A Summary of the Principles of Fiqh

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This book has been written as a summary of Usool-us-Shaashi to help students familiarise themselves with some of the concepts of the book. However, due to the incompetence of the writer, many inaccuracies will surely be found in this summary. Thus the writer will be grateful if any errors, factual or typographical, are brought to his attention for amendment in further editions.

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الموضوع

بحث الأول في كتاب الله

فصل في الخاص والعام

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All praise belongs to Allah, who has elevated the status of the believers by the means of his noble speech and elevated the rank of the U’lama’ by the meaning of his book. He has bestowed upon those who extract rulings from amongst them with increased favour and reward. May peace descend upon his Nabi ﷺ and his Sahabah, and salutations upon Imam Abu Hanifah (r.a) and his students.

Know that the principles of Fiqh are four:

1- The book of Allah

2- The Sunnat of Rasulullah ﷺ

3- The agreement of the Ummah

4- Qiyaas
The book of Allah: That Qur’an which was revealed upon Rasulullah (s.a.w), written in the form of a scripture, narrated from him in mass transmission with complete certainty.

Khaas: A word that refers to a specific meaning or object without referring to anything else.

An example of a specific individual: Zaid

An example of a specific class: Man

An example of a specific specie: Human

The ruling of Khaas: Compulsory to practice upon it entirely without any doubt.

An example of Khaas: The word “three” in the verse of the Quran: “And divorced women should wait for three courses.”
Explanation: There are differences of opinions with regards to the meaning of the word “courses”, if it refers to Haidh\(^1\) or Tuhr\(^2\).

According to Ahnaaf the word “courses” refers to Haidh, because the word preceding it is “three” which is Khaas. The word “three” is Khaas because it is a specific known number and therefore compulsory to practice on it.

However, according to Shafi‘e the word “courses” refers to Tuhr, because the word preceding it is “three”. In Arabic grammar, when a number is feminine its subject will be masculine. Here the word “three” is feminine, therefore its subject which is “courses” will be masculine.

The subject “courses” cannot refer to the word Haidh because it is feminine but rather will refer to Tuhr because it is masculine.

If we were to accept that the word “courses” refers to Tuhr then we would have to abandon on practicing Khaas. Those who regard “courses” as Tuhr, they will not be able to complete three complete courses of purity, but rather it will only be two complete courses and a portion of the third in which the divorce was issued.

As a result of this, the rulings differ between the two spouses. If the husband was to reconcile at the end of the third course, it will be permissible according to Ahnaaf because the wife is still in her waiting period. Whereas according to Shafi‘e it is not permissible because her waiting period has terminated.

\(^1\) Menstruation period  
\(^2\) Purity
Aam: Every word which refers to a number of individuals.

By word: All Mushriks and all Muslims

By meaning: whoever and whatever

Aam is of two types:

1- Aam in which nothing has been excluded

Its ruling: Compulsory to practice upon it entirely without any doubt.

Its example: The word “whatever” in the verse of the Quran: “Recite that which is easy from the Quran.”

Explanation: The letter “whatever” is Aam and it implies that you can recite from any portion of the Quran in Salaah which is easy for you.

Nabi (s.a.w) said: “There is no Salaah without the recitation of Surah Faatihah.”
If Khabr Waahid¹ contradicts the ruling of the Quran, then it will be disregarded. However if it’s possible to practice upon Khabr Waahid without changing the ruling of the Quran then we will practice on both.

In this example, the Khabr Waahid contradicts the ruling of the Quran, however it’s possible to practice on both.

Such that according to Ahnaaf it will be Fardh to recite from any portion of the Quran in Salaah which is easy for you and Waajib to recite Surah Faatihah in accordance to the Khabr Waahid.

2- Aam in which some of it has been excluded

Its ruling: Compulsory to practice upon it in the rest with the possibility of it being incorrect.

An example from the verse of the Quran: “And Allah has permitted trade and forbidden interest.”

Explanation: A trade consists of many things such as buying selling, interest and fraud etc.

In the verse mentioned, Allah has permitted trade which includes all the constituents of trade but has excluded interest. Therefore, interest is prohibited even though trade has been permitted for us which includes interest in it.

¹ A Hadeeth which one individual has reported from another individual or an individual from a group or group from an individual
Mutlaq\textsuperscript{1}: That which indicates towards the essence of a thing rather than its specific qualities.

The ruling of Mutlaq: Mutlaq will be kept unrestricted.

An example of Mutlaq from the verse of the Quran:

“The female and male who commit fornication should both be given a hundred lashes.”

Explanation: The punishment for the female and male who commit fornication is “a hundred lashes” which has been mentioned in the previous verse. This verse is Mutlaq and only limits the punishment to “a hundred lashes”.

Nabi (s.a.w) said: “If an unmarried man fornicates with an unmarried woman, then give them both a 100 lashes and exile them.”

This Khabr Waahid is contradicting the verse of the Quran, by adding “exile” to the punishment of the one who fornicates, whereas you cannot add anything to Mutlaq.

However, according to Ahnaaf we will practice upon the Khabr Waahid in such a manner that it will not add to the ruling of the Quran.

\textsuperscript{1} Unrestricted clause
The punishment will be “a hundred lashes” in accordance to the Quran and exile will be permissible under certain circumstances in accordance to the Khabr Waahid.

Muqayyad\textsuperscript{1}: That which indicates towards the essence of a thing, inclusive of its specific qualities.

The ruling of Muqayyad: Muqayyad will be kept restricted.

An example of Muqayyad from a verse of the Quran:

“He has to set free a slave who is a believer” in the expiation of killing by accident.

Explanation: If a person was to kill another by accident, then his expiation is to “set free a slave who is a believer”, which has been mentioned in the previous verse.

This verse is Muqayyad and is only restricted to “setting a slave free who is a believer”.

\textsuperscript{1} Restricted clause
Mushtarak: A word which has two different meaning or many meanings with each referring to different objects.

الأمثلة:

Examples:

1- Jaariyah refers to a female slave and a ship

2- Mushtaree refers to a buyer and a star in the sky

3- Baa’in refers to separation and explanation

The ruling of Mushtarak: If one meaning has been specified, then consideration of the other meanings fall away.

An example of Mushtarak: If one says to his wife “you are like my mother to me”

Explanation: The word “like” could refer to many meanings.

In the example mentioned, the word “like” could either be taken in the meaning of respect or prohibition. However, the meaning of prohibition will only be taken into consideration if the person specified it by intention.
If the person intended the meaning of prohibition then he will be regarded as a Muzhaahir\(^1\) and his wife will be haram upon him just like his mother is haram upon him.

المؤول: إذا ترجح بعض وجه المشترك بغالب الرأي.

Mu’awwal: If one of the meanings of Mushtarak is given preference based on firm proof.

الحكم المؤول: وجب العمل به مع احتمال الخطأ.

The ruling of Mu’awwal: Compulsory to practice upon it in the rest with the possibility of it being incorrect.

مثال المؤول: ترجيح معنى الحيض من “القروء” دون الظهير.

Example of Mu’awwal: Given preference of the meaning of Haidh in “courses” and not Tuhr.

Explanation: The word “courses” is Mushtarak and could either be taken in the meaning of Haidh or Tuhr. Ahnaaf has taken the meaning of “courses” as Haidh because it is Khaas and therefore will be given preference over the meaning of Tuhr.

المفسر: لو ترجح بعض وجه المشترك ببيان من قول المتكلم.

Mufassar: If the meaning of Mushtarak has been clarified by the speaker.

الحكم المفسر: وجب العمل به لا محالة.

The ruling of Mufassar: Compulsory to practice upon it entirely without any doubt.

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\(^1\) injurious comparison
An example of Mufassar: If one says “I owe a certain person ten Dirhams from the currency of Bukhaara”\(^1\). His statement “from the currency of Bukhaara” is the clarification of it.

\(^1\) Name of a place
فصول في الحقيقة والمجز

الحقيقة: لفظ أريد به ما وضعت له.

Haqeeqat\(^1\): That word through which its original meaning is intended.

مثال الحقيقة: الأسد للحيوان المفترس.

An example of Haqeeqat: A lion in the meaning of a predatory animal.

المجز: لفظ أريد به غير ما وضعت له.

Majaaz\(^2\): That word which is meaning is other than what is intended.

مثال المجز: الأسد للرجل الشجاع.

An example of Majaaz: A lion in the meaning of a brave man.

حكم الحقيقة والمجز: لا يجمعان ارادة من لفظ واحد في حالة واحدة.

The ruling of Haqeeqat and Majaaz: They cannot be intended at the same time by the same word.

مثال الحقيقة والمجز: لفظ “لمستم” في قوله تعالى: “إِن كُنتُم مَّرْضُواً أو عَلَى سَفَرٍ أَو جَاхٍ أَحَدُ مَنْ كُنْتُم مِّنَ النَّائِئِينَ أَو لَمْ تَسْتَمِنْ النَّسَاءَ فَلَم تَجِدُوا مَآءً فَتَيَمَّمُوا صَبِيعًا طِبِيبًأ”

An example of Haqeeqat and Majaaz: The word “touching” in the verse of the Quran: “If you are ill on a journey or returning from the toilet or from touching your wives and you do not find any water, then use clean soil to perform Tayammum”.

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\(^1\) the literal meaning  
\(^2\) the figurative meaning
Explanation: The word “touching” from the verse mentioned above could either refer to the meaning Haqeeqat which is touching your wives with your hand or it could refer to the meaning of Majaaz which is engaging in sexual relations.

This verse implies that if you do not have Wudhu due to touching your wife or using the toilet and thereafter “you do not find any water, then use clean soil to perform Tayammum”.

However, by touching your wife, your Wudhu would not break, rather by having sexual intercourse your Wudhu would break.

So the word “touching” would not refer to the meaning of Haqeeqat but will refer to the meaning of Majaaz which is having sexual intercourse.

Haqeeqat is of three types:

1- Haqeeqat Mut’adhirah

Haqeeqat Mut’adhirah is when the Haqeeqat is difficult or almost impossible to achieve therefore the Majaaz will be considered.

Its ruling: All are in agreement that Majaaz will be considered.

Its example: When a person takes an oath that he will not eat this tree or this pot.

Explanation: From the example above, it is impossible or extremely difficult to literally eat a tree or a pot, so the
Haqeeqat will be discarded and will refer to the Majaaz which is to eat from the fruits of the tree or the contents of the pot.

So if a person was to literally eat a tree (its branches, leaves etc.) or a piece of the pot, then he will not be breaking his oath.

2- Haqeeqat Mahjoorah

Haqeeqat Mahjoorah is when the Haqeeqat is discarded due to it having a common usage/meaning, therefore the Majaaz will be considered.

حكمها: يصار إلى المجاز بالاتفاق.

Its ruling: All are in agreement that Majaaz will be considered.

مثالها: كمن حلف لا يضع قدمه في دار فلان.

Its example: When a person takes an oath that he will not set foot into a certain person’s house.

Explanation: From the example above, the Haqeeqat meaning to set foot into a person’s house is literally placing a single foot in his house which will be discarded. This is because the Majaaz meaning to set foot has a common usage/meaning, which is to enter the house in any way.

So if the person was to literally place only a foot in the house and does not enter it, then he will not be breaking his oath.

3- Haqeeqat Must‘amalah

Haqeeqat Must‘amalah is when the Haqeeqat does not have a common usage/meaning, therefore the Haqeeqat will be taken into consideration according to Imam Abu Hanifah (r.a) and
Umoom-e-Majaaaz¹ will be taken into consideration according to Imam Abu Yusuf (r.a) and Imam Muhammad (r.a).

Its ruling: If it does not have a commonly used Majaaaz then Haqeeqat is preferred according to all and if it does have a commonly used Majaaaz then Haqeeqat will be preferred according to Imam Abu Hanifah (r.a), whereas according to Imam Abu Yusuf (r.a) and Imam Muhammad (r.a) practicing on Umoom-e-Majaaaz is preferred.

Its example: When a person takes an oath that he will not eat from this wheat.

Explanation: From the example above, wheat could refer to the Haqeeqat, which is the wheat itself as Imam Abu Hanifah (r.a) has or it could refer to the Umoom-e-Majaaaz, which is the wheat itself and anything comprising of wheat as Imam Abu Yusuf (r.a) and Imam Muhammad (r.a) has.

So if the person was to eat bread made of wheat, then according to Imam Abu Hanifah (r.a) his oath would not break, whereas according Imam Abu Yusuf (r.a) and Imam Muhammad (r.a) his oath will break.

¹ When a single broad and inclusive meaning is taken which combines both Haqeeqat and Majaaaz meaning
Isti’aarah\textsuperscript{1} in the rulings of Shari’ah is possible in two ways:

1- When there is a relationship between ‘Illat\textsuperscript{2} and the ruling.

Its ruling: Isti’aarah is permissible for both.

Its example: When a person says “If I become owner of a slave then he is free” or he says “If I purchase a slave then he is free”.

Explanation: Ownership refers to complete ownership of an item. Therefore, if a person was to say “If I become owner of a slave then he is free”, and he becomes owner of half a slave, then he sells it and later becomes the owner of the other half, the slave would not be free as he did not have complete ownership of the slave.

Whereas if he was to say “If I purchase a slave then he is free” and he purchases half a slave, then he sells it and later purchases the other half, the slave would be free because he was purchased completely, even though it was not at one time.

However, if he intended the meaning of purchase, when he said “If I become owner” or intended the meaning of ownership, when he said “If I purchase” then it is permissible to do Isti’aarah.

\textsuperscript{1} to take an alternate meaning of a word
\textsuperscript{2} the principal cause
2- When there is a relationship between the Sabab\(^1\) and the ruling.

**Its ruling:** Isti’aarah is permissible for one.

**Example:** When a person says to his wife “I set you free” with the intention of divorce or he says to his female slave “I give you divorce” with the intention to set her free.

**Explanation:** From the example above, if a person was to say to his wife “I set you free”, which is the Sabab, with the intention of divorce, which is the ruling, then the divorce will take place.

Whereas, if a person was to say to his female slave “I give you divorce”, which is the ruling, with the intention to set her free, which is the Sabab, then Isti’aarah is not permissible for both but only one, which is to take the meaning of divorce with the words of freedom for a slave.

\(^1\) Cause
فصل في الصريح والكِنايَة

الصريح: لفظ يكون المراد به ظاهراً.

Sareeh: A word which its meaning is clear.

حكم الصريح: يوجب ثبوت معناه بأي طريق.

The ruling of Sareeh: Its meaning will be established regardless of the manner it has been mentioned in.

من آخبارك "طفقتك".

In the manner of information: “I divorce you”

من نعتك "انت طالق".

In the manner of an adjective/quality: “you are divorced”

من نداءك "يا طالق".

In the manner of a title: “O divorced one”

مثال الصريح في قوله تعالى: {وأحَلَّ اللَّهُ الْبِيْعَ وَحَرَّمَ الرَّبْوَا}.

An example of Sareeh from the verse of the Quran: “And Allah has permitted trade and forbidden interest.”

Explanation: From the verse mentioned, it is clear that Allah has permitted for us trade and prohibited us from interest. Such that there would not be a need of clarification.

الكِنايَة: لفظ هي ما استَتَر معناه.

Kinaayah: A word whose meaning is obscure.

حكم الكِنايَة: ثبوت الحكم بها عند وجود النية أو بدالة الحال.

The ruling of Kinaayah: The apparent meaning will be applied when the intention was for it or by the occasion.
An example of Kinaayah: When a person says to his wife “you are separated from me” or he says “you are forbidden to me”.

Explanation: From the example above, the words “you are separated from me” and “you are forbidden to me” are obscure and unclear.

The person could either be referring to divorce or something else according to his intention. If his intention was for divorce, then the divorce will take place.
Words - with regards to their level of clarity - are of four types:

1- Zhaahir: A word which the listener understands it’s meaning by merely listening to it without any contemplation.

2- Nas: The objective of the speech.

The ruling of both: It is compulsory to act upon it, whether they be Aam or Khaas, with the possibility that another meaning could be intended.

An example of Zhaahir and Nas from the verse of the Quran: “And Allah has permitted trade and forbidden interest”.

Explanation: From the verse above, we learn the permissibility of trade and the prohibition of interest by merely listening to it, which is Zhaahir.

The objective of this verse is to differentiate between trade and interest which is Nas and to disprove what the Kuffaar use to say:

"إِمَّا الْبَيْعُ مَثَلُ الرَّبْوَا" "Trade is just like interest"
3- **Mufassar:** A word which its meaning has been clarified by the speaker, such that there remains no possibility of *Ta’weel*\(^1\) or *Takhsees*\(^2\).

**The ruling of Mufassar:** Compulsory to practice upon it entirely without any doubt.

An example of Mufassar from the verse of the Quran: “So every single one of the angels bowed down to him together”

**Explanation:** From the verse above we know that the angels prostrated to Allah. However, there is possibility of *Takhsees* with regards to how many angels prostrated, was it some of them or was it all of them. This has been clarified by the words “all of them” and will therefore have no possibility of *Takhsees*. However, there is still a possibility of *Ta’weel* with regards to when they prostrated, did they prostrate together at one time, or did they prostrate separately at different times. This has been clarified by the words “together” and will therefore have no possibility of *Ta’weel* as well.

4- **Muhkam:** A word which is stronger than Mufassar, such that acting contrary to it is not permissible at all.

**The ruling of Muhkam:** Compulsory to practice upon it entirely without any doubt.

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\(^1\) alternate interpretation
\(^2\) exclusion
Mثال المحكم في قوله تعالى: "إنَ الله بكل شأ  عليم"

An example of Muhkam from a verse of the Quran: “Indeed Allah has knowledge over everything”

Explanation: From the verse above, it is impossible to deny that Allah has knowledge over everything.

اللفظ باعتبار خفاء المعنى على أربعة أقسام:

Words – with regards to their level of obscurity - are of four types:

1- الخَفِيَّ: لفظ ما خَفِي مراد به لا مِن حَيْب الصِّيغة.

1- Khafie: A word which its meaning is obscure because of external factors and not because of the word itself.

حكم الخَفِيَّ: وجُوبُ الطَّلُب حتَّى يُزول عنه الخفاء.

The ruling of Khafie: It is compulsory to seek out its meaning until its obscurity is removed.

مثال الخَفِيَّ في قوله تعالى: "السَّارِق والسَّارِقة فاقطعْوا أيديهما جزاء بما كسبا”

An example of Khafie from the verse of the Quran: “As for the male and female thief, cut of their hands as a punishment for what they earn”

Explanation: From the verse mentioned above, it is Zhaahir that a thief will get his hands cut off, however it is Khafie with regards to a Tarraar¹ and a Nabbaash².

2- مُشْكِل: لفظ ما ازداد خفاء على الخَفِيَّ.

2- Mushkil: A word which is more obscure than Khafie.

حكم المَشْكِل: لفظ لا ينال المراد منه إلا بالطلب ثم التأمل في معناه.

¹ the one who pickpockets
² a grave robber
The ruling of Mushkil: A word which its implication cannot be ascertained except through investigation and deliberation in its meaning.

مثال المشكل: كمّ حلف بأنه لا يائنَم.

An example of Mushkil: When a person takes an oath that he will not eat ledam¹.

Explanation: From the example above, ledam is an item or food which is used to improve or add flavour to the food.

With regards to vinegar and juice, it is Zhaahir that it will be considered as ledam. However, with regards to meat, chicken and eggs it will be Mushkil. This is because meat, chicken and eggs is regarded as a flavour to add to curry as well as a main dish itself.

So the word ledam has to be investigated to see whether it refers only to vinegar and juice or does it also refer to meat, chicken and eggs.

3- Mujmal: A word that has many implications, such that none of them can be specified except if clarified by the speaker.

حكم المجمل: اعتقاد حقيقة المراد به حتى يأكل البيان.

The ruling of Mujmal: We believe its meaning until is explained.

مثال المجمل في قوله تعالى: وحَرَّمَ الرِّبَا. ³

An example of Mujmal from the verse of the Quran: “And forbidden interest”

Explanation: The linguistic meaning of interest is any form of excess in profit and gain, which is not implied in the mentioned

¹ Any item or food used to improve or add flavour
verse, but rather it implies to the Shari’ah meaning, which is excess gained through like for like items. Therefore the word interest cannot be specified, unless clarified by a person.

4- Mutashaabih: That word wherein the obscurity of its meaning is greater than in Mujmal in a manner where its meaning is originally unknown.

حكم المتشابه: اعتقاد حقيقة المراد به حتى يأتي البيان.

The ruling of Mutashaabih: We believe its meaning until is explained.

المتشابه نوعان:

Mutashaabih is of two types:

1- معلوم المعنى ومجهول المراد.

1- That which it’s meaning is known, but its implication is not.

مثاله: ﴿رَبِّي﴾

Its example: “The hand of Allah”

2- مجهول المعنى ومجهول المراد.

2- That which it’s meaning and implication are both unknown.

مثاله: ﴿حَم﴾

Its example: “HaaMeem”

Explanation: Only Allah and Rasulullah (s.a.w) know the meaning of Mutashaabih.
There are five occasions where the meaning of Haqeeqat will be abandoned:

1- دلالة الْعُرْف: إذا كان المعنى مُتَعَارِفاً بين الناس.

- **Dalaalat-ul-Urf**: When a meaning is well known amongst the people.

   *Its example:* When a person takes an oath that he will not buy a head.

   *Explanation:* The common meaning of a head which is known to people, refers to the head of a sheep, cow or goat.

   Therefore, if the person was to buy the head of a sparrow or a pigeon, then his oath would not break because the Haqeeqat will be abandoned and the common meaning will be implied, which is the head of a sheep, cow or goat.

2- دلالة في نفس الكلام: هو أن يرد نفس الكلام حقيقة اللفظ.

- **Dalaalat-Fi-Nafs-il-Kalaam**: When the original meaning is rejected due to an indicator in the actual speech.

   *Its example:* When a person says “every slave that I own is free”.

   *Explanation:* Ownership refers to complete ownership of an item. Therefore only the Mudabbar\(^1\) and the

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\(^1\) A slave whom the master has told that he will be free on his death
Umme-Walad\(^1\) will be set free because they are in complete ownership. However, the Makaatib\(^2\) would not be set free as it is not in complete ownership.

Here, the Haqeeqat will be abandoned which is all slaves, due to the person using the word “own” which only refers to the Mudabbar and the Umme-Walad.

\(^3\) دلالة سياق الكلام: هو أن لا يقبل حقيقة اللفظ ما كان قبله وما كان بعده من الكلام.

3- Dalaalat-Siyyaaq-il-Kalaam: The original meaning of the word does not fit in with the context of the speech (by looking at what comes before and after it).

مثاله: إذا قال المسلم للحاربيّ “انزل” فنزل، كان آمناً. ولو قال “انزل ان كنت رجلاً” فنزل، لا يكون آمناً.

Its example: When a Muslim tells an enemy combatant “step down”, then he steps down, he will be given sanctuary. Whereas, if he said “step down, if you are a man” then he steps down, he will not be given sanctuary.

Explanation: The reason why the enemy combatant will be given sanctuary from the first statement is because the words “step down” is more of a promise than a threat.

Whereas, in the second statement the enemy combatant will not be given sanctuary because the words “if you are man” is more of a threat than a promise.

The Haqeeqat meaning of “step down” is to be given sanctuary, which has been abandoned due to what has come after it “if you are a man” in the second statement.

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\(^1\) A slave who gave birth to the child of her master
\(^2\) A slave with whom the master has made an agreement that if he pays him a stipulated amount, then he will be set free
4- Dalaalat-Min-Qibal-il-Mutakallim: The intention with which the word has been uttered (by the speaker) does not accept the original meaning of the word.

An example from a verse of the Quran: “So whoever desires, believe and whoever desires, disbelieve”

Explanation: From the verse above, the Haqeeqat is that whoever desires to believe can believe and whoever desires to disbelieve can disbelieve.

However, the Haqeeqat will be abandoned due to the speaker, who is Allah. Allah is All-wise and he cannot be All-wise if he is commanding evil which is to disbelieve if one desires.

5- Dalaalat-Mahall-il-Kalaam: The situation in which the word has been said rejects the original meaning of the word.

Its example: Contracting a marriage using the words of trade “sell yourself to me”.

Explanation: From the example above, the Haqeeqat of the words of trade “sell yourself to me” would be abandoned and will refer to marriage due to the time and place.
The manners in which a ruling is derived from a words are of four types.

1- Ibaarat-un-Nas: The purpose for which the speech was intended and intentionally implied.

Its ruling: Whatever has been established through this manner will be compulsory definitively.

2- Ishaarat-un-Nas: The ruling which is proved by a word of a speech without any addition and is not entirely clear, nor was it the purpose of the speech.

Its ruling: Whatever has been established using this manner will be obligatory to follow definitively, except that if it contradicts with Ibaarat-un-Nas, then that will be given preference over this (i.e. Ishaarat-un-Nas).

An example of both from a verse of the Quran: “Permission has been granted for you, on the night of fasting, to have sexual intercourse with your wives”
Explanation: The purpose of this verse is that you are allowed to have sexual intercourse with your wives on the night of fasting which is Ibaarat-un-Nas.

The ruling derived from this verse is that you are allowed to gargle your mouth and rinse your nose for Ghusl, whilst fasting. The reason for this is that if one was to have sexual intercourse with his wife in the last portion of night, then he will be in the state of major impurity in the first portion of fasting, which will make Ghusl compulsory on him and part of the Faraaid of Ghusl is to gargle your mouth and rinse your nose. This is known as Ishaarat-un-Nas.

3- دلالاً ظنً: ما علٌمَ من علٌمة الحكم المقصود عليه لغة لا اجتهداه ولا استنباطاً

3- Dalaalat-un-Nas: That which is known to be the ‘Illat for the ruling through diction and not through derivation or extraction.

Its ruling: Wherever the ‘Illat is found, the ruling will apply.

An example from a verse of the Quran: “Do not even tell them ‘Oof’ and do not rebuke them”

Explanation: From the verse mentioned, saying “Oof” to your parents is Haraam because it will cause harm to them, which is the ‘Illat. Therefore, if a person was to harm his parents in any other manner such as swearing or beating them, then this will also be Haraam because the ‘Illat is the same, so the ruling will apply here as well.

Imaam Qaadhi Abu Zaid said: “If a nation regards the word ‘Oof’ as a gesture of respect, then it will not be Haraam for them to say “Oof” to their parents.”
The reason for this is that the ‘Illat which is causing harm to ones parents is not present so the ruling will also not apply.

4- اقتضاء النص: زيادة على النص لا يتحقق معنى النص إلا به.

Iqtidaa-un-Nas: An addition to the speech, which without it the meaning of the speech will be incorrect.

Its ruling: It is established out of necessity and therefore it will be restricted to its necessity.

Its example: When a person says “Set your slave free on my behalf for one thousand Dirhams” and the owner then says “I have set it free”, then the act of setting free will take place.

Explanation: One of the conditions for trade to be permissible is offering and accepting. Whereas, from the example above, this condition is not present and therefore the trade will be regarded as impermissible.

However, Shari’ah has made it permissible, to make the meaning of the speech correct through Iqtidaa-un-Nas. It is as if the person said “Sell this slave to me for one thousand and then set him free on my behalf”. In other words offering and accepting has taken place but not literally.
فصل في الأمر

الأمر في اللغة: قول القائل لغيره "افعل".

The literal meaning of A’mr: When a person commands another to do something using the words “Do this”.

الأمر في الشريعة: الزام الفعل على الغير.

The Shari’ah meaning of Amr: Making something compulsory on another.

مثال الأمر في قوله تعالى: "وأقيموا الصلاة وأتُوا الزكاة"

An example of A’mr from the verse of the Quran: “And establish Salaah and give Zakah”

الأمر المطلق: المجرد عن القرين يكون لله من اللزوم و عدم اللزوم.

Amr Mutlaq: Free from any indication, whether it is for compulsion or not for compulsion.

حكمه: موجب الأمر المطلق الوجوب إلا إذا قام الدليل على خلافه.

Its ruling: Amr Mutlaq is Waajib except if proof is established against it.

مثاله في قوله تعالى: "وإذا قرأ القرآن فاستمعوا له وأنصتوا لعلكم ترحمون"

An example from a verse of the Quran: “And when the Quran is recited, then listen attentively to it and remain silent so that mercy may be shown to you”

Explanation: A command is compulsory upon another if the person who is commanding has authority over that person. However, if the one who is commanding does not have authority over that person, then the command will not be compulsory on him.
Allah (s.w) is the supreme master of the universe, thus he has authority over everything. Therefore, his commands are compulsory upon his creation.

الأمر بالفعل: لا يقتضى التكرار.

**Amr bil Fi’l:** It does not necessitate repetition.

مثاله: إذا قال: "صلوا" أذو الصلاة مرة.

**Its example:** When a person says “Pray Salaah”, it will refer to praying once.

المأمور به

The action that has been commanded

المأمور به نوعان:

The action that has been commanded is of two types:

1- مطلق عن الوقت: هو المأمور به الذي لم يقيد أداءه بوقت.
1- **Mutlaq-a’nil-Waqt:** It is that command the performance of which is not restricted to a certain time.

حكمه: يكون الأداء فيه واجبا على التراخي بشرط أن لا يفوته في العمر.

**Its ruling:** Performing the command is **Waajib** with delay as long as it is performed before one’s death.

مثاله: لو نذر ان يصوم شهرا له ان يصوم اي شهر شاء.

**Its example:** If a person makes an oath to fast for a month, then he may fast in any month he desires.

**Explanation:** This act of **Waajib** is not restricted to a specific time, unlike Salah. Rather, it may be carried out at any time as long as he carries out the action before his death. From the example above, the person may fulfil his oath at any point in his life before he passes away.
2- *Muqayyad-bil-Waqt*: Is that command which performing it is restricted to time.

Muqayyad-bil-Waqt is of two types:

A- Where a specific time is the period in which the act can be carried out.

*Its ruling*: An act being *Waajib* in that time does not oppose another act similar to it being *Waajib* in that same time.

*Its example*: Salaah being *Waajib* in that time will not negate the permissibility of other Salaah.

*Explanation*: Each Salaah has its own designated time. Therefore, it is not necessary for a person to spend the entire time performing the specified Salaah. In that same time he could also perform other Salaah such as Nafl etc.

B- Where a specific time is the period in which the act needs to be carried out.

*Its ruling*: When a time has been specified for it, another act cannot be *Waajib* in that time.

*Example*: Fasting in the month of Ramadan.
Its example: Fasting in the month of Ramadhaan.

Explanation: Shari’ah has specified the month of Ramadhaan for fasting. Therefore, if a person was to perform a similar act in nature, such as Qadhaa fast, then his fast will be for Ramadhaan and not for Qadhaa.

A good action that has been commanded

Hasan in the affairs of:

A good action that has been commanded is of two types:

1- Hasan bi-Nafsih: An act which is good in its essence i.e. in itself and not for anything else.

Hasan bi-Nafsih is of two types:

A- When performance of an action is Waajib on a person then he will not be absolved from it except by fulfilling it (at all times).

Its example: Imaan in Allah.

Explanation: A person has to have faith in Allah at all times and therefore cannot be absolved from it.

B- An action that does fall away is because it falls away by performance or if the one who issued the command cancels it.
Its example: Salaah

Explanation: When a person performs Salaah, then the person will be absolved from performing that Salaah again.

2- Hasan-li-Ghairihi: The goodness of an action is because of something else.

Its ruling: The action falls if its cause falls away.

Its example: Wudhu for Salaah.

Explanation: The reason for goodness being in the action of Wudhu is because of Salaah, without Salaah there would be no need of Wudhu.

الأمر نوعان:

A command is of two types:

1- اداء: تسليم العين الواجب بالأمر.

1- Adaa’: Fulfilling the Waajib precisely in the manner ordained.

- أداء نوعان:

Adaa’ is of two types:
**A- Adaa’ Kaamil:** Fulfilling the **Waajib** act as prescribed with completeness.

*Its ruling:* One will be absolved of his duty by performing it.

*Its example:* Performing Salaah in its proper time with congregation.

*Explanation:* The action has to be fulfilled in the manner it was revealed to us i.e. to perform it how it was supposed to be performed including all its requisites without any deficiency. Salaah performed at its prescribed time and with congregation is part of the requisites of Salaah. Therefore, if it is performed in this manner, it will be regarded as **Adaa’ Kaamil.**

**B- Adaa’ Qaasir:** Fulfilling the **Waajib** with a slight defect in the characteristics prescribed.

*Its ruling:* If it is possible to compensate for the fault in a similar manner then it will be compensated by it and if not then the fault will be excused but not the sin.

*Its example:* Performing Salaah without the recitation of Surah Faatihah.

*Explanation:* When an action has not been fulfilled in the manner it was supposed to be, rather it was performed in a manner which left out some of its requisites or with slight deficiency, then it will be regarded as **Adaa’ Qaasir.** Part of the requisites of Salaah is reciting Surah Faatihah, therefore, if it was left out, it will fall under the category of **Adaa’ Qaasir.**
Qadaa': Fulfilling the Waajib similar to what has been ordained.

Qadaa' is of two types:

A- Qadaa' Kaamil: To present that which is similar to what is Waajib in both structure and meaning.

Explanation: When an action is fulfilled in a similar manner to what was ordained in both structure and meaning. For example, a bag of wheat was stolen, then that exact same bag of wheat will be Waajib for the thief to return, this is known as Adaa’ Kaamil. However, if the bag of wheat was lost whilst it was stolen, then it will be Waajib for the thief to return another bag of wheat which is similar to the actual bag of wheat, this is known as Qadaa’ Kaamil.

B- Qadaa’ Qaasir: To present that which is not similar in structure but similar in meaning.

Explanation: When a person forcefully seizes a sheep which he then loses, the value of it will become due on him.
Explanation: When an action is fulfilled in a similar manner to what was ordained in meaning only and not structure. For example, a sheep was stolen, then that exact same sheep will be *Waajib* for the thief to return, this is known as *Adaa’ Kaamil*. However, if the sheep was destroyed whilst it was stolen, then it will be *Waajib* for the thief to give the value of the sheep which is known as *Qadaa’ Qaasir*. 


فصل في النهي

النهي في اللغة: قول القائل لغيره على سبيل الإستعلا "لا تفعل".

The literal meaning of Nahi: The saying of one person to another by way of regarding himself as higher in status using the words “Do not do”.

اصطلاحاً: إلزام ترك الفعل على الغير.

The Shari’ah meaning of Nahi: Making something prohibited on another.

حكمه: موجب النهي المطلق ووجب الإمتان إلاّ إذا قام الدليل على خلافه.

Its ruling: An unrestrictive Nahi will be Waajib to abstain from except when there is proof contradicting it (being Waajib).

مثاله في قوله تعالى: "ولا تقربوا الزّنّ".

An example from the verse of the Quran: “And do not go close to fornication”.

النهي نوعان:

Nahi is of two types:

1- الأفعال الحسية: هي الأفعال المنهي عنها التي توجد من قبل ظهور هذه الشريعة.

1- al-Af’aal -ul-Hissiyyah: Those action which were prohibited before the coming of this Shari’ah.

حكمها: تكون المنهي عنه هو عين ما ورد عليه النهي فيكون عينه قبيحا فلا يكون مشروعاً أصلا.

Its ruling: The prohibition is a result of the act itself, thus it will be evil itself and never permitted.

مثالها: الزنا، شرب الخمر.

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1 the Shari’ah of Rasulullah (s.a.w)
Its example: Fornication, consuming alcohol.

Explanation: Those actions that were prohibited before the coming of Shari’ah will be regarded under the category of Af’aal-ul-Hissiyah such as fornication and alcohol. This is because these acts were already regarded as prohibited by the people and still remained prohibited after the coming Shari’ah.

2- التصرفات الشرعية: هي التي لا تعرف آلاً من طريق الشرع.

التسارعات-الذي-يشتهر-بـ شريعة: Those things that (the prohibition of which) are not understood except through Shari’ah.

حكمها: تكون المنهي عنه غير ما أضيف إليه النهي. فيكون حسنا بنفسه قبيحا لغيره.

Its ruling: The prohibition is a result of exterior factors and not the act itself, thus it is good in itself but evil because of exterior factors.

مثالها: الصوم في يوم النحر.

Its example: Fasting on the day of Nahr¹.

Explanation: Those actions that were not regarded as prohibited by the people, but when the rulings of Shari’ah was established it became prohibited. For example, fasting on the day of Nahr is prohibited because of the day it has been attached to i.e. the day of Nahr and not because of the fasting itself. This has been established by Shari’ah. The reason why fasting on the day of Nahr is prohibited is because Allah hosts the Muslims by providing for them the meat of the sacrificial animals.

¹ The day of ‘Eid
Know that the method in which the implication of speech is recognised are many:

1- When a word has one meaning of Haqeeqat and another of Majaaz.

Its ruling: Haqeeqat is more appropriate than Majaaz.

An example of what our 'Ulama say: An illegitimate daughter\(^1\) is Haraam for the fornicator to marry.

Explanation: The reason why the illegitimate daughter will be Haraam on the fornicator i.e. the father, is because in reality she is his daughter and therefore will be categorised under the verse of the Quran:

"Forbidden for you are your mothers and your daughters"

2- When a word has two possible meanings, with one requiring Takhsees\(^2\) and not the other.

\(^1\) A daughter conceived by fornication
\(^2\) Specification
Its ruling: It is better to use the meaning which does not require Takhsees.

مثاله: لفظ "لمَستُم" في قوله تعالى: »وإِنْ كَنْتَ مَرْضِىٰ أو عَلِيَّ سَفَرٍ أو جَآء أَحَدٌ مَّنْ غَيْرِكُمْ مَنْ غَيْرِ النَّاسِ فَلَمْ تَجِدْوَا مَآءً فَقَيِّمْوَا صَدِيقًا طِيبًا«.

Its example: The word “touching” in the verse of the Quran: “If you are ill on a journey or returning from the toilet or from touching your wives and you do not find any water, then use clean soil to perform Tayammum”.

Explanation: When a word has two meanings, then the meaning of the one which does not require Takhsees will be taken into consideration.

For example\(^1\), the word “touching” from the verse mentioned could either refer to the meaning of Haqeeqat which is touching your wives with your hand or it could refer to the meaning of Majaaz which is engaging in sexual relations.

This verse implies that if you do not have Wudhu due to touching your wife or using the toilet and thereafter “you do not find any water, then use clean soil to perform Tayammum”.

However, by touching your wife, your Wudhu would not break, rather by having sexual intercourse with your wife your Wudhu would break.

Therefore, the word “touching” would not refer to the meaning of Haqeeqat but will refer to the meaning of Majaaz according to us which is to have sexual intercourse. Whereas, if we were take the meaning of Haqeeqat as Imaam Shaf’ie has, then many cases will be left out such as touching ones female blood relative which originally does not break Wudhu, but if we were to take the meaning of Haqeeqat then by touching our female blood relative our Wudhu would break.

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\(^1\) This example has already been explained on page 14
3- If a word is recited in two different forms of recitation or reported in two different chains of narration.

Its ruling: Practicing on it in a manner whereby both recitations are practised upon is better.

An example from the verse of the Quran: “Wash your faces, your arms up to the elbows, pass wet hands over your heads and your feet up to your ankle”

Explanation: The word "اَرجِلُكم" mentioned in the Quran is recited in two different forms. One form of its recitation is with a Nasab which is "أَرجِلْكُم", if it is recited in this form then the meaning will refer to washing i.e. washing ones feet up to his ankles.

The other form of its recitation is with a Kasrah which is "اَرجِلُكم", if it is recited in this form then the meaning will be refer Masah i.e. Masah of ones feet up to his ankles when wearing leather socks.
The particle ُوّ ُو is of two types:

A- The particle ُوّ ُو is used to link words together according to Imam Abu Hanifah (r.a) and for sequence according to Imam Shafi’e (r.a).

Example: When a person says to his wife “If you talk to Zayd and A’mr you are divorced”.

Explanation: According to Imam Abu Hanifah (r.a), whether she talks to Zayd first then A’mr or vice versa or together the divorce will take effect.

However, according to Imam Shafi’e the divorce will only take effect if she talks to Zayd first then A’mr.

B- The particle ُوّ ُو sometimes denotes situation.

Example: When a master says to his slave “Pay me one thousand and you are free”.

Explanation: The slave would not be free unless he pays his master one thousand. The condition must be met for the result to take effect.
The particle ف’ (fathah) is of two types:

A- The particle ف’ denotes subsequence with conjunction.

Its example: When a person says to his wife “If you enter this house then this house, you are divorced.”

Explanation: So if the wife was to enter the second house straight away after entering the first house, then the divorce will take effect. Whereas, if she didn’t enter the second house straight away, rather entered another house and then the second house, the divorce would not take effect.

B- The particle ف’ sometimes describes the characteristic/quality of a person or an item.

Its example: When a master says to his slave “Pay me one thousand because you are free.”

Explanation: The slave will be set free immediately and will not be required to pay anything. This is because the master implied freedom as a quality and not a condition.
3- The particle ‘ثم’

A- The particle ‘ثم’ is for delay.

مثاله: إذا قال لغير المدخول بها "إن دخلت الدار فأنت طلاق ثم طلاق ثم طلاق".

Its example: When a person says to his wife – whom he had not had intercourse with - “If you enter this house, you are divorced then divorced then divorced”.

Explanation: According to Imam Abu Hanifah (r.a) the particle ‘ثم’ indicates a delay in speech and ruling, whereas according to Saahibain¹ it only indicates delay to ruling.

As a result, Imam Abu Hanifah (r.a) says that two divorces will take effect; the first will be conditional to entering the house and the second will take effect immediately. The third, however, will not take place at all. It must be understood that because the woman is one whom he had not had intercourse with, she will cease to be his wife immediately after the second divorce takes effect.

However, Saahibain say that all three divorces will be conditional to her entering the house. Thereafter, she will cease to be his wife immediately after the first divorce comes into effect.

¹ Imaam Abu Yusuf and Imaam Muhammad
4- The particle 'بل’

A- The particle 'بل’ is for correction.

Its example: I ate chicken, no, but rather meat.

Explanation: The particle 'بل’ is used to correct the first statement with another. Therefore, it will be deemed as though he did not eat chicken at all, but just meat.

5- The particle ‘لكن’

A- The particle ‘لكن’ is for clarification after negation.

Its example: Zaid did not come but A’mr.

Explanation: It was clarified that A’mr came and not Zaid by using the particle ‘لكن’.

6- The particle ‘أو’

The particle ‘أو’ is used in three meanings:
A- The particle أو is to include either one of the two mentioned.

Example: This one is free or this one.

Explanation: Out of the two things that are mentioned only one will be taken into consideration.

From the example above, only one slave will be free and not both. However, the slave that will be free will have to be clarified by the master.

B- The particle أو is sometimes for negation.

Example: I will not talk to this person or this person.

Explanation: When the particle أو is used for negation, then both things that were mentioned will be taken into consideration. From the example above, the person cannot speak to any of them and does not have a choice.

C- The particle أو is sometimes used in the meaning of unless.

Example: I will not separate from you or (unless) you pay my debt.

Explanation: When the particle أو is used in the meaning of unless, then it will be a condition.

From the example above, the person will not separate from him until the condition is met which is to pay the debt off.
7- The particle ‘حتى’

The particle ‘حتى’ is used in three meanings:

أ- ‘حتى’ للغاية.

A- The particle ‘حتى’ sometimes indicates limit.

Example: My slave is free if I do not hit you until you scream.

Explanation: The slave will be free if the person screams. Here, the scream is the limit and the time in which he is getting hit is known as I’mtidaad.

However, if ‘حتى’ has a common meaning then the common meaning will take place.

Example: My slave is free if I do not hit you until you die.

Explanation: The common meaning of “until you die” is when the person is beat very severely, therefore the slave will be free if he is beaten very severely and not if he is killed.

ب- ‘حتى’ للجزاء.

B- The particle ‘حتى’ sometimes indicates result.

Example: My slave is free if I do not come to you so that you can give me breakfast.

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1 غاية
2 prolongation
3 عرف
Explanation: When the particle حتى is used to indicate result, then the condition preceding حتى must be met for the result to take place. From the example above, the condition is that the master has to go to the person’s house and the result of that will be him getting breakfast. If he fulfils the condition and thereafter does not be given breakfast then his slave would not be free. However, if he is given breakfast after fulfilling the condition then his slave will be set free.

ج- حتی للعطف.

C- The particle حتى sometimes indicates conjunction.

مثاله: عبدى حر ان لم تأتيني حتى تغدى عندي اليوم.

Its example: My slave is free if you do not come to me and eat breakfast with me today.

Explanation: If the person thereafter goes to the master’s house, whether he has breakfast with him or not, the slave will be set free in both scenarios. This because the particle حتى was used as a conjunction and not a condition.

8- حرف إلى

A- The particle إلى denotes the extremity of the limit.
The particle إلى is used in two meanings:

1- امتداد الحكم إلى الغاية: لا تدخل الغاية في الحكم.

1- The action is prolonged until the limit, the limit will not be included in the action.

مثاله: اشترى هذا المكان إلى هذا الحائط.

Its example: I purchased this building until this wall.

Explanation: When particle إلى indicates that the action has been prolonged until the limit, then the limit will not be included in the action. From the example above, the particle إلى indicates that the area that has been purchased prolongs/stretches from the building until the wall, therefore the wall will not be included in the sale.

2- إسقاط ما وراء الغاية: تدخل الغاية في الحكم.

2- The action terminates at what lies beyond the limit, the limit will be included in the action.

مثاله: لا أتكلم فلنا إلى شهر.

Its example: I will not talk to a person until a month.

Explanation: When the particle إلى indicates that the action will terminate at a limit, then that limit will be included in the action. From the example above, the particle إلى indicates termination after the passing of a whole month. Thus, his vow to not speak to that person will be valid for one full month.
The particleُ is used in three meanings:

أ- على للالتزام

A- The particleُ is used for obligation.

Example: For a certain person *upon me* is one thousand.

Explanation: The particleُ is sometimes used to make something obligatory upon another. In reality it gives the meaning of superiority and elevation.

From the example above, what is understood is that I owe the person one thousand as debt and not as trust. This is clarified by the use of *على* which is used for obligation and debt is an obligation.

Whereas, if you were to replace *على* (upon me) with *فِي* (with me), then this will refer to as trust.

ب- على *فِي* الباء مجازا

B- The particleُ sometime comes in the meaning of the particleُ باء (attachment).

Example: I sell this to you *on* one thousand.

Explanation: The meaning of *على* here refers to in exchange of one thousand.

ج- على يَعْنِى الشرط

C- The particleُ sometime comes in the meaning of a condition.
Its example: When a women tells her husband “I will give you one thousand on condition you give me three divorce”.

Explanation: The condition has to be met for the result to take place. So if the husband was to give only one divorce, then it will not be compulsory for the wife to give the one thousand. This is because the condition was not met which was three divorces and not one.

The particle في

The particle في is used for three meanings:

1- The particle في is used for containment.

أ- When في denotes time.

Its example: You are divorced in tomorrow.
Explanation: According to Imaam Abu Hanifah, the divorce will take place the next day whenever the husband intends it.

However, Saahibain say that the divorce will take place at dawn the next day, whether the particle في is used or not.

ب- للمكان

B- When في denotes place.

مثاله: أنت طالق في مكة.

Its example: You are divorced in Makkah.

Explanation: The divorce will take place immediately wherever you are, whether you are in Makkah or not. This is because divorce cannot be restricted to a place.

٢- في للشرط

2- The particle في is sometimes used for condition.

مثاله: أنت طالق في دخولك الدار.

Its example: You are divorced in your entrance to the house.

Explanation: Here, the particle في is used as a condition, therefore is as if the person is saying to his wife “you are divorced if you enter the house”. So if the condition is met i.e. entering the house, then the result will take place which is divorce.

١١- حرف باء

١١- The particle باء

أً- الباء للإِلصَاق.

A- The particle ب is used for attachment.
Its example: I sell this slave to you for a specified measurement of wheat.

Explanation: In this example, the slave is attached to the specified measurement of wheat. For the slave to be in the buyer’s possession, the specified measurement will have to be exchanged for it.
The method of clarification is of seven types:

1- Bayaan-ut-Taqreer: When the meaning of a word is clear but has the possibility of referring to another meaning other than the literal meaning.

Its example: When a person says “I owe a person one thousand from the currency of the city”.

Explanation: It is clearly understood that he owes a certain person one thousand. However, there still remains a doubt with regards to which currency the one thousand is referring to. Therefore, he clarified that the currency is referring to the currency of the city.

2- Bayaan-ut-Tafseer: When the implication of a word which is unclear is clarified.

Its ruling: Clarification of it is valid whether made immediately or after an interval.
Mثاله: إذا قال "فلان علي شيء" ثم فسر الشيء بثوب.

**Its example:** When a person says “I owe a certain person something”, then he clarifies that something as a cloth.

**Explanation:** It is unclear with regarding to what the person owes. However, the unclearness is removed by the clarification of the speaker, that the thing which is unclear is referred to a cloth.

٣- بيان التغيير: هو أن يتغيّر ببيانه معنى كلامه.

**Bayaan-ut-Taghyeer:** When clarification changes the implication of the speech.

**حكمه:** يصح موصولا ولا يصح مفصولا.

**Its ruling:** Clarification of it is valid when made immediately and not after an interval.

له قسمان: التعليق بالشرط والاستثناء.

**It’s of two types:** Condition and exclusion.

أ- التعليق بالشرط.

**A- Condition**

مثاله: إذا قال "إن تزوّجتك فأنت طالق".

**Its example:** When a person says “If I marry you, then you are divorced”.

**Explanation:** According to Imam Abu Hanifah (r.a), the result will only take place after the condition is met. So if the marriage takes place, then the divorce will take effect immediately after the marriage.

Whereas, according to Imam Shafi’i (r.a), the result (i.e. divorce) will take place immediately, but the condition will be
preventing it from taking effect. In other words, the statement is baseless.

B - استثناء

مثاله: إذا قال "فلان علي ألف إلا مائة".

Its example: When a person says “I owe a certain person one thousand except a hundred”.

Explanation: According to Imam Abu Hanifah (r.a), it is as if he only mentioned nine hundred and not one thousand, such that only nine hundred will be Waajib on him.

Whereas, according to Imam Shafie, one thousand will become Waajib on him immediately, but due to the exclusion, it will be preventing it from being one thousand and will rather be only nine hundred.

4- بيان الضرورة: هو بيان حاصل بطريق الضرورة.

4- Bayaan-ud-Dharoorah: When clarification of it is attained through obviousness.

مثاله في قوله تعالى: "وورثه أبواه فلامه الثلث؟"

An example from the verse of the Quran: “His parents are his only heirs, then the mother gets a third”

Explanation: From this verse, we understand that if the parents are the only heirs, then the mother will get a third. Therefore, it is obvious that the father will get two thirds.
5- **Bayaan-ul-Haal:** When clarification of it is attained through the condition of the speaker.

Example: If Rasulullah (s.a.w) saw a specific action and he did not prohibit it, then his silence is the same as him clarifying its permissibility.

Explanation: The reason for this is that, if Rasulullah (s.a.w) seen an action he disliked, he would prohibit it instead of remaining silent. Therefore, if he remained silent, it would be understood that he is clarifying the permissibility of the action.

6- **Bayaan-ul-Attf:** When the clarification of something unclear is attained through the use of conjunction.

Example: When a person says “I owe a certain person one hundred and a dirham”.

Explanation: The conjunction will clarify the whole amount i.e. one hundred and one dirham, rather than just a hundred dirham.

7- **Bayaan-ut-Tabdeel:** When you replace the first ruling with a latter ruling.


Its ruling: It is only permissible for the lawmaker i.e. Allah and his messenger (s.a.w) to do and not man.

مثاله: قال النبي ﷺ " كنت نهيتكم عن زيارة القبور، فزوروها"

Its example: Nabi (s.a.w) said: “I used to prohibit you from visiting graves, but you may visit them now”

Explanation: Prophet Muhammad (s.a.w) prohibited his companions from visiting the graves at the beginning of prophet hood because he was afraid that they may start worshipping the graves, but he then later allowed them to visit the graves.
Sunnah: Whatever has been established by the statements or actions or affirmations of Nabi (s.a.w).

The Hadeeth of Rasulullah (s.a.w) is the same as the Quran in that it is compulsory to believe in it and act upon it.

The Hadeeth of Rasulullah (s.a.w) is of three types:

1- Mutawaatir: A Hadeeth which has been narrated in every generation by such a large group of people that it is logically impossible for all of them to be lying.

Its ruling: It grants definitive knowledge and its rejection equates to Kufr.

Its example: The narration of Quran and the five prayers.

2- Mashhoor: A Hadeeth which was Khabar Wahid in the beginning, then it became more known in the second and third generations.

مثاله: نقل القرآن وصلاة الخمس.
It's ruling: It obligates belief upon it with a certain degree of conviction and its rejection equates to innovation.

Its example: Pelting the adulterer in the chapter of fornication.

3- Khabar Waahid: A Hadeeth which one individual has reported from another individual or an individual from a group or group from an individual.

Its ruling: It grants belief upon it without conviction.

The narrators in the first generation is of two types:

1- Narrators who were well known for their knowledge and their ability to extract religious rulings.

Its ruling: Practicing upon there narrations will be better than practicing on Qiyaas.

Its example: The four caliphs.
2- Narrators who were well known for their memory and piety, but not for their ability to extract religious rulings.

Its ruling: If the narration corresponds with Qiyaas, then there is no doubt that it is Waajib to practice upon it, but if it contradicts Qiyaas, then it would be better to practice upon Qiyaas.

Its example: Abu Hurairah (r.a) and Anas bin Maalik (r.a).

The condition of the narrators are of three categories:

1- A true believer who accompanied Rasulullah (s.a.w) and understood the meaning of his speech.

2- A Bedouin who came from his tribe and heard some of the speech of Rasulullah (s.a.w) but did not understand the reality of Rasulullah’s (s.a.w) speech.

3- A Munaafiq whose hypocrisy is unknown, and he narrates what he did not hear and fabricates.
The conditions for practicing upon Khabar Wahid are:

1- It must not contradict the Quran.

Example: The Hadeeth regarding touching ones private parts.

Explanation: Rasulullah (s.a.w) said: “Whoever touches his private parts should perform Wudhu”. However, this Hadeeth contradicts the verse of the Quran, where Allah says:

“In it are men who love to be extremely pure”

This verse is referring to those people who use to do Istinjaa with stones and then follow it by washing their private parts with water.

Therefore, if touching the private parts did break Wudhu, then the method of Istinjaa would be means of impurification rather than a means of purification.

2- It must not contradict the well-known Sunnah/narration.

Example: The narration of judgement being passed with one witness and an oath.

Explanation: The Khabar Waahid is that “Rasulullah (s.a.w) passed a judgement with an oath and one witness”. However, this Hadeeth contradicts the well-known Hadeeth of Rasulullah (s.a.w):
“The accuser must bring a witness and the defendant must take an oath”

3- It must not contradict the apparent.

حکمه: اذا خرج مخالفًا للظاهر لا يُعمَل به.

Its ruling: If it contradicts the apparent, it will not be practised upon.

مثال مخالفة الظهر: عدم اشتهر الخبر فيما يعم به البلوى في الصدر الأول والثاني.

An example contradicting the apparent: When it is not the common practice of those residing in the first generation¹ and the second generation².

مثله في الحکمیات: اذا آخیرت بالمراة بموت زوجها وهو غائب جاز ان تعتمد على خبره وتتزوج بغيره.

Its example in the laws of Shari’ah: If a woman is informed of the death of her husband when he is not present, then it will be permissible to rely upon this information and remarry.

Explanation: The reason a woman can rely upon this information is because her husband is not present. However, if her husband was to be present, then it would not be permissible for her to rely upon this information because it is impossible for her to be unaware of his death, which is contradicting the apparent.
Khabar Waahid can be mentioned in four instances:

1 - خالص حقِّ الله تعالى ما ليس بعقوبه.

It is purely the right of Allah and it is not a punishment.

Its ruling: Khabar Waahid is accepted in it.

Its example: Rasulullah (s.a.w) accepted the testimony of one Bedouin regarding the sighting of the crescent of Ramadaan.

Explanation: The reason why Rasulullah (s.a.w) accepted the testimony of the Bedouin is because fasting is purely the right of Allah and not the right of another person and it is an act of worship and not a punishment.

2 - خالص حقِّ العبّد ما فيه إلزام محض.

It is purely the right of another person wherein a claim is made against another.

Its ruling: (At least) two people and (their) uprightness is required.
Its example:

Explanation: In a case where a claim is made against another person, the claimant must bring forth two witnesses whose uprightness is known in order for the judge to rule in favour of him. These conditions are stipulated in order to ensure that the right of another innocent person is not violated, nor is he falsely accused.

3- خالص حق العبد ما ليس فيه إلزم.

3- It is purely the right of another person wherein no claim is made against another.

Its ruling: Khabar Waahid is accepted in it whether it be from one who is upright or an open sinner.

Its example: Social dealings.

Explanation: Social dealings, such as gifting something to another person, are part of this category. Since no claim is made against another person, there is no stipulation of the uprightness or the quantity of the witnesses.

4- خالص حق العبد ما فيه إلزم من وجه.

4- It is purely the right of another person wherein a claim is partially made against another.

Its ruling: (At least) two people or (their) uprightness is required according to Imam Abu Hanifah (r.a).
Its example: Revoking the right for one’s slave to trade.

Explanation: Because a master has the option to transact in business dealings himself, there exists no actual claim against anyone by revoking the slave’s right to trade. However, since the right to trade was a right that solely belonged to the slave, to withdraw it from him will be regarded as a claim against him. Therefore, Imam Abu Hanifah (r.a) has decided to stipulate either the condition of an uprightness witness, or more than one witness whose uprightness is not considered.
البحث الثالث في الإجماع

الإجماع: اتفاق المجتهدين من أمة محمد في عصر علي أمر.

Ijmaa': The agreement of the Mujtahids from the Ummah of Muhammad (s.a.w) upon a certain matter.

حكمه: هو حجة كالحديث.

Its ruling: It holds the status of a legislative proof, like Hadeeth.

فصل في حجية الإجماع

الإجماع على أربعة أقسام:

Ijmaa’ is of four types:

1- إجماع الصحابة على حكم الحادثة نصاً.

1- Ijmaa’ of the Sahabah on a ruling of an incident with clarification from all.

حكمه: هو منزلة آية من كتاب الله تعالى.

Its ruling: It holds a similar status to a verse of the Quran in legislation.

مثاله: خلافة أبي بكر.

Its example: The Khilaafat of Abu Bakr (r.a).

Explanation: The Sahabah unanimously agreed to the Khilaafat of Abu Bakr (r.a) with clarification from all. The status of this unanimous agreement is same as an ayat of the Quran, that there can be no doubt in it and rejection of it will be kufr.
2- Ijmaa’ of the Sahabah by clarification from some and the silence of the rest without any refutation.

Its ruling: It is similar in its status as proof to Khabar Mutawaatir.

Its example: The killing of the ones who refused to pay Zakaah during the Khilaafah of Abu Bakr (r.a).

Explanation: After the death of Rasulullah (s.a.w), a lot of Bedouin Arabs that recently accepted Islam refused from giving Zakaah. Therefore, the Sahabah came to an agreement that the killing of the refusers of Zakaah is permissible. This issue came to an agreement with the clarification from some of the Sahabah and silence from the rest from whom none refuted. The ruling of it is the same as the ruling of Khabar Mutawaatir, that there can be no doubt in it and rejection of it will be kufr.

3- Ijmaa’ of those who came after them on those laws in which they did not find any clarification from the Sahabah.

Its ruling: It is similar to Khabar Mashhoor.

Explanation: The ruling of it is the same as the ruling of Khabar Mashhoor; it is compulsory to practice upon it and rejection of it will be an innovation.

4- Ijmaa’ of the later scholars on one of the opinions of the Sahabah.
Its ruling: It is similar to the authentic Hadeeth of Khabar Waahid.

Explanation: The ruling of it is the same as the ruling of Khabar Waahid: it is compulsory to believe in it without the need of conviction.

الإجماع على نوعين:

Ijmaaً is of two types:

1- مركب: ما اجتمع عليه الآراء على حكم الحادثة مع وجود الاختلاف في العلة.

1- Murakkab: It is that Ijmaa’ in which there is consensus regarding the ruling but there is difference of opinion regarding the ‘Ilmat.

مثاله: إجماع الحنفية والشافعي على وجود الإنقراض عند القيئ ومس المرأة.

Its example: The Ijmaa’ of Imam Abu Hanifah (r.a) and Imam Shafi’e (r.a) regarding the nullification of Wudhu when a person vomits and touches a woman.

Explanation: The ruling of the outcome is agreed by both, whereas the ‘Ilmat of the ruling is disagreed upon. The ruling of when a person vomits and touches a woman is that the Wudhu becomes nullified which is agreed upon by both Imam Abu Hanifah (r.a) and Imam Shafi’e (r.a). However, the ‘Ilmat of the ruling is disagreed upon. According to Imam Abu Hanifah (r.a), the ‘Ilmat that nullifies the Wudhu of the person is him vomiting and not due to him touching the woman, whereas according to Imam Shafi’e (r.a), the Wudhu is nullified due to the person touching the woman and not due to him vomiting.

^1 The cause
A type of *Ijmaa’ Murakkab*: ‘Adamul-Qaail-bil-Fasl

‘Adamul-Qa’il-bil-Fasl is of two types:

أ- ما إذا كان منشأ الخلاف في الفصلين واحدًا.

**A-** The basis of disagreement in both rulings is the same.

*Note:* The example is regarding those Fiqhi rulings in which the scholars have derived which are based upon one principle.

Its example: A vow to fast on the day of Eid is correct and an invalid sales transaction will establish ownership.

*Explanation:* A ruling that has been agreed upon is that making a vow to fast on the day of Eid is permissible even though to actually fast on that day is regarded as impermissible.

Likewise, the ruling regarding an invalid sale is that it establishes ownership, even though the actual sale itself is impermissible.

Both these two rulings are based upon one principle, which is that the prohibition of both acts has come as an external quality that does not prevent the action in both scenarios from being valid.

ب- ما إذا كان منشأ الخلاف مختلفًا.

**B-** The basis of disagreement is different.

*Example:* If vomiting a mouthful breaks Wudhu then an invalid sales transaction will establish ownership.
Explanation: The ruling has been agreed regarding a person who vomits a mouthful that his Wudhu breaks.

Another ruling that has also been agreed upon is regarding an invalid sale that it establishes ownership.

However, if a person was to say that if vomiting breaks Wudhu then an invalid sale would establish ownership, this would not be accepted because each ruling has a different basis and principle. Therefore although they are both correct, the validity of one does not necessarily ensure the validity of the other.

٢- غير مركّب: ما اجتمع عليه الآراء على حكم الحادثة من غير وجود الاختلاف في العلّة.

2- Ghair Murakkab: It is that [Ijmaa’] in which there is consensus of different opinions regarding the ruling without any difference of opinion regarding the ‘Illat.

مثاله: اجماع الحنفية على أنّ العلة في جبر الصغيرة على النكاح إما هي الصغر.

Its example: The agreement of the Hanafi scholars that the ‘Illat in the permissibility of marrying off an immature child without her consent is ‘immaturity’.

Explanation: The father has the right of decision to perform the marriage of his immature son without his consent. The reason for this is because the son has not reached puberty which is the ‘Illat for the father having the right over him.

This ruling has been established through Ijmaa’ without any difference of opinion regarding the ‘Illat.
Qiyaas: To measure a subsidiary with an original ruling due to a common cause and ruling.

It is a proof from the proofs of Shari’ah, which is Waajib to practice upon when none of the other proofs mentioned above\(^1\) are present.

Its ruling: It is a Shar’i proof which has been established through both traditional and intellectual evidences to be an exposition for other shar’i injunctions, but not a substantiater.

The conditions for the validity of Qiyaas are five:

1- Qiyaas must not contradict Nas.

Its example: False accusation of a chaste woman of fornication in Salaah will not break Wudhu, even though false accusation is a greater crime than laughing aloud, so how is it possible it that Wudhu breaks by laughing aloud when it is lesser.

Explanation: The reason why laughing aloud in Salaah breaks the Wudhu is because of the incident that took place regarding

\(^1\) Quran, Sunnah and Ijmaa’
the Bedouin who had an ailment in his eyes and fell into a hole which he did not see, causing some of the Sahabah to laugh in their Salaah, after which Rasulullah (s.a.w) said:

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"A'la min ghaffarrumukum qayyemah fi al-Salaah, fee iyyad al-`ibada wa al-Salaah "
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"Listen, whomsoever amongst you laughed loudly in Salaah, they must repeat their Wudhu and Salaah together."

But when the felony of laughing aloud in Salah is compared with accusing a chaste woman, the latter seems graver than the former. Thus, according to Qiyas, one may deem that since laughing aloud breaks both Salah and Wudu, accusing a chaste woman of fornication should also break both Salah and Wudu. However, because this ruling contradicts an already substantiated injunction – where talking in Salah only nullifies the Salah – it will be rejected.

2- Qiyaas must not alter any ruling already established by Nas.

مثاله في قول الشافعي: النية شرط في الوضوء بالقياس على التيمم.

An example: According to Imam Shafi’e (r.a), intention is a condition for Wudhu by making Qiyaas on Tayammum.

قلنا: هذا يوجب تغيير آية الوضوء "فاغسلوا وجوهكم" من الإطلاق إلى التقييد.

We (Ahnaaf) say: This will alter the verse of Wudhu “And wash your faces” from being Mutlaq to Muqayyad.

Explanation: A ruling of Shari’ah that is agreed upon is that intention is a condition for Tayammum. Imam Shafi’e (r.a) has done Qiyaas on this ruling and derived the ruling that intention is also a condition in Wudhu.

However, according to us if we were to accept intention as a condition for Wudhu, then we would be changing the verse of
the Quran “And wash your faces....” from Mutlaq to Muqayyad through Qiyaas, and therefore using Qiyaas here will be invalid.

3- لا يكون حكم الأصل مما لا يعقل معناه.

3- Qiyaas must not be based on a ruling that was established contrary to reason.

مثاله: لا يقاس على جواز التوضئ بنبيذ التمر غيره من الأنبزة.

Its example: Qiyaas cannot be done upon the permissibility of Wudhu with date juice to other juices.

Explanation: A ruling of Shari’ah that is agreed upon is the permissibility of performing Wudhu with date juice. However, to do Qiyaas on this ruling and derive the ruling that it is permissible to perform Wudhu with other juices aswell is incorrect. This is because we say that performing Wudhu with date juice is a ruling which is not understood and is contrary to reason. Therefore, Qiyaas cannot be done upon it. The only reason why it is permissible to perform Wudhu with date juice is because of what Nabi (s.a.w) said when he was asked١ about what was in his pot, he (s.a.w) replied:

"مَرَأَة طَيِّبَة وَمَاء طَهُور"

“Good dates and pure water”

He then performed Wudhu with it.

٤- يكون القياس لإثبات حكم شريعي لا لمعنى لغوي.

4- Qiyaas will be in accordance to the rulings of Shari’ah and not based upon linguistic meaning.

١ By Abdullah bin Mas’ood (r.a)
Its example: A thief is called a thief because he steals the wealth of others secretly and a grave robber also shares this meaning.

Explanation: The linguistic meaning of a thief is someone who steals secretly and this meaning is also found in the meaning of a grave robber. Therefore, according to Imam Shafi’ee (r.a) the ruling\(^\text{1}\) that applies to a thief\(^\text{2}\) will also apply to a grave robber.

However, according to us, Qiyaas cannot be based upon the linguistic meaning. Rather, it will be based upon the rulings of Shari’ah. Therefore, this Qiyaas will not be accepted.

An example according to Imam Shafi’ee (r.a): Setting free a Kaffir slave in expiation of an oath and Zhihaar\(^\text{3}\) is not permissible by making Qiyaas on the expiation of killing by accident.

We (Ahnaaf) say: This Qiyaas is deriving a rule already mentioned in Nas. Thus, it is not permissible to apply Qiyaas here.

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\(^{1}\) Punishments

\(^{2}\) The cutting of the hand

\(^{3}\) Comparing ones wife to a blood relative
Explanation: The expiation of killing a person by accident is to set free a believing slave\(^1\) which has been established in the verse of the Quran:

\[
\text{“He has to set free a slave who is a believer”}
\]

This is agreed upon; however, Imam Shafi’é (r.a) has done Qiyaas from this ruling and derived the ruling that a person who breaks his oath or commits Zhihaar has to also set free a believing slave and cannot set free a Kaafir slave.

We say that the ruling regarding the expiation of breaking an oath or committing Zhihaar has already been established by the verse of the Quran:

\[
\text{“He has to set free a slave”}
\]

This verse is Mutlaq and is referring to any slave - whether believer or Kaafir.

Therefore, we would disregard this Qiyaas as a ruling has already been established for it by Nas.

\(^1\) Muslim
The quality of a characteristic being the ‘Illat is established through the Quran, Sunnah, Ijmaa’, independent analogy and derivation.

1- An ‘Illat established through Quran

مثال العلّة المعلومة بالكتاب: كثرة الطواف.

An example of an ‘Illat established through Quran: Constant coming and going.

Explanation: Allah says in the Quran:

“وَلَيۡسُ عَلَيۡكُمْ وَلَا عَلَيۡهِمْ جَنَاحٌ بَعْدَهُمَّ طَوَافٌ عَلَيۡكُمْ بِعَضُومِهِمْ عُنۡبَئٌ”

“There is no sin on yourselves or on them, they often come and go from your presence, one from the other”

The ‘Illat that is found in this verse is regarding constant coming and going. The Sharia’h has made this an ‘Illat for removing the difficulty of having to repeatedly seek permission to enter.

Rasulullah (s.a.w) later used this ‘Illat to remove the difficulty of the impurity being caused by the saliva of cats and said:

"الهَرَّةَ لَيۡسَ بِنَجۡسَةٍ فَإِنَّهَا مِنَ الطَّوَافِينَ عَلَيۡكُمْ وَالطَّوَافَاتِ"

“Cats are not impure as they often come and go amongst you”

From this hadeeth, our scholars have used Qiyaas regarding all those animals that reside in the house that they are not impure, such as rats and snakes.
2- An ‘Illat established through Sunnah

مثال العلة المعلومة بالسنة: استرخاء المفصل.

An example of an ‘Illat established through Sunnah: Loosening of the joints.

Explanation: Nabi (s.a.w) said:

"ليس الوضوء على من نام قائماً أو ساجداً أو راكعاً أو ساجداً، إذا الوضوء على من نام مضطجعاً، فإنه إذا نام مضطجعاً استرخة مفصله"

"Wudhu is not incumbent upon one who sleeps standing, sitting, in Ruku’ or in Sajdah, Wudhu is incumbent upon one who sleeps lying down because when he sleeps lying down his limbs lack"

The injunction of Wudhu being nullified is the loosening of the limbs, as explicitly mentioned by Rasulullah (s.a.w) in the aforementioned hadeeth. Thus, it can be deduced from this that wherever this ‘Illat viz. the loosening of the limbs is found, the ruling of Wudhu being nullified will be applied there.

3- An ‘Illat established through Ijmaa’

مثال العلة المعلومة بالإجماع: الصغر علة لولاية التكاح في حق الغلام.

An example of an ‘Illat established through Ijmaa’: Not attaining puberty is the ‘Illat for granting (the father) the right to perform the marriage of his immature son (without consent).

Explanation: The ruling that has been established through Ijmaa’ is that the father has the right of decision perform the marriage of his immature son. The reason for this is because the son has not reached puberty - which is the ‘Illat for the
father having the right over him. Thus, the same ruling will apply to the immature daughter as well because of the same ‘Illat being found.

Qiyaas is of two types:

1- الاتّحاد في النوع: يكون الحكم المعْدّى من نوع الحكم الثابت في الأصل.

1- Ittihaad-fi-Noa’: The category of the ruling which is being applied (to the subsidiary) conforms to the category of the ruling in the original.

Its ruling: Qiyaas will not be invalid because of the difference.

Its example: Not attaining puberty is the ‘Illat for granting (the father) the right to perform the marriage of his immature son.

Explanation: The ruling has been established through Ijmaa’ that the father has the right of decision to perform the marriage of his immature son. The reason for this is because the son has not reached puberty which is the ‘Illat for the father having this right over him. Thus, the same ruling will apply to the immature daughter as well because of the same ‘Illat being found.

The category of the ruling that has been derived is the same as the category of the original ruling. The only difference between them is that the original ruling is regarding an immature son whilst the ruling which has been derived is regarding an immature daughter. However, this difference will not make the Qiyaas invalid.

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1 This example has been explained on the previous page
2- **Ittihaad-fil-Jins:** The genus of the ruling which is being applied to the subsidiary is the same genus as the ruling in the original.

Its ruling: Qiyaas will be invalid if the 'Illat is not applicable elsewhere within the genus of the ruling or there is a specific distinction found (between the original ruling and the ruling to which the 'Illat is applied to).

Its example: Just as immaturity allows the father the right to transact in the wealth of his child, the right for him to marry him of without him permission has also been established through this 'Illat (i.e. immaturity).

Explanation: The ruling has been established that the father has the right to make decision in the wealth of his immature child. This is because the child has not reached puberty and therefore is incapable of looking after his wealth.

Similarly, this 'Illat (i.e. immaturity) is also found within cases regarding the child himself. Thus, a father may marry his child off without their consent due to this 'Illat.

In these two scenarios, despite the category of the rulings being different, their genus is one and the same.
The objections to Qiyaas can occur in eight ways:

1- الممانعة: وهي عدم قبول دليل المستدل كلا أو بعضاً.

1. **Objection through Refutation**: To entirely or partially refute the proofs of the opponent.

Refutation is of two types:

أ- منع الوصف

**A- Refutation of the ‘Illat**

مثاليه في قول الشافعي: صدقة الفطر وجبت بدخول وقت الفطر فلا يسقط موت المكلف ليلة الفطر.

Its example according to Shaf’ie: Sadaqat-ul-Fitr becomes **Waajib** because of the beginning of the day of Eid, therefore, he will not be absolved from it if he passes away on the night of Eid.

قلنا: لا نسلم أن وجوبها بالفطر، بل عندنا تجب صدقة الفطر برأس ٍموت ويله عليه.

We (Ahnaaf) say: We do not accept that it is **Waajib** because of the beginning of the day of Eid, but according to us it is **Waajib** because of the presence of that person for whom one is responsible and has authority over.

**Explanation**: According to Imam Shafi’e (r.a), the ‘Illat for Sadaqat-ul-Fitr is the beginning of the day of Eid. However, we Ahnaaf reject this factor being an ‘Illat and and say that the factor that is the ‘Illat is the presence of the person for whom Sadaqat-ul-Fitr is paid for.
B- Refutation of the ruling

Its example according to Shafie: Masah is a fundamental part of Wudhu. Therefore, to make Masah three times will be Sunnah just as washing is a fundamental act of Wudhu (and to wash each limb thrice is a Sunnah).

We (Ahnaaf) say: We do not accept that washing each limb three times is Sunnah, but rather prolonging the act to more than what has been made Fardh, such as lengthening Qiyaam\(^1\) and Qira’at\(^2\) in Salaah is Sunnah. However, lengthening an act of washing in Wudhu is not possible except by repetition as the washing already extends to cover the entire area (of the limb).

Explanation: According to Imam Shafi’e (r.a), making Masah of the head three times is Sunnah just as it is Sunnah to wash the Fardh limbs\(^3\) three times.

However, we reject this ruling by saying that washing each limb three times is not Sunnah, rather prolonging the act itself is Sunnah, just as lengthening Qiyaam and Qira’at in Salah.

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\(^1\) Standing posture in Salaah
\(^2\) Recitation in Salaah
\(^3\) The face, hands and feet
Since it is not possible to prolong the act of washing in Wudhu as the limb is already washed, it will be therefore repeated three times.

On the other hand, it is possible to prolong the act of making Masah of the head, as the Fardh is to only make Masah of ¼ (a quarter) of the head and to prolong the act is to make Masah of the full head which is Sunnah and therefore would not be needed to be repeated three times.

2- Objection to the implication of the ‘Illat: When you accept the ‘Illat, but the explanation of it implies to something else other than the implication made by the one who derived the ‘Illat.

Example: 1: The elbow is the limit in Wudhu and will therefore not be compulsory to wash because the limit is not included in the action.

We (Ahnaaf) say: The elbow is the limit of termination and will therefore not be included in the ruling of termination, because the limit is not included in the action.

Explanation: The limit of an action would never be included in the action. According to Imam Zufar (r.a), the limit for washing is the elbow, therefore it would not be included in the washing as shown in the diagram below:

\(^{1}\) According to Imam Zufar (r.a)
Whereas, according to Imam Abu Hanifah (r.a), the limit of termination for the part that is being left dry/not being washed is the elbow, therefore the elbow will not be included in the part being left dry i.e. being washed as shown in the diagram below:
3- Objection by Reversal:

Reversal is of two types:

A- To make what the Mu'allil has made the ‘llat of the ruling to be the result of the ruling.

Its example from the laws of Shari’ah: The amount of Riba in large quantities necessitates the amount of Riba in small quantities as in the case of gold and silver, therefore the sale of one handful of food for two handfuls of food will be Haraam.

We (Ahnaaf) say: The amount of Riba in small quantities necessitates the amount of Riba in large quantities as in the case of gold and silver.

Explanation: According to Imam Shafi’e (r.a), the Shari’ah has made Riba in large quantities impermissible. He then used this ruling as an ‘llat to derive the ruling that Riba in small quantities is also not permissible.

However, we (Ahnaaf) say the complete opposite. According to us, the ‘llat is that Riba in small quantities is not permissible and from this we derived the ruling that Riba in large quantities is not permissible.

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1 the one who derived the I’llat
2 i.e. according to Imam Shafi’e
B- To use what the Mu’allil has made the ‘Illat to prove the opposite of that ruling, therefore becoming a proof for the objector after being a proof for the Mu’allil first.

Its example according to Shafi’e: The fast of Ramadhaan is Fardh, therefore specification of the fast is a condition as in the case of Qadhaa fasts.

We (Ahnaaf) say: The fasting of Ramadhaan is Fardh, therefore it does not require specification (in its intention) - like Qadhaa - after the Shari’ah has already specified it on behalf of the fasting person.

Explanation: We (Ahnaaf) and Shafi’e agree that fasting in Ramadhaan is Fardh. However, we disagree with regards to the ruling. Our ruling is completely the opposite of the ruling of Shafi’e.

According to Shafi’e, the intention needs to be specified for the fast of Ramadhaan, whereas, we say the opposite, which is that it does not need to be specified because the Shari’ah has already ascertained the intention of the fast for us. Therefore, to fast in Ramadhaan with a Mutlaq intention is permissible for us, and impermissible for Imam Shafi’e (r.a).
4- Objection through Inversion: When the objector\(^1\) derives a ruling from the original which the Mu’allil made Qiyaas on in such a manner that forces the Mu’allil to differentiate between the original and that for which the ruling was derived for.

Mثلا: الحلى­ أعدت للابتذال والاستعمال فلا يجب فيها الزكاة كثياب البذلة.

Its example: Jewellery is made for adornment and usage, therefore Zakah will not be Waajib on it just as the clothing one wears.

Qلنا: لو كان الحلى منزلة الثواب فلا تجب الزكاة في حلى الرجال كثياب البذلة.

We (Ahnaaf) say: If jewellery is the same as clothing then Zakaat is not Waajib on the jewellery of men just as the clothing one wears.

Explanation: ‘Aks (inversion) in simple terms is someone holding the ‘Illat of another and forcing the one who derived the ‘Illat (the Mu’allil) to change his ruling.

A ruling of Shari’ah that is agreed upon is that there is no Zakaat on clothing one usually wears. From this ruling, the Mu’allil - who is Imam Shafi’e (r.a) - has taken out the ‘Illat that what one usually wears should hold the same ruling as jewellery as it is something that is usually worn. Therefore, he has come out with the ruling that there is no Zakaah on Jewellery.

However, the objector - who is Imam Abu Hanifah (r.a) - says that if we were to agree with the ‘Illat that Imam Shafi’e (r.a) has derived, then it will lead to an invalid result. This is because clothing is permissible for both men and women, whereas, jewellery is only permissible for women and not men.
5- Objection by the ‘Ilmat being inappropriate: When the ‘Ilmat is made to such a characteristic that does not fit with the ruling.

Its example according to Shafi’e: The acceptance of Islam by one of the spouses causes the marriage to become invalidated, as in the case of one of the spouses abandoning Islam. Here, they have made Islam the ‘Ilmat for the invalidation of the Nikah.

We (Ahnaaf) say: Islam is known to secure rights and therefore will have no role in the invalidation of the marriage.

Explanation: An accepted ruling of Shari’ah is that if one of the spouses\(^1\) abandons Islam then the marriage will become invalid.

According to Imam Shafi’e (r.a), the ‘Ilmat from the ruling above is the difference of Deen. From this he has derived the ruling that the acceptance of Islam of one of the spouses\(^2\) also invalidates the marriage because the ‘Ilmat is also found here.

However, according to us acceptance of Islam is not an appropriate ‘Ilmat because Islam is known to secure rights, not break them.

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\(^1\) Both spouses are Believers
\(^2\) Both spouses are Non-Believers
6- Objection through distinction: To separate between two things.

Its example according to Imam Shafi’e (r.a): It is Waajib to give Zakaat from the wealth of an immature child to make the poor well-off just as in the wealth of a mature person.

We (Ahnaaf) say: The reason Zakaat is Waajib on a mature person is to cleanse his sins, not to make the poor well-off.

Explanation: An accepted rule of Shari’ah is that Zakaat is Waajib upon every person who possesses the Nisaab\(^1\) of Zakaat.

However, the question arises whether Zakaat is Waajib on an immature child or not. According to Imam Shafi’e (r.a), it will be Waajib on the immature child because the ‘Illat for Zakaat being Waajib upon someone is to make the poor well-off.

Whereas, we (Ahnaaf) say that the ‘Illat for Zakaat being Waajib on someone is not to make the poor well-off (that’s the wisdom), but rather to cleanse one’s sin. Therefore, Zakaat will not be Waajib on an immature child because he is sinless.

7- Objection by Disproval: To state that the ‘Illat mentioned does not result in the ruling.

\(^1\) Amount which makes Zakaat Waajib
Its example according to Imam Shafi’e (r.a): Wudhu is the means of attaining purity, therefore intention is a condition just as in Tayammum.

We (Ahnaaf) say: Qiyaas will be disproved by the washing of clothing and utensils, because it is also a means of purity – though the condition of intention is not stipulated for it.

Explanation: An accepted ruling of Shari’ah is that intention is a condition for Tayammum.

According to Imam Shafi’e (r.a), the ‘Illat for the ruling above is attaining purity i.e. intention is a condition for Tayammum because of attaining purity through it. From this he derived the ruling that intention is also a condition in Wudhu because it is also a means of attaining purity.

However, we disprove this Qiyaas by saying that washing clothing and utensils is also a means of attaining purity, but the condition of an intention is not stipulated for it. Therefore the ‘Illat proposed by Imam Shafi’e (r.a) does not result in the ruling.

8- Objection by Counteraction: To establish a proof to counteract the proof established by another.

Its example according to Imam Shafi’e (r.a): Masah is a fundamental act of Wudhu, therefore making Masah three times is Sunnah just as washing.
We (Ahnaaf) say: Masah is a fundamental act of Wudhu and therefore washing three times will not be Sunnah just as in Masah of leather socks and in Tayammum.

Explanation: Both Imam Abu Hanifah (r.a) and Imam Shafi’e (r.a) agree that Masah is a Fardh act of Wudhu.

However, according to Imam Shafi’e (r.a) it is Sunnah to do Masah of the head three times as it is Sunnah to wash all the other Fardh acts of Wudhu three times.

However, we counteract this by saying that it is not Sunnah to do Masah of leather socks three times nor in Tayammum, therefore it is not Sunnah to do Masah of the head three times.
1- The Sabab

The definition of Sabab in Shari’ah: That which leads to the ruling by means of something else.

The linguistic definition of Sabab: Whatever leads to another thing by means of something else, like a path.

2- The ‘Illat

The technical definition of ‘Illat: That characteristic which introduces the ruling, or which is used as a link between the Sabab and the ruling.

The linguistic definition of ‘Illat: A term used to denote through which the condition of something else changes, like illness for the body.

An example of Sabab and ‘Illat together: Opening the door of the stable: therefore, opening is the Sabab for the loss (of the animal) by means of an action from the animal, which is the
leaving of the animal. Thus, the opening of the door will be the Sabab and the leaving will be the ‘Illat.

3- تعريف الشرط: ما يستلزم من عدمه عدم الحكم أو ما يلزم من عدمه عدم المشروط.

3- The definition of condition: That factor, the absence of which incurs the absence of the ruling. Or, the absence of which incurs the absence of the stipulated.

مثاله: الطهارة للصلاة.

Its example: Purification for Salaah
1- The Sabab for Salaah being Waajib: Time, based on the proof that the instruction to perform Salaah does not apply before the time has set in but only after.

2- The Sabab for Fasting being Waajib: The coming of the month of Ramadhaan, because the instruction to fast applies then and fasting has been affixed to it.

3- The Sabab for Zakaat being Waajib: Having possession of growing wealth, whether in reality (stock for trade) or ruling (gold and silver).

4- The Sabab for Hajj being Waajib: The Ka’bah, because of Hajj being affixed to it and the fact that it is Waajib only once in a life time.

5- The Sabab for Sadaqat-ul-Fitr being Waajib: The presence of the person whose expenses he bears and those under him.
6- The Sabab for U’shr\(^1\) being Waajib: The land being productive.

7- The Sabab for Khiraaj\(^2\) being Waajib: That the land must be fertile for cultivation.

8- The Sabab for Wudhu being Waajib: Salaah according to some and others are the opinion of that the Sabab for Wudhu is minor impurity.

9- The Sabab for Ghusl being Waajib: Being in the state of Haidh, Nifaas and major impurity.

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\(^1\) tax on the produce of land
\(^2\) land tax
Impediments are of two types:

أ- باعتبار جواز تخصيص العلة

1- Based on considering the specification of the 'Illat as permissible.

Impediments can occur in four ways according to one who considers the specification of the 'Illat as permissible:

A- Prevention that prevents the 'Illat from occurring.

مثله: بيع الحر واللثمة والدم.

Its example: Sale of a free person, carrion and blood.

Explanation: The Shari’ah terminology of sale is wealth in exchange for wealth. The ‘Illat of sale is offering and accepting. However, a free person, a carrion and blood are not wealth and therefore would not be categorised as objects of sale. Since they are not categorised as objects of sale, it will prevent the 'Illat of sale – offering and accepting - from taking place which in turn prevents the ruling from taking place; i.e. change of ownership.

ب- مانع يمنع تمام العلة.

B- Prevention that prevents the 'Illat from completing.

مثاله: هلاك النصاب في أثناء الحول.

Its example: Loss of the Nisaab during the course of the year.
Explanation: The ‘Illat for Zakaah being Waajib is having the possession of the Nisaab for the duration of a year.

However, if the Nisaab goes missing or perishes during the course of the year, then Zakaah will not be Waajib which is a result of the ‘Illat not being completed.

ج- مانع يمنع ابتداء الحكم.

C- Prevention of the ruling from applying from the beginning.

مثاله: البيع بشرط الخيار.

Its example: A sales transaction stipulated with the right to cancel or approve the transaction.

Explanation: The ‘Illat of a sale is acceptance and offering. The ruling of a sale is that ownership of the item will be established.

However, in a transaction where the right to cancel has been stipulated by the buyer or seller the ownership – which is the ruling - will not take place from the beginning because the stipulation of the right to cancel or approve the sale is preventing it from taking place.

د- مانع يمنع دوام الحكم.

D- Prevention of the ruling from applying continuously.

مثاله: خيار البلوغ.

Its example: Khiyaar-ul-Buloogh¹.

Explanation: Although the ruling of marriage has been intiated, a child who was married off by someone other than his father or grandfather without their (the child’s) consent possess the right to annull the marriage after reaching puberty. Thus, this is an example of an impediment preventing the continuation of the ruling.

¹ The right to cancel a marriage after reaching puberty
2- Based on one who considers the specification of the ‘Iltat as impermissible.

Impediments can occur in three ways:

1- Prevention of the ‘Iltat from applying from the beginning.

2- Prevention of the ‘Iltat from completing.

3- Prevention of the ruling from applying continuously.
تعريف الفرض والواجب والسنة والنفل

فرض: ما ثبت بدليل قطعي لا شبهة فيه.

1- **Fardh:** Whatever has been established by convincing proof which has no doubt in it.

*Its ruling:* It is obligatory to act upon it and believe in it.

الواجب: ما ثبت بدليل فيه شبهة.

2- **Waajib:** Whatever has been established by proof but has a slight amount of uncertainty.

*Its ruling:* It is obligatory to act upon it and believe in it.

السنة: هي الطريقة المسلوكة المرتبطة في فتنة الدين.

3- **Sunnah:** The preferred path adopted in the matters of Deen.

*Its ruling:* A person should attempt to revive it and show dislike on its disregard except where it is disregarded with a valid excuse.

النفل: هو زيادة على الفرائض والواجبات.

4- **Nafl:** Those acts which are an additional to Fardh and Waajib.

*Its ruling:* One will be rewarded by practicing upon it and will not be punished for disregarding it.
Permissible acts are of two types:

1- A’zeemah

The literal meaning of A’zeemah: Firm intention.

Explanation: If a person was to firmly decide to indulge in sexual relations with his spouse whom he has done Zhihaar with, then this is as if he actually indulged in sexual relations with her and the Kaffaarah will be Waajib upon him just as it would be if he actually did. From this we understand that if a person was to say ‘I firmly decided to give you a Dirham’ then this is taking an oath which if he does not fulfil then Kaffaarah will be Waajib upon him.

The Shari’ah meaning of A’zeemah: Those laws of Shari’ah that were incumbent on us from the beginning.

Example: The fasting of Ramadhaan and the four Raka’at in Zhuhr, Asr and I’sha.

2- Rukhsah

1 Comparing ones wife to a blood relative
The literal meaning of Rukhsah: Ease and comfort

The Sharia'h meaning of Rukhsah: Changing the command from difficulty to ease due to a valid excuse.

الرخصة نوعان:

Rukhsah is of two types:

1- رخصة الفعل مع بقاء الحرمة.

1- Permission to carry out the act while it still remains Haraam.

مثالها: إجراء كلمة الكفر على اللسان مع إطمئنان القلب عند الإكراه.

Its example: Uttering a statement of Kufr whilst having Imaan in one’s heart under compulsion.

حكمها: لو صر حتى قتل يكون مأجورا: امتناعه عن الحرام، تعظيما لنهي الشارع.

Its ruling: If the person remains patient until he is killed, he will be greatly rewarded because of abstaining from that which was prohibited by Rasulullah (s.a.w).

Explanation: It is permissible to carry out a Haraam act whilst being forced, like being forced to utter words of Kufr. However, if a person still does not utter words of Kufr after being forced and thereby gets killed, he will be greatly rewarded. Additionally, uttering the words of kufr at that moment of compulsion does not imply that it has become permissible to utter words of kufr, but it’s a mere concession on behalf of the Shari’ah upon the compelled.

2- تغيير صفة الفعل بأن يصير مباحا في حقه.

2- Altering the characteristic of the act such that it becomes permissible for him to carry out.
Its example: Consuming carrion and drinking wine in dire circumstances.

Its ruling: If he abstains from eating until he is killed or dies, then he will be sinful because he abstained from that which was permissible for him.

Explanation: It is permissible to carry out a Haraam act in certain circumstances, liking drinking wine due to starvation as mentioned in the Quran:

"So whoever is forced because of starvation"

However, if a person still abstains from drinking the wine and therefore dies, then he will be sinful because the wine was made permissible for him due to the circumstances.
الاحتجاج بلا دليل أنواع ومنها:

Establishing injunctions without proof is of many types and from them are:

١- الاستدلال بعدم العلة على عدم الحكم.

١- Proving due to the notion that “the ‘Illat not being present results in the ruling not being present”.

مثاله في قول الشافعي: القيء غير نافض لأنه لم يخرج من السبيلين.

Its example according to Imam Shafi’e (r.a): Vomit does not break Wudhu because it has not come out from one of the two private parts.

Explanation: Both Imam Abu Hanifah (r.a) and Imam Shafi’e (r.a) agree that whatever comes out of the two private parts breaks the Wudhu.

However, Imam Shafi’e (r.a) says that whatever that does not come out of the two private parts does not break the Wudhu such as vomiting. This ruling has been established by the notion that ‘if the ‘Illat is not present, then the ruling will also not be present’. However, we say that the exiting of impurity from the two private parts is not the only ‘Illat for the nullification of Wudhu. Rather, there are other factors that can break Wudhu, and vomiting is one of them.

٢- التماسك باستصحاب الحال

٢- Proving due to the original condition of something

مثاله: مجهول النسب لو أدعى عليه أحد رقًا، ثم جنى عليه جناية لا يجب عليه أرش الحر

Its example: A person whose lineage is unknown will not be liable to pay the penalty of a free person if someone claims him to be his slave.
Explanation: Imam Shafi’e (r.a) says that a ruling can be established through the original condition of something. The original condition of a person is that he is free and not a slave. Therefore, a person whose lineage is unknown will regarded as free person because that is his original condition.

However, we say that you cannot establish a rule through the original condition of something because it has the possibility of changing. Rather, we say that you can negate a ruling through the original condition of something.

From the example above, if someone was to claim a person whose lineage is unknown to be a slave, we can use his original condition to negate him being a slave but cannot establish him being a free person.