

الورقات

عبد الملك بن عبد الله بن يوسف بن محمد الجويني، أبو المعالي، ركن الدين، الملقب
بإمام الحرمين (ت ٤٧٨ هـ)

ومعها الحاشية الحنبلية

مطلق الجاسر

Al-Waraqāt

By ‘Abd al-Malik ibn ‘Abd Allāh ibn Yūsuf ibn Muḥammad al-
Juwaynī, Abū al-Ma‘ālī, Rukn al-Dīn, known as Imām al-
Ḥaramayn (d. 478 AH / 1085 CE).

Accompanied by the Ḥanbalī Marginalia

By Muṭṭlaq al-Jāsir

Translation by

Hatem al-Haj

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

All praise is due to Allah, the Lord of the worlds.

وصلّى الله على سيدنا محمد وآله وصحبه أجمعين

And may Allah send blessings upon our master Muḥammad, his
.family, and his companions, all together

قال الشيخ الإمام العالم أبو المعالي عبد الملك بن عبد الله بن يوسف
الجويني رحمه الله:

The Shaykh, Imām, and scholar Abū al-Ma‘ālī ‘Abd al-Malik ibn
‘Abd Allāh ibn Yūsuf al-Juwaynī, may Allah have mercy on him,
:said

[معنى أصول الفقه]

[The Meaning of Uṣūl al-Fiqh]

These are pages that comprise sections of the principles of jurisprudence (<i>uṣūl al-fiqh</i>), which is composed of two distinct parts: 1. Foundation (al-Aṣl): That upon which other matters are built. Branch (al-Far'): That which is built upon something else. 2. Fiqh is the knowledge of legal rulings in the Sharī'ah that are derived through <i>ijtihād</i> (independent reasoning).²	هَذِهِ وَرَقَاتٌ تَشْتَمِلُ عَلَى فُصُولٍ مِنْ أُصُولِ الْفِقْهِ وَذَلِكَ مُؤَلَّفٌ مِنْ جَزَائِنِ مُفْرَدِينَ. 1. فَأَلْأَصْلُ مَا بُنِيَ عَلَيْهِ غَيْرُهُ وَالْفَرْعُ مَا يُبْنَى عَلَى غَيْرِهِ. 2. وَالْفِقْهُ مَعْرِفَةُ الْأَحْكَامِ الشَّرْعِيَّةِ الَّتِي طَرِيقُهَا الْإِجْتِهَادُ.¹
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¹ الجاسر: قال الإمام ابن النجار الفتوحى (رحمه الله) في «مختصر التحرير» معرفًا الفقه: «معرفة الأحكام الشرعية الفرعية، بالفعل أو القوة القريبة» اه، وقال في شرحه «شرح الكوكب المنير»: «وهذا الحد لأكثر أصحابنا المتقدمين».

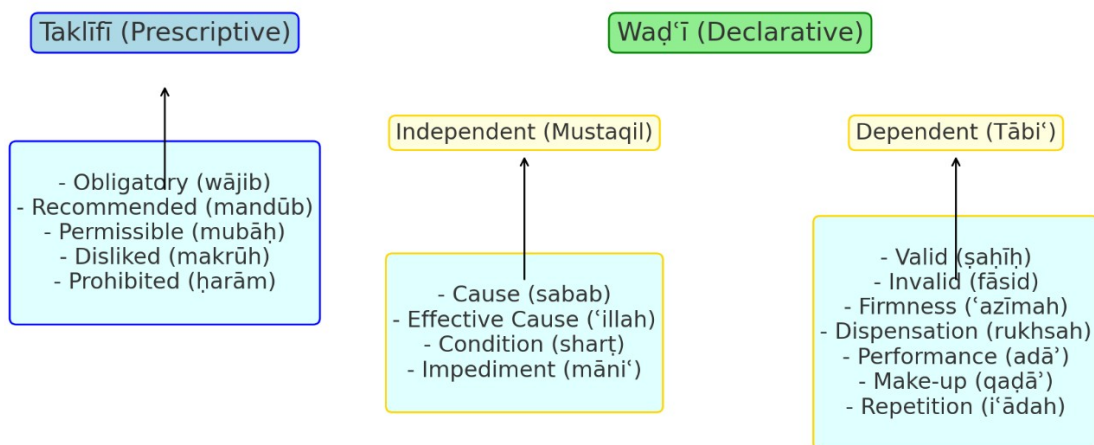
² Al-Jāsir: Imām Ibn al-Najjār al-Futūḥī (rahimahu Allāh) defined fiqh in *Mukhtaṣar al-Taḥrīr* as: "Knowledge of the detailed rulings of the Sharī'ah, whether actual or potential (proximate potentiality)," end quote. He further commented in his *Sharḥ al-Kawkab al-Munīr*: "This definition is adopted by most of our early scholars."

[أنواع الحكم]

[Types of Rulings]

The rulings are seven: wājib (obligatory), mandūb (recommended), mubāḥ (permissible), maḥẓūr (prohibited), makrūh (disliked), ṣaḥīḥ (valid), and bāṭil (invalid).	وَالْأَحْكَامُ سَبْعَةٌ الْوَاجِبُ وَالْمَنْدُوبُ وَالْمُبَاحُ وَالْمَحْظُورُ وَالْمَكْرُوهُ وَالصَّحِيحُ وَالْبَاطِلُ.
1. Obligatory (Wājib): Actions rewarded if performed and punishable if omitted.	1. فَأَلْوَاجِبُ مَا يُثَابُ عَلَى فَعْلِهِ وَيُعَاقَبُ عَلَى تَرْكِهِ
2. Recommended (Mandūb): Actions rewarded if performed but not punishable if omitted.	2. وَالْمَنْدُوبُ مَا يُثَابُ عَلَى فَعْلِهِ وَلَا يُعَاقَبُ عَلَى تَرْكِهِ
3. Permissible (Mubāḥ): Actions neither rewarded nor punished, regardless of performance.	3. وَالْمُبَاحُ مَا لَا يُثَابُ عَلَى فَعْلِهِ وَلَا يُعَاقَبُ عَلَى تَرْكِهِ
4. Prohibited (Maḥẓūr): Actions rewarded if avoided and punishable if committed.	4. وَالْمَحْظُورُ مَا يُثَابُ عَلَى تَرْكِهِ وَيُعَاقَبُ عَلَى فَعْلِهِ
5. Disliked (Makrūh): Actions rewarded if avoided but not punishable if committed.	5. وَالْمَكْرُوهُ مَا يُثَابُ عَلَى تَرْكِهِ وَلَا يُعَاقَبُ عَلَى فَعْلِهِ
6. Valid (Ṣaḥīḥ): Actions considered effective and valid.	6. وَالصَّحِيحُ مَا يَتَعَلَّقُ بِهِ النُّفُوذُ وَيَعْتَدُ بِهِ
7. Invalid (Bāṭil): Actions not considered effective or valid.	7. وَالْبَاطِلُ مَا لَا يَتَعَلَّقُ بِهِ النُّفُوذُ وَلَا يَعْتَدُ بِهِ

Summary of Shar'ī Rulings: Taklīfī and Waḍ'ī



[الفرق بين الفقه والعلم والظن والشك]

[Difference Between Fiqh, Knowledge, Assumption, and Doubt]

[Fiqh and Knowledge:] • Fiqh is more specific than knowledge ('ilm). • Knowledge: recognizing something as it truly is.⁵ • Ignorance: Perceiving something contrary to reality. [Types of Knowledge:] 1. Immediate (Self-Evident) Knowledge ('Ilm Ḍarūrī): ○ Knowledge acquired without reasoning or inference. ○ Examples include sensory perception through hearing, sight, smell, taste, or touch, as well as mutawātir (mass-transmitted) reports. 2. Acquired Knowledge ('Ilm Muktasab): ○ Knowledge that depends on reasoning and inference. ○ Reasoning (Naẓar): Reflection on the subject. ○ Inference (Istidlāl): Seeking evidence. ○ Evidence (Daḥīl): That which guides to the intended conclusion, serving as a signpost. Assumption (Ẓann): When two possibilities exist, with one being more likely. Doubt (Shakk): When two possibilities exist without a clear preference for either. The Science of Uṣūl al-Fiqh: addresses its [fiqh's] evidences in a general manner and how to use them [for the derivation of rulings].⁶	[بين الفقه والعلم] • وَالْفَقْهُ أَخْصُ مِنَ الْعِلْمِ • وَالْعِلْمُ مَعْرِفَةُ الْمَعْلُومِ عَلَى مَا هُوَ بِهِ.³ • وَالْجَهْلُ تَصَوُّرُ الشَّيْءِ عَلَى خِلَافِ مَا هُوَ بِهِ [أنواع العلم] 1. وَالْعِلْمُ الضَّرُورِيُّ • مَا لَمْ يَقَعْ عَنْ نَظَرٍ وَاسْتِدْلَالٍ • كَالْعِلْمِ الرَّاقِعِ بِإِخْدَى الْحَوَاسِ الْخَمْسِ الَّتِي هِيَ السَّمْعُ وَالْبَصَرُ وَالشَّمُّ وَالذَّوْقُ وَالْمَسُّ أَوْ التَّوَاتُرُ 2. وَأَمَّا الْعِلْمُ الْمُكْتَسَبُ • فَهُوَ الْمُؤَفَّفُ عَلَى النَّظَرِ وَالِاسْتِدْلَالِ • وَالنَّظَرُ هُوَ الْفِكْرُ فِي حَالِ الْمَنْظُورِ فِيهِ • وَالِاسْتِدْلَالُ طَلَبُ الدَّلِيلِ • وَالدَّلِيلُ هُوَ الْمُرْشِدُ إِلَى الْمَطْلُوبِ لِأَنَّهُ عَلَامَةٌ عَلَيْهِ وَالظَّنُّ: تَجَوِيزُ أَمْرَيْنِ أَحَدُهُمَا أَظْهَرَ مِنَ الْآخَرِ وَالشَّكُّ: تَجَوِيزُ أَمْرَيْنِ لَا مَزِيَّةَ لِأَحَدِهِمَا عَلَى الْآخَرِ وَعِلْمُ أَصُولِ الْفِقْهِ: طَرَقُهُ عَلَى سَبِيلِ الْإِجْمَالِ وَكَيْفِيَّةِ الْإِسْتِدْلَالِ بِهَا.⁴
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³ الجاسر: ذكر المرداوي (رحمه الله) تعريف المصنف هذا في كتابه «التحرير شرح التحرير» (1/219)، وذكر غيره، ثم قال: «وأصحها: صفة يُمَيِّزُ بِهَا تَمَيِّزاً جَازِماً مُطَابِقاً، فَلَا يَدْخُلُ إِدْرَاكُ الْحَوَاسِ، خِلَافاً لِلْأَشْعَرِيِّ وَجَمْعٍ» اهـ.

⁴ الحاج: «هو العلم بالقواعد التي تستنبط بها الأحكام»، كما في شرح مختصر الروضة وشرح الكوكب المنير.

⁵ Al-Jāsir: Al-Mardāwī (rA) mentioned this definition by the author in *al-Taḥrīr Sharḥ al-Taḥrīr* (1:219) and other definitions. He then stated: "The most accurate is: a quality by which something is distinguished with definitive and accurate discernment, thus excluding sensory perception, contrary to al-Ash'arī and others," end quote.

⁶ **Al-Haj:** "It is the knowledge of the principles through which legal rulings are derived," as stated in *Sharḥ Mukhtaṣar al-Rawḍah* and *Sharḥ al-Kawkab al-Munīr*.

وَأَبْوَابُ أُصُولِ الْفِقْهِ

And the Topics of Uṣūl al-Fiqh Are



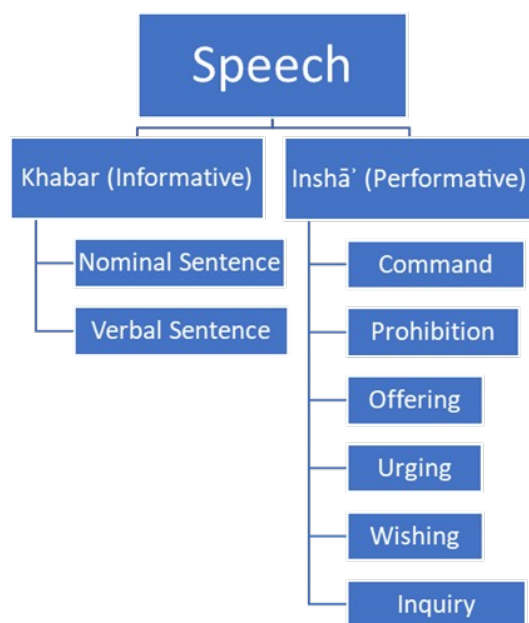
1. Types of Speech.	1. أَقْسَامُ الْكَلَامِ
2. Commands and Prohibitions.	2. وَالْأَمْرُ وَالنَّهْيُ
3. General ('Ām) and Specific (Khāṣ).	3. وَالْعَامُّ وَالْخَاصُّ
4. Ambiguous (Mujmal) and Clear (Mubayyan) and Apparent (Zāhir) and Re-Interpreted (Mu'awwal).	4. وَالْمَجْمَلُ وَالْمُبِينُ وَالظَّاهِرُ وَالْمُؤْوَلُ
5. Actions of the Law-Conveyor.	5. وَالْأَفْعَالُ
6. Abrogating (Nāsikh) and Abrogated (Mansūkh).	6. وَالنَّاسِخُ وَالْمَنْسُوخُ
7. Consensus (Ijmā').	7. وَالْإِجْمَاعُ
8. Reports (Akhbār).	8. وَالْأَخْبَارُ
9. Analogy (Qiyās).	9. وَالْقِيَاسُ
10. Prohibition (Ḥaẓr) and Permission (Ibāḥah).	10. وَالْحَظَرُ وَالْإِبَاحَةُ
11. Hierarchy of Evidences.	11. وَتَرْتِيبُ الْأَدِلَّةِ
12. The Qualities of the Muftī and Mustaftī.	12. وَصِفَةُ الْمُفْتَى وَالْمُسْتَفْتَى
13. Rulings on the Mujtahids.	13. وَأَحْكَامُ الْمُجْتَهِدِينَ

فَأَمَّا أَقْسَامُ الْكَلَامِ

As for the Types of Speech

Speech is composed of at least: 1. Two nouns. 2. A noun and a verb. 3. A verb and a particle. 4. A noun and a particle. Speech is divided into: 1. Command. 2. Prohibition. 3. Statement. 4. Question. Also: 1. Wish. 2. Offer. 3. Oath. From Another Perspective, it is divided into: 1. Literal (Ḥaqīqah): 2. Figurative (Majāz): The ḥaqīqah is that which remains in usage according to its original designation, or, as some say, that which is used according to the convention of communication. The majāz is that which departs from its original designation. Types of Literal Usage: 1. Linguistic. 2. Legal (Sharʿī). 3. Customary (ʿUrfī). And <i>majāz</i> (figurative usage) can occur through addition, omission, transference, or metaphor:	فَأَقْلَ مَا يَتَرَكِبُ مِنْهُ الْكَلَامُ 1. اسمان 2. أو اسم وفعل 3. أو فعل وحرف 4. أو اسم وحرف وَالْكَلَامُ يَنْقَسِمُ إِلَى 1. أمر 2. ونهي 3. وخبر 4. واستخبار وينقسم أيضاً إلى 1. تمن 2. وعرض 3. وقسم ومن وجه آخر ينقسم إلى 1. حقيقة 2. ومجاز فالحقيقة ما بقي في الاستعمال على موضوعه وقيل ما استعمل فيما اصطلح عليه من المخاطبة. والمجاز ما تجوز عن موضوعه. والحقيقة: 1. إمّا لغوية 2. وإمّا شرعية 3. وإمّا عرفية والمجاز إمّا أن يكون بزيادة أو نقصان أو نقل أو استعارة 1. فالمجاز بالزيادة مثل قوله تعالى لَيْسَ
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1. Majāz through addition: As in the verse, "<i>Shakir</i>: ... nothing like a likeness of Him" (Qur'ān 42:11), where the phrase "<i>like</i>" is an additional emphasis. 2. Majāz through omission: As in the verse, "And ask the village" (Qur'ān 12:82), where "the people of the village" is implied. 3. Majāz through transference: As in the word '<i>ghā'it</i>', originally meaning a low place, but transferred to mean human excrement. 4. Majāz through metaphor: As in the verse, "A wall that wants to collapse" (Qur'ān 18:77), attributing intent to an inanimate object.	كمثله شيء ﴿ والمجاز بالنقصان مثل قوله تعالى ﴿واسأل القرية﴾ والمجاز بالنقل كالغائط فيما يخرج من الإنسان والمجاز بالاستعارة كقوله تعالى ﴿جدارا يريد أن ينقض﴾
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[الأمر والنهي]

[Commands and Prohibitions]

[Definition of Command:] - A command is a verbal request for an action, directed to a subordinate, indicating obligation. - Its form is the imperative verb, e.g., "Do (if al)." [Default Rules of Commands:] - This form indicates a command unless evidence suggests that recommendation (<i>nadb</i>) or permissibility (<i>ibāḥah</i>) is intended. - A command does not imply repetition unless there is evidence indicating repetition.⁹ - A command does not necessarily require immediate action.¹⁰ [Implication of Commands:] - A command to perform an action also implies a command for all prerequisites necessary to fulfill it. Example: A command to pray includes the requirement for purification. - Once the commanded action is performed, the individual is absolved of responsibility. Clarifications (Tanbīh): Who is Addressed by Commands and Prohibitions? - Believers are addressed in Allah's address. - As for the forgetful, the child, and the insane, they are	[تعريف الأمر] - وَالْأَمْرُ اسْتِدْعَاءُ الْفِعْلِ بِالْقَوْلِ مِمَّنْ هُوَ دُونَهُ عَلَى سَبِيلِ الْوُجُوبِ - وصيغته أفعل [أحكام الأمر عند الإطلاق] - وَهِيَ عِنْدَ الْإِطْلَاقِ وَالتَّجَرُّدِ عَنِ الْقَرِينَةِ تَحْمِلُ عَلَيْهِ إِلَّا مَا دَلَّ الدَّلِيلُ عَلَى أَنَّ الْمُرَادَ مِنْهُ النَّدْبُ أَوِ الْإِبَاحَةُ - وَلَا تَقْتَضِي التَّكْرَارَ⁷ عَلَى الصَّحِيحِ إِلَّا مَا دَلَّ الدَّلِيلُ عَلَى قِصْدِ التَّكْرَارِ - وَلَا تَقْتَضِي الْفَوْرَ⁸ [دلالات الأمر] - وَالْأَمْرُ بِإِجَادِ الْفِعْلِ أَمْرٌ بِهِ وَبِمَا لَا يَتِمُّ الْفِعْلُ إِلَّا بِهِ كَالْأَمْرِ بِالصَّلَاةِ فَإِنَّهُ أَمْرٌ بِالطَّهَارَةِ الْمُوَدِّيَةِ إِلَيْهَا - وَإِذَا فَعَلَ يَخْرُجُ الْمَأْمُورُ عَنِ الْعَهْدَةِ تَنْبِيْهِ مَنْ يَدْخُلُ فِي الْأَمْرِ وَالنَّهْيِ وَمَنْ لَا يَدْخُلُ - يَدْخُلُ فِي خُطَابِ اللَّهِ تَعَالَى الْمُؤْمِنُونَ. - وَأَمَّا السَّاهِي وَالصَّبِيُّ وَالْمَجْنُونُ فَهُمْ غَيْرُ دَاخِلِينَ فِي
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⁷ الجاسر: ذهب الحنابلة إلى أن الأمر المطلق المجرد عن القرينة يقتضي التكرار حسب الإمكان. قال الإمام ابن عقيل (رحمه الله) في «الواضح في أصول الفقه»: «الأمر المطلق المجرد عن القرائن اختلف الناس فيه، فذهب صاحبنا [الإمام أحمد] (رحمه الله) وأصحابه إلى أنه يقتضي التكرار». ⁸ الجاسر: ذهب الحنابلة إلى أن الأمر المطلق المجرد عن القرينة يقتضي الفور.

⁹ Al-Jāsir: The Ḥanbalīs hold that an absolute command, devoid of contextual indicators, necessitates repetition when possible. Imām Ibn ‘Aqīl (rA) stated in *al-Wāḍiḥ fī Uṣūl al-Fiqh*: "An absolute command, devoid of contextual indicators, is a matter of disagreement. Our Imām and his companions hold that it necessitates repetition."

¹⁰ Al-Jāsir: The Ḥanbalīs hold that an absolute command, devoid of contextual indicators, necessitates immediate execution.

not included in the address. ▪ Disbelievers are addressed with the branches of Sharī'ah and the prerequisite for validity: Islam, because of saying of the Most High: "What led you to Hell?" They will say: 'We were not of those who prayed.'" [Qur'ān 74:42-43]. [Relationship Between Commands and Prohibitions:] ○ A command for something inherently includes a prohibition of its opposite. ○ A prohibition of something inherently includes a command for its opposite. [Prohibition (Nahy):] • Prohibition is a verbal request to abstain from an act, directed to a subordinate, as an obligation. • It implies the invalidity of the prohibited action. [Variants of Command (Ṣiġhat al-Amr):] The form of a command may be used with meanings other than obligation, such as permissibility (ibāḥah), threat (tahdīd), equivalence (taswiyah), or creation (takwīn).	الخطاب • وَالْكَافَرُ مُخَاطَبُونَ بِفُرُوعِ الشَّرِيعَةِ وَبِمَا لَا تَصِحُّ إِلَّا بِهِ وَهُوَ الْإِسْلَامُ لِقَوْلِهِ تَعَالَى ﴿مِمَّا سَلَكَكُمْ فِي سَقَرٍ قَالُوا لِمَ نَكُ مِنَ الْمُصَلِّينَ﴾ [بين الأمر والنهي] • وَالْأَمْرُ بِالشَّيْءِ نَهْيٌ عَنِ ضِدِّهِ. • وَالنَّهْيُ عَنِ الشَّيْءِ أَمْرٌ بِضِدِّهِ. [النهي] • وَالنَّهْيُ اسْتِدْعَاءُ التَّرْكِ بِالْقَوْلِ مِمَّنْ هُوَ دُونَهُ عَلَى سَبِيلِ الْوُجُوبِ. • وَيَدُلُّ عَلَى فَسَادِ الْمُنْهَى عَنْهُ [دلالات أخرى لصيغة الأمر] • وَتَرَدُّ صِبْغَةُ الْأَمْرِ وَالْمَرَادُ بِهِ الْإِبَاحَةُ أَوْ التَّهْدِيدُ أَوْ التَّسْوِيَةُ أَوْ التَّكْوِينُ.
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[الْعَامُّ وَالْخَاصُّ]

[The General and the Specific]

As for the general (<i>al-‘Ām</i>), it refers to that which includes two or more entities, as in the statement: " I included Zayd and ‘Amr in the giving." " I included all people in the giving." There Are Four Expressions of Generality: - Singular nouns defined by the definite article ("al-"). - Collective nouns defined by the definite article ("al-"). - Indefinite pronouns, such as: "man" (who) for rational beings. "mā" (what) for non-rational beings. "ayy" (any) for all. "ayna" (where) for place. "matā" (when) for time. "mā" in contexts of questioning or conditionality. - Indefinite nouns negated by "lā" (none). [Generality and Its Domain:] Generality applies to speech and cannot be claimed for actions or their equivalents. [The Specific (<i>al-Khāṣ</i>)] The specific opposes the general, and specification (<i>takhṣīṣ</i>) distinguishes part of a general statement. Specification is divided into two types: Connected (<i>Muttasil</i>): Disconnected (<i>Munfaṣil</i>): The connected (<i>muttasil</i>) specification includes Exclusion (<i>istithnā</i>)	وَأَمَّا الْعَامُّ فَهُوَ مَا عَمَّ شَيْئَيْنِ فَصَاعِدًا مِنْ قَوْلِهِ - عممت زيدا وعمرا بالعطاء - وعممت جميع الناس بالعطاء وَالْفَافِظَةُ أَرْبَعَةٌ 1. الاسم الواحد المُعَرَّفُ بِالْألفِ وَالْلامِ 2. واسم الجمع المُعَرَّفُ بِالْلامِ 3. والأسماء المبهمة كـ • من فيمن يعقل • وَمَا فِيمَا لَا يَعْقِلُ • وَأَيُّ فِي الْجَمِيعِ • وَأَيْنَ فِي الْمَكَانِ • وَمَتَى فِي الزَّمَانِ • وَمَا فِي الاستِثْنَاءِ وَالْجَزَاءِ وَغَيْرِهِ 4. وَلَا فِي النَكَرَاتِ [ما يدخله العموم] والعموم من صفات النطق وَلَا يجوز دَعْوَى الْعُمُومِ فِي غَيْرِهِ مِنَ الْفِعْلِ وَمَا يَجْرِي مجْزَاهُ. [الخاص] وَالْخَاصُّ يُقَابِلُ الْعَامَّ وَالتَّخْصِصُ تَمْيِيزُ بَعْضِ الْجُمْلَةِ. وَهُوَ يَنْقَسِمُ إِلَى: 1. مُتَّصِلٌ 2. وَمُنْفَصِلٌ فَالْمُتَّصِلُ 1. الاستِثْنَاءُ 2. وَالتَّقْيِيدُ بِالشَّرْطِ
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2. Qualification by condition (<i>taqyīd bi-sharṭ</i>) 3. Qualification by attribute (<i>taqyīd bi-ṣifah</i>). Exclusion (<i>istithnā</i>): Excludes what would otherwise have been included in the statement. It is valid under these conditions: 1. A portion of the general category must remain after the exemption.¹³ 2. The exemption must be directly connected to the statement. ○ It is permissible to place the exemption before the general statement (<i>al-mustathnā minhu</i>), and it can apply either to the same category or to a different one.¹⁴ Qualification by Condition (<i>taqyīd bi-sharṭ</i>): A condition may either precede or follow the ruling it qualifies. Qualification by Attribute (<i>taqyīd bi-ṣifah</i>): An absolute term (<i>muṭlaq</i>) is interpreted in light of a specific qualification when both occur. For example, "a slave" is qualified as "a believing slave" in some contexts while left unrestricted in others. The unrestricted (<i>muṭlaq</i>) is then understood in accordance with the qualified (<i>muqayyad</i>). It is permissible to specify: 1. The Qur'ān by the Qur'ān. 2. The Qur'ān by the Sunnah. 3. The Sunnah by the Qur'ān. 4. The Sunnah by the Sunnah. 5. Spoken (textual) evidence (<i>nuṭq</i>) by analogy (<i>qiyās</i>). By "spoken evidence," we mean the speech of Allah and the Messenger ﷺ.	3. وَالنَّقِيدُ بِالصِّفَةِ وَالِاسْتِثْنَاءُ إِخْرَاجَ مَا لَوْلَاهُ لَدَخَلَ فِي الْكَلَامِ وَإِنَّمَا يَصَحُّ بِشَرْطٍ 1. أَنْ يَبْقَى مِنَ الْمُسْتَثْنَى مِنْهُ شَيْءٌ¹¹ 2. وَمَنْ شَرْطُهُ أَنْ يَكُونَ مُتَّصِلًا بِالْكَلَامِ ○ وَيَجُوزُ تَقْدِيمُ الْإِسْتِثْنَاءِ عَلَى الْمُسْتَثْنَى مِنْهُ وَيَجُوزُ الْإِسْتِثْنَاءُ مِنَ الْجِنْسِ وَمِنْ غَيْرِهِ¹² وَالشَّرْطُ يَجُوزُ أَنْ يَتَأَخَّرَ عَنِ الْمَشْرُوطِ وَيَجُوزُ أَنْ يَتَقَدَّمَ عَنِ الْمَشْرُوطِ وَالْمَقِيدُ بِالصِّفَةِ يَحْمَلُ عَلَيْهِ الْمَطْلُوقُ كَالرَّقِيبَةِ قِيدَتْ بِالْإِيمَانِ فِي بَعْضِ الْمَوَاضِعِ وَأُطْلِقَتْ فِي بَعْضِ الْمَوَاضِعِ فَيَحْمَلُ الْمَطْلُوقُ عَلَى الْمَقِيدِ وَيَجُوزُ: 1. تَخْصِيسُ الْكِتَابِ بِالْكِتَابِ 2. وَتَخْصِيسُ الْكِتَابِ بِالسَّنَةِ 3. وَتَخْصِيسُ السَّنَةِ بِالْكِتَابِ 4. وَتَخْصِيسُ السَّنَةِ بِالسَّنَةِ 5. وَتَخْصِيسُ النُّطْقِ بِالْقِيَاسِ وَنَعْنِي بِالنُّطْقِ قَوْلَ اللَّهِ وَقَوْلَ الرَّسُولِ □.
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¹¹ الجاسر: أما عند الحنابلة فلا يصح استثناء الأكثر من عدد مسمى.

¹² الجاسر: وأما الحنابلة فلا يصح الاستثناء عندهم من غير الجنس، بل جزمه نجم الدين الطوفي في «شرح مختصر الروضة» من شروط صحة الاستثناء، فقال: «ويشترط للاستثناء أن لا يكون من غير جنس المستثنى منه».

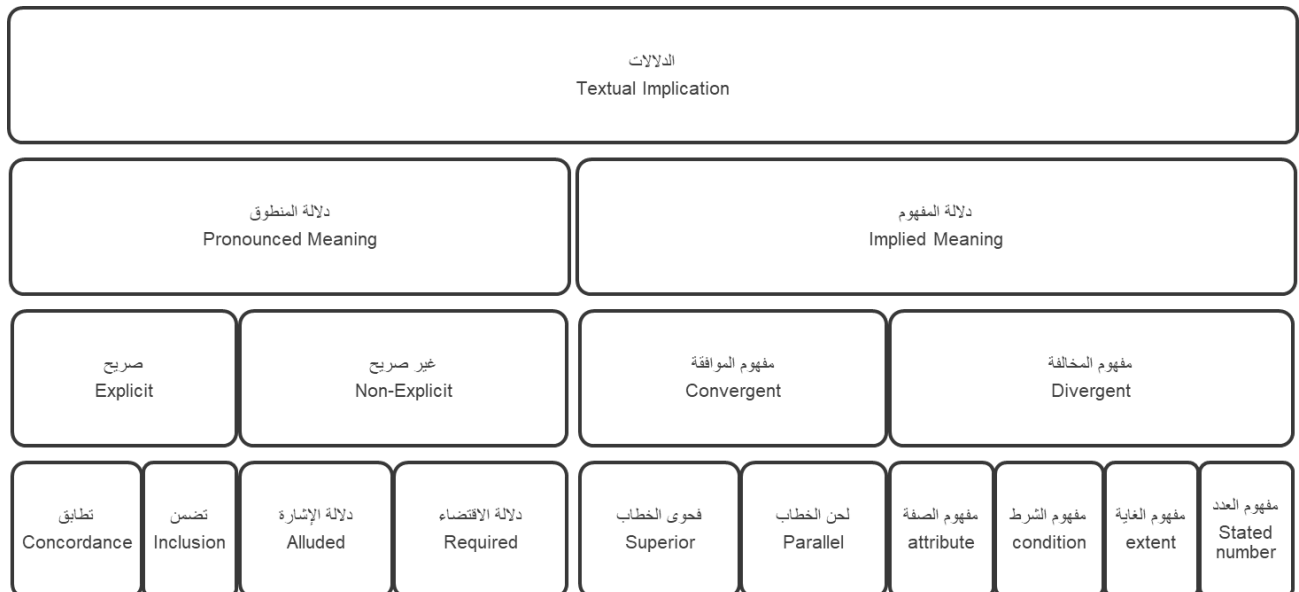
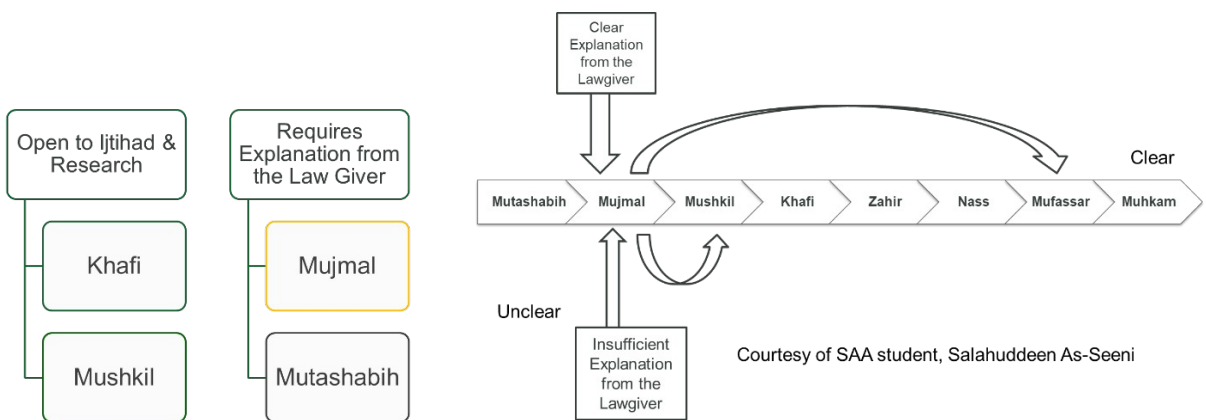
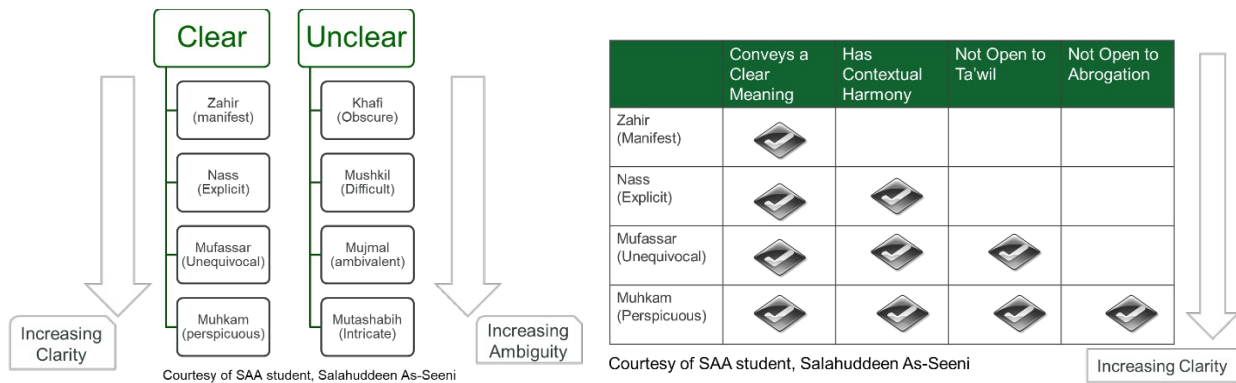
¹³ Al-Jāsir: According to the Ḥanbalīs, it is not valid to exclude a majority from a specified number.

¹⁴ Al-Jāsir: As for the Ḥanbalīs, exclusion (*istithnā*) is not valid for something outside the category of what is being excluded. Najm al-Dīn al-Ṭūfī affirmed this in *Sharḥ Mukhtaṣar al-Rawḍah* as one of the conditions for the validity of exclusion: 'It is a condition for exclusion that it not be from outside the category of what is being excluded.'

[المُجْمَل والمبين والظاهر والمؤول]

[The Ambiguous, the Clear, the Apparent & the Reinterpreted]

Ambiguous (Mujmal): - A text that requires clarification (<i>bayān</i>). Clarification (Bayān): - The process of removing something from the realm of ambiguity to the realm of clarity. Decisive (Naṣṣ): - A text that allows only one interpretation. - Another definition states that it refers to a text whose apparent meaning is identical to its intended meaning (<i>ta'wīluhu tanzīluhu</i>). - The term is derived from <i>minaṣṣat al-'arūs</i> (bride's platform), a type of chair symbolizing clarity and prominence. Apparent (al-ẓāhir): - A term that allows for two meanings, with one being more likely than the other. - The apparent meaning can be interpreted based on evidence, and in such cases, it is called "apparent with evidence" (<i>al-ẓāhir bi-dalīl</i>).	والمجمل: • مَا افْتَقَرَ إِلَى الْبَيَانِ وَالْبَيَانُ: • إِخْرَاجُ الشَّيْءِ مِنْ حَيْزِ الْإِشْكَالِ إِلَى حَيْزِ التَّجَلِّيِ وَالنَّصُّ: • مَا لَا يَحْتَمِلُ إِلَّا مَعْنَى وَاحِدًا • وَقِيلَ مَا تَأْوِيلُهُ تَنْزِيلُهُ • وَهُوَ مُشْتَقٌّ مِنْ مَنْصَةِ الْعُرْسِ وَهُوَ الْكُرْسِيُّ وَالظَّاهِرُ: • مَا اخْتَمَلَ أَمْرَيْنِ أَحَدُهُمَا أَظْهَرَ مِنَ الْآخَرِ • وَيُؤَوَّلُ الظَّاهِرُ بِالذَّلِيلِ وَيُسَمَّى الظَّاهِرُ بِالذَّلِيلِ
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الأفعال

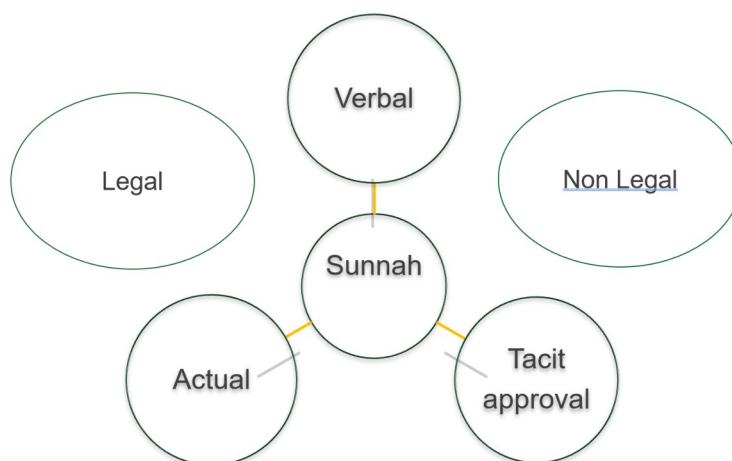
Actions

The actions of the Law-Conveyor (the Prophet ﷺ) can either: 1. Be acts of devotion and obedience. 2. Be acts unrelated to devotion and obedience. • If there is evidence indicating that an action is specific to him, it is treated as such. Otherwise, it is not restricted to him, as Allah says: "Indeed, in the Messenger of Allah, you have an excellent example" [Qur'an 33:21]. • Among our scholars: ○ Some say his actions are interpreted as obligatory.¹⁶ ○ Others say they are interpreted as	فعل صاحب الشريعة لا يخلو إما أن يكون: 1. على وجه القربة والطاعة 2. أو غير ذلك • فإن دلّ دليل على الاختصاص به يحمل على الاختصاص وإن لم يدلّ لا يخص به لأن الله تعالى يقول ﴿لقد كان لكم في رسول الله أسوة حسنة﴾ • فيحمل على: ○ الوجوب¹⁵ عند بعض أصحابنا ○ ومن بعض أصحابنا من قال يحمل على الندب
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¹⁵ الجاسر: وهذا الفعل النبوي إن لم يُعلم حكمته - بوقوعه بياناً لمجمل مثلاً - فمذهب الإمام أحمد وأكثر أصحابه أنه على الوجوب.

¹⁶ Al-Jāsir: This Prophetic action, if its reasoning is not known—such as occurring as a clarification of an ambiguous matter—is, according to the madhhab of Imām Aḥmad and most of his companions, considered obligatory.

recommended. ○ Others suspend judgment. • If the action is not one of devotion or obedience, it is interpreted as permissible for both him and us. • The approval (iqrār) of the Law-Conveyor ﷺ regarding a statement made by someone is considered equivalent to his own statement, and his approval of an action is regarded as equivalent to his own action. • If an action occurred during his time, outside his presence, and he was aware of it without objecting, it is treated as if it occurred in his presence.	○ وَمِنْهُمْ مَنْ قَالَ يَتَوَقَّفُ عَنْهُ • فَإِنْ كَانَ عَلَى وَجْهِ غَيْرِ الْقُرْبَةِ وَالطَّاعَةِ فَيَحْمِلُ عَلَى الْإِبَاحَةِ فِي حَقِّهِ وَحَقِّنَا. • وَإِقْرَارُ صَاحِبِ الشَّرِيعَةِ عَلَى الْقَوْلِ الصَّادِرِ مِنْ أَحَدٍ هُوَ قَوْلُ صَاحِبِ الشَّرِيعَةِ وَإِقْرَارُهُ عَلَى الْفِعْلِ كَفِعْلِهِ. • وَمَا فَعَلَ فِي وَقْتِهِ فِي غَيْرِ مَجْلِسِهِ وَعَلِمَ بِهِ وَلَمْ يُنْكِرْهُ فَحُكْمُهُ حُكْمُ مَا فَعَلَ فِي مَجْلِسِهِ.
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[النسخ]

[Abrogation]

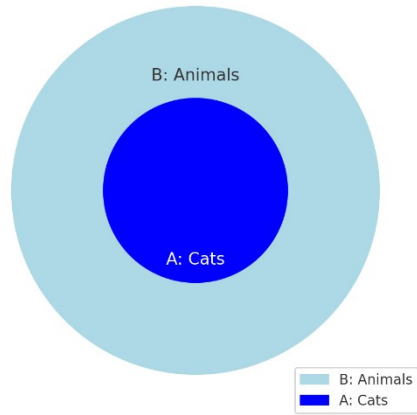
Abrogation	وَأَمَّا النَّسْخ
• Its linguistic meaning is removal, and some say it means transference, as in the expression: "I copied (nasakhtu) what was in this book," meaning, "I transferred it." • Its technical definition is: an address (khiṭāb) that indicates the removal of a ruling established by a previous address, in such a way that, without the new statement, the previous ruling would have remained in effect, with a delay between them. • Permissible Abrogation: 1. Abrogation of the wording while the ruling remains. 2. Abrogation of the ruling while the wording remains. 3. Abrogation involving replacement. 4. Abrogation without replacement. 5. Abrogation to something stricter. 6. Abrogation to something more lenient. • Also: 1. The Qur'an may abrogate the Qur'an. 2. The Qur'an may abrogate the Sunnah.	• فَمَعْنَاهُ لُغَةً الإزالة وَقِيلَ مَعْنَاهُ النَّقْلُ مِنْ قَوْلِهِمْ نَسَخْتُ مَا فِي هَذَا الْكِتَابِ أَيَّ نَقْلَتُهُ • وَحَدَّهُ هُوَ الْخُطَابُ الدَّالُّ عَلَى رَفْعِ الْحُكْمِ الثَّابِتِ بِالْخُطَابِ الْمُتَقَدِّمِ عَلَى وَجْهِ لَوْلَاهُ لَكَانَ ثَابِتًا مَعَ تَرَاخِيهِ عَنْهُ. • وَيَجُوزُ: 1. نسخ الرُّسْمِ وَبَقَاءِ الْحُكْمِ 2. وَنَسْخِ الْحُكْمِ وَبَقَاءِ الرُّسْمِ 3. وَالنَّسْخِ إِلَى بَدَلٍ 4. وَإِلَى غَيْرِ بَدَلٍ 5. وَإِلَى مَا هُوَ أَغْلَظُ 6. وَإِلَى مَا هُوَ أَخْفَى • وَيَجُوزُ: 1. نسخ الكتاب بِالْكِتَابِ 2. وَنَسْخِ السُّنَّةِ بِالْكِتَابِ 3. وَنَسْخِ السُّنَّةِ بِالسُّنَّةِ¹⁷

¹⁷ الجاسر: المعتمد في مذهب الحنابلة - كما هنا - عدم جواز نسخ القرآن بالسنة المتواترة شرعاً، كما في «مختصر التحرير» ولكن هناك رواية ثانية في المذهب بجواز نسخ القرآن بالسنة المتواترة شرعاً. انظر: «شرح الكوكب المنير» قال أبو الخطاب الكلواذاني في «التمهيد»: «وقال أكثر الفقهاء والحنفية والمالكية وعامة المتكلمين: يجوز ذلك، وهو الأقوى عندي»، وقال الطوفي في «اللبيل»: «وهو المختار». وتبعه عز الدين ابن نصر الله الكناني في اختصاره للبلبل «بلغة الوصول إلى علم الأصول» وقال الطوفي في «شرح مختصر الروضة»: «تلخيص مأخذ النزاع في المسألة أن بين القرآن ومتواتر السنة جامعاً وفارقاً. فالجامع بينهما ما ذكرناه من إفادة العلم وكونهما من عند الله، والفارق إعجاز لفظ القرآن والتعبد بتلاوته بخلاف السنة. فمن لاحظ الجامع أجاز النسخ، ومن لاحظ الفارق منعه».

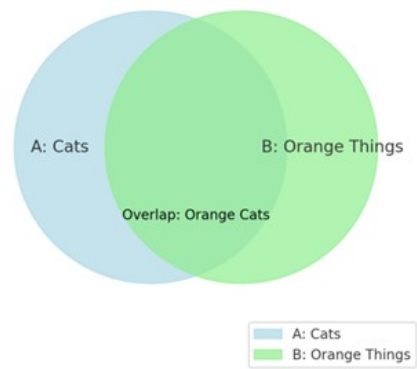
• Also: 4. A mutawātir (mass-transmitted) text may abrogate another mutawātir text. 5. An āḥād (solitary) text may be abrogated by either āḥād or mutawātir evidence. 6. A mutawātir text cannot be abrogated by an āḥād text. A Note on Contradiction Between Texts When two texts appear to contradict one another, they fall into one of the following categories: 1. Both are general. 2. Both are specific. 3. One is general, and the other is specific. 4. Each is general in one aspect and specific in another. [Resolving Contradictions:] If both are general, • reconciliation should be attempted. • If reconciliation is not possible, ○ judgment is suspended unless their historical order is known. ○ If the historical order is known, the later text abrogates the earlier one. ○ The same applies when both texts are specific. If one is general and the other specific (absolute generality and specificity), the general is restricted by the specific. If one is general in one aspect and specific in another (mutual generality and specificity), the generality of each is restricted by the specificity of the other.	• وَيَجُوزُ: 1. نسخ المتناتر بالمتواتر منهُما 2. ونسخ الأحاد بالآحاد وبالمتواتر 3. ولا يجوز نسخ المتناتر بالآحاد • تَنْبِيْهِ فِي التَّعَارُضِ إذا تعارض نطقان فَلَا يَخْلُو إِمَّا أَنْ يَكُونَا 1. عَامَيْنِ 2. أَوْ خَاصَيْنِ 3. أَوْ أَحَدُهُمَا عَامًا وَالْآخَرُ خَاصًّا 4. أَوْ كُلٌّ وَاحِدٌ مِنْهُمَا عَامًا مِنْ وَجْهٍ وَخَاصًّا مِنْ وَجْهٍ • [الجمع] فَإِنْ كَانَا عَامَيْنِ، • فَإِنْ أُمِكنَ الْجَمْعُ بَيْنَهُمَا جَمْع • وَإِنْ لَمْ يُمِكنَ الْجَمْعُ بَيْنَهُمَا ○ يَتَوَقَّفُ فِيهِمَا إِنْ لَمْ يَعْلَمْ التَّارِيخُ ○ فَإِنْ عُلِمَ التَّارِيخُ يَنْسَخُ الْمُتَقَدِّمُ بِالْمُتَأَخِّرِ ▪ وَكَذَا إِذَا كَانَا خَاصَيْنِ وَإِنْ كَانَ أَحَدُهُمَا عَامًا وَالْآخَرُ خَاصًّا فَيُخَصِّصُ الْعَامُ بِالْخَاصِّ وَإِنْ كَانَ أَحَدُهُمَا عَامًا مِنْ وَجْهٍ وَخَاصًّا مِنْ وَجْهٍ فَيُخَصِّصُ عُمُومُ كُلٍّ وَاحِدٌ مِنْهُمَا بِخُصُوصِ الْآخَرِ
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Allah. The distinction is the miraculous nature of the Qur'ān's wording and the obligation of worship through its recitation, unlike the Sunnah. Those who focus on the commonality permit abrogation, while those who focus on the distinction prohibit it."

Absolute Generality and Specificity



Mutual Generality and Specificity



وَأَمَّا الإِجْمَاعُ

As for Consensus (Ijmā')

It is the agreement of the scholars of an era on the ruling of a specific incident

By "scholars," we mean jurists, and by "incident," we mean a legal matter

The consensus of this Ummah is binding evidence, unlike the consensus of other communities, due to the statement of the Prophet ﷺ: **"My Ummah will not agree upon misguidance."**

Additionally, the Sharī'ah affirms the infallibility of this Ummah in such matters.

- Consensus (ijmā') is binding upon subsequent generations.
- It is binding, regardless of the era in which it occurred.
- It is not a condition, according to the correct opinion, that the generation in which the consensus occurred must have completely passed away (*inqirāḍ al-ʿaṣr*).²¹
 - However, if we say that the passing of the generation is a condition, then the opinion of those who were born during that generation, gained understanding of the religion (*tafaqquh*), and became qualified for *ijtihād*, must also be considered.

Consensus can be established through their statements, actions, or the statements and actions of some members of the community, provided the rest remain silent while aware of it.

The statement of a single Companion is not binding as evidence upon others, according to the newer opinion (*al-qawl al-jadīd*).²²

فَهُوَ اتِّفَاقُ عُلَمَاءِ الْعَصْرِ عَلَى حُكْمِ الْحَادِثَةِ.

ونعني بالعلماء الفقهاء، ونعني بالحادثة الحادثة الشرعية.

وإجماع هذه الأمة حجة دون غيرها لقوله ﷺ "لا تجتمع أمتي على ضلالة." والشرع ورد بعصمة هذه الأمة.

• والإجماع حجة على العصر الثاني.

• وفي أي عصر كان.

• ولا يشترط انقراض العصر على الصحيح¹⁹

○ فَإِنْ قُلْنَا انْقِرَاضُ الْعَصْرِ شَرْطٌ فَيُغْتَبَرُ قَوْلُ مَنْ وَلَدَ فِي حَيَاتِهِمْ وَتَفَقَّهُ وَصَارَ مِنْ أَهْلِ الْإِجْتِهَادِ فَلَهُمْ أَنْ يَرْجِعُوا عَنْ ذَلِكَ الْحُكْمِ.

وَالْإِجْمَاعُ يَصِحُّ بِقَوْلِهِمْ وَبِفِعْلِهِمْ وَبِقَوْلِ الْبَعْضِ وَبِفِعْلِ الْبَعْضِ وَانْتِشَارَ ذَلِكَ وَسُكُوتَ الْبَاقِينَ.

وَقَوْلُ الْوَاحِدِ مِنَ الصَّحَابَةِ لَيْسَ بِحُجَّةٍ عَلَى غَيْرِهِ عَلَى الْقَوْلِ الْجَدِيدِ.²⁰

¹⁹ الجاسر: خالف في ذلك الحنابلة، واشترطوا انقراض العصر.

²⁰ الجاسر: قول الصحابي الذي لم ينتشر ولم يظهر له مخالف من الصحابة حجة عند الحنابلة.

²¹ Al-Jāsir: The Ḥanbalīs disagreed on this matter and stipulated the condition of the passing of the generation.

²² Al-Jāsir: The statement of a Companion (ṣaḥābī) that did not become widely circulated and for which no disagreement from other Companions is known is considered a proof (ḥujjah) according to the Ḥanbalīs.

وَأَمَّا الْأَخْبَارُ

As for the Reports (Akhbār)

A report (khabar) is something that can be either true or false. Reports are divided into two types: 1. Mutawātir 2. Āḥād The mutawātir report is one that establishes knowledge (<i>‘ilm</i>). • It is defined as a report narrated by a group whose agreement upon a falsehood is impossible, from a similar group, continuing back to the original source of the report. • Such a report must originate from direct observation or hearing, not from inference or reasoning. The āḥād report is one that establishes obligation to act (<i>‘amal</i>) but does not establish certain knowledge (<i>‘ilm</i>). It is divided into: 1. Mursal (Disconnected). 2. Musnad (Connected). The musnad is that which has an unbroken chain of transmission, and the mursal is that with a missing link in the chain of transmission. If the mursal is narrated by someone other than the Companions, it is not considered evidence,²⁶ except for the mursal reports of Sa‘īd ibn al-Musayyab, as these have been scrutinized and found to have connected chains to the Prophet ﷺ. The <i>‘an‘anah</i> (repeated use of "an" or "from") is a common feature in chains of transmission (<i>asānīd</i>). [Narration Styles:] • When a teacher reads to a student, the latter may say: “ḥaddathanī” (he narrated to me) or “akhbaranī” (he informed me). • When the student reads to the teacher, he says:	فَالْخَبَرُ مَا يَدْخُلُهُ الصِّدْقُ وَالْكَذِبُ. وَالْخَبَرُ يَنْقَسِمُ إِلَى قَسْمَيْنِ 1. آحَاد 2. وَمُتَوَاتِر فَالْمُتَوَاتِرُ مَا يُوجِبُ الْعِلْمَ. • وَهُوَ أَنْ يَرَوِي جَمَاعَةٌ لَا يَقَعُ التَّوَاطُّؤُ عَلَى الْكَذِبِ مِنْ مِثْلِهِمْ إِلَى أَنْ يَنْتَهِيَ إِلَى الْمَخْبَرِ عَنْهُ. • وَيَكُونُ فِي الْأَصْلِ عَنْ مُشَاهَدَةٍ أَوْ سَمَاعٍ لَا عَنْ اجْتِهَادٍ. وَالْأَحَادُ هُوَ الَّذِي يُوجِبُ الْعَمَلَ وَلَا يُوجِبُ الْعِلْمَ وَيَنْقَسِمُ إِلَى 1. مُرْسَل 2. وَمُسْنَد فَالْمُسْنَدُ مَا اتَّصَلَ إِسْنَادُهُ وَالْمُرْسَلُ مَا لَمْ يَتَّصَلِ إِسْنَادُهُ فَإِنْ كَانَ مِنْ مَرَاتِبِ غَيْرِ الصَّحَابَةِ فَلَيْسَ ذَلِكَ حُجَّةً²³ إِلَّا مَرَاتِبِ سَعِيدِ بْنِ الْمُسَيَّبِ فَإِنَّهَا قُتِبَتْ وَوُجِدَتْ مَسَانِيدُ عَنِ النَّبِيِّ ﷺ وَالْعَنْعَنَةُ تَدْخُلُ عَلَى الْأَسَانِيدِ. [صيغ الرواية] • وَإِذَا قَرَأَ الشَّيْخُ بِجَوَزٍ لِلرَّائِي أَنْ يَقُولَ حَدَّثَنِي أَوْ أَخْبَرَنِي • وَإِذَا قَرَأَ هُوَ عَلَى الشَّيْخِ فَيَقُولُ أَخْبَرَنِي وَلَا يَقُولُ حَدَّثَنِي.²⁴
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²³ الجاسر: خالف في ذلك الحنابلة واعتبروا مرسل غير الصحابة حجة.

“akhbaranī” and not “ḥaddathanī.”²⁷ If the teacher grants authorization without reading, the student may say: “ajāzanī” (he authorized me) or “akhbaranī ijāzah” (he informed me by authorization).²⁸	• وَإِنْ أَجَازَهُ الشَّيْخُ مِنْ غَيْرِ قِرَاءَةٍ فَيَقُولُ أَجَازَنِي أَوْ أَخْبَرَنِي إِجَازَةً.²⁵
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²⁴ الجاسر: وعند الحنابلة يجوز أن يقول إذا قرأ على الشيخ: حدثنا، أو أخبرنا. انظر: «مختصر التحرير»، و«شرح الكوكب المنير» وهناك رواية أخرى عند الحنابلة بالمنع، وفاقاً لما في المتن، انظر: «روضة الناظر» مع «نزهة الخاطر العاطر».

²⁵ الجاسر: ويجوز عند الحنابلة أن يقول: حدثني إجازة.

²⁶ Al-Jāsir: The Ḥanbalīs disagreed on this matter and considered the mursal (disconnected) report of non-Companions to be a valid proof (ḥujjah).

²⁷ Al-Jāsir: According to the Ḥanbalīs, it is permissible to say “ḥaddathanā” (he narrated to us) or “akhbaranā” (he informed us) when reading to a shaykh. See: *Mukhtaṣar al-Taḥrīr* and *Sharḥ al-Kawkab al-Munīr*. However, there is another opinion in the Ḥanbalī school prohibiting this, in agreement with what is stated in the text. See: *Rawḍat al-Nāẓir* along with *Nuzhat al-Khāṭir al-‘Āṭir*.

²⁸ Al-Jāsir: It is permissible, according to the Ḥanbalīs, to say “ḥaddathanī ijāzah” (he narrated to me by authorization).

وَأَمَّا الْقِيَاسُ

As for Analogy (qiyās)

It is the extension of a ruling from an original case (aṣl) to a new case (far') due to a shared underlying effective cause ('illah).

It is divided into three categories:

1. **Qiyās al-'illah (Causal Analogy)**
2. **Qiyās al-dalālah (Indicative Analogy)**
3. **Qiyās al-shabah (Analogical Resemblance)**

Causal Analogy (Qiyās al-'illah): This is where the cause ('illah) necessitates the ruling.

Indicative Analogy (Qiyās al-Dalālah): This is reasoning by comparing one case to another, where the cause indicates the ruling but does not necessitate it.

Analogical Resemblance (Qiyās al-Shabah): This applies to a subsidiary case (far') that oscillates between two original cases (uṣūl). It is not used when the previous forms of analogy are possible.

[Conditions:]

1. **For the New Case (Far'):** It must be appropriate for comparison with the original case (aṣl).
2. **For the Original Case (Aṣl):** Its ruling must be established by evidence agreed upon by both parties in the dispute.
3. **For the Cause ('illah):** It must consistently apply to all instances without exception, either in wording or meaning.
4. **For the Ruling:** The ruling must correspond with the cause in both affirmation and negation (existence and non-existence).
 - If the cause exists, the ruling exists.
 - The cause is what brings about the ruling.

فَهُوَ رَدُّ الْفَرْعِ إِلَى الْأَصْلِ بَعْلَةً تَجْمَعُهُمَا فِي الْحُكْمِ.
وَهُوَ يَنْقَسِمُ إِلَى ثَلَاثَةِ أَقْسَامٍ:

1. إِلَى قِيَاسِ عِلَّةٍ
2. وَقِيَاسِ دَلَالَةٍ
3. وَقِيَاسِ شَبَهٍ

فَقِيَاسُ الْعِلَّةِ مَا كَانَتْ الْعِلَّةُ فِيهِ مُوجِبَةً لِلْحُكْمِ.

وَقِيَاسُ الدَّلَالَةِ هُوَ الْاسْتِدْلَالُ بِأَحَدِ النَّظِيرَيْنِ عَلَى الْآخَرِ وَهُوَ أَنْ تَكُونَ الْعِلَّةُ دَالَّةً عَلَى الْحُكْمِ وَلَا تَكُونَ مُوجِبَةً لِلْحُكْمِ.

وَقِيَاسُ الشَّبَهِ هُوَ الْفَرْعُ الْمُرْتَدُّ بَيْنَ أَصْلَيْنِ. وَلَا يُصَارُ إِلَيْهِ مَعَ إِمْكَانِ مَا قَبْلَهُ.

[شروط القياس]

1. وَمِنْ شَرْطِ الْفَرْعِ أَنْ يَكُونَ مُنَاسِبًا لِلْأَصْلِ
2. وَمِنْ شَرْطِ الْأَصْلِ أَنْ يَكُونَ ثَابِتًا بِدَلِيلٍ مُتَّفَقٍ عَلَيْهِ بَيْنَ الْحَصْمَيْنِ
3. وَمِنْ شَرْطِ الْعِلَّةِ أَنْ تَطْرُدَ فِي مَعْلُولَاتِهَا فَلَا تَنْتَفِضُ لَفْظًا وَلَا مَعْنَى
4. وَمِنْ شَرْطِ الْحُكْمِ أَنْ يَكُونَ مِثْلَ الْعِلَّةِ فِي النَّفْيِ وَالْإِثْبَاتِ أَيْ فِي الوجود والعدم
 - فَإِنْ وَجَدَتِ الْعِلَّةُ وَجَدَ الْحُكْمُ
 - وَالْعِلَّةُ هِيَ الْجَالِبَةُ لِلْحُكْمِ

وَأَمَّا الْحَظْرُ وَالْإِبَاحَةُ

As for Prohibition (Ḥaẓr) and Permission (Ibāḥah)

- Some people argue that things are inherently prohibited unless made permissible by the Sharī'ah. If no evidence of permissibility is found in the Sharī'ah, they adhere to the original ruling, which is prohibition.³¹ - Others argue the opposite, maintaining that the default ruling on things is permissibility unless explicitly prohibited by the Sharī'ah.³² - The meaning of <i>istiḥāb al-ḥāl</i> (presumption of continuity), which is used as evidence, is to uphold the original state in the absence of Sharī'ah evidence to the contrary.	- فَمَنْ النَّاسُ مَنْ يَقُولُ إِنَّ الْأَشْيَاءَ عَلَى الْحَظْرِ إِلَّا مَا أَبَاحَتْهُ الشَّرِيعَةُ فَإِنْ لَمْ يُوجَدْ فِي الشَّرِيعَةِ مَا يَدُلُّ عَلَى الْإِبَاحَةِ يَتَمَسَّكَ بِالْأَصْلِ وَهُوَ الْحَظْرُ.²⁹ - وَمَنْ النَّاسُ مَنْ يَقُولُ بُضْدهُ وَهُوَ أَنَّ الْأَصْلَ فِي الْأَشْيَاءِ أَنَّهَا عَلَى الْإِبَاحَةِ إِلَّا مَا حَظَرَهُ الشَّرْعُ.³⁰ - وَمَعْنَى اسْتِصْحَابِ الْحَالِ الَّذِي يَحْتَجُّ بِهِ أَنْ يَسْتَصْحَبَ الْأَصْلَ عِنْدَ عَدَمِ الدَّلِيلِ الشَّرْعِيِّ.
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²⁹ الجاسر: وذهب إلى هذا من الحنابلة: الحسن بن حامد (ت: 403 هـ) والقاضي أبو يعلى (ت: 458 هـ).
³⁰ الجاسر: وذهب إلى هذا من الحنابلة: أبو الحسن التميمي (ت: 371 هـ) وأبو الفرج الشيرازي (ت: 486 هـ) وأبو الخطاب الكلواني (ت: 510 هـ).

³¹ Al-Jāsir: Among the Ḥanbalīs, this opinion was held by al-Ḥasan ibn Ḥāmid (d. 403 AH) and al-Qāḍī Abū Ya'īlā (d. 458 AH).

³² Al-Jāsir: Among the Ḥanbalīs, this opinion was held by Abū al-Ḥasan al-Tamīmī (d. 371 AH), Abū al-Faraj al-Shīrāzī (d. 486 AH), and Abū al-Khaṭṭāb al-Kalwādhānī (d. 510 AH). [This is the dominant view in the madhhab.]

[تَرْتِيبُ الْأَدِلَّةِ]

[The Hierarchy of Evidences]

As for Evidences: • Clear evidence (<i>al-jalī</i>) is prioritized over ambiguous evidence (<i>al-khafī</i>). • Evidence that produces certainty (<i>ʿilm</i>) is prioritized over evidence that produces assumption (<i>ẓann</i>). • Spoken evidence (<i>naṣṣ</i>) is prioritized over analogy (<i>qiyās</i>). • Clear analogy (<i>al-qiyās al-jalī</i>) is prioritized over subtle analogy (<i>al-qiyās al-khafī</i>). If there is spoken (textual) evidence (<i>nuṭq</i>) that alters the default status, the textual evidence is acted upon; otherwise, the presumption of continuity (<i>istiṣḥāb al-ḥāl</i>) is maintained.	وَأَمَّا الْأَدِلَّةُ: • فَيَقْدَمُ الْجَلِيُّ مِنْهَا عَلَى الْخَفِيِّ • وَالْمَوْجِبُ لِلْعِلْمِ عَلَى الْمَوْجِبِ لِلظَّنِّ • وَالنُّطْقُ عَلَى الْقِيَاسِ • وَالْقِيَاسُ الْجَلِيُّ عَلَى الْخَفِيِّ فَإِنْ وَجَدَ فِي النُّطْقِ مَا يُغَيِّرُ الْأَصْلَ يَعْمَلُ بِالنُّطْقِ وَإِلَّا فَيَسْتَصْحَبُ الْحَالَ.
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