



صِفْوَةُ أَصُولِ الْفِقْهِ

THE FINEST SELECTION OF USUL UL-FIQH

SHAIKH ABDURRAHMAN BIN NAASIR AS-SA'DI

(D.1376 H.)


DARUSSAFII

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The Finest Selection of Usul ul-Fiqh¹

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¹ The Arabic copy used for this translation is the copy of the text published in *Majmoo' Mu'alafaat ash-Shaikh 'Allamah Abdurrahman bin Naasir as-Sa'adi* (7/265-280)



All praise is due to Allah the Lord of the Worlds, a praise which is abundant, pure, and full of blessings. O Allah send abundant peace and blessings upon Muhammad, his family, Companions, and followers until the Last day.

As for what follows:

Verily **Usul ul-Fiqh** (the Foundations of Jurisprudence) is an honorable, important knowledge. By knowing it, the Student of knowledge acquires the ability to make a correct examination into the foundations of rulings and deduce evidences for the halal and haram. This science aids him in deriving the Legislated rulings from the Book and the Sunnah. He will get to know how to do all of that and the way to do so.

This is an abridged text which I have selected [its content] from the books of Fiqh. I have restricted myself in it to mentioning the most important and needed information. I have strived in making it clear because the need for clarification and elucidation [in a text] is more emphasized than the need for omission and abridgement. I hope for the assistance of Allah, the Exalted and for steadfastness, and the ability to tread the shortest path to obtain guidance and uprightness by His bounty and His generosity. Ameen

Know that the Foundations of Jurisprudence are the evidences that lead to jurisprudence. It's foundations are:

- The Book (i.e. the Qur'an)
- The Sunnah
- 'Ijmaa' (Consensus)
- Qiyaas (Analogy)

The Legislated Rulings are five:

Wajib (Obligatory): it is that [action] which a person is rewarded for performing and punished for leaving it off.

Haram (Unlawful): it is the opposite of above.

Masnoon (Recommended): it is that [action] which a person is rewarded for performing and not punished for leaving it off.

Makruh (Disliked): it is the opposite of the above.

Mubah (Lawful): is that which is not connected to praise or dispraise.

If there is a command that is reported in the Book and the Sunnah, then the origin is that it is an obligation, except due to a circumstance which changes it to a recommendation; or towards permissibility if a command appears after a prohibition. This is in most cases.

A prohibition is indicative of forbiddance except due to a circumstance that changes it towards a dislike.

It is incumbent that words be carried upon their literal meanings without claiming it is figurative, and upon its general meaning without specifying it, and upon its apparent, explicit structure without the [claim] of (إضمار)², and upon its unrestrictedness without restriction.

If a word [is repeated in a sentence] then it establishes a [new] ruling and is not an emphasis of the previous word, and these two words are distinct and not synonyms, and that a word remains valid/intact and is not abrogated, except due to an evidence that proves the opposite of what was mentioned above.

If speech is that of the Legislator, then it is understood in accordance to the customary [meaning] used by the Legislator. Speech is understood according to the customary meaning of the one who said it in relation to contracts and what follows it.

² (إضمار) means suppression. It refers to a sentence structure in which a word/element is omitted from the structure, but is essential for the meaning of the sentence.

The means take the rulings of their purposes. Whatever is needed to complete an act, then it is obligatory. Whatever is needed to complete a *Wajib*, then it is not obligatory.

Valid acts of worship, contracts, and mutual dealings combine between fulfilling the conditions and the obligations, and being free from invalidators. Nullification and invalidation is the opposite of this.

Whatever the Legislator requests from every legally responsible person themselves, then it is an individual obligation. Any action whose intent is purely to be performed and whose benefit also returns to the one who performs it, then it is a communal obligation. If someone performs such an action such that the intent is fulfilled, then it suffices others from performing it as well. If no one performs it, then everyone who knows how to perform it and is capable of doing so are sinful. It then becomes an individual obligation in regards to the one who knows that another person will not establish it, either out inability or negligence.

If two benefits vie with one another, then the most beneficial of the two is given precedence. Or if two evils vie with one another and it is necessary to perform one of the two, then the lesser of the two evils is performed. If something lawful resembles something prohibited in that which is not a necessity, then it is obligatory to hold back from both.

A command necessity that it be performed immediately.

The Legislated wisdom, referred to as (العلة) in Arabic, is the appropriate rationale for which a ruling is Legislated. A ruling is made general due to the generality of its reason (العلة). Just like how a general wording is made specific if the specification of the reason is known.

as-Sabab (Cause): is that which necessitates by its presence the presence of something else and by its absence, the absence of that thing in and of itself.

ash-Shart (Condition): is that which necessitates the absence of something due to its absence, and does not necessitate the presence or the absence of that very thing in and of itself due to its presence.

al-'Azeemah (Determination): is an established ruling due to a Legislated evidence and is free from an opposing [evidence] which is preponderant. The opposite of it is called **ar-Rukhsah** (Allowance).

The one who is forgetful, mistaken, or compelled has no sin upon him. Whatever they may have done in their acts of worship due to these causes does not lead to its invalidation, nor are their contracts binding [on account of that].

The one who is forgetful or mistaken is liable for what he takes of life or destroys of wealth.



Chapter

The Sunnah: is the statements of the Prophet (ﷺ), his actions, and his approvals. As for his statements, then the matter is clear. As for his (ﷺ) actions, then the origin is that they are recommended. However, depending on the context, it can change towards an obligation or something specific to him (ﷺ). The exception to this are the actions which it is known he (ﷺ) did not perform due to the Legislation, such as the affairs which he did coincidentally and not intending them in and of themselves. In this case, such actions are permissible. The origin is that he (ﷺ) is a role model for the Ummah in all rulings, except what is made specific for him by way of evidence. His (ﷺ) approvals of something indicate its permissibility except due to an evidence [that proves otherwise].

His (ﷺ) statements take precedence over his actions.



Chapter

The ***Ijmaa'*** (Consensus) of the Ummah upon a Legislated ruling is a definitive proof. It is not allowed for anyone to oppose a well-known consensus. It is necessary for a consensus to be based on a Legislated proof which is known even by a few Mujtahids.

The ***Mutawaatir*** (Successive) narration in wording or meaning gives certain [knowledge] with the condition that it is reported by a large number of narrators, which it is not possible for them all to agree on a lie or a mistake. If it does not reach this level, then it is called: ***Ahaad*** (Single Narration). Some Ahaad narrations can give certain [knowledge] depending on the context.

The statement of a Companion (may Allah be pleased with him), if another Companion does not oppose him in it, is from the evidences. If someone else differs with him, then a person returns to the preponderant opinion. If the opinion of a narrator opposes his narration, then his narration is acted upon instead of his opinion.

A command for something is a prohibition of its opposite. A prohibition of something is a command for its opposite.

If a forbidden act is committed, which relates to an act of worship itself or its conditions, then it invalids it. If it relates to a command outside of that, then it is prohibited but the action is not invalid.

From the words that indicate generality are:

- ▣ 'From', 'what', 'which', 'where' and the likes
- ▣ Relative pronouns
- ▣ Words which are clear in their generality, such as 'every', 'all', and the likes
- ▣ Whatever word accepts the article 'the' such as plurals, *plurale tantum* (اجناس), a singular word that is definite using other than the Laam used for definiteness
- ▣ The singular word annexed for definiteness
- ▣ An indefinite word in the context of negation or prohibition or condition or question



Chapter

Specifying a general text is by way of a condition or an attribute or the likes. So it is acted upon in relation to the speech of the Legislator and the speech of those who are legally responsible.

Unrestricted speech should be carried upon restricted speech that appears in another place, except if that includes a delay of the clarification [of an issue] from its time of need.

The obscure and ambiguous text are carried upon the definitive, clarifying and clear text which appears later.

It is obligatory to act upon the apparent meaning of a text except if there is an evidence that turns it away from that. Speech has an explicit meaning (**Mantooq**) which aligns with the wording or is included into the meaning of the wording. It also has an implied meaning (**Mafhoom**) which the text is silent about. If it is more deserving or equal to the ruling derived from the explicit wording, then it is referred to as **Mafhoom al-Muwaafiq** (convergent implied meaning). Its ruling is the same as the ruling established by the explicit wording. If it is in opposition to the explicit wording, then it is called: **Mafhoom al-Mukhaalafah** (the divergent implied meaning). So its ruling is in opposition to the ruling established by the explicit text with the condition that:

- ▣ It does not exit from the dominant and customary situation
- ▣ It is not an answer to a question from a questioner
- ▣ That it not be in the context of aggrandizement/exaggeration or the context of gratitude
- ▣ It not be an explanation of the incident which necessitated the clarification of the mentioned ruling



Chapter

an-Naskh (Abrogation): is the removal of a Legislated ruling due a Legislated evidence that comes after it. This does not occur except if it is not possible to harmonize between both texts from any possible angle.

As for **Qiyas** (Analogy), then it is to equate a subsidiary issue which does not have a textual evidence with an original issue which does have textual evidence if their reason (العلة) is same and there is no difference between both issues. This is based on [the idea] of gathering two like things under one ruling and separating two different things. It is considered a proof according to the majority of the Scholars of Usul. Analogy differs greatly in terms of its strength and its weakness.

From the Fiqh maxims which are established are:

- Certainty is not removed by doubt
- The origin is that something remains upon the state that it is [unless an evidence appears to change it from that state]³
- A harm is not removed by another harm
- Necessities make permissible the prohibitions
- Inability drops obligations
- Difficulty brings about ease
- Customs are returned to in many affairs
- The origin of worship is prohibition. Nothing can be Legislated in it except what is Legislated by Allah and His Messenger (ﷺ)
- The origin of customs is permissibility. Nothing is prohibited in it except what is prohibited by Allah and His Messenger
- Whatever speech or action indicates towards the intended purpose between two parties involved in a contract or an action, then the contract becomes valid
- Purposes and intentions are considered in actions of mutual dealings just as they are considered in the acts of worship
- If there is a contradiction between two preponderant actions, then the strongest of them is acted upon

³ The Scholars refer to this as (الاستصحاب): the principle of the presumption of continuity.

- ▣ Likewise, a less preponderant action is given precedence [at times] if it leads to an outcome that is equal to or greater than the more preponderant action. And Allah knows Best.

This is the end of the treatise.

All praise is due to Allah alone and may peace and blessings be upon Muhammad, his followers, and Companions.

Written by

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