

Introduction To
Usul al-Fiqh
Al-Sheikh Muhamamd Hassanayn Makhluḥ al-‘Adawi

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Book One
(Part One)

Translated and Abridged
Suhaib Webb

Introduction: Sheikh Hasanayn Makhluḥ¹, former Mufti of Egypt

In the name of Allah, the Most Gracious, the Most Merciful.

I praise Allah a blessed praise, and I send peace upon our master Muhammad, his family, his companions, and his followers.

This is an introduction to the study of usul al-fiqh, authored by the esteemed teacher: my father. He wrote it as an introduction to the seminal book, *Jam’ al-Jawami*² written by Taj al-Din al-Subki³.

¹ Sheikh Hasanayn Muhammad Makhluḥ (1890-1990) was a renowned Islamic scholar from a family of respected scholars in Bani Adi, a village known for its scholarly traditions. He was one of the early students at the Azhar School of Shariah Law, where he became a prominent graduate and the first in his class to be appointed as a Mufti. Makhluḥ received his education from his father, other family members who were educators, and various distinguished professors. He studied arithmetic and algebra at the Mosque of Al-Muayyad and earned his Alamiyya certificate in 1914 from the Azhar School of Shariah Law, affiliated with Al-Azhar University in Cairo. Notably, he was the first to provide annotations for the classical texts of the Maliki legal school, making a groundbreaking contribution to Islamic jurisprudence.

² *Jami al-Jawami*, a pivotal intermediate text in the study of usul al-fiqh, holds significant importance in Islamic scholarship. Historically, it was so esteemed that its study was a mandatory prerequisite for obtaining a scholar’s license at Al-Azhar. The text is structured into seven chapters, not including its introduction and conclusion. It comprehensively addresses the foundational principles of Islam, effectively bridging the perspectives of two major schools of thought: the fuqaha (Hanifis) and the mutakalimin (Malikis, Shafis and Hanbalis). Additionally, it delves into various theological issues and aspects of tasawwuf (Sufism), demonstrating its comprehensive approach to Islamic studies.

³ Tāj al-Dīn al-Subkī (1327-1370) was a leading Islamic scholar, a faqīh, a muḥaddith and a historian from the celebrated al-Subkī family of Shāfi’ī ‘ulamā, during the Mamluk era.

My father began teaching it to some students of Al-Azhar in the year 1335 AH., and when he reached the chapter on *ijtihād*, the students requested him to publish it. My father agreed and happily published it.

We hope that Allah will make it as beneficial as its original, and that he will continue to provide us an opportunity to share this important text. He is sufficient for us and the best guardian.

17th Jumada Al-Awwal, 1341,
Husayn Muhammad Makhlof,
Judge at the Sharia Court of Egypt⁴.

Author's Introduction

In the name of Allah, the Most Gracious, the Most Merciful.

All praise is due to Allah, who has guided us to this success; without His guidance, we would not have achieved it. Blessings and peace be upon our leader, Muhammad ﷺ, his family, his companions, and their followers.

Several talented students from Al-Azhar requested me to teach al-Mahalli's commentary on 'Jam al-Jawami,' a work on the principles of jurisprudence. They asked me to conduct these teachings between the Maghrib and Isha prayers. Delighted, I began these sessions in early 1335, relying on Allah the Almighty for support.

Shortly after I completed my introduction to the text, the students requested that I publish it, adding both the spontaneous discussions that arose and the notes I prepared for each session. I arranged the introduction to illuminate the nuances, secrets, purposes, and objectives of the text. I steered clear of trivial topics and excessive brevity, highlighting important aspects often missed by others who have explained the authoritative works of *usul al-fiqh*. My intention was to clarify the truth for those seeking it and to elucidate the goals of the subject. That is the method I employed here, hoping, inshallah, it will be beneficial for those eager to learn.

⁴ The Shariah Courts of Egypt- no longer in existence - where an elaborate legal system that consisted of four institutions. First were the *sharī'a* courts staffed by judges (*quḍā*, sg. *qāḍī*) trained in Islamic jurisprudence (*fiqh*) who adjudicated the affairs of Muslims and non-Muslims who agreed to have their cases heard there. Second, non-Muslim councils (*majālis*, sg. *majlis*) handled cases between Christians and Jews. The non-Muslim councils could be headed by a judge trained in the *sharī'a* courts or a mediator appointed by the ruler. Third was consular courts held in foreign embassies and ruled in matters where at least one party was a foreign national. Finally, there was the court of the governor (*wāḥī*), which addressed appeals from Muslim or non-Muslim courts, handling cases brought directly to them and intervening in issues where there was a prevailing state interest, such as homicide.

Muhammad bin Husayn bin Muhammad Makhoulouf Al-Adawi Al-Malik

Chapter One Studying Usul al-Fiqh/ The Purpose of This Text

It is essential for students of usul al-fiqh to progress gradually in their understanding of the subject until they reach an secure level of scholarship and mastery. They should start carefully, familiarizing themselves with the text they intend to study, then turn to its different explanations, and the easily understood commentaries, fully immersing themselves in the style and flow of the text. With this text, Jami al-Jawami', when they find themselves perplexed, they should refer to what I have written here. They will discover what satisfies their inquiry and quenches their thirst for knowledge, and, Allah willing, the secrets of the text will be unveiled. Allah is generous and bestows His bounty upon who He chooses.

I titled it 'The Complete Study: Explaining the Introduction to Jam' al-Jawami,' hoping for immense benefit from Allah's grace and generosity. My success comes only from Allah; on Him, I rely, and to Him, I return.

The Benefits of This Introduction

The benefit of my introduction is that it will prepare seekers for the concepts that await them when they study the remaining chapters of Jami al-Jawami. Additionally, it will expand their understanding of usul al-fiqh, and the objectives of the author, Ibn Subki. Thus, this work is essential before students embark on the study of the text because it will lay the groundwork for what lies ahead.

The Purpose of Usul al-Fiqh

Usul al-Fiqh is one of the most important Islamic sciences, offering a wealth of benefits and blessings. I say that because its primary function is to scrutinize the proofs scholars extract from particular proofs of Islamic law: The Quran, the Sunnah, the consensus, and analogical reasoning⁵ because those proofs serve as a reservoir for jurists to extract rulings. Moreover, Usul al-Fiqh plays a crucial role in insulating a jurist's reasoning from errors when they deduce legal rulings. It also serves as a pivotal reference in legal debates, particularly when adherents utilize the theories of their Imams of madhabs to support their arguments. The Imam's followers adopt his methodology based on sound principles and accurate methods to support their Imam's preferred opinions. Lastly, the principles of jurisprudence are indispensable for those specializing

⁵ Qiyas is defined as, judicial reasoning by analogy. The word is derived from the Hebraic term *hikkish*, infinitive *hekkesh* and from the Aramaic root *n-k-sh* which signifies "to beat together". It is employed with reference to (a) the juxtaposition of two subjects in the Bible and the demonstration that they should be treated in the same manner; (b) the action of the exegete who applies the comparison suggested by the text; and (c) the conclusion of the reasoning by analogy which relies on the existence of a common characteristic in the "basic case" and the "analogous case" (J. Schacht, *Origins*, 99).

in the extraction (takhrij)⁶ and preference (tarjih)⁷ of legal opinions. Experts in this area focus on legal opinions that address contemporary issues not explicitly covered by the Shariah. In this context, Usul al-Fiqh is essential, as it ensures the shariah compliance of these opinions by tracing their validity through the principles of Usul al-Fiqh. Numerous jurists engaged in the study of legal debates (khilaf), so their reliance on the principles of jurisprudence is as significant as that of the independent jurist (mujtahid), although the mujtahid needs usul for deriving rulings, the specialist engaged in understanding dissences utilizes them to defend his madhab from being undermined by contrary evidences.

Therefore, usul al-fiqh is important for understanding jurist's positions, proofs, sources of disagreement, areas of independent reasoning, and their extractions and preferences. It is evident that this effort is for those qualified in one of the legal schools: those well-versed in the sciences of legal dissent and have mastered the knowledge of Islamic law and its principles.

The Main Function of Usul al-Fiqh

The primary purpose of understanding usul al-fiqh is to acquire the skills required for extracting rulings from detailed religious proofs in the correct way. However, that is only possible for a mujtahid who has acquired a comprehensive set of skills. To undertake Ijtihad,⁸ a deep understanding of Arabic, the religious sciences, and Islamic logic is required, along with a unique level of talent and genius. Those prerequisites enable a scholar to delve into the important process of legal deduction, a task rarely undertaken due to its complexity, yet despite its difficulty, pursuing ijthad remains important and achievable.

The Place of Ijtihad & Madhabs

The role of Ijtihad is one of the most important aims of islamic jurisprudence. Hence the Shari'ah strongly encourages it in every era. Specialists and scholars of Usul al-Fiqh have explained that ijthad can be either a collective obligation (Fard Kifayah) or an individual obligation (Fard 'Ayn), depending on the circumstances, while acknowledging the difficulty in achieving it. Thus, they impressed upon people to follow one of the four major Islamic legal schools due to waning interest in the mastery of ijthad, a decline in religious intelligence, the proliferation of disciplines and terms, and the daily preoccupations that hinder people from dedicating the time and effort required to reach the qualifications of ijthad.

Additionally, scholars paid significant attention to ijthad and its conditions to prevent the appointment of such a significant role to the unqualified, or those whose integrity and judgments

⁶ Takhrij (Eng. extraction) is the extraction of rulings not addressed explicitly by the sacred sources.

⁷ Tarjih (Eng. preference) is the examining the various opinions of Muslim jurists on a certain question and evaluating them in order to determine which is most faithful to the original Shari'a sources

⁸ the jurist's exerting himself to the utmost of his capacities to arrive at a considered opinion with respect to a legal judgment.

are not trustworthy, and in an effort to prevent corruption, some scholars closed the door of ijthihad despite its high status, favoring imitation (taqlid), even though taqlid is frowned upon.

This does not negate the fact that ijthihad is possible at any time and is a noble aspiration. Allah has deemed it an instrument of guidance and legislation, an integral part of Islamic law that interprets texts, clarifies their implications, establishes and elucidates their merits, and facilitates the methods of deriving rulings from them. Therefore, legal theorists set conditions for the individual who undertakes the task of deducing legal rulings from the evidences.

Scholarship & Maturity

Since the opinions of religious jurists are initially presumptive, they are treated as nondefinitive, it is essential that the one practicing ijthihad possesses a special emotional maturity and intellectual capability that enables him to scrutinize scholarly opinions in a way that removes doubts (about a specific opinion), ultimately raising those opinions to the level of certainty⁹. This is to safeguard the legal opinions of jurists from errors as much as possible, especially since the requirement of ijthihad is not limited to any specific time or place.

Ijthihad When?

Ijthihad occurs when a jurist exerts his full capacity towards examining Islamic proofs and researching jurisprudential sources to form a reasoned opinion on an action (a ruling).¹⁰ Such an ability, as mentioned earlier, is only possible for someone with a special acumen and a deep training in the Arabic sciences, the principles of jurisprudence, and the religious sciences, to the extent that they become an inherent skill enabling the scholar to seamlessly extract rulings from their specific sources and established principles.¹¹

Ijthihad How

Legal theorists teach that ijthihad is honed through extensive practice- frequent exercise- engaging scholars, studying reliable books, and possessing a profound knowledge of the Quran and the Sunnah. The development and maturation of this skill in mujtahids varies depending on the different circumstances and on their intellectual and spiritual capacities: what might suffice in developing this skill in one person might not serve another.

⁹ Imam al-Baydawi addresses this saying, "The ruling is certain; assumption lies in its process." Minhaj al-Wusul ila Ilim al-Usul Pg. 4. See also, pg. 121 where he writes in the context of a mistaken ijthihad, "Since he is commanded to extract a ruling (initially) based in his assumption, the mujtahid's mistake is in accordance with what Allah has revealed."

¹⁰ "Ijthihad is the complete exertion towards learning a shariah ruling." Minhaj al-Wusul Ila Ilim al-Usul pg. 118

¹¹ "They must have a deep knowledge of the Quran, the Sunna, the sciences related to law, consensus, the conditions of analogy, how to examine legal arguments and texts, the sciences of the Arabic language, abrogation, and the narratoes of hadith, not theology or fiqh since they are its outcomes." Minhaj al-Wusul ila Ilim al-Usul Pg. 119

In summary, *ijtihād* is a special skill, an inherent knowledge; a talent that Allah bestows upon His servants. He grants His gifts to whom He wills. It is reported that Imam al-Sarakhsi¹², the author of ‘*Al-Mabsūt*, who passed away in the year 490, was more knowledgeable than Al-Shafi’i, may Allah be pleased with him. Yet, the ability to attain *ijtihād* escaped him. When asked about this, he said that “memorization and understanding are one thing, while *Ijtihād* is another.” The Hanafi scholars considered him to be at the level of a *mujtahid* in matters where there is no narration from their Imam.

Types of Mujtahids & Their Relation To One Another

There are different levels of *mujtahids*. The lowest rank is a *mujtahid* within a particular *madhab* (Islamic legal school). This is someone who exhausts their *madhab*’s efforts in deriving interpretations and rulings from the opinions of their Imam or deducing them from the texts of Islamic law, adhering to their Imam’s method, principles, and conditions for reasoning.

The next level is the *mujtahid* specialized in issuing legal verdicts (*fatwa*), who is well-versed in the *madhab* of their Imam and capable of making reasoned choices between different opinions within that *madhab*.

Ijtihād in these two senses, though rare in our time, where engagement with the sciences of religion and its tools is less common, has historically been achieved by many followers of the four major Imams.

The highest level of *mujtahid*, in the context of the principles of jurisprudence, is an absolute *mujtahid*. The *mujtahids* of a *madhab* and *fatwa* are followers (*muqallid*) of the absolute *mujtahid*, who examines the conditions of the textual proofs for establishing Islamic legal rulings through the methods of *Ijtihād* and preferring certain evidence in cases of conflicting proofs. He relies on the sacred texts, while the other types of *mujtahids* rely on the opinions of the first.

Definitions of Usul al-Fiqh

Usul al-Fiqh, or the principles of jurisprudence, is defined by some scholars as knowing the recognized sources of law, the methods of benefiting from those evidences, and the factors that lead some scholars to prefer some opinions over others. Alternatively, other scholars define it as the study of both the proofs, principles and the factors that validate them, as well as the correct methods of use applicable to each along with the qualities of a *mujtahid*.¹³

¹² Muḥammad b. Aḥmad b. Abī Sahl Abū Bakr, *Shams al-A’imma*, a Ḥanafī jurist of the 5th/11th century, who lived and worked in Transoxania, inheriting and developing the juristic tradition of that region. He produced a number of works, the most important being the *Mabsūt*, the *Sharḥ al-Siyar al-kabīr*, and the *Uṣūl al-fiqh*

¹³ Al-Baydawi writes, “*Usul al-Fiqh* is mastery of its general directives, how to benefit from them and the conditions required for a *mujtahid*.” *Minhaj al-Wusul ila Ilm al-Usul* pg.1

I will explore each component of these definitions in detail at the appropriate juncture, but based on these definitions, a specialist in the field of *usul al-fiqh* is someone proficient in understanding the principles and proofs of Islamic law, recognizing the rules to correctly employ them, and is aware of the academic qualifications of a mujtahid.

A mujtahid, responsible for interpreting Islamic legal rulings from Shariah, must have certain qualifications as I previously mentioned. These qualifications vary depending on the type of mujtahid. An absolute mujtahid dedicates their efforts to deriving rulings directly from Shariah sources. Others might be mujtahids within a specific madhab (Islamic school of thought) or specialize in issuing fatwas (legal opinions). It's important to note that an absolute mujtahid is contingent on a scholar's experience as a madhab or fatwa mujtahid. To be skilled in *ijtihad* (the process of making a legal decision), a mujtahid must have knowledge of legal principles, understanding of factors that strengthen or weaken legal proofs, and proficiency in the Arabic language.

The study of *usul* (Islamic legal theory): its purpose, equips a mujtahid with the tools to effectively deduce legal rulings. Thus, mastery of the Arabic language is crucial for comprehending the nuanced meanings of primary Islamic texts.

The Categories of Scholars

Mujtahids and Islamic legal scholars, are categorized based on their scope of expertise. They could have a complete knowledge encompassing all areas of Islamic jurisprudence or they may specialize in particular subjects like inheritance, trade, or worship. The first category are absolute mujtahids, who are versed in a wide range of Islamic legal matters. The second category includes specialized mujtahids who focus on narrower areas of expertise.

According to the author of '*Kashf al-Asrar*,' ideally an absolute mujtahid, who provides fatwas (legal opinions) across aspects of Islamic law areas, must exhibit mastery of all sciences mentioned in the works of *usul al-fiqh*. However, most legal theorists agree that a mujtahid can specialize and issue fatwas on specific topics. This specialization means their opinions don't encompass every aspect of Islamic law. For instance, a scholar proficient in analogical reasoning (*Qiyas*) is qualified to give a fatwa on a related matter, even if they lack expertise in *hadith* (sayings and actions of Prophet Muhammad). Similarly, a mujtahid knowledgeable in the principles and meanings of inheritance laws is competent to address issues like shared ownership (*Al-Musha'*) and emancipation (*Al-Mawla*). This competence is valid even if they are not experts in *hadiths* about usury and trade, as those narrations are irrelevant to inheritance matters.

This does not contradict the fact that an absolute mujtahid may occasionally find himself uncertain about issues, and reply to a question, 'I do not know.' This is because he is limited by

the time he has to deduce the ruling being asked, he may be temporarily preoccupied, preventing him from considering the matter at hand or conducting research into the sources of Islamic law, as mere knowledge of them is not sufficient. A mujtahid may also refrain from answering out of caution, or due to the inquirer's harshness, inability to understand the response, or other situations dictated by the circumstances of the case or the inquirer.

The Method of Ijtihad

In 'Irshad al-Fuhul, Imam al-Shawkani¹⁴ referencing Imam al-Shafi'i, notes what is incumbent for mujtahids to employ and rely upon when faced with a case:

Initially, they should seek answers clearly stated in the Quran. Then, they must look to the mutawatir hadith and then ahad hadiths. If these sources don't provide a solution, they should avoid analogy and reexamine the Quran and Sunnah and try to discover explicit meanings. If found, these are to be interpreted through specific methods and information that will shape them, and if no explicit text exists, they rule by the implicit meaning if found.

If they are unable to deduce an explicit or implicit meaning from the Quran and Sunnah, they should then consider the consensus of various schools of law. Where there's consensus, it should be followed. If there is no consensus, analogy is the next step, favoring broad foundational axioms over minute details. For example, in a murder case involving a heavy object, the principle of deterrence of punishment is prioritized. If no broad principle is applicable, they should look to authoritative legal texts for precedent and areas of agreement amongst jurists. If these agree, their interpretation is accepted; if not, analogy is used. In situations where all these methods are insufficient, the foundational principle of permissibility¹⁵ should be upheld, as it is the basis for judgments and textual interpretations. Finally, In cases of conflicting evidence, efforts should be made to find a reconcilable interpretation. If reconciliation is not possible, the decision should be based on prioritizing factors, which will be discussed later.

A Broader Identification of Mujtahids

Ibn Abidin, in his Risalah narrates from Shams al-Din Muhammad, Ibn Suleiman, known as Ibn Kamal Pasha, identifies seven levels of religious jurists:

¹⁴ Muḥammad b. 'Alī b. Muḥammad, writer, teacher and mufī in Ṣan'ā' (ca. 1173-1255/1760-1839). His opinions and his writings are seen as foreshadowing the Islamic modernism of the first half of the 20th century. Rashīd Riḍā [q.v.] regarded him as the muḍjaddid "regenerator", of the 12th century A.H. (Tafsīr al-Manār , vii, 144). Many of his books exist in modern (sometimes uncritical) editions. In his al-Ḳawl al-mufīd fī adillat al-idjtiḥād wa 'l-taḳlīd (Cairo, Muṣṭafā al-Ḥalabī) he argues that it is not necessary to follow one of the established Islamic schools of law or madhāhib.

¹⁵ The default of innocence is a principle the majority of jurists employ when faced with issues that are not addressed explicitly or implicitly in the Qur'an or the Sunnah or consensus.

The first consists of the mujtahid in Sharia, like the four Imams and those who follow their approach in establishing the principles of usul and deriving the rules of the branches from the four sources without imitating anyone in either the principles or the branches.

The second includes mujtahids within a specific madhab, like Abu Yusuf and Muhammad, and other companions of the imam, capable of deriving rulings from the mentioned sources according to the rules established by their teacher. Although they may differ from him in some branch rulings, they follow him in the principles of his usul.

The third level is in issues not narrated from a madhab. Examples are Abu Bakr al-Khassaf, al-Tahawi, al-Karkhi, al-Sarakhsi, Fakhr al-Islam al-Bazdawi, and Qadi Khan. They cannot contradict the Imam in either principles or branches but derive rulings for issues not textually addressed by him, based on the principles he established and the rules he expanded upon.

The fourth level includes those specializing in deducing rulings from established principles, like al-Jassas, and his contemporaries. They are not capable of ijtihad but, with their comprehensive knowledge of principles and control over sources, can elaborate on ambiguous statements or rulings potentially based on two aspects, transmitted from the madhab's founder or one of its mujtahid companions, using their understanding of principles and analogies with similar branch issues.

The fifth level comprises those who specialize in weighing and choosing between different opinions within the madhab, like the author of Al-Hidayah and Abu al-Hasan al-Quduri and those like them. Their role is to prioritize some narrations over others.

The sixth level is that of the imulators who are capable of distinguishing between the stronger, strong, weak and weaker positions, the relied upon narrations, the sound opinions of the madhab, and the rare narrations. Examples are the author of Al-Kanz and the author of Al-Majma'. These individuals do not mention in their books rejected opinions or weak narrations.

The seventh level consists of imulators who are unable to do what has been mentioned and cannot differentiate between the strong and the weak.

In summary, when you understand these seven roles, you realize that the claim by some people that the knowledge of usul al-fiqh has no benefit except for the absolute mujtahid, and that its origin is now lost, is due to a lack of understanding and short-sightedness; the principles of usul are still relevant and beneficial, not only to the those engaged in championing their Imam's opinions, but to others among the aforementioned levels, as they rely on legal principles in

determining the rulings of incidents and un-texted events in the most complete and perfect manner.

Neglected Does Not Equate To Value

The decline in ambition and the inability to comprehend and utilize knowledge to its fullest potential does not negate its benefit or render its guidance useless. Many religious sciences have been neglected by people in terms of engagement and the application of their rulings, leading to a loss of the benefits those sciences bring and the blessings of their observance. However, this does not mean that these sciences are without benefit or should be abandoned.

In the case of *usul al-fiqh*; a science whose true study is left to a small minority, It is obvious that those who master it, understand its essential relationship with the rulings of *fiqh*, its detailed evidence, the components of those evidences and the conditions required to produce analogies. Thisw those scholars appreciate a deeper understanding of the study of *fiqh*. There is a significant difference between that person and someone who learns the rulings of *fiqh* directly from the Book, the Sunnah and the various aspects of arguing opinions. This is similar to the difference between someone who blindly follows in matters of religious belief and someone who understands beliefs with their proofs and refutations.

For those who consider and apply them, the benefit is immense. It leads a person from mere imitation in branches of Islamic law to a profound understanding of *fiqh* with its proofs and legal logic. The blind follower is the *mujtahid* in a *madhab* or *fatwa*, while the one who understands the proofs and refutations: the relationship between both types of *mujtahids* is the absolute *mujtahid*; he is is the reference for the non-absolute *mujthaid*s, while the texts of *shariah* are his

End of part one