

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

Lesson (2/17) Transcribed:

The text of the Qur’ān and the Hadīth is in the **Arabic language**, so in order to deduce rules of fiqh, those general rules of Fiqh, it assumes the knowledge of the Arabic language. And since this course is being taught in English & for the most part I imagine the audience, English is their first language or let’s say for the most part that Arabic is not their first language, it’s going to be difficult to be taught and we’ll try our best to present the subject of Usūl al-fiqh by giving examples in English but at times, it might be difficult, because **it does assume Arabic knowledge**.

And Fiqh, the actual evidences of fiqh itself, one of the problems is that depending upon how extensive our knowledge is of Fiqh, we might not be able to appreciate to its fullest some of these matters of Usūl al fiqh. But at the same time, I’m sure we can learn many principles of Usūl al fiqh, we can have a good introduction to Usūl al fiqh and I think this subject is very important. And the reason why I decided to teach Usūl al fiqh in this course was basically because 4 or 5 reasons. And I’ll like to share that with you because I think these should be our goals in studying this topic over the next 6 or 7 days you have.

The first aim we should have of this course is that we should have an introduction to this topic, an introduction to this science. The science of Usūl al fiqh. In other words, after the 18th lecture or the 20th lecture, all of us will be leaving insha’Allāh (سبحانه وتعالى) and we’ll have a good introduction to this topic. We’ll have said we’ve learnt something, and to help us in doing that, I have prepared, translated a small booklet about 30 pages which would be distributed tomorrow, it’s a small introduction to this topic.

The second aim we should have, that I wanted to all come out of this course is to understand that the Sharee’ah (Allāh’s law), the divine law has supremacy over everything. In other words, the standards by which humans, their behavior should be judged & their behavior should be conformed is by Allāh’s law, the shari’ah, not by reason, not by whatever they feel is right or wrong. That is the second thing which should come out of this course which I hope we’ll learn.

The third thing is an appreciation of how sharee'ah law is determined. That's the 3rd aim I want to have in this course. In other words, when a scholar comes or you're reading a book and it says this thing is Wajib, or this matter is disliked (makruh), or we should follow the sunnah, I mean we should appreciate how did they get to this. What does it mean by these statements, so that's the third aim of this course.

The fourth aim of this course, this is very important to me is lessening of fanaticism and development of a spirit of tolerance. **Alhamdulillah many brothers have adopted the correct attitude of following the sunnah**, this is something which is good, but **unfortunately** though sometimes they have fanatical opinions and they have fanatical positions and they are intolerant to other opinions. And the reason why is because many times they don't know Usūl al-fiqh, so if there is another opinion, they immediately assume that, that other opinion is false because that person is rejecting the sunnah or is not strict to the sunnah, but in reality what it is, is that because the rules and the regulations of the sharee'ah are sometimes not of the same clarity in other words, for instance the regulation that we should pray 5 times a day, that command is not the same for instance as maybe one of the different aspects of Salāh where the Scholars have differed. So because brothers have no idea of Usūl al-fiqh, they do not understand why scholars differ or how do they come to this point of view, sometimes they take a fanatical approach. And by understanding Usūl al-Fiqh this would help us **lessen the fanaticism** and would help us develop a spirit of tolerance, we would understand a little bit better when can scholars differ, why do they differ, and when is for instance differences unallowed.

The final aim I have of this course is to provide a basic response to the orientalist and the modernist. These are 2 groups of people which are very active, especially in the English language. The **orientalists** are those people who study Islam, they're non-muslim. And the **modernists**, they follow a school of thought which has been influenced by the orientalists. And they come out with arguments sometimes, we shouldn't follow the sunnah, the sunnah has been fabricated, sometimes they come out with the argument that reason comes before the sharee'ah and so forth and these different arguments, so by studying Usūl al-fiqh we would have some basic answers to some of their misconceptions and to some of their arguments. That's the 5th aim I have in this course.

One of the things which we left last time & the reason why we're doing an introduction because there's really no good place to place it, is regarding knowledge and the different types of degree of certitude. Basically we can divided certitude into **5 categories**;

The first being **knowledge**, then a little bit less than that, being that which is **probable**(Dhan), and then comes a **doubt**, then comes **impalpable**(or wahn) and then comes **ignorance** and I would like to explain each of these 5 categories and some of the sub categories in some of them.

First of all, what is knowledge, well knowledge according to the definition in Usūl al-fiqh, the definition of knowledge or 'ilm in Usūl al fiqh is **to conceive of something as it is in reality**, that's what knowledge is and the highest degree of certitude is when one has knowledge of something, when he conceives of something in his mind as it truly is in reality.

Now sometimes one will have a situation where there are 2 matters, one is more likely than the other, and that is known in Usūl al-fiqh as **al-Dhan** or we might translate in English that which is probable. So if something is knowledge, there's only 1 possibility for it, but sometimes you have 2 possibilities, one is more likely, one is more probable than the other and that which is more probable is known as al-Dhan.

Now if these 2 matters or these 2 rulings are equal, in other words both "a" and "b" the likely hood of it being "a" is the same as the likely hood of being "b", they're equal okay, then it is referred to as **al-Shakk**, which I have translated here as doubt. Knowledge is to conceive of something as it is in reality, sometimes we have 2 matters, one is more probable than the other, one is more likely than the other. That which is more likely is known as al-Dhan. Now what happens if they are equal, I mean there's no way we can distinguish one more than the other, it seems to us that they're both equal, impossibility, improbability, okay. We refer to this as then therefore al-Shakk.

Now when we said there were 2 matters, one is more probable than the other, the unlikely one, if "a" is more probable than "b" then the unlikely one, matter "b" is referred to as which I translated improbable, but it's known as **al-wahn**.

And finally the lowest category is ignorance or **al-jahl** which is defined as to conceive of something as it is not in reality. So if knowledge is to

conceive of something as it is in reality, ignorance is to conceive of something as it is not in reality. The stronger of the 2 [matters] is dhan, and the lesser of the 2 is wahn, and if they're equalivent it's shakk.

Now knowledge according to Usūl al fiqh is 2 types. That which is known as **al-'ilm al-daruri**, and the other is **al-'ilm al-muktassab**. Al-'ilm al-daruri we might translate as **necessary knowledge**, while al-'ilm al-muktassab might be translated as **acquired knowledge**.

Al-'ilm al-daruri means that knowledge which is necessary because it's based upon the senses, in other words you know the 5 senses, hearing, sight, taste, smell and touch. When knowledge is rooted upon something like that, it becomes al-'ilm ul-daruri, you don't have to think about it, it's necessary knowledge, I mean if you see something, I see this, a red pen. I don't have to prove that it's a red pen because by my sight itself, I understand it's a red pen.

And likewise in terms of the sharee'ah al-'ilmu al-daruri we gain it from something, from certain evidences of the sharee'ah sometimes gives us which is 'ilm al-daruri like the mutawatir Hadīth, those Hadīth which are mutawatir provide us necessary knowledge because we know it can't be a lie, or it cannot have an error in it. And ofcourse when we get into the section of the sunnah, that will become a little bit more clear.

Al-'ilm al-muktassab, acquired knowledge is that knowledge which you have to bring evidence for, you have to prove it, you have to show it, because it's not something which is just gained by the 5 senses or by such an overwhelming proof which is known by necessity. The point is that sometimes knowledge is of a different degree, in terms of the strength of it. Now ignorance which is the exact opposite of knowledge, is also 2 types;

Simple ignorance which is al-jahl al-baseet, this is when you do not know something, for instance I say to somebody "when was the battle of badr" and somebody said "Allāhu a'lam", I don't know, that's simple ignorance.

Compounded ignorance which is the worst type of ignorance, compounded ignorance or al-jahl al-murakkab, means as opposed to simple ignorance when you just do not know, al-jahl al-murakkab or compounded ignorance is when you think you know and you don't know. I'll give you an example, "when was the battle of badr" somebody says "I don't know, Allāhu a'lam", that's simple ignorance,

compounded ignorance he says “It was in the 7th year of hijrah” because he thinks he knows but it’s the wrong answer, that’s the worst type of ignorance.

So therefore we have the 5 categories, *knowledge*, *dhan* which we said probable, *shakk*(doubt), *wahn*(improbable) and *ignorance*. And knowledge is 2 types, the **necessary knowledge** and the **acquired knowledge**. And ignorance is 2 types, **simple ignorance** and **compounded ignorance**.

Now when we talk about the science of Usūl al-fiqh, it’s based upon knowledge(‘ilm) and it’s based upon dhan. In other words, not every time when you come to a matter in Usūl al-fiqh or really, all the sciences in the sharee’ah, I mean it’s a general rule for all the sciences in the sharee’ah, it’s not always a matter of knowledge, in the sense that there’s only one answer and you’ve conceived of that matter as it is in reality, it’s not always like that. But sometimes you’ve only taken the more probable matter, the more probable issue, dhan.

So the first issue which is very important for us to understand, not always the sciences of the sharee’ah and Usūl al fiqh in specific because it’s what we’re studying, is based upon knowledge. In the sense meaning that conceiving of a matter as it truly is in reality, sometimes it’s based upon dhan, the more probable, the more likely of the 2 matters, because the evidences are not that clear cut.

The law giver – Al-Hakim:

Who is the law giver, who tells us, who legislates for us laws that we are supposed to emulate and conform to. Allāh(سبحانه وتعالى) alone is the lawgiver, all the sharee’ah comes from Allāh(سبحانه وتعالى) and Allāh(سبحانه وتعالى) alone, and the evidences is a verse from surat yusuf, there are many evidences but we’ll just take one, where Allāh(سبحانه وتعالى) says:

إن الحكم إلا لله

That “judgment belongs only to Allāh” [12:40],

Now this is something very important for us to understand, that laws, legislations, regulations, as to what is lawful, what is not lawful, what is required, what is recommended, what is disliked, what is forbidden comes only from Allāh(سبحانه وتعالى). So somebody might ask a question, what about the Prophet(صلى الله عليه وسلم), is he a lawgiver? The Prophet(صلى الله عليه وسلم) is not a lawgiver, but rather the role of the Prophet(صلى الله عليه وسلم) Muhammad is to convey the law and to

explain it as Allāh (سبحانه وتعالى) has revealed to him. So the Prophet (صلى الله عليه وسلم) is not a lawgiver, it's very important to understand.

Now that's different than saying "We do not find laws in his Sunnah" there's a difference, when we say that for instance, sometimes you might find a regulation only in the sunnah, it's not in the Qur'ān, that's one thing, meaning the source of it is in the sunnah. It's another thing to say that the Prophet (صلى الله عليه وسلم) is not a lawgiver, Just because we found it in the sunnah, it doesn't mean the Prophet (صلى الله عليه وسلم) himself initiated it, but rather Allāh (سبحانه وتعالى) conveyed to us that law through the sunnah as opposed to conveying to us that law by the Qur'ān. Sometimes Allāh (سبحانه وتعالى) conveys to us laws by the Qur'ān, and sometimes he conveys to us laws through the sunnah, and sometimes he conveys to us laws through both the Qur'ān and the sunnah.

So do not misunderstand it when I say the Prophet (صلى الله عليه وسلم) is not a lawgiver, that I'm saying we do not find independent rulings in the sunnah, No, an example is the athan, the athan for prayer is required, it's an obligatory act upon the community as a whole.

Somebody from the community which is known as fard al-Kifayah, which we'll talk about in the next lesson, but this is just an example that somebody in the community must give athan before the prayer, do we find any verses in the Qur'ān that tell us about the athan? No, but we find the obligation to do the athan and the manner of pronouncing the athan in the sunnah, in the Hadīth of the Prophet (صلى الله عليه وسلم), but does that mean the Prophet (صلى الله عليه وسلم) was a lawgiver in the sense that he decided to come up with the issue of the athan? No, Allāh (سبحانه وتعالى) commanded that the athan be given, but through the sunnah, in other words Allāh (سبحانه وتعالى) for a wisdom with him determined that this command would be delivered through the sunnah.

As opposed to the command for the laws of inheritance, the laws of inheritance, who receives what portion, what share upon death of a muslim, which of his relatives receive what share. Allāh (سبحانه وتعالى) himself mentioned those shares in surat al nisa', so they came through the Qur'ān. So the Prophet (صلى الله عليه وسلم) is not a lawgiver, but the Prophet (صلى الله عليه وسلم) is a conveyor. And an example of that as a proof for that would be surah shurah [42:48], Allāh (سبحانه وتعالى) says addressing the Prophet (صلى الله عليه وسلم):

إن عليك إلا البلاغ

“It is only upon you to convey”

This is one evidence from the many evidences. Likewise the Prophet (صلى الله عليه وسلم) explains to us, what was Allāh (سبحانه وتعالى)'s laws, we find that also in different evidences, among which is surah 16 verse 44, where Allāh (سبحانه وتعالى) says:

وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ

“And we have sent down upon you (meaning Muhammad) the reminder, so that you (meaning Muhammad) may clarify to the people, what has been sent down to them”.

So the Prophet (صلى الله عليه وسلم) does not himself make up the laws, but rather he only conveys and explains what Allāh (سبحانه وتعالى) has legislated.

Let's give a couple more examples, this is a very important topic, look at surah 4 verse 10, Allāh (سبحانه وتعالى) says:

إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ

“We have sent down upon you the scripture of truth so that you may judge between the people, by what Allāh has determined”.

So here he's judging not by his own laws that he's making up, but by what Allāh (سبحانه وتعالى) has commanded, and likewise I'm sure many of you might know, the verse in surat al-najm where Allāh (سبحانه وتعالى) says that the Prophet (صلى الله عليه وسلم) doesn't speak of his own accord, but only what is revealed to him “wa ma yantiqu 3an al-hawa in huwa ila wahyin yu7a”.

Now let's take another question, what about the consensus (the Ijma'). One of the sources of Islamic law is as we'll see in some lectures of the future is the consensus which refers to the agreement of the scholars of the Ummah of Muhammad upon some sort of ruling. The Prophet (صلى الله عليه وسلم) has said to us that his Ummah does not gather upon error. So when we say that there is a consensus of the scholars, does this mean they have gathered together and decided a law and so therefore collectively they became lawgivers? No, because whenever there is a consensus as we will see, one of the conditions for a consensus is that it has to be rooted in the Qur'ān and the Hadīth, the scholars themselves collectively (when they have a consensus) aren't making laws up, because a law only comes from Allāh (سبحانه وتعالى), that's the collective consensus.

And likewise when a scholar makes ijtihād, the Mujtahid, when a scholar exercises his opinion, he is exercising his opinion as we will come to the lecture of ijtihād in order to determine what is Allāh (سبحانه وتعالى)ʼs judgment regarding a matter.

Ijtiḥād is the exercise of opinion to determine what is Allāhʼs judgment in a matter in which there is no evidence mentioned by Allāh (سبحانه وتعالى) in the Qurʼān or letʼs say by the sunnah, so something new occurs thereʼs no evidence in the Qurʼān, thereʼs nothing in the sunnah discussing this issue, a scholar tries to then deduce what is Allāhʼs judgment regarding that matter.

And so therefore he is not himself making up a law, but heʼs trying to determine Allāhʼs judgment of that matter and if heʼs correct, the Prophet (صلى الله عليه وسلم) says he will receive 2 rewards, but if he is in error, the Prophet (صلى الله عليه وسلم) taught us that he would only receive 1 reward for his effort.

Letʼs take another example, reasoning, reason, oneʼs mind. Allāhʼs laws have wisdom to it, because Allāh (سبحانه وتعالى) is **al-hakeem**, the all-wise, but with that we should understand that reason itself, oneʼs mind itself cannot determine what is the aim or the intent of Allāhʼs law, and thatʼs why Allāh (سبحانه وتعالى) sent the Prophets and the messengers, thatʼs why Allāh (سبحانه وتعالى) revealed the scriptures, because if people themselves could determine that through reasoning alone, there would be no reason to send the Prophets and messengers.

Revelation is always in agreement with sound reason, and sound reasoning is always in sound agreement with revelation. But the point is that reasoning itself cannot determine what is Allāhʼs intent, and for this reason Allāh (سبحانه وتعالى) sent the Prophets and messengers, so one himself cannot just deduce by reason itself what is Allāhʼs laws. So from this, we understand that the lawgiver is Allāh (سبحانه وتعالى), and the Prophet (صلى الله عليه وسلم) is not a lawgiver, but laws might appear in his sunnah, but heʼs not a lawgiver, but he conveys Allāhʼs laws and he explains Allāhʼs laws.

The scholars when they agree upon a matter which is known technically as ijmaʼ, they are not inventing laws or so forth, but rather as we will see in the lecture of ijmaʼ, in order for ijmaʼ to be valid, it must be rooted in the Qurʼān and Hadīth. The mujtahid when he exercises his ijtiḥād, likewise he is not making up a law or introducing a law, but rather he is seeking to find Allāhʼs law in a matter which is

not mentioned in either the Qur'ān nor the Hadīth, if he is correct he has 2 rewards and if he's incorrect, he receives 1 reward. And reason itself cannot determine what Allāh's intent and aim is.

When one therefore talks about a law or a ruling of a law, he has to know that this Allāh's law. You cannot then therefore just say that this is haram or this is halal or this is wajib or this is mustahab just based upon your own feelings, but rather it's Allāh's law so you have to know Allāh's ruling is regarding that and there are verses in the Qur'ān which condemn those people who say that this is halal or haram without any knowledge regarding that. Allāh (سبحانه وتعالى) says:

وَلَا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكُذِبَ هَذَا حَلَالٌ وَهَذَا حَرَامٌ لِيَتَفَتَرُوا عَلَى اللَّهِ الْكُذِبَ ۗ إِنَّ الَّذِينَ يَفْتَرُونَ عَلَى اللَّهِ الْكُذِبَ لَا يَفْلِحُونَ

“And do not say about what your tongues assert of untruth, "This is lawful and this is unlawful," to invent falsehood about Allah . Indeed, those who invent falsehood about Allah will not succeed.” [16:116]

Transcribed by Radwan Dakkak