

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
وَالصَّلَاةِ وَالسَّلَامِ عَلَى رَسُولِ اللَّهِ

# Introduction to *Usūl al-Fiqh*

by  
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## Introduction

*Usūl-al-Fiqh* is the study of Islam's legal sources, the rules that govern their usage, and the qualifications required to use them. In short, what qualifies to be a source of guidance on acts and belief, how it is used, and what are the academic requirements needed for one who wants to use it. This text is important for anyone who hopes to benefit from the study of *Usūl-al-Fiqh*. It is written in a friendly style and serves as primer for the beginner, and a review for the one well-acquainted with the subject.

## What is *Usūl al-Fiqh*

*Usūl al-Fiqh* addresses 5 questions:

1. What constitutes an evidence in Islamic law (Ar. *Dalīl*)?
2. What are the rules for using evidence?
3. What are the qualifications needed to engage evidence?
4. What are the methods a scholar uses when issuing a ruling or trying to reconcile texts?
5. What relationship does a non-scholar have with the scholars of religious law? (*Adāb al-Mustafti*)?

## What Constitutes an Evidence

One of the most important functions of *usūl al-fiqh* is recognizing what constitutes an acceptable evidence for an Islamic position on an act or belief. The Arabic word for evidence is *dalil* - دليل. When used literally, *dalil* means a sign. For example, Arabs called smoke an indicator (evidence) of fire.

دَلِيلٌ عَلَى النَّارِ

In the context of Islamic law, a *dalil*'s job is to indicate a ruling, just as smoke indicates fire. Dr. Mahmud al-Azhari said to me that a *dalil* is,

ما يمكن التوصل بصحيح النظر فيه إلى مطلوب خبري قطعي أو ظني

“Anything that through sound research, directs to a proposition, whether decisive (*qatī*) or indecisive(*dhani*).”

If we examine the major legal schools of Islam, we find the total number of sources of evidence are nineteen. However, only four sources of evidence are agree upon:

1. Qur'an
2. Sunna
3. Consensus
4. Analogy

## The Second Question: How to Use Evidence

While recognizing the evidences is crucial. It is not enough. *Usūl al-Fiqh* addresses the rules and axioms that guide their usage. An example is the statement of the Prophet (صلى الله عليه وسلم),

"If a dog licks a vessel, wash it seven times, the first time with dirt."

A quick glance at the text would imply that washing the vessel is an obligation and that dogs are impure. Imām Mālik did not consider washing them obligatory because the narrator, Abū Hurairah, did not act on it, even though he narrated it, as he did not consider dogs impure because Allah allows us to hunt with them. His position regarding dogs being pure is based on another verse of the Qur'an,

His position regarding washing the vessel is based on the report that Abu Huraira, the narrator of this hadith did not do so. Thus, the axiom,

الأعمال أقوى من الأقوال

Actions are stronger than words.

*Mālik* did not deny the *dalīl*. He differed with its meaning (Ar. *Dalāla*) based on a rule that governs that process. So, in the case of this hadith, he is using a principle to guide how he understands the evidence. Thus, you have an acceptable evidence: the hadith and a principle that guide how it is understood. You can appreciate why scholars cringe at people he use evidences without knowing how to use them. There are large number of principles that direct and shape who rulings are understood. Learning constitutes ¼ of Usul al-Fiqh.

### **The Third Question: What are the Qualifications for Scholarship?**

What are the qualifications required for a scholar of law, a *mufti*, a student to engage in the different types of *ijtihād*?

### **The Fourth Question: The Methods Employed by Scholars**

When issuing a ruling, is there a method scholars use? Would certain pieces of evidence be given preference to others? What happens when scholars find evidence that seems to contradict each other?

### **The Fifth Question: The Relationship a Non-Scholar has with the Scholars**

Why is it an obligation for a layperson to consult a scholar? What is the purpose of schools of law (Ar. *Madhāhib*)? What is *taqlīd* (Eng. imitation)? What are its types?

### **Summary**

After that quick overview, it becomes clear to you that *Usūl al-Fiqh* is not one subject, but five. For that reason, the plural, *Usūl* (fundamentals) is used instead of *aṣl* (Fundamental). Thus, the “Fundamentals of Islamic Law.” For this reason, Imām al-Baydāwī defined it as

مَعْرِفَةُ دَلَائِلِ الْفَقْهِ إِجْمَالًا وَكَيْفِيَّةً اسْتِفَادَةً مِنْهَا وَحَالِ الْمُسْتَفِيدِ

“Recognizing general evidences (for rulings), how to use them, and who qualifies to use them.”

### **Questions**

1. What are the 5 questions *Usūl al-Fiqh* addresses?
2. If a scholar ran into a contradiction of evidence, would he employ the science of *hadīth*, *tajwīd*, *usūl al-fiqh* or *‘aqīda*?
3. Why is the plural *usūl* used instead of the singular *aṣl* for the field of *usūl al-fiqh*?
4. What types of *dalīl* are there? (This is based on what was discussed in the class, not what is in this text.)

### ***Usūl al-Fiqh*'s Basic 10**

As the system of education advanced in the Muslim world, scholars became increasingly concerned with creating a system that would ease a student's introduction to a subject, ensuring

that a proper understanding was attained before moving on to the next level. For that reason, they focused on 10 building blocks (Ar. *Mabādī*) they were crucial to attaining a quick literacy in any subject. These 10 were called the مبادئ العشرة (Eng. The Basic 10) and they were a subject's definition, subject matter, founder, faculty, prerequisites, ruling, perks, benefits, name, and the questions it addressed.

### Their Logic

When a student begins to study, the first thing he needs to learn is the name of the field they are studying. After that, he needs to learn its definition, to differentiate it from other sciences. Then, he learns its subject matter to have general map of the subject, then its details, in order to delve into it and map his progress that will take him to its prerequisites and its designation. After that he needs to know its virtues - all knowledge is beneficial, but sacred knowledge should be given priority, then the fruit of studying it, and then its ruling. Finally, he will need to know its history and the person who laid down the foundations of its study.

### Memorize This!

They were so important that some scholars even wrote poems about them. One was *Imam al-Maqarī* who wrote,

مَنْ رَامَ فَنَاءً فَلْيَقِدَّ أَوَّلًا  
عِلْمًا بِحَدِّ ثُمَّ مَوْضُوعَ تَلَا  
وَوَاضِعٍ وَنَسْبِيَةٍ وَمَا اسْتَمَدَ  
مِنْهُ وَفَضْلُهُ وَحُكْمُهُ يَعْتَمِدُ  
وَأَسْمٍ وَمَا أَفَادَ وَالْمَسَائِلُ  
فَتِلْكَ عَشْرٌ لِلْمُنَى وَسَائِلُ  
وَوَبَعْضُهُمْ مِنْهَا عَلَى الْبَعْضِ اقْتَصَرَ  
وَمَنْ يَكُنْ يَدْرِي جَمِيعَهَا انْتَصَرَ

“Who hopes to master a science, then let him start with its definition, then its subject matter; its founder; its faculty; its prerequisites; its ruling; its perks and the dominant opinion about its ruling; its name, its benefits and the issues it addresses.”

## A Quick Glance at Usūl’s 10

### 1) Usūl’s Definition

“Knowledge of the evidences, how to use them and who qualifies to use them.”

### 2) Its Subject Matter

“The evidence used for legislation, the rules for using them, and the qualifications needed to use them.”

### 3) Founder

Imam al-Shāfiī in his book *Al-Risalah* (Eng. *The Epistle*)

### 4) Its Faculty

Islamic Law

### 5) Its Prerequisites

1. Faith (*Aqida*) - Due to the fact that the goal of this study is to understand and implement God’s rulings and his Messenger’s (صلى الله عليه وسلم), as well as the divine methodology for extracting rulings for events not explicitly mentioned in sacred texts.
2. Arabic - Due to sacred texts being revealed in Arabic.

3. Familiarity with one of the four Islamic schools of thought because they are the outcome of *Usūl's* employment, and it is that employment that they differ on.
4. Logic - It is not possible for a person to understand many of *Usūl's* classical texts without an understanding of logic
5. Understanding *Usūl's* historical development and the different types of books written on the subject. For example, many books were written in an argumentative style whose goal was to prove the point of a certain school over another. While important for serious students, outside of teaching the etiquette of differing, they are not necessary for a common person.
6. *Adab* (etiquette) because the science of *usūl* deals, at times, with differences and no one should study the differences of the scholars unless he is a person of good character.

## 6) Its Importance

The study of *usūl al-fiqh* is a community obligation, but it could become an individual obligation in certain situations.

## 7) Its Perks

1. Understanding the pieces of evidence
2. The types
3. How to use them
4. Understanding how the scholars extracted rulings
5. Understanding why they differed
6. Appreciating the scholars' efforts
7. Maturity in dealing with differences amongst Muslims
8. Understanding the universal nature of Islam

## 8) Its Benefits

Gaining a deeper understanding of faith

## 9) Its Name

*Usūl* (Eng. Fundamentals) al-Fiqh (Eng. Islamic Law)

## Questions

1. What is the purpose of the basic 10?
2. Why did scholars start with a subject's definition before its name (taken from a teacher not from the text)
3. What are the prerequisites of *Usūl al-Fiqh*?
4. Who is the founder of *Usūl al-Fiqh* (give the answer given to you by your teacher)
5. What are the perks of studying *Usūl al-Fiqh*?
6. What are your goals for studying *Usūl al-Fiqh*?
7. Take another subject, like *tajwīd* and create your own basic 10 for studying it.

## Chapter 1

### Definitive Texts From the Qur'an and Sunna (Ar. *Al-Nass*)

#### Main Sources

The two main sources of Islamic law are the Qur'an, Sunna of Muhammad (صلى الله عليه وسلم), *ijma'* and *qiyas*:

The Qur'an  
Imām al-Shātibi wrote,

“The Qur'an contains the entire *shari'ah*. It is the pillar of religion, the spring of wisdom, the sign of the (divine) message, a light for the eyes and to those who perceive. There is no way to God except with it, no salvation with anything else, and no clinging (to any hope) with what opposes it.” (*Al-Muwāfaqāt* vol. 3 pg. 346)

Like other great scholars, Imām Mālik preferred the Qur'an to all other pieces of evidence. Al-Qādi 'Iyād wrote that Mālik

“Gave preference to the Qur'an, preferring it to other sources.”

The same can also be said about the Sunna of the Prophet (صلى الله عليه وسلم). Imām Mālik said, “The Prophet's tradition is like the Ark of Noah; whoever boarded it was saved, and who didn't, drowned.”

The following evidences were extracted by the early scholars from the Qur'an and Sunna based on the actions of the Prophet (صلى الله عليه وسلم), his illustrious companions (رضى الله عنهم) and the early scholars who followed them (رضى الله عنهم).

#### The First Evidence: *Nass* (Eng. Definitive Text)

The first evidence used by Imām Malik and other scholars is a definitive text. What is called in Arabic *nass* (نَصٌّ).

The word *nass* means the highest point of something. In weddings, the chair that the bride and groom sit on (like a throne) is called مَنَصَّة because it clarifies who is the lucky couple.

When talking about a *dalil* the word is used to describe a text whose meaning (*dalālah*) is so clear that it is impossible to give it another meaning. It's meaning (*dalāla*) raises itself above any other possibilities.

Look at the following statement of the Prophet,

**“God has ordered that you pray five times a day.”**

The word five does not allow the mind to entertain any other meaning. Five is five! This is called a *nass*.

God orders those who need to expiate for their hajj to fast 3 days while there and 7 upon their return. God says,

**“Those are 10 days total!”**

The word 10 here does not accept another meaning. It is so clear, it is as though it has reached the pinnacle of meaning. That is why it is called *nass*!

The first evidence used by *Mālik* and his school is an apparent text from the Qur’an or the Sunna. Scholars of *Usūl al-Fiqh* defined it as,

ما لا يحتمل إلا معنى واحدا

“A text that does not entertain another meaning.”

### **Examples of Nass**

1) Allah says,

**“And whoever does not have the ability, then let him fast 2 consecutive months.”**

1. Allah says,

**“The male or female thief; cut their hands.”**

1. The Prophet (sa) said,

**“God has forbidden the killing of your daughters.”**

1. God says,

**“Do not murder.”**

### **Your Turn!**

1. Allah says

**“For you is half what your wives left (as inheritance) as long as they did not leave children.”**

1. The Prophet (sa) said,

**“The murderer does not inherit.”**

1. The Prophet (sa) said,

**“For every letter of Qur’an, there is 10 rewards.”**

1. God says,

**“The only religion (acceptable to) God is Islām.”**

1. God says,

**“Then, let him feed 60 poor.”**

## The Relationship between *Dalil*, *Dalāla* and *Fiqh*

Earlier, we defined *dalīl* as, “Anything that, through sound research, directs to a Islamic ruling, whether decisive (*qatī*) or indecisive (*dhani*).”

However, for the sake of simplicity, let’s take an easier definition, provided by *Imām Abu al-Hasan al-‘Ashari*,

مظهر الدلالة

“What clarifies the meaning (of a text).”

The word *dalāla* is what the *dalīl* directs to. The outcome of that is *fiqh* (understanding).

To make it easier, think about the smoke model we mentioned before: Smoke is the *dalil*, the *dalalah* is the fire and the *fiqh* is what needs to be done because of the previous two processes. Another example is smell and food. The scent would be the *dalil*, the *dalalah* would be the food and the *fiqh* would inform you what to do.

## *Nass*, *dalil*, *dalālah*, and *fiqh*

Considering the above, a *nass* would be a text whose *dalil* is so strong, that there would be no room for speculation. If the smoke was strong enough and billowing, there would be no doubt that there was a fire.

### Practice!

With a friend, look at the following texts and find the *nass*!

1. “Indeed your God is one God!”
2. “Islam is based on five ....”
3. “Muhammad is the messenger of God.”
4. “Ramadan, the month that the Qur’an was revealed.”
5. “Whoever observes the two cold ones, enters Paradise.”

## Chapter 2

### Apparent Texts (Ar. *Dhāhir*)

By now I’m sure you are tired of the fire example, but I need you to keep it in mind because it is important.



When you think of smoke, what is the first thing you think of? That doesn't need an answer, but walk with me for a minute.

If you were driving past a neighbor's house and noticed smoke coming out of his back yard, would you call 911 or wait and see what was going on? What would influence your decision?

When talking about the meanings (*dalāla*) of texts, there are times when the *dalīl* is not definitive. Meaning, there are times when it is not a *nass*. When that happens, when an evidence has more than one possible meaning, that text is called *dhāhir*.

While there is an apparent meaning to smoke, (a fire that needs to be contained), it is possible that that is not the case; he could be cooking or making a campfire. When that happens, when a *dalīl* carries an apparent meaning (*dhāhir*), but a allows for the possibility of other meanings (we will get into that shortly, God willing), that text (*dalīl*), is called *dhāhir*!

### **Two Important Terms: *Rājih*, *Marjūh***

1. *Rājih* - A correct opinion as held by a scholar, when presented with 2 or more possibilities.
2. *Marjūh* - An incorrect opinion held by a scholar (in the face of 2 or more possibilities)

Note: *rājih* and *marjūh* are determined by the intellect. Thus, one scholars *rājih* may be another's *marjūjh*.

In the case of the neighbor's smoke, barbecue might be correct or a bonfire might be. One scholar would hold the former as correct (*rājih*) while holding the other's (*marjūh*). In this case, it would never be possible to prove either, thus, differences are accepted and handled with *adāb*.

### **Reasons for *Dhāhir***

Scholars were meticulous in understanding this process, ensuring that their conclusions were based on revelation and the actions of the Prophet, his companions and early jurists. While we will not mention them all, we will note a few of the important causes for a *dalīl* to be ^.

### **The First Cause: A Word Has Multiple Meanings**

When a word has more than one meaning there is one that is apparent (meaning the first thought that comes to mind), and a second less apparent. The first is called *dhāhir*, the second, *t'awīl*.

All says,

**“And he who does not find [a slave] - then a fast for two months consecutively before they touch one another; and he who is unable - then the feeding of sixty *poor persons*.”**  
**58:4**

I emphasized the word for “poor persons” above because it carries more than one meaning. In Arabic, *miskīn*, not only means poor persons, but can mean a weight - pound, for example. The first meaning is the obvious (*dhāhir*) meaning. Meaning: it is the first to come to mind, while the second meaning requires some thought, *tawīl*.

For that reason scholars differed over the meaning of this text. The majority said the apparent meaning is “sixty poor persons.” *Imām Abu Hanifa* said that the apparent meaning is (for example) 60lbs! *Imām Abu Hanifa* took the rout of *tawīl*, while the majority went with the *dhāhir*.

### Questions

1. According to the majority, whose opinion is *rājih* (correct) and whose opinion is *marjūh* (incorrect)?
2. According to *Imām Abu Hanifa*, whose opinion is *rājih* and whose is *marjūh*?
3. Which word is *dhāhir*, which is *tawīl*?
4. A brother finds himself guilty of what was described in the verse above, a friend of his tells him he has to feed sixty poor people. When the brother informs the friend that he plans to feed a person 60 pounds of food because it is the opinion of *Imām Abu Hanifa*, the friend responds, “I only follow the Qur’an and Sunna! *Imām Abū Hanifa* was a man who did not!” How do you respond to this with care?

### Your Turn!

Here are two of the most common and well known examples of an evidence that is *dhāhir*. Look at the texts and determine “why” scholars differed, explaining why both positions have support from the *usūl*.

Allah says,

**“or you have touched women.” Qur’ān 5:6**

And,

**“My Lord, how will I have a child when no man has touched me?” Qur’ān 3:47**

Scholar used these verses to debate if touching the opposite gender necessitates *wudū*. This gist of the argument surrounds the Arabic word *lams* (لمس), that means to touch.

### Your Turn!

If you took the *dhāhir* of this word, what would your ruling be?

If you took the *ta’wīl*, what would you base your opinion on?

## The Second Example

Allah says,

**“None touch it except the purified.”**

Scholars used this verse to support two opposing contentions: That a person must be pure before he touches the Qur’ān. The second, that the word pure refers to the angels, not people.

## Your Turn

Which opinion takes the *dhāhir* as its proof?

Which opinion takes *tawīl*?

## The Second Cause: A Word is Not Mentioned

If you’ve studied Qur’anic explanation with me, you probably heard me talk about this idea. Arabic is such a concise language, that there are times when a word’s mentioning is not warranted. When that happens, do you think a text’s *dalālah* is *nass* or *dhāhir*? Why?

الحمد لله رب العالمين

“Praise is due to God.”

The word *li* in this verse is a prepositional phrase. In Arabic the noun or verb a prepositional phrase is connected to is often not mentioned. Hence, scholars differ over it.

The Prophet (sa) said,

لا صلاة لجار المسجد إلا في المسجد

**“No prayer for the neighbor of a mosque, except in a mosque.”**

Scholars differed over the word *li* in this statement. Some said it meant, accepted, others said complete.

## The Third Cause: Interpretation of the Text Become Necessary

### 1. Obligation for *Tawīl* Because of Given Reality

The Prophet (sa) said,

رفع عن أمتي النسيان والخطأ وما استكره عليه

“Forgetfulness, mistakes, and coercion are removed from my community.”

If we interpret this *hadīth* literally, it would mean that the Prophet (sa) was not truthful and that would not be impossible. Hence, its meaning is, “(The sin of) forgetfulness ....”

## Question

Based on this, why is it an obligation to make *tawīl* of the Prophet’s statement, “There is no prayer for a neighbor of a mosque except in a mosque” and, “None of you believes until he

loves for his brother what he loves for himself?” If you were to take the *dhāhir* of these two texts, what would you conclude?

## 2. *Tawīl* is an Obligation Because of a Prophetic Practice and *Ijmā’*

Allah says,

**“Believers! When you stand to pray, then wash your faces.” Qur’ān 5:6**

The *dhāhir* meaning of the word “stand” means a person is standing in prayer. Why is it impossible to interpret that literally? Why do scholars say, “The meaning of stand here is ‘intend’”?

### Questions

Identify the *dhāhir* and *tawīl* in the verses and *hadīth* below. Identify which one you think is correct, explaining your reasoning.

Allah says,

“Indeed the polytheists are filthy.”

Those who held to the *dhāhir* of this verse said a non-Muslim cannot enter the mosque. Others held that it meant spiritually unclean. Which opinion is *dhāhir* and which is *tawīl*?

Allah says,

“Then purify your *thobe*.”

The word *thobe* has two meanings, clothes and heart. Scholars who held this verse was talking about clothes held to the *dhāhir* or the *tawīl*. Keep in mind that the obvious meaning of *thobe* is clothes. Heart is a secondary meaning.

Allah says,

“When you recite the Quran, seek refuge in God from Satan the Cursed.”

If you were to act on the *dhāhir* of the verse when would you say “I seek refuge in God from Satan the Cursed?” Before or after you started your reading?

## Chapter Three

### Orders and Prohibitions

Allah (swt) says

“Believe in Allah and His Messenger and spend from what we’ve placed you in charge of.”

The Prophet (sa) said, “Young man, pronounce Allah’s name, eat with your right hand and eat what is nearest to you.”

Allah says,

“Fasting was prescribed for you.” Qur’an 2:185

Looking at these texts, you’ll notice that some of them carry the form of a command to perform an action, while others carry the meaning that prohibits an action. A word that carries the meaning of a command is called ‘amr (أمر), and a word that carries the meaning for a prohibition is called nahyi (نهى).

### 3.1 Definition of Commands

Scholars defined a command as,

الأمر هو ما دلّ على الطلب بالصيغة الإنشائية المعروفة في علم العربية

"A command implies a demand, constructed in a form that cannot be evaluated, well known in the Arabic language."

#### Explanation

“Command” in the definition above means an absolute order. We know that because of the form of the word and how it was used by Arab people. The most common example is افعل, “You must act.” There are other forms and indicators of commands, and inshallah, you will learn them in our other courses. For now, focus on that form, افعل, because it is the most common and the easiest to remember.

### 3.2. Al-Insha and al-Khabar

The statement “Cannot be evaluated” alludes to a type of communication in Arabic, al-Insha. Insha is a type of word or phrase whose truthfulness or falseness cannot be judged, usually because the action associated with the phrase has not happened, or is not asking for an opinion. If I said to you, “Sit!” You could not evaluate that word based on its truth because you have not sat yet. The same would apply to a question, “How are you?” for example. You cannot qualify that with truth or falsehood. There are different types of insha, but for now, let’s focus on commands.

When a phrase can be evaluated based on its truthfulness or falsehood, it is called khabar (Eng. news). We will talk about it in the future, inshallah.

### 3.3 What Does *Amr* Mean?

If you look at the verses of Qur'an above and the statements of the Prophet (sa), it becomes clear that the meaning of an order is an obligation. Scholars coined an axiom to describe that,

الأمر يفيد الوجوب

"An order implies and obligation."

Thus, when you come across a command, your understanding should be that it is obligatory.

الأمر يدل على الوجوب حقيقة في اللغة والشرع ولا يخرج عنه إلا لقرينة صارفة واضحة صحيحة.

"A command implies an obligation, literally in the Arabic language and that does not change unless there is another evidence that is clear and authentic.

### 3.4 Is a Command Always and Obligation?

As you noticed in the previous definition, there are times when the intensity of a command's meaning is reduced from obligatory to recommended or even permissible. That occurs when there is another text that tempers it, an action of the prophet or his companions after his passing that explains it or a consensus that the command is not obligatory.

There is a rules scholars composed to not when a command's intensity is reduced,

قد يخرج الأمر عن حقيقته إلى الندب والإباحة والإرشاد وغيره هذه المعاني المصطلح ويجمعها عند التحقيق والندب

"A command's meaning can change from literal, obligatory, to figurative, recommended, carrying the meaning of encouragement or permissibility as well as other religious meanings. Based on research, those meanings cause a command to mean recommendation."

### 3.5 What is the Source of an Amr

The first source of commands is the Qur'an since it is unquestionably authentic. Of course, for you, you will need to consult scholars and books of fiqh to make sure an order is an obligation, or a recommendation, but the Qur'an is the first source.

The Second source is the Sunna. However, in order for a sunna to be a command it must be authentic (Ar. Sahih) or good (Ar. Hasan.) There is an important axiom you should know,

لا يثبت الأمر للوجوب إلا بحديث صحيح اتفاقا أو حسن عند الأكثر

"Scholars agree that an authentic hadith can be used to prove an obligation, and most contend that a good hadith does the same."

### 3.6 Practice

#### Text One

The Prophet صلى الله عليه وسلم said, "Perfect (أفعل = أسبغ) wudu, rub water (فعلل = خلل) between your fingers, and emphasis (فاعل = بالغ) sniffing water in your nose and gargling."

There exists authentic narrations that the Prophet صلى الله عليه وسلم did not gargle or sniff water with emphasis, yet there are not texts that show he ignored perfecting his wudu and rubbing water through his fingers.

#### Questions

1. How many orders exist in this prophetic transmission
2. Do all of them imply that the actions are obligatory?
3. If the answer to question two was yes, why?
4. If the answer to question number two was no, why?

## Chapter 3 Divergent Meanings (*Mafhūm al-Mukhālafah*)

### ***Mantūq* and *Mafhūm* (Spoken Texts and Understood Texts)**

Before we address divergent meanings, let's take some time to introduce you to two types of texts. The first is what is called *mantūq*. A *mantūq* text is one that has direct meaning on its own. For example, "**Whoever worships God alone, enters Paradise.**" The *mantūq* of this verse is that whoever worships God alone, enters Paradise. Thus, as you may have figured out, *nass*, as studied before, falls under the general definition of *mantūq*. The same can be said of the word *miskīn* in the example above, as well. Thus, *dhāhir* falls under *mantūq*. There are two other types of texts that fall under *mantūq* as well, but we will address those in the future. They are called *mujmal* and *mubayyin*.

The opposite of *mantūq* is *mafhūm*. If the former illustrates a text that is self-evident, the latter represents what is understood from a text. For example, the verse above, "**Whoever worships**

**God alone, enters Paradise.”** Is there anything else understood from this text? What if you were to flip its meaning, “Whoever does not worship God alone enters ....” That process is called *mafḥūm* and it has different categories recognized by the scholars: the converse of the *mantūq* meaning, like the example above. Second, a meaning that agrees with the text exactly or an act not directly mentioned in the text that is of greater intensity, thus it takes the text’s ruling by default. An example of the latter would be, “Do not say to your parents uff.” The *mantūq* of the text is not to speak to them in a disrespectful way. The *mantūq* that is greater in intensity is “Do not hit them.” The reason being, if talking to them in that way is bad, then anything greater than that is even worse! Let’s spend a moment addressing various types of implied meanings (*al-Mafḥūm al-Mukhālafa*).

### Types of Implied Meanings

#### 1. Related to The Description of Something

**“God only accepts the deeds of those who fear and obey him.”**

The *mantūq* of the verse is clear. However an implied meaning (*mafḥūm*) would be that “God does not accept the deeds of those who do not fear and obey him.”

The Prophet (صلى الله عليه وسلم) said,

**“Whoever fasts the month of Ramadān, faithful and hopeful, God will forgive him.”**

The *mantūq* is clear, but the the implication is “Who does not fast the month” or “Whoever fasts and is not faithful and hopeful, then God will not forgive his sins.”

#### 1. Related to a Number

**“Lash each one of them one hundred times.”**

The *mantūq* is clear. It is a *nas*. The implication is that anything more or less than a hundred is not allowed.

#### 1. Related to a Goal

The Prophet (sa) said,

**“The pen is lifted from a child until he attains puberty.”**

The *mantūq* of this narration is clear. However, its implication is that once a child attains puberty, he is responsible for himself.

#### 1. Related to a Time or Place

Allah says,

**“Observe ‘itikāf in any mosque.”**

The *mantūq* is that ‘itikāf should occur in a mosque. The implication is that it cannot take place in your house!

Allah says,

**“Hajj occurs in the known months.”**



The *mantūq* is that hajj occurs in certain months. The implication (*mafḥūm mukhālafa*) is that if someone performs it outside of those months it will not be correct.

5. Related to an Exception

**“God does not burden a should more than it can handle.”**

The implication is that anything that a person cannot handle is not something God has charged them with. An example would be a disabled person who cannot stand to pray. Standing is not an obligation for them because it is beyond that person’s scope.

### **Your Turn!**

Look at the text above, identify the *mantūq* and the *mafḥūm mukhālafa*, stating which type the latter is if possible.

1. Allah said,

**“Whoever does an atom’s weight of good will see it.”**

2. The Prophet (sa) said,

**“When the month of Ramadan comes, the gates of heaven open and the gates of hell close.”**

3. The Prophet (sa) said,

**“You will not have complete faith until your desires agree with what I was sent with.”**

4. Allah says,

**“Do not approach your wives (while they are menstruating) until they are pure.”**

5. The Prophet (sa) said,

**“Allah will no accept any of your prayers, if you are not clean, until you are purified.”**

6. The Prophet (sa) said,

**“If any of you sees a dream that frightens him, he should spit on his left side.”**

### **Exceptions to Divergent Texts**

There are six types of exceptions to the application of a divergent text. I will mention a few here to give you an idea. In the future, inshallah, you will learn them all.

1. What is described is done so to show commonality not to support an opposite ruling  
Allah says,

**“your stepdaughters in your homes [born] of your wives unto whom you have had sexual relations with.” 4:23**

No one could take the word “In your homes” and say that if they are not in your home, then you can marry them because, in those days, it was common for a stepdaughter to live with her stepfather.

2) What is described is done so as a blessing

**“He who subjected the sea for you to eat from it tender meat and to extract from it ornaments which you wear.” 16:14**

One could not take this verse and say, the divergent understanding shows that we cannot extract tough meat or use shells for something other than ornaments.

3) What is described is embellished to show its blessings or its impermissibility

The Prophet (sa) said,

**“By God I repent to God and seek his forgiveness seventy times a day.”**

This does not mean that less than seventy or more than seventy is against the sunna because seventy is used for embellishment.

Allah says,

**“If you sought forgiveness for them seventy times, God will never forgive them.”**

This does not mean that God would accept more or less than seventy.

### **Section 3.2 Agreed Understanding (*Mafhūm al-Muwāfaqa*)**

An agreed understanding *Mafhūm al-muwāfaqa* (مفهوم الموافقة) implies that what is understood (*mafhūm*) agrees (*muwāfaqa*) with the text (*mantūq*). Scholars defined it as,

أن يكون المعنى المسكوت عنه موافقا للمعنى المنطوق به في الحكم

“That the understood meaning (not spoken) agrees with the spoken text in a ruling.”

One of the more common examples is this verse from the fourth chapter of the Qur’an,

Allah says,

**“Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire. And they will be burned in a Blaze.” 4:10**

The *mantūq* of this verse is that those who devour the property of orphans will suffer in the next life. The agreed understanding would be that the same applies to those who burn it, give it away, or waste it! When we talk of agreement or difference, we do so on the basis (*‘ila*) of the action and its reward. Remember that!

### **Different Types of Agreed Understandings**

There are two types of agreed understandings in relation to the *‘ila* (basis) and the *f’il* (act):

1. Implied Meaning (*Fahwa al-Khitāb*)
2. Parallel Meaning (*Lahn al-Khitāb*)

### Implied Meaning (فحو الخطاب)

Allah says,

فمن يعمل مثقال ذرة خيراً يره

“Whoever does a insignificant amount of good will see it.” Qur’an

The *mantūq* of this verse is that a small amount of good will be rewarded. What about a large amount of good? The implied meaning is that it will be rewarded more. Thus, in the second statement, basis for the reward is greater. When the basis for a *mantūq* is greater in its *mafḥūm*, that *mafḥūm* text is called, فحو الخطاب (Eng. implied meaning).

### Parallel Meaning (الحن الخطاب)

Allah says,

**“Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire. And they will be burned in a Blaze.” 4:10**

The *mantūq* of this verse was explained above, its *mafḥūm* agrees with it perfectly, that burning it or throwing it away is forbidden. When the understood meaning is parallel to the spoken one, the former is called *lahn al-khitāb*.

### Chapter 4: Necessary Interpretation (*Dalāla al-Itizām*)

There are times when a text does not make sense on its own. When that happens it relies on because of an assumption, a Shar’iah ruling or Logic. When the truth or falsehood of a text rest on those, we call the instrument used to understand it, *Dalāla al-Itizām* (دلالة الإتيان). The word *iltizām* means necessary. Here it means that one of the three mentioned above is necessary to understand a text.

#### 1. Assumption Based on Experience (العادة)

Allah says,

**“And [recall] when Moses prayed for water for his people, so We said, "Strike with your staff the stone." And there gushed forth from it twelve springs, and every people knew its watering place.” Qur’an 2:60**

There is no way the rock broke by itself and people drank from it. What is understood by experience is that after God ordered Moses to strike the stone, he struck it and, “There gushed forth...”

#### 2. Assumption Based on Logic (العقل)

Allah says,

واسئل القرية

**“Ask the city.” Qur’ān 12:82**

It is not possible for a person to ask a city a question and the city would answer. Thus, the verse would make no sense unless we understood it as, “Ask (the people of) the city.”

Another example would be the statement of the Prophet (صلى الله عليه وسلم),

رفع عن أمتي النسيان

**“Forgetfulness does not occur in my community.”**

We forget things everyday. Thus, it is not possible to confirm this statement literally. Because if we did, that would imply the Prophet (صلى الله عليه وسلم) is not truthful. However, we know that one of the things we are obligated to affirm about the Prophets is truthfulness. Imām al-Marzūqi wrote in ‘Aqīda al-‘Awām,

أرسل أنبياء ذوي فطانه \* بالصدق والتبليغ والأمانة

“God sent the Prophets, possessors of intelligence, with truthfulness, preaching, and trustworthiness.”

Thus, we must, by necessity, understand the statement of the Prophet (عليه السلام) to be, **“The (sin) of forgetfulness does not occur in my community.”**

### 3. Assumptions Based on *Shari’ah* (الشرع)

Allah says,

أقيموا الصلاة

**“You must establish prayer.”**

It is understood that before a person can “establish” prayer they must observe purity first. Thus, the soundness of this order, is based on another text from the sacred law,

لا يقبل الله صلاة أحدكم إذا أحدث حتى يتوضأ

**“God will not accept any of your prayers if one of you breaks his purity until he purifies himself.”**

When a text’s soundness depends on one of the three above it is called a Dependent Necessary Interpretation. (دلالة الإلتزام التصريحي). However, there is another type that is not dependent called Necessary Interpretation. (التلويحي). Meaning, for the interpretation to take place, the text must exist, but the text’s soundness is not dependent on anything.

إحل لكم ليلة الصيام الرفث إلى نسائكم

**“It is permissible during the nights of Ramadān to go to your wives.”**

This verse’s *mantūq* suggests that a person can have sex with his wife any time during the nights of Ramadān. It implies, by necessity, that a person’s fast is valid if the fast starts and he/she is sexually defiled.

#### 4.1 Necessary Significance *Dalāl al-īmā’* (دلالة الإيماء)

From the family of necessary interpretations is *Dalāl al-īmā'*. This occurs when a reward or punishment is mentioned with a noun or act that serves as the basis (علة) for that act. If not, then the verse or *hadīth* would make no sense.

Allah says,

والسارق والسارقة فاقطعوا أيديهما

**“Cut the hand of the male or female thief.” Qur’an 5:38**

Implying, that since thief is mentioned, we understand that thievery is the reason for amputating hands.

## Chapter 5: Consensus (I’jmā’)

*Ijm’a* (scholarly consensus) is the next evidence recognized by the scholars of *Usūl al-Fiqh*. It is defined as,

إتفاق المجتهدين من الأمة المحمدية بعد وفاة رسول الله (صلى الله عليه وسلم) في أي عصر على الحكم.

Agreement of Muslim scholars of *ijtihād* on a ruling in any era after the passing of the Prophet (صلى الله عليه وسلم).

Imām al-Ghāzali defined it as,

اتفاق أمة محمد (صلى الله عليه وسلم) خاصة على أمر من الأمور الدينية

“An agreement of the Prophet’s community only on a religious issue.”

### 5.1 Proof for *Ijm’a*

Allah says,

ومن يشاقق الرسول من بعد ما تبين له الهدى ويتبع غير سبيل المؤمنين نوله ما تولى ونصله جهنم وساءت مصيرا

**Whoever opposes the messenger after guidance has come to him and follows a path other than that of the believers, we will give him what he has taken and drive him to hell.”**

4:115

,The Prophet (sa) said

لا تجتمع أمتى على دلالة

**”My community will not agree on misguidance“**

These as well as other proofs are used to support the idea of *Ijm’a*. Perhaps the greatest proof is the practice of the companions and those who followed them in honoring something that they .. knew was agreed upon by qualified jurists

## **'Historical Development of *Ijmā* 5.2**

Dr. Wahba Zuhaili wrote, "During the time of the Companions (ra) there was a severe need for new rulings to address incidents that occurred after the Prophet (sa) passed away. That was the greatest catalyst for the idea of *Ijmā*"

### **Reasons for *Ijmā*' During the Time of the Companions**

An agreement amongst scholars on a ruling would protect people from the mistake of a .1 scholar who ruled incorrectly on an issue

Since "consensus" was divinely protected it protect the community from going astray .2

It would encourage intellectual pursuits, since peer review would encourage creativity and .3 (discovery (gave birth to an engaged climate

Ensure that only the qualified would engage the subject .4

Help ease religious practices for the community .5

Encouraged cooperation amongst scholars, protected from the cult of personality .6

### **'Historical Stages of *Ijmā***

**Era of the Companions (ra)** - A time of exploration and preservation, ensuring that that .1 fundamentals of Islām were laid out according to the sacred texts. Examples of this during their time was the choice of the Caliph, compiling the Qur'ān, diving the land in Iraq and other areas, .fighting those who refused to pay mandatory charity

**Era of the Companion's Students (Ar. *al-Tābi'in*)** - The occurrence of *ijmā'* become less .2 frequent because scholars left Medina and lived in different places, experiencing different .realities that shaped the way they formulated legal rulings

**Era of *Ijtihād*** - Regionalized consensus took shape because scholars were worried about .3 contradicting the great scholars who preceded them, such as Mālik worrying about contradicting an agreed-upon position of the scholars of Medina and Abu Hanīfa worried about contradicting .an agreed-upon position of the scholars of Kufa

**Era of the Four Schools** - While new consensus became less frequent, scholars from each .4 school would take some liberty in declaring an *ijmā* on opinion held by their Imām or their opinion. While it should be assumed their intentions were for the best, it is a cause for concern. Instead of exploring the law, this was an era of preserving it. A concept whose impact we still feel today. While preserving the sacred is an obligation, confusing it with independent opinions is problematic. Imām al-Isfarāni wrote, "We know of more than twenty thousand rulings based ". 'on *ijmā*

**Modern Era: Between Two Extremes** - Since the early part of the mid 20th century, there .5 have appeared two extremes with regards to *ijmā'*, one who denies it completely, another who .involves it as frequently as the previous era

### **The Solution**

The solution is to verify the claims by different scholars, ensuring that *ijmā'* occurred, understanding what they meant by it and if their claims are backed up by evidence. For more on this, see this excellent article:

<http://www.suhaiwebb.com/islam-studies/scholarly-consensus-ijma%CA%BF-between-use-mis/use-by-abdullah-bin-hamid-ali>

### Understanding Ijmā' Again 5.3

Let's return to the definition of *ijmā'* one more time,

إتفاق المجتهدين من الأمة المحمدية بعد وفاة رسول الله (صلى الله عليه وسلم) في أي عصر على الحكم.

Agreement of Muslim scholars of *ijtihād* on a ruling in any era after the passing of the Prophet (صلى الله عليه وسلم).

### Breaking Down this Definition

1. "Agreement" - Means that all qualified scholars agreed on a ruling
2. *Mujtahidīn* is a restrictive term, implying that it cannot be performed by any scholar, but a scholar of *ijtihād*.

### Who is Qualified for *Ijtihād*?

A *mujtahid* is a person who has reached a level of scholarship that allows him/her to extract rulings from sacred sources. That causes us to ask an important questions, what is *ijtihād*?

### What Are the Qualifications of a *Mujtahid*?

Ibn al-Rahīq al-Māliki wrote,

"A *Mujtahid* should know how to extract rulings from the fundamentals (of *sharī'ah*): the Qur'an, the *Sunna*, *Ijmā'* and *Qiyas*. He should have mastery of the methods for doing so, understanding what must be given precedence and what must be delayed. He must exhibit mastery of the different signifiers of texts in relation to their meaning such as *mantūq*, hypothesized meanings (*madhnūn*), implied meaning (*fahwu al-khitāb*), *mafhūm* and its meanings and understandings. He must be a scholar of the conditions for transmitting texts (*hadith* of the Prophet and *ijmā'* of the community), knowing that a *nass* is given preference to a *dhāhir*, a universal text shapes a universal, a restrictive text shapes a unrestricted, an abrogated shapes and abrogated and its conditions. He must understand *t'awīl* and the method of engaging (seemingly) contradicted texts, giving preference to the literal over the figurative (when proper), knowing how to derive rulings and make analogy." (Iubāb al-Mahsūl fi 'ilm al-Usūl vol. 2 pg. 711-712)

### What is *Ijtihād*

Scholar defined it as,

بذل الجهد من متمكن في تعرف الأحكام الشرعية من أدلتها لا يبقى له وسع

"A qualified scholar exercising all his energy towards identifying a *sharī'ah* ruling, extracted from its sources, such that he has no energy left."

## **The Conditions of a Proper Ijtihād**

Dr. Muhammad al-Amīn ibn al-Sheikh listed them as follows:

1. It is issued from the qualified
2. It occurs in the right context
3. It respects the tradition
4. Does not go into excess in using *maslaha* (public benefit)
5. Does not go into excess seeking to make things easy or hard on people

## **Back to Ijmā's Definition**

"in a given era after the death of the Prophet (sa)" meaning at any time period after his death a group of scholars of that era must have agreed on a given ruling. That agreement could be of two types:

1. Spoken - meaning we have a historical record that scholars agree on a given issue
2. Unspoken- Meaning, a scholar or scholars issued a ruling and other scholars did not voice their disapproval of it or issued a ruling to the contrary

## **Pillars of Ijmā'**

The majority of scholars hold that an ijmā' must be rooted in an evidence from Islam's legal sources: the Qur'an, the *Sunna* or *Qiyās*.

## **The Probability of Ijmā'**

Sheikh Abu Zahra (ra) wrote, "The occurrences and strength of *Ijmā'* in my estimation is exclusive to the era of the companions (ra) because they did not spread out (but stayed in Hijāz). Thus, it was possible. During the era of the *tabi'īn*, scholars spread out across the globe. Thus, its occurrence was unlikely.

## **Ijmā' Throughout History**

Imām ibn Hazim mentioned 58 chapters in which *ijmā'* occurred:

1. Purification - That a large amount of water cannot be polluted unless its smell, color or taste changes
2. Prayer - The five prayers are obligatory; that it is not allowed to delay the prayers
3. *Janaza* - preparing and burying a Muslim is an obligation
4. Fasting - Who eats without an excuse is a sinner
5. *'Itikāf* - Who leaves without a legitimate reason, his *i'tikaf* is violated