opinion in regard to some jurists’ statement: Every jurist who exerts is correct [Kullu mujtahidin musibun. كُلُّ مُجْتَهِدٍ مُصِيبٌ]. How will you connect this statement with what you have studied in this chapter?