

THE 5TH EDITION



KEYS TO KNOWLEDGE

AL-WARAQAAT



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Our Mission: To propagate the pristine, unadulterated teachings of Islam to Muslims and non-Muslims in Dubai in the most effective and appropriate way.

Our Vision: The souls of a nation, connected to their Creator.

Al-Waraqāt fī Uṣūl al-Fiqh

By Imām ‘Abdil-Malik ibn ‘Abdillāh ibn Yūsuf al-Juwaynī (d.478H)

In the name of Allah, the Most Merciful,
the bestower of Mercy.

All praise be to Allāh, the Lord of the
worlds, and May Allāh bestow his peace
and blessing upon our master
Muhammad, his family and companions.

And to proceed:

These pages include sections of the
fundamentals of jurisprudence.

Which is composed of two individual
parts:

- First: *al-Uṣūl*
- Second: *al-Fiqh*

al-Aṣl: that which other matters are
based upon.

al-Far’a: that which is based upon other
matters.

al-Fiqh: Knowledge of the rulings of the
Shari’ah that are derived by way of
independent reasoning.

Rulings are seven types: obligatory (*al-wājib*), recommended (*al-mandūb*), permissible (*al-mubāh*), forbidden (*al-mahẓūr*), disliked (*al-makrūh*), sound (*al-ṣaḥīḥ*), and invalid (*al-bāṭil*).

Obligatory is an action which is
rewarded if done and is punished if left
out.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَصَلَّى اللَّهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَآلِهِ
وَصَحْبِهِ أَجْمَعِينَ.

وَبَعْدُ:

فَهَذِهِ وَرَقَاتٌ تَشْتَمِلُ عَلَى مَعْرِفَةِ فُصُولٍ مِنْ أَصُولِ الْفِقْهِ.

وَهُوَ مُؤَلَّفٌ مِنْ جُزْأَيْنِ مُفْرَدَيْنِ:

أَحَدُهُمَا: الْأُصُولُ.

وَالْآخَرُ: الْفِقْهُ.

فَالْأَصْلُ: مَا يُبْنَى عَلَيْهِ غَيْرُهُ.

وَالْفَرْعُ: مَا يُبْنَى عَلَى غَيْرِهِ.

وَالْفِقْهُ: مَعْرِفَةُ الْأَحْكَامِ الشَّرْعِيَّةِ الَّتِي طَرِيقُهَا الْاجْتِهَادُ.

وَالْأَحْكَامُ سَبْعَةٌ: الْوَاجِبُ، وَالْمَنْدُوبُ، وَالْمُبَاحُ،

وَالْمَحْظُورُ، وَالْمَكْرُوهُ، وَالصَّحِيحُ، وَالْبَاطِلُ.

الْوَاجِبُ: مَا يُتَابُ عَلَى فِعْلِهِ، وَيُعَاقَبُ عَلَى تَرْكِهِ.

Recommended is an action which is rewarded if done and is not punished if left out.

Permissible is an action which is neither rewarded if done nor is punished if left out.

Forbidden is an action which is rewarded if left out and is punished if done.

Disliked is an action which is rewarded if left out and is not punished if done.

Sound is the proper implementation of a deed and is considered acceptable.

Invalid is the improper implementation of a deed and is not considered acceptable.

al-Fiqh is more specific than knowledge.

Knowledge is to recognise what is known as it exists in reality.

Ignorance is to imagine something differently than it is in reality.

Necessary knowledge is what does not result from reflection or deduction, such as knowledge of reality by one of the five senses, which are hearing, seeing, smelling, tasting, and touching, or by unanimous reports (*al-tawātir*).

As for **acquired knowledge**, it is dependent upon reflection and deduction.

Reflection is to think about the object that needs reflection.

Deduction is seeking a proof.

Proof is what leads to that which is sought.

وَالْمَنْدُوبُ: مَا يُثَابُ عَلَى فِعْلِهِ، وَلَا يُعَاقَبُ عَلَى تَرْكِهِ.

وَالْمُبَاحُ: مَا لَا يُثَابُ عَلَى فِعْلِهِ، وَلَا يُعَاقَبُ عَلَى تَرْكِهِ.

وَالْمَحْظُورُ: مَا يُثَابُ عَلَى تَرْكِهِ، وَيُعَاقَبُ عَلَى فِعْلِهِ.

وَالْمَكْرُوهُ: مَا يُثَابُ عَلَى تَرْكِهِ، وَلَا يُعَاقَبُ عَلَى فِعْلِهِ.

وَالصَّحِيحُ: مَا يُعْتَدُّ بِهِ، وَيَتَعَلَّقُ بِهِ النُّفُودُ.

وَالْبَاطِلُ: مَا لَا يَتَعَلَّقُ بِهِ النُّفُودُ، وَلَا يُعْتَدُّ بِهِ.

وَالْفِيقَةُ أَخْصُ مِنَ الْعِلْمِ.

وَالْعِلْمُ: مَعْرِفَةُ الْمَعْلُومِ عَلَى مَا هُوَ بِهِ فِي الْوَاقِعِ.

وَالجَهْلُ: تَصَوُّرُ الشَّيْءِ عَلَى خِلَافِ مَا هُوَ بِهِ فِي الْوَاقِعِ.

وَالْعِلْمُ الضَّرُورِيُّ: مَا لَمْ يَقَعْ عَنِ نَظَرٍ وَاسْتِدْلَالٍ؛ كَالْعِلْمِ

الوَاقِعِ بِإِخْدَى الْحَوَاسِّ الْخَمْسِ - الَّتِي هِيَ السَّمْعُ، وَالْبَصَرُ، وَالشَّمُّ، وَالذَّوْقُ، وَاللَّمْسُ - أَوْ التَّوَاتُرِ.

وَأَمَّا الْعِلْمُ الْمُكْتَسَبُ فَهُوَ الْمَوْقُوفُ عَلَى النَّظَرِ وَالِاسْتِدْلَالِ.

وَالنَّظَرُ هُوَ الْفِكْرُ فِي حَالِ الْمَنْظُورِ فِيهِ.

وَالِاسْتِدْلَالُ: طَلَبُ الدَّلِيلِ.

وَالدَّلِيلُ هُوَ الْمُرْشِدُ إِلَى الْمَطْلُوبِ؛ أَنَّهُ عَلَامَةٌ عَلَيْهِ.

Confidence is the presence of two possibilities, one of which is more likely than the other.

Doubt is the presence of two possibilities, neither of which is more likely than the other.

Uṣūl al-Fiqh deals with 'general proofs' of *Fiqh* and methodology to adduce them as 'proof' in evidential inquiry.

The chapters of *Uṣūl al-Fiqh*:

The types of speech, commands and prohibitions, general and specific wordings, ambiguous and clear wordings, apparent and interpreted, actions, abrogating and abrogated, consensus, reports, analogy, unlawfulness and permissibility, priority of evidences, the attributes of the *mufti* and the *mustafti*, and rulings related to the *mujtahid*.

Speech is minimally composed of: Two nouns, a noun and a verb, a verb and a particle, or a noun and a particle.

Speech is divided into commands and prohibitions, declarations and questions. It is also divided into wishes, suggestions, and oaths.

From another aspect, it is divided into literal and figurative speech.

Literal speech is that which is used in its ordinary meaning, or it is said that it is used as a specific term known to its audience.

Figurative speech is what goes beyond its ordinary meaning.

وَالظَّنُّ: تَجْوِيزُ أَمْرَيْنِ أَحَدُهُمَا أَظْهَرُ مِنَ الْآخَرِ.
وَالشُّكُّ: تَجْوِيزُ أَمْرَيْنِ لَا مَزِيَّةَ لِأَحَدِهِمَا عَلَى الْآخَرِ.
وَأُصُولِ الْفِقْهِ: طُرُقُهُ عَلَى سَبِيلِ الْإِجْمَالِ، وَكَيْفِيَّةُ الْاسْتِدْلَالِ

بِهَا.

وَأَبْوَابُ أُصُولِ الْفِقْهِ:

أَقْسَامُ الْكَلَامِ، وَالْأَمْرُ، وَالنَّهْيُ، وَالْعَامُّ، وَالْخَاصُّ،
وَالْمُجْمَلُ، وَالْمُبِينُ، وَالظَّاهِرُ، وَالْمُؤَوَّلُ، وَالْأَفْعَالُ، وَالنَّاسِخُ،
وَالْمَنْسُوخُ، وَالْإِجْمَاعُ، وَالْأَخْبَارُ، وَالْقِيَاسُ، وَالْحَظْرُ، وَالْإِبَاحَةُ،
وَتَرْتِيبُ الْأَدْلَةِ، وَصِفَةُ الْمُفْتِيِّ وَالْمُسْتَفْتِيِّ، وَأَحْكَامُ الْمُجْتَهِدِينَ.

فَأَمَّا أَقْسَامُ الْكَلَامِ؛ فَأَقْلُ مَا يَتَرَكَّبُ مِنْهُ الْكَلَامُ: اسْمَانِ، أَوْ
اسْمٌ وَفِعْلٌ، أَوْ اسْمٌ وَحَرْفٌ، أَوْ فِعْلٌ وَحَرْفٌ .

وَالْكَلامُ يَنْقَسِمُ إِلَى أَمْرٍ، وَنَهْيٍ، وَخَبَرٍ، وَاسْتِخْبَارٍ.

وَيَنْقَسِمُ أَيْضًا إِلَى تَمَنٍّ، وَعَرْضٍ، وَقَسَمٍ.

وَمِنْ وَجْهِ آخَرَ يَنْقَسِمُ إِلَى حَقِيقَةٍ، وَمَجَازٍ.

فَالْحَقِيقَةُ: مَا بَقِيَ فِي الْاسْتِعْمَالِ عَلَى مَوْضُوعِهِ.

وَقِيلَ: مَا اسْتُعْمِلَ فِيمَا اضْطَلِحَ عَلَيْهِ مِنَ الْمُحَاظَبَةِ.

وَالْمَجَازُ: مَا تُجَوِّزُ بِهِ عَنْ مَوْضُوعِهِ.

Literal speech can be either linguistic, legal, or customary.

Figurative speech can be by an addition, deletion, transfer, or metaphor.

Figurative by addition is like the saying of Allah Almighty: "There is nothing like unto Him," (42:11) in which an additional 'like' is added to emphasize the meaning.

Figurative by deletion is like the saying of Allah Almighty: "Ask the village," (12:82) meaning ask the people of the village.

Figurative by transfer is like the word 'gully' (*ghā'it*) to refer to what exits the human body, as the original linguistic meaning has been changed to another obscure meaning.

Figurative by metaphor is like the saying of Allah Almighty: "A wall wanting to collapse..." (18:77) as an inanimate thing has been compared to something else.

A command is a verbal demand obliging an inferior to perform an act. The verbal form that indicates command is *if'al* [the imperative].

When unqualified, and in the absence of contextual indications [to the contrary], it is interpreted as obligation, except when some evidence indicates that recommendation or permission is meant, in which case it is interpreted accordingly.

The correct view is that command does not require the repetition of the act, unless some evidence indicates that repetition was intended; nor does it require immediate action.

The command to bring about an action is a command to perform both the act and whatever is required for the completion of the act, just as the command to perform the prayers is a command enjoining the purity that paves the way for them. When the commanded act is performed, the one who is commanded is considered to have discharged his responsibility.

وَالْحَقِيقَةُ إِمَّا لَعْوِيَّةٌ، وَإِمَّا شَرْعِيَّةٌ، وَإِمَّا عُرْفِيَّةٌ.
وَالْمَجَازُ إِمَّا أَنْ يَكُونَ بِزِيَادَةٍ، أَوْ تَقْصَانٍ، أَوْ نَقْلِ، أَوْ اسْتِعَارَةٍ.
فَالْمَجَازُ بِالزِّيَادَةِ مِثْلُ قَوْلِهِ تَعَالَى: ﴿لَيْسَ كَمِثْلِهِ شَيْءٌ وَهُوَ
السَّمِيعُ الْبَصِيرُ﴾ [الشورى: ١١].

وَالْمَجَازُ بِالتَّقْصَانِ مِثْلُ قَوْلِهِ تَعَالَى: ﴿وَسئَلِ الْقَرْيَةَ﴾ [يوسف: ٨٢].
وَالْمَجَازُ بِالنَّقْلِ كَ (الْعَائِطِ) فِيمَا يَخْرُجُ مِنَ الْإِنْسَانِ.
وَالْمَجَازُ بِالاسْتِعَارَةِ كَقَوْلِهِ تَعَالَى: ﴿جِدَارًا يُرِيدُ أَنْ يَنْقَضَ﴾
[الكهف: ٧٧].

وَالْأَمْرُ: اسْتِدْعَاءُ الْفِعْلِ بِالقَوْلِ مِمَّنْ هُوَ دُونَهُ عَلَى سَبِيلِ
الْوُجُوبِ.
وَصِيغَتُهُ: افْعَلْ.

وَهِيَ عِنْدَ الْإِطْلَاقِ وَالتَّجَرُّدِ عَنِ الْقَرِينَةِ تُحْمَلُ عَلَيْهِ، إِلَّا مَا
دَلَّ الدَّلِيلُ عَلَى أَنَّ الْمُرَادَ مِنْهُ التَّنْبُّهُ أَوْ الْإِبَاحَةُ.
وَلَا يَفْتَضِي التَّكْرَارَ عَلَى الصَّحِيحِ؛ إِلَّا مَا دَلَّ الدَّلِيلُ عَلَى
قَصْدِ التَّكْرَارِ.
وَلَا يَفْتَضِي الْقَوْرَ.

وَالْأَمْرُ بِإِيجَادِ الْفِعْلِ: أَمْرٌ بِهِ، وَبِمَا لَا يَتِمُّ الْفِعْلُ إِلَّا بِهِ؛
كَالْأَمْرِ بِالصَّلَاةِ: أَمْرٌ بِالطَّهَارَةِ الْمُؤَدِّيَةِ إِلَيْهَا، وَإِذَا فُعِلَ يَخْرُجُ
الْمَأْمُورُ عَنِ الْعَهْدَةِ.

Those who are included in the command and prohibition and those who are not

Believers are included in those who Allah, The Most High addresses, but those who forget, children, and the insane are not included.

The disbelievers are addressed with the branches of the Law and with what is required for its soundness, which is Islam, as in the saying of the Almighty, "What caused you to enter fire? They will say: We were not among those who prayed." (74:42-43)

The command to do something is a prohibition of doing its opposite, and a prohibition of something is a command to do its opposite.

The prohibition is a call to leave an action by words to someone who is below, in the manner of an obligation which indicates the corruption/invalidity of what is prohibited.

As for the general meaning, it is what generalises two or more things. It comes from the phrase, 'I included Zayd and Umar in the gift,' and, 'I included all people in the gift.'

Its wordings are four: a single noun with the definite article,

الَّذِي يَدْخُلُ فِي الْأَمْرِ وَالنَّهْيِ، وَمَا لَا يَدْخُلُ

يَدْخُلُ فِي خِطَابِ اللَّهِ تَعَالَى الْمُؤْمِنُونَ .

وَالسَّاهِي، وَالصَّبِي، وَالْمَجْنُونُ غَيْرُ دَاخِلِينَ فِي الْخِطَابِ.

وَالْكَفَّارُ مُحَاطَبُونَ بِفُرُوعِ الشَّرَائِعِ، وَبِمَا لَا تَصِحُّ إِلَّا بِهِ، وَهُوَ الْإِسْلَامُ؛ لِقَوْلِهِ تَعَالَى: ﴿مَا سَلَكَكُمْ فِي سَقَرٍ * قَالُوا لَوْ نَكُنَّ مِنَ الْمُصَلِّينَ﴾ [المثدر: ٤٢-٤٣].

وَالْأَمْرُ بِالشَّيْءِ: نَهْيٌ عَنِ ضِدِّهِ، وَالنَّهْيُ عَنِ الشَّيْءِ: أَمْرٌ بِضِدِّهِ.

وَالنَّهْيُ: اسْتِدْعَاءُ التَّرْكِ بِالقَوْلِ مِمَّنْ هُوَ دُونَهُ عَلَى سَبِيلِ

الْوَجُوبِ، وَيَدُلُّ عَلَى فَسَادِ الْمُنْهَى عَنْهُ.

وَتَرْدٌ صِيغَةُ الْأَمْرِ وَالْمُرَادُ بِهِ الْإِبَاحَةُ، أَوِ التَّهْدِيدُ، أَوِ

التَّسْوِيَةُ، أَوِ التَّكْوِينُ.

وَأَمَّا الْعَامُّ فَهُوَ مَا عَمَّ شَيْئَيْنِ فَصَاعِدًا، مِنْ قَوْلِهِ: عَمَّمْتُ زَيْدًا

وَعَمْرًا بِالْعَطَاءِ، وَعَمَّمْتُ جَمِيعَ النَّاسِ بِالْعَطَاءِ.

وَأَلْفَاظُهُ أَرْبَعَةٌ:

الاسْمُ الْوَاحِدُ الْمُعْرَفُ بِاللَّامِ.

plural nouns with the definite article, undefined nouns such as 'whoever' for animate beings, 'whatever' for inanimate beings, 'whichever' for anything, 'wherever' for place, 'whenever' for time, 'whatever' for inquiry, consequences, and other things, and 'no' for indefinite nouns.

Generality is a characteristic of speech. It is not permissible to claim general application in actions which are not so and in whatever has a defined application.

Specific is the opposite of general. Specification is distinguished by part of the sentence. It is divided into dependent and independent clauses.

The dependent clause can be an exception, a restriction to conditions, and a restriction to characteristics.

An exception is excluding what would otherwise be included in the statement. It is only sound on condition that something remains for which the exception is made and on condition that it is connected to the statement.

It is possible for an exception to be stated before that for which it is made, and it is possible for a category to be excepted from a different category.

وَأَسْمُ الْجَمْعِ الْمَعْرُوفِ بِاللَّامِ.

وَالْأَسْمَاءُ الْمُبْهَمَةُ كـ(مَنْ) فِيمَنْ يَعْقِلُ، وَ(مَا) فِيمَا لَا يَعْقِلُ،
وَ(أَيُّ) فِي الْجَمِيعِ، وَ(أَيْنَ) فِي الْمَكَانِ، وَ(مَتَى) فِي الزَّمَانِ، وَ(مَا)
فِي الْأَسْتَفْهَامِ وَالْجَزَاءِ وَغَيْرِهِ.

و(لَا) فِي التَّكْرَارِ.

وَالْعُمُومُ مِنْ صِفَاتِ النُّطْقِ، وَلَا يَجُوزُ دَعْوَى الْعُمُومِ فِي
غَيْرِهِ؛ مِنَ الْفِعْلِ وَمَا يَجْرِي مَجْرَاهُ.

وَالْخَاصُّ يُقَابِلُ الْعَامَّ.

وَالتَّخْصِيصُ: تَمْيِيزُ بَعْضِ الْجُمْلَةِ.

وَهُوَ يَنْقَسِمُ إِلَى مُتَّصِلٍ، وَمُنْفَصِلٍ.

فَالْمُتَّصِلُ: الْأَسْتِثْنَاءُ، وَالتَّقْيِيدُ بِالشَّرْطِ، وَالتَّقْيِيدُ بِالصِّفَةِ.

وَالْأَسْتِثْنَاءُ: إِخْرَاجُ مَا لَوْلَاهُ لَدَخَلَ فِي الْكَلَامِ.

وَإِنَّمَا يَصِحُّ بِشَرْطِ أَنْ يَبْقَى مِنَ الْمُسْتَثْنَى مِنْهُ شَيْءٌ.

وَمِنْ شَرْطِهِ أَنْ يَكُونَ مُتَّصِلًا بِالْكَلَامِ.

وَيَجُوزُ تَقْدِيمُ الْأَسْتِثْنَاءِ عَلَى الْمُسْتَثْنَى مِنْهُ، وَيَجُوزُ الْأَسْتِثْنَاءُ

مِنَ الْجِنْسِ وَمِنْ غَيْرِهِ.

Conditions can potentially be stated after mentioning what is made conditional, and potentially before mentioning what is made conditional.

That which is restricted to a characteristic is given the same interpretation as if it were unqualified, such as a slave characterised by faith in some places and unqualified in other places. The unqualified is interpreted as though it were qualified by the characteristic.

It is possible for the Book (the Qur'an) to be specified by the Book, for the Book to be specified by the Sunnah, for the Sunnah to be specified by the Book, for the Sunnah to be specified by the Sunnah, and for statements to be specified by analogy. What we mean by 'statements' are the sayings of Allah Almighty and His Messenger, peace and blessings be upon him.

The **ambiguous** is what lacks clarity.

The **clear** is what turns something vague into something evident.

The **decisive text** (*al-naṣṣ*) is what cannot be interpreted except with one meaning, or it is said that it is interpreted as it was revealed. The word *nass* is etymologically derived from the brides *minassa*, i.e. her seat.

The **apparent meaning** is what can potentially be interpreted in two ways, one of which is more obvious than the other.

The **apparent meaning** is interpreted differently if there is an evidence to do so, which is called 'apparent by virtue of evidence.'

وَالشَّرْطُ يَجُوزُ أَنْ يَتَأَخَّرَ عَنِ الْمَشْرُوطِ، وَيَجُوزُ أَنْ يَتَقَدَّمَ عَلَى الْمَشْرُوطِ.

وَالْمُقَيَّدُ بِالصِّفَةِ يُحْمَلُ عَلَيْهِ الْمُطْلَقُ، كَالرَّقَبَةِ قِيَّدَتْ بِالْإِيمَانِ فِي بَعْضِ الْمَوَاضِعِ، وَأُطْلِقَتْ فِي بَعْضِ الْمَوَاضِعِ، فَيُحْمَلُ الْمُطْلَقُ عَلَى الْمُقَيَّدِ.

وَيَجُوزُ تَخْصِيصُ الْكِتَابِ بِالْكِتَابِ، وَتَخْصِيصُ الْكِتَابِ بِالسُّنَّةِ، وَتَخْصِيصُ السُّنَّةِ بِالْكِتَابِ، وَتَخْصِيصُ السُّنَّةِ بِالسُّنَّةِ، وَتَخْصِيصُ النَّطْقِ بِالْقِيَاسِ.

وَتَعْنِي بِالنُّطْقِ قَوْلَ اللَّهِ سُبْحَانَهُ وَتَعَالَى، وَقَوْلَ الرَّسُولِ ﷺ. وَالْمُجْمَلُ: مَا افْتَقَرَ إِلَى الْبَيَانِ.

وَالْبَيَانُ: إِخْرَاجُ الشَّيْءِ مِنْ حَيْزِ الْإِشْكَالِ إِلَى حَيْزِ التَّجَلِّيِّ. وَالنَّصُّ: مَا لَا يَحْتَمِلُ إِلَّا مَعْنَى وَاحِدًا.

وَقِيلَ: مَا تَأْوِيلُهُ تَنْزِيلُهُ.

وَهُوَ مُشْتَقٌّ مِنْ مَنَصَّةِ الْعُرُوسِ، وَهُوَ الْكُرْسِيُّ.

وَالظَّاهِرُ: مَا اخْتَمَلَ أَمْرَيْنِ، أَحَدُهُمَا أَظْهَرَ مِنَ الْآخَرِ.

وَيُؤَوَّلُ الظَّاهِرُ بِالذَّلِيلِ، وَيُسَمَّى الظَّاهِرُ بِالذَّلِيلِ.

Actions

The actions of the law-giver, are not vacuous, whether they are from the perspective of worship, obedience, or something else.

If there is an indication demonstrating the action is specific to him, then it is interpreted as specific to him.

If there is no indication, it is not specific to him as Allah Almighty says, 'Certainly in the Messenger of Allah you have an excellent example,' (33:21).

It is interpreted as an obligation, according to some of our scholars. Among our scholars are some who said it should be interpreted as a recommendation, and among them are those who suspended judgment.

If it were from a perspective other than worship and obedience, it is interpreted as permissible.

The tacit approval given by the law-giver to a statement issued by anyone is itself a statement of the law-giver. The tacit approval of an action is his action.

What was done in his time but not in his presence, which he knew about and did not reject, is judged as if it were done in his presence.

As for abrogation (*al-naskh*), its linguistic meaning is 'removal'

الأَفْعَالُ

فِعْلٌ صَاحِبِ الشَّرِيعَةِ؛ لَا يَخْلُو إِمَّا أَنْ يَكُونَ عَلَى وَجْهِ الْقُرْبَةِ وَالطَّاعَةِ، أَوْ غَيْرَ ذَلِكَ، فَإِنْ دَلَّ دَلِيلٌ عَلَى الْاِخْتِصَاصِ بِهِ؛ يُحْمَلُ عَلَى الْاِخْتِصَاصِ، وَإِنْ لَمْ يَدَلَّ لَا يُخَصَّصُ بِهِ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: ﴿لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ﴾ [الأحزاب: 21]، فَيُحْمَلُ عَلَى الْوُجُوبِ عِنْدَ بَعْضِ أَصْحَابِنَا، وَمِنْ أَصْحَابِنَا مَنْ قَالَ: يُحْمَلُ عَلَى النَّذْبِ، وَمِنْهُمْ مَنْ قَالَ: يَتَوَقَّفُ عَنْهُ.

فَإِنْ كَانَ عَلَى وَجْهِ غَيْرِ الْقُرْبَةِ وَالطَّاعَةِ؛ فَيُحْمَلُ عَلَى الْإِبَاحَةِ فِي حَقِّهِ وَحَقَّتْنَا.

وَإِفْرَارُ صَاحِبِ الشَّرِيعَةِ عَلَى الْقَوْلِ الصَّادِرِ مِنْ أَحَدٍ هُوَ قَوْلُ صَاحِبِ الشَّرِيعَةِ.

وَإِفْرَارُهُ عَلَى الْفِعْلِ: كَفِعْلِهِ.

وَمَا فُعِلَ فِي وَقْتِهِ فِي غَيْرِ مَجْلِسِهِ، وَعَلِمَ بِهِ، وَلَمْ يُنْكِرْهُ = فَحُكْمُهُ حُكْمُ مَا فُعِلَ فِي مَجْلِسِهِ.

وَأَمَّا النَّسْخُ فَمَعْنَاهُ لُغَةً: الْإِزَالَةُ.

or it is said its meaning is 'transfer,' from their phrase, 'I abrogated what was in this book,' that is, I transferred it.

Its definition is an address indicating the lifting of a ruling established by a previous address, without which it would remain in effect.

It is possible for writing to be abrogated but the ruling to remain, or for the ruling to be abrogated but the writing to remain.

Abrogation can be by replacement or without replacement, and to what is stricter or to what is more lenient.

It is possible for the Book to be abrogated the Book, the Sunnah to be abrogated by the Book, and the Sunnah to be abrogated by the Sunnah.

It is possible for a unanimous report to be abrogated by another unanimous report, and a solitary report (*al-āhād*) to be abrogated by another solitary or unanimous report. It is not possible for a unanimous report to be abrogated by a solitary report.

وَقِيلَ: مَعْنَاهُ النَّقْلُ، مِنْ قَوْلِهِمْ: نَسَخْتُ مَا فِي هَذَا الْكِتَابِ؛
أَيُّ نَقَلْتُهُ.

وَحَدُّهُ هُوَ الْخِطَابُ الدَّالُّ عَلَى رَفْعِ الْحُكْمِ الثَّابِتِ بِالْخِطَابِ
الْمُتَقَدِّمِ؛ عَلَى وَجْهِ لَوْلَاهُ لَكَانَ ثَابِتًا، مَعَ تَرَاخِيهِ عَنْهُ.

وَيَجُوزُ نَسْخُ الرَّسْمِ وَبَقَاءُ الْحُكْمِ، وَنَسْخُ الْحُكْمِ وَبَقَاءُ
الرَّسْمِ، وَالنَّسْخُ إِلَى بَدَلٍ وَإِلَى غَيْرِ بَدَلٍ، وَإِلَى مَا هُوَ أَعْلَى وَإِلَى مَا
هُوَ أَدْنَى.

وَيَجُوزُ نَسْخُ الْكِتَابِ بِالْكِتَابِ، وَنَسْخُ السُّنَّةِ بِالْكِتَابِ، وَنَسْخُ
السُّنَّةِ بِالسُّنَّةِ.

وَيَجُوزُ نَسْخُ الْمُتَوَاتِرِ بِالْمُتَوَاتِرِ مِنْهُمَا، وَنَسْخُ الْآحَادِ بِالْآحَادِ
وَبِالْمُتَوَاتِرِ، وَلَا يَجُوزُ نَسْخُ الْمُتَوَاتِرِ بِالْآحَادِ.

Section regarding contradiction

If two statements contradict each other, they are inevitably either two general statements, two specific statements, one is general and the other is specific, or each of them is general from one perspective and specific from another perspective.

If they are two general statements that can be reconciled, they are reconciled. If they cannot be reconciled, judgment is suspended if their historical order is not known. If the historical order is known, the previous statement is abrogated by the later statement. It is the same if they are two specific statements.

If one of them is a general statement and the other is a specific statement, the general statement is restricted by the specific statement. If one of them is general from a perspective and specific from another perspective, the generality of each is restricted by the specification of the other.

As for **consensus** (*al-ijmā'*), it is the agreement of the scholars of an era on a new ruling. By 'scholars' we mean 'jurists' and by 'new' we mean a new legal issue.

فَضْلُ فِي التُّعَارُضِ

إِذَا تَعَارَضَ نُظْمَانِ؛ فَلَا يَخْلُو إِمَّا أَنْ يَكُونَا عَامِّيْنِ، أَوْ
خَاصِّيْنِ، أَوْ أَحَدُهُمَا عَامًّا وَالْآخَرُ خَاصًّا، أَوْ كُلُّ وَاحِدٍ مِنْهُمَا
عَامًّا مِنْ وَجْهِ، وَخَاصًّا مِنْ وَجْهِ.

فَإِنْ كَانَا عَامِّيْنِ؛ فَإِنْ أُمِّكَنَّ الْجَمْعُ بَيْنَهُمَا جُمِعَ، وَإِنْ لَمْ
يُمْكِنِ الْجَمْعُ بَيْنَهُمَا يَتَوَقَّفُ فِيهِمَا؛ إِنْ لَمْ يُعْلَمِ التَّارِيخُ؛ فَإِنْ عُلِمَ
التَّارِيخُ يُنْسَخُ الْمُتَقَدِّمُ بِالْمُتَأَخِّرِ، وَكَذَا إِنْ كَانَا خَاصِّيْنِ.

وَإِنْ كَانَ أَحَدُهُمَا عَامًّا وَالْآخَرُ خَاصًّا؛ فَيُخَصِّصُ الْعَامُّ
بِالْخَاصِّ.

وَإِنْ كَانَ أَحَدُهُمَا عَامًّا مِنْ وَجْهِ، وَخَاصًّا مِنْ وَجْهِ؛
فَيُخَصِّصُ عُمُومُ كُلِّ وَاحِدٍ مِنْهُمَا بِخُصُوصِ الْآخَرِ.

وَأَمَّا الْإِجْمَاعُ فَهُوَ اتِّفَاقُ عُلَمَاءِ الْعَصْرِ عَلَى حُكْمِ الْحَادِثَةِ.

وَنَعْنِي بِالْعُلَمَاءِ الْفُقَهَاءَ.

وَنَعْنِي بِالْحَادِثَةِ الْحَادِثَةَ الشَّرْعِيَّةَ.

The consensus of this nation is a proof in itself, due to his saying, peace and blessings be upon him, 'My nation will not gather together upon misguidance.' The law has related the immunity of this nation from error (in consensus).

Consensus is a binding proof for the following generation and in each generation thereafter. It is not a condition that the first generation pass away, according to the correct opinion.

If we say that the passing of the first generation is a condition, the opinion of one would be considered who was born in their lifetimes, acquired legal knowledge, and became a legal expert, that they may retract this ruling.

Consensus is valid by their statements and actions, or the widespread statements and actions of some of them while the remaining jurists are silent. The statement of a single companion is not a binding proof over others, according to the new school of al-Shāfi'ī.

As for reports, they are what has been narrated, including what is true and what is false. They are divided into two categories: solitary reports and unanimous reports.

Unanimous reports necessarily result in accurate knowledge. They are reported by groups who could not have conspired upon a lie, from those similar to them up to the end of transmission, and being what was originally witnessed or heard, not from independent reasoning.

وَإِجْمَاعُ هَذِهِ الْأُمَّةِ حُجَّةٌ دُونَ غَيْرِهَا؛ لِقَوْلِهِ ﷺ: «لَا تَجْتَمِعُ أُمَّتِي عَلَى ضَلَالَةٍ».

وَالشَّرْعُ وَرَدَ بِعِصْمَةِ هَذِهِ الْأُمَّةِ.

وَإِجْمَاعُ حُجَّةٌ عَلَى الْعَصْرِ الثَّانِي، وَفِي أَيِّ عَصْرِ كَانَ.

وَلَا يُشْتَرَطُ انْقِرَاضُ الْعَصْرِ عَلَى الصَّحِيحِ.

فَإِنْ قُلْنَا: انْقِرَاضُ الْعَصْرِ شَرْطٌ، يُعْتَبَرُ قَوْلُ مَنْ وُلِدَ فِي حَيَاتِهِمْ، وَتَفَقَّهُ وَصَارَ مِنْ أَهْلِ الْاجْتِهَادِ، وَلَهُمْ أَنْ يَرْجِعُوا عَنْ ذَلِكَ الْحُكْمِ.

وَإِجْمَاعٌ يَصِحُّ بِقَوْلِهِمْ وَبِفِعْلِهِمْ، وَبِقَوْلِ الْبَعْضِ وَبِفِعْلِ الْبَعْضِ، وَأَنْتِشَارِ ذَلِكَ وَسُكُوتِ الْبَاقِينَ عَنْهُ.

وَقَوْلُ الْوَاحِدِ مِنَ الصَّحَابَةِ لَيْسَ بِحُجَّةٍ عَلَى غَيْرِهِ، عَلَى الْقَوْلِ الْجَدِيدِ.

وَأَمَّا الْأَخْبَارُ؛ فَالْخَبَرُ مَا يَدْخُلُهُ الصِّدْقُ وَالْكَذِبُ.

وَالْخَبَرُ يَنْقَسِمُ إِلَى قِسْمَيْنِ: آحَادٍ وَمُتَوَاتِرٍ.

فَالْمُتَوَاتِرُ: مَا يُوجِبُ الْعِلْمَ، وَهُوَ أَنْ يَرَوِيَ جَمَاعَةٌ لَا يَقَعُ التَّوَاطُّؤُ عَلَى الْكَذِبِ مِنْ مِثْلِهِمْ، إِلَى أَنْ يَنْتَهِيَ إِلَى الْمُخْبَرِ عَنْهُ، وَيَكُونُ فِي الْأَصْلِ عَنْ مُشَاهَدَةٍ أَوْ سَمَاعٍ، لَا عَنِ اجْتِهَادٍ.

Solitary reports are those which are acted upon but which do not necessarily result in accurate knowledge. They are divided into *mursal* and attributed transmissions *musnad*.

If *mursal* reports are from those besides the companions, they are not a binding proof unless they are the reports of Sa'īd ibn al-Musayyib, as they have been investigated and found to be attributable to the Prophet, peace and blessings be upon him.

Reports with imprecise transmission terminology (saying 'from' or 'an) are included in attributed reports.

If the Shaykh reads a report, it is permissible for the narrator to say 'he narrated to me,' (*haddathanī*) or 'he informed me,' (*akhbarānī*). If the narrator reads a report to the Shaykh, he says 'he informed me' and he does not say 'he narrated to me.' If the Shaykh grants him license without reading, he says 'he granted me license' or 'he informed me by license.'

As for analogy, it is referring a derived case back to the original case through an effective cause (*'illah*) that connects them in the ruling. It is divided into three categories: analogy by effective cause, analogy by indication, and analogy by similarity.

وَالْأَحَادُ هُوَ الَّذِي يُوجِبُ الْعَمَلَ، وَلَا يُوجِبُ الْعِلْمَ.

وَيَنْقَسِمُ إِلَى مُرْسَلٍ، وَمُسْنَدٍ.

فَالْمُسْنَدُ: مَا اتَّصَلَ إِسْنَادُهُ.

وَالْمُرْسَلُ: مَا لَمْ يَتَّصِلْ إِسْنَادُهُ.

فَإِنْ كَانَ مِنْ مَرَّاسِيلِ غَيْرِ الصَّحَابَةِ فَلَيْسَ بِحُجَّةٍ؛ إِلَّا مَرَّاسِيلَ

سَعِيدِ بْنِ الْمُسَيَّبِ؛ فَإِنَّهَا فَتُّشَتْ فَوُجِدَتْ مَسَانِيدَ عَنِ النَّبِيِّ ﷺ.

وَالْعَنْعَنَةُ تَدْخُلُ عَلَى الْأَسَانِيدِ.

وَإِذَا قَرَأَ الشَّيْخُ يَجُوزُ لِلرَّوَايِ أَنْ يَقُولَ: (حَدَّثَنِي) أَوْ

(أَخْبَرَنِي).

وَإِنْ قَرَأَ هُوَ عَلَى الشَّيْخِ فَيَقُولُ: (أَخْبَرَنِي)، وَلَا يَقُولُ:

(حَدَّثَنِي).

وَإِنْ أَجَارَهُ الشَّيْخُ مِنْ غَيْرِ رِوَايَةٍ فَيَقُولُ: (أَجَازَنِي) أَوْ

(أَخْبَرَنِي إِجَازَةً).

وَأَمَّا الْقِيَاسُ فَهُوَ رَدُّ الْفَرْعِ إِلَى الْأَصْلِ؛ بِعِلَّةٍ تَجْمَعُهُمَا فِي

الْحُكْمِ.

وَهُوَ يَنْقَسِمُ إِلَى ثَلَاثَةِ أَقْسَامٍ: إِلَى قِيَاسِ عِلَّةٍ، وَقِيَاسِ دَلَالَةٍ،

وَقِيَاسِ شَبْهِ.

Analogy by effective cause contains an effective cause that necessitates the ruling.

Analogy by indication is inferred by one of two identical cases from the other. It is that the effective cause indicates the ruling but does not necessitate the ruling.

Analogy by similarity is a derived case relatable to two original cases. It is not resorted to if the previous types of analogy are possible.

Among the conditions of the derived case is that it be suitable to the original case. Among the conditions of the original case is that it be established by evidence and agreed upon by conflicting parties.

Among the conditions of the effective cause is that it be continuous in its effects, such that it does not alter its wording or meaning.

Among the conditions of the ruling is that it be similar to the effective cause in negation or affirmation, that is, in its existence or non-existence. If the effective cause is found, the ruling is found. The effective cause is what results in the ruling.

As for forbidden and permissible, among people are those who say that things are forbidden except if the law permits them. If no indication is found in the law to permit them, the default position is adhered to, which is that it is forbidden.

فَقِيَاسُ الْعِلَّةِ: مَا كَانَتْ الْعِلَّةُ فِيهِ مُوجِبَةً لِلْحُكْمِ.

وَقِيَاسُ الدَّلَالَةِ هُوَ الاستِدْلَالُ بِأَحَدِ النِّظِيرَيْنِ عَلَى الْآخَرِ، وَهُوَ أَنْ تَكُونَ الْعِلَّةُ دَالَّةً عَلَى الْحُكْمِ، وَلَا تَكُونَ مُوجِبَةً لِلْحُكْمِ.

وَقِيَاسُ الشَّبَهِ هُوَ الفَرْعُ الْمُتَرَدِّدُ بَيْنَ أَضْلَيْنِ، فَيُلْحَقُ بِأَكْثَرِهِمَا شَبَهًا، وَلَا يُصَارُ إِلَيْهِ مَعَ إِمْكَانِ مَا قَبْلَهُ.

وَمِنْ شَرْطِ الفَرْعِ أَنْ يَكُونَ مُنَاسِبًا لِالأَصْلِ.

وَمِنْ شَرْطِ الأَصْلِ أَنْ يَكُونَ ثَابِتًا بِدَلِيلٍ مُتَّفَقٍ عَلَيْهِ بَيْنَ الحَضَمَيْنِ.

وَمِنْ شَرْطِ الْعِلَّةِ أَنْ تَطَّرِدَ فِي مَغْلُولَاتِهَا، فَلَا تَنْتَقِضَ لَفْظًا وَلَا مَعْنَى.

وَمِنْ شَرْطِ الْحُكْمِ أَنْ يَكُونَ مِثْلَ الْعِلَّةِ فِي النَّفْيِ وَالْإِثْبَاتِ.

وَالْعِلَّةُ هِيَ الْجَالِيَّةُ لِلْحُكْمِ.

وَالْحُكْمُ هُوَ الْمَجْلُوبُ لِلْعِلَّةِ.

وَأَمَّا الحَظْرُ وَالْإِبَاحَةُ؛ فَمِنَ النَّاسِ مَنْ يَقُولُ: إِنَّ الأَشْيَاءَ عَلَى الحَظْرِ؛ إِلَّا مَا أَبَاحَتْهُ الشَّرِيعَةُ، فَإِنْ لَمْ يُوجَدْ فِي الشَّرِيعَةِ مَا يَدُلُّ عَلَى الإِبَاحَةِ يَتَمَسَّكُ بِالأَصْلِ؛ وَهُوَ الحَظْرُ.

\\And among people are those who say the opposite, which is that the default position of things is permission except if the law forbids them.

The meaning of 'presumption of continuity' (*istiṣḥāb al-ḥāl*) which is binding is that the default position (*al-aṣl*) is taken in the absence of legal evidence.

As for evidences, precedence is given to the obvious over the obscure, to certain knowledge over certain suspicion, to transmission over analogy, and to obvious analogy over obscure analogy.

If a statement is found which changes the default position, the statement is acted upon, otherwise continuity is presumed.

Among the conditions of the legal expert are that he is knowledgeable in jurisprudence, its roots, its branches, its disagreements, and its doctrines, that he is completely aware of the indications of independent legal reasoning, recognizing what is needed to derive rulings, the exegesis of verses related to the rulings, and the reports related to them.

Among the conditions of one seeking a verdict is that he is among those incapable of independent legal reasoning, so he conforms to the legal expert in his verdict. It is not for the scholar to blind-follow others.

وَمِنَ النَّاسِ مَن يَقُولُ بِضِدِّهِ، وَهُوَ أَنَّ الْأَصْلَ فِي الْأَشْيَاءِ أَنَّهَا عَلَى الْإِبَاحَةِ؛ إِلَّا مَا حَظَرَهُ الشَّرْعُ.

وَمَعْنَى اسْتِصْحَابِ الْحَالِ: أَنَّ يُسْتَصْحَبَ الْأَصْلُ عِنْدَ عَدَمِ الدَّلِيلِ الشَّرْعِيِّ.

وَأَمَّا الْأَدِلَّةُ فَيَقْدَمُ الْجَلِيُّ مِنْهَا عَلَى الْخَفِيِّ.

وَالْمُوجِبُ لِلْعِلْمِ عَلَى الْمُوجِبِ لِلظَّنِّ.

وَالنُّطْقُ عَلَى الْقِيَاسِ.

وَالْقِيَاسُ الْجَلِيُّ عَلَى الْخَفِيِّ.

فَإِنْ وُجِدَ فِي النُّطْقِ مَا يُعَيِّرُ الْأَصْلَ؛ وَإِلَّا فَيُسْتَصْحَبُ الْحَالُ.

وَمِنْ شَرْطِ الْمُفْتِيِّ أَنْ يَكُونَ عَالِمًا بِالْفِقْهِ: أَضْلًا وَفَرَعًا،

خِلَافًا وَمَذْهَبًا.

وَأَنْ يَكُونَ كَامِلَ الْأَلَةِ فِي الاجْتِهَادِ، عَارِفًا بِمَا يُحْتَاجُ إِلَيْهِ فِي

اسْتِنْبَاطِ الْأَحْكَامِ: مِنَ النُّحْوِ وَاللُّغَةِ وَمَعْرِفَةِ الرُّجَالِ، وَتَفْسِيرِ

الآيَاتِ الْوَارِدَةِ فِي الْأَحْكَامِ، وَالْأَخْبَارِ الْوَارِدَةِ فِيهَا.

وَمِنْ شَرْطِ الْمُسْتَفْتِيِّ أَنْ يَكُونَ مِنْ أَهْلِ التَّقْلِيدِ؛ فَيَقْلُدُ الْمُفْتِيَّ

فِي الْفُتْيَا.

وَلَيْسَ لِلْعَالِمِ أَنْ يَقْلُدَ.

Blind-following (*al-taqīd*) is to accept the opinion of someone without knowing its proof.

Based on this, accepting the statement of the Prophet, peace and blessings be upon him, is called conformity.

Among them are those who said legal conformity is to accept the opinion of someone without knowing on what basis he said it.

If we say that the Prophet, peace and blessings be upon him, spoke by analogy, it is permissible to refer to acceptance his statement as conformity.

As for independent legal reasoning (*al-ijtihād*), it is to expend the sum of one's efforts in achieving the objective. If the expert jurist has mastery over the mechanisms of legal reasoning in secondary issues and his verdict is correct, he will have two rewards. If he reasons to a verdict and is mistaken, he will have one reward.

It is not possible that every expert jurist is correct in foundational theological issues, for that would lead to declaring the people of misguidance to be correct, such as pagans, unbelievers, and heretics.

The evidence of those who say that not every expert jurist is correct in secondary issues is his saying, peace and blessings be upon him, "Whoever strives in his reasoning and is correct, he will have two rewards. Whoever strives in his reasoning and is mistaken, he will have one reward."

The view of the evidence is that the Prophet, peace and blessings be upon him, declared an expert jurist to be mistaken sometimes and to be correct other times.

والتَّقْلِيدُ: قَبُولُ قَوْلِ الْقَائِلِ بِلَا حُجَّةٍ.

فَعَلَى هَذَا قَبُولُ قَوْلِ النَّبِيِّ ﷺ يُسَمَّى تَقْلِيدًا.

وَمِنْهُمْ مَنْ قَالَ: التَّقْلِيدُ: قَبُولُ قَوْلِ الْقَائِلِ وَأَنْتَ لَا تَدْرِي مِنْ

أَيِّنَ قَالَهُ.

فَإِنْ قُلْنَا: إِنَّ النَّبِيَّ ﷺ كَانَ يَقُولُ بِالْقِيَاسِ، فَيَجُوزُ أَنْ يُسَمَّى

قَبُولُ قَوْلِهِ تَقْلِيدًا.

وَأَمَّا الاجْتِهَادُ فَهُوَ بَدَلُ الْوُسْعِ فِي بُلُوغِ الْغَرَضِ.

فَالْمُجْتَهِدُ إِنْ كَانَ كَامِلَ الْآلَةِ فِي الاجْتِهَادِ؛ فَإِنْ اجْتَهَدَ فِي الْفُرُوعِ

فَأَصَابَ؛ فَلَهُ أَجْرَانِ، وَإِنْ اجْتَهَدَ فِيهَا وَأَخْطَأَ؛ فَلَهُ أَجْرٌ وَاحِدٌ.

وَمِنْهُمْ مَنْ قَالَ: كُلُّ مُجْتَهِدٍ فِي الْفُرُوعِ مُصِيبٌ.

وَلَا يَجُوزُ أَنْ يُقَالَ: كُلُّ مُجْتَهِدٍ فِي الْأَصُولِ الْكَلَامِيَّةِ

مُصِيبٌ؛ لِأَنَّ ذَلِكَ يُؤَدِّي إِلَى تَصْوِيبِ أَهْلِ الضَّلَالَةِ؛ مِنَ النَّصَارَى

وَالْمَجُوسِ وَالْكَفَّارِ وَالْمُلْحِدِينَ.

وَدَلِيلُ مَنْ قَالَ: لَيْسَ كُلُّ مُجْتَهِدٍ فِي الْفُرُوعِ مُصِيبًا: قَوْلُهُ ﷺ:

«مَنْ اجْتَهَدَ وَأَصَابَ فَلَهُ أَجْرَانِ، وَمَنْ اجْتَهَدَ وَأَخْطَأَ فَلَهُ أَجْرٌ

وَاحِدٌ».

وَجَهُّ الدَّلِيلِ: أَنَّ النَّبِيَّ ﷺ خَطَأَ الْمُجْتَهِدَ تَارَةً، وَصَوَّبَهُ

أُخْرَى.

