

Usūl al-Fiqh by Shaykh ‘Ali al-Tamimi (حفظه الله)

Lesson (1/17) Transcribed:

What is Usūl al-Fiqh?

Well if you actually look at it, Usūl al-Fiqh, this term is taken from 2 words. First word **Usūl** & Second word **Fiqh**. And in order to understand the meaning depth of this term, let’s take it by looking at each word on its own.

The meaning of **Usūl** is a plural of the Arabic word **al-asl**. And we might translate that to English as “**The root, the foundation of something**”. And in the Arabic language, the trunk of the tree is known as the **Asl**, and there’s a verse in Surat Ibrahim, where Allāh (سبحانه وتعالى) describes the good word of a tree, and then Allāh (سبحانه وتعالى) says “**Asluhā Thābit**”, its root is well-fixed, “**wa far’uha**” (its branch) is in the heavens or in the sky.

So as opposed to **Asl** (the root), we have branch which is **fara’** or **furoo’** (the plural), so **Asl**, the plural which is **Usūl** means foundation, in the Arabic language we say “**asl al-Jidār**” the root or the foundation of the wall (meaning the bottom part that touches the ground). So, the word **Usūl** means that which is built upon it, wherever that might be. So now we understand the first word **Usūl**, now let’s have a look at the second word **Fiqh**.

What does Fiqh mean?

Does anyone know what the word **Fiqh** means linguistically? Linguistically the word of **Fiqh** means to understand or comprehend. There’s a similar word in the Arabic language which is **al-‘ilm** which is knowledge, but **Fiqh** is more specific in meaning than knowledge, so knowledge is something general, whereas **fiqh** is a little bit more specific in the Arabic language, which means to understand and comprehend.

And we find this in verses in the Qur’ān where Allāh (سبحانه وتعالى) tells us that musa asked Allāh (سبحانه وتعالى) when he was being sent as a messenger **that he would understand speech**, and the Hadīth of the Prophet (صلى الله عليه وسلم) for instance in Sahih al-Bukhari where the Prophet (صلى الله عليه وسلم) made a dua for Ibn ‘Abbās that:

“O Allāh (سبحانه وتعالى) give him **Fiqh** in the religion”

Meaning, give him comprehension and understanding in the religion. That is the linguistical meaning of the word **fiqh**. But it has a technical meaning, which we can define as:

“Knowledge of the Sharee’ah regulations(Ahkaam) of actions required from their specific evidences.”

(He was asked and what does that mean?)

Knowledge means as opposed to ignorance, **regulations** meaning that for instance that something is required, we say that Salāh, praying 5 times a day is obligatory, that’s a regulation of the Sharee’ah, that you have to fast the month of Ramadan, that in order to marry, a woman must have a wali(a guardian), these are regulations in the Sharee’ah.

As opposed to regulations for instance of nature, that when it’s cold and it rains, snow occurs, **that’s a regulation of nature**. Regulation of the mind for instance, that the sum of something is equaled to its whole.

We’re talking about the **regulations of the sharee’ah** like Salāh is required 5 times a day, one must give zakat, one must fast the month of Ramadan, a woman must need a guardian to get married, these are the regulations of the sharee’ah.

And there are regulations to do with action, in other words, belief that Allāh(سبحانه وتعالى) is one, belief in the Prophet(صلى الله عليه وسلم) Muhammad as the messenger of Allāh(سبحانه وتعالى), belief in the angels, this is not entered into the subject of fiqh because these are regulations dealing with belief, or what we call Aqeedah or Tawheed.

But Fiqh specifically deals with those matters dealing with action (like Salāh, Zakat, Hajj, Fasting etc...), and these regulations are gained, we acquire them from their specific evidences. Those evidences in the Qur’ān, those evidences in the Hadīth, those evidences from Ijma’, the consensus, those evidences of analogy(or qiyās), so when we say Fiqh in the linguistical sense, it means to understand or comprehend.

We say fiqh as a subject/science, it means knowledge of the sharee’ah regulations, instead of regulations of nature/reasoning, and those regulations are of action as opposed to regulations to do with belief, and they are gained from their specific evidences. The specific proofs of the Qur’ān, the Hadīth and the other sources of Sharee’ah law.

So if I say **“The unbelievers will be buried in the hellfire”**, is this fiqh? It’s not part of Fiqh, because we said that it’s of action, and the belief that the believers will go to paradise and the unbelievers will go to the hellfire is not a matter of action, it’s a matter of belief **(Aqeedah)**.

If we say for instance that 3 is greater than 1, is this a matter of Fiqh? No, because there is no sharee’ah regulation.

Now we know what the word **Usūl** means, we said that which is built upon something, something is built upon it. And we know what the word **fiqh** means, so taking those 2 definitions together, we will know what **Usūl al-fiqh** means.

So now Usūl al-fiqh is a science, that means a knowledge of the general evidences of fiqh and how to use them and the statics of the one who impours them. So fiqh deals with the specific regulations, and Usūl al-fiqh deals with the general evidences.

What do I mean by general evidences?

Well, for instance if Allāh (سبحانه وتعالى) tells us in the Qur'ān:

“Aqiumu al-Salāt”

or “**establish the prayer**”. Now aqiumu al-Salāt there's a specific ruling, it shows us that prayer is required, but the general ruling which deals with Usūl al fiqh is that whenever we have a command like in the Arabic language, the verbs there's a type of verb which is the commanding verb, “**do this, do that**”, so establish, do! It indicates that it's incumbent upon us to do so.

So that's the first issue, so for e.g. a **command** tells us that it's required (wajib), a **prohibition** tells us that it's forbidden(haram), that's an example of a general evidence of Fiqh.

You come across a verse in the Qur'ān, it prohibits you from doing something, Allāh (سبحانه وتعالى) forbids you from doing something, you understand when you see a prohibition, it means a matter is **forbidden**, you've come across a Hadīth of the Prophet (صلى الله عليه وسلم), you find a command, you understand that a command means that it's required, it's **Obligatory** for me to do that. That is something which is Wajib, that is a general evidence of Fiqh.

A specific evidence would be like for instance the 5 prayers, it's required to pray 5 times a day, it's required to give zakah, that's a specific matter, it's required to fast Ramadan, it's forbidden to drink/consume intoxicants, so those are the **specific** ones.

That's **not** what Usūl al-Fiqh deals with, **Usūl al-fiqh deals with the general regulations**. And during the course when we study, we'll be studying this general evidences of Fiqh and how to use them, how to use these general evidences of Fiqh, in other words for instance if I had a verse of the Qur'ān & I have a Hadīth from the Prophet (صلى الله عليه وسلم) & they are contradictory, they seem that they do not fit in meaning for instance, what do I use, do I take the Hadīth, do I take the verse of the Qur'ān? Do I try to explain that verse in the Qur'ān from the Hadīth? Do I think one abrogates the other? This is how to use these general evidences of Fiqh.

And the third thing is the one who employs them, in other words the **Mujtahid**, the one who employs is the Mujtahid and we'll be talking about Ijtihad, what is Ijtihad and who can exercise Ijtihad.

So the science of Usūl al-fiqh used with knowledge of the **general evidences of Fiqh**, like a command means required, a prohibition means forbidden, how to use these general evidences in other words I have verses from the Qur'ān, I have Hadīth from the Prophet (صلى الله عليه وسلم), what do I put first, does one explain the other, how do I deal with something that is abrogated, is there contradictory when one is abrogating the other, you know this whole idea of how do I use these evidences.

And then finally, the condition or the status of the one who employs them, who can make use of these evidence, who can use these principle, the Mujtahid, who is the mujtahid, who has the right to exercise ijtihad. What are his qualifications, that's what Usūl al-fiqh deals with.

If we now know what Usūl al-Fiqh means:

Where is the science of Usūl al fiqh taken from?

Well, Usūl al fiqh has 3 foundations, the foundations of Usūl al fiqh are 3.

The **first** is 'ilm ul-Kalam, which we might translate as theology, however 'ilm ul-Kalam is not the aqeedah according to the Salaf, but rather its the 'Aqeedah according to the Khalaf. In many of its aspect, it has innovation in it. But Usūl al fiqh is based upon that, and we'll discuss that in a moment.

And the **second** matter Usūl al fiqh is based upon is the **Arabic language**.

And the **third** matter which Usūl al fiqh is based upon is Fiqh itself, the **regulations of Fiqh** itself.

So right now we need to know that the foundations of the science Usūl al-fiqh is based upon **'ilm al-kalam** (theology), **the Arabic language** and the **regulations of fiqh** itself. So what about the history of Usūl al fiqh, where did it start?

Well, Usūl al fiqh began right from the days of the Prophet (صلى الله عليه وسلم), in the sense that understanding these regulations, that for instance when the Prophet (صلى الله عليه وسلم) gives a command the muslims should obey that command. His statements are revelation as the sunnah has approved, an evidence of the religion.

For instance that when Allāh (سبحانه وتعالى) gives a command or prohibition in the Qur'ān, it means we should act upon it or leave it. That for instance a person if he has enough knowledge, he can exercise ijtihad.

These general principles of Usūl al fiqh were known in the day of the Prophet (صلى الله عليه وسلم), were known in the day of the Prophet (صلى الله عليه وسلم)s companions. Because the companions of the Prophet (صلى الله عليه وسلم) understood the regulations of the religion, and they are the most knowledgeable of humanity regarding that.

However though, they didn't have the science of Usūl al-fiqh written in a book. It was just principles they understood collectively and it remained that way for about 2 centuries until Imam al-Shafi'ee came about. Of course he died in the year 204 AH, that's the year of his death and:

Imam al-Shafi'ee was the first scholar to take these principles of Usūl al fiqh and put them together in a book.

To write a book and the book he wrote was known as "Al-riSalāh" that was the first book in Usūl al-fiqh, Imam al-Shafi'ee and his reason for, was because people began to not understand certain aspects of the religion, for e.g. some people started to question the validity of certain Hadīth of the Prophet (صلى الله عليه وسلم), certain Hadīth which are known as the **Ahaad Hadīth**, meaning those Hadīth which have come to us in a few chains of narration, some people started to argue, we cannot use these Hadīth, so imam al-shafi'ee tried to show that **you must, you're obligated to use these Hadīth**, these Hadīth are a proof in the religion. Some people started to argue for instance regarding the **value of Ijma'**, the consensus is the consensus of the scholars a proof. Imam shafi'ee in al-risaalah shows that it is a proof, the issue of the Prophet's sunnah, what is its value, what do we gain from the sunnah, well the sunnah is the explanation of the Qur'ān, some people started to question that. They even started to question whether we should follow the sunnah. And imam shafiee in al risaalah explained that the **sunnah is obligatory to follow** & other issues he discusses in that book.

So the point is that Usūl al fiqh while all these principles were known in the time of the Prophet (صلى الله عليه وسلم) and his companions, and the first couple centuries of islam, it was really imam al shafiee who started to put down the foundations of the science & try to gather all these principles and put it in a book which we can then say is the **first book written in Usūl al-fiqh**.

It doesn't mean that imam al-shafi'ee made up the subject of Usūl al fiqh as some people think, and just because imam al shafi'ee gathered these principles, it doesn't mean he is the one who made up.

Just like for instance, I'll give you an example, the Hadīth of the Prophet (صلى الله عليه وسلم), initially the Hadīth weren't written down, and then the Hadīth were collected into books, does that mean that those people who collected the Hadīth made up those Hadīth? No, they just collected which was memorized and which was initially spoken but they wrote them down with a chain of narration.

Likewise the Qur'ān, the Qur'ān initially was not in a scripture, but was written on different **parchments, different bones, different pieces of palm tree, leaves** and so forth, and then it was placed in a single mushaf, does that mean those people that put it in the mushaf, those

companions, they're the ones that made the Qur'ān, they made it up? No, they just gathered what was there initially and likewise Usūl al fiqh was there before imam al shafi'ee but imam al shafi'ee for certain reasons which I explained decided to put it together in a book and he wrote a book called al-risalah and this book al-risalah is available in the English language, I guess many of you might have seen it or some of you have seen it, it's translated by a Christian author, a Christian professor, but the translation is generally more or less sound and its useful to use and we might photocopy some pages from it during the course we pass them out.

Okay, so we talked about how Usūl al fiqh was the first work and afterwards what happened was that:

2 schools of Usūl al fiqh developed.

After imam al shafiee wrote his book al-risalah, **2 schools of Usūl al fiqh** developed. Like for instance we know in fiqh itself, there are **4 popular legal schools**, the Hanafi, shafi'ee, maliki and Hanbali, and there are certain books written according to each of those madhahib.

And when you look at the legal writings of those 4 madhahib you find that the style of writing is different, from one madhab to the other. In terms of the way they organize the issues, some of the terminology they use and so forth, in terms of the value of certain books.

In the Arabic language, the science of the Arabic grammar, there are basically 2 schools, there's the **school of Basra and there's the school of Kufa**. Each school uses different terms for describing certain parts of speech and each school has different works and different authors and so forth.

And Usūl al fiqh likewise even though imam al shafi'ee was the first one who wrote it, it later on developed into 2 schools. One school we might call the **shafi'ee school** which is the school of the **mutakalimeen** or the mutakalimoon, and the second school is the **Hanafi school** which is the school of the **fuqaha**. They basically deal with the same issues, but the style of writing the legal textbooks of Usūl al fiqh are different. The style of writing of the shafi'ee or mutakalimoon school, mutakalimoon are those who study 'ilm al kalam(theology), it's different than the style of writing of the Hanafi school or the fuqaha school.

Some of the classical writings in the shafiee or the mutakalimoon school, for e.g. There's a book called "**al-burhaan**" by al-Juwayni who died yr 413AH, there's "**al-Mustasfah**" which is by al-Ghazali who died 505AH. These are 2 examples of books of Usūl al fiqh written according to the legal style of authoring books of that school which is referred to as the shafi'ee/Mutakalimoon school.

And as I said these schools deal with the same issues basically, but it's just a legal style of writing, that's the main difference. Let us look at some examples of the Hanafi way of writing.

Two examples of 2 books on Usūl al-fiqh according to the Hanafi/Fuqaha(scholars of fiqh) writing is **"al-Usūl"** by al-Jassas, who died in the year 370AH, and also **"al-Usūl"** by al-Sarsakhi, who died in the year 490AH. These are 2 examples of legal writings in Usūl al fiqh according to the Hanafi or the fuqaha method.

But what happened was, later on afterwards, scholars came who said let's combine the 2 styles of writing. In other words, let's combine the Shafiee/mutakalimoon style of writing and the Hanafi/fuqaha style of writing, and so now we have another type of legal books written which combined the 2 methods, you can call it the combined method of writing and I'll give 2 examples of that.

For e.g. **"Al-Tanqih"** and its commentary which is by Sadar al-Sharee'ah, and he died in the year 647AH, and another example of the combined method is **"Jam' al-Jawami"** by al-Subki, who died in the year 771AH. Okay, so what happened was, these 2 styles of writing, the Hanafi/fuqaha and also the shafi'ee/mutakalimoon, later on scholars came and they said well we're going to write books on Usūl al fiqh using the best of both styles of writing & this is the combined method. An example is Al-Tanqih and its commentary written by Sadar al-Sharee'ah. Sadar al-Sharee'ah wrote a book called al-Tanqih and he also wrote a commentary of that book. And also Jam' al-Jawami by al-Subki is also another example of the **combined style**.

The reason I brought this out was just to show you that when you come to the books of Usūl al fiqh. If we were to take a tour to the Library of Muntajah and look at the section of Usūl al fiqh. I haven't been to the library here before, but I'm assuming they'll have a section on Usūl al fiqh. The classical books written over the centuries would either be of that first style, the shafi'ee/mutakalimoon style, it might be written according to the Hanafi/fuqaha style or it might be written according to the combined style. And so therefore the organisation of the topics in each book would be different. The way of approaching this subject matter of that definition of Usūl al-fiqh would be different, in each style of writing.

And there are hundreds and hundreds of books on Usūl al-fiqh, these are just a few examples. What is the style which we will be using in this class? Basically we'll be using the shafi'ee/Mutakalimoon style, that's the main way we're going to deal with it, however though, what we're also be doing is that we'll be organizing the issues which are setting according to a more modern way of teaching Usūl al-fiqh. Basically the method or the order of the issues I'm following is that of Umar al-Ashqar and his introductory textbook to Usūl al-fiqh.

And just to give you a course outline of how we're going to deal with it over the next few days. In lesson number 2, we're going to discuss the lawgiver, who has the right to legislate laws? That's the first thing, then we'll be discussing the shareeah law itself, and then we'll be discussing the sources of shareeah law, and then the interpretation, how do we interpret the law interpretation of the shareeah law, and finally the interpreter.