Contents

Transliteration Guide ix

Principles of Jurisprudence *(Uṣūl al-Fiqh)* 1

The Legislator *(al-Ḥakim)* 5

al-Ḥakim (The Judge) 11

There was No Verdicts before the Arrival of the Sharī'ah 17

The Legally Responsible *(al-mukallafūn)* with respect to the *Sharī'ah* Rulings 33

The Conditions of Legal Responsibility [*Shurūṭ al-Taklīf*] 44

The Legal Ruling [*al-Ḥukm al-Shar'ī*] 49

The Address of Legal Responsibility *(Khiṭāb al-Taklīf)* 53

The Obligation (*al-Wājib*) 54

That which the Obligation doesn't get accomplished without it, is an Obligation 58

The Forbidden [*al-ḥarām*] 61

The Permissible [*al-Mubāḥ*] 61

The Address of Circumstances (*Khiṭāb al-Waḍ'ī*) 65

The Cause [*al-Sabab*] 68

The Condition [*al-Sharṭ*] 71

The Impediment [*al-Māni'*] 77

The Validity, the Invalidity and the Corrupted [*ṣiḥḥah, buṭlān, fasād*] 79

The Determination and the Concession [*al-'Azīmah wa'l-Rukhṣah*] 82

The Legal Evidences (*al-Adillah al-Shar'iyyah*) 93

The Sharī'ah Evidences Must Be Decisive 95

The First Evidence – The Book of Allah (*al-Kitāb*) 99

What is Considered as a Proof (*Hujjah*) of the Qur'ān 100
The Firm and the Similar (*al-Muḥkam wa'l-Mutashābih*) 104
The Second Evidence – The *Sunnah* 109
The Status of the Sunnah in relation to the Qur'ān 109
Divisions of the Sunnah (*Aqsām al-Sunnah*) 125
The *Mutawātir* 126
The Number by Which the Certainty Occurs 127
The Famous (*ḥadīth*) *[al-Mashhūr]* 128
The Individuals Report (*Khabar al-āḥād*) 130
The Narrators of the *ḥadīth* (*Ruwāt al-ḥadīth*) 132
Types of the Individuals Report *(Anwā khabar al-āḥād)* 135
Conditions for Accepting the Individuals Report (*Shurūṭ qabūl Khabar al-āḥād*) 138
The Actions of the Messenger *(Af'āl al-Rasūl)* 140
The Ways by which the Direction (Quality) of the Action of the Messenger Can be known 156
The Silence *(Sukūt)* of the Prophet ﷺ 160
The Conflict between the Actions of the Messenger 162
The Conflict between the Action of the Messenger and his Saying 163
The Conflict Between the Sayings of the Messenger 169
The Inference (*al-istidlāl*) from the *Kitāb* and the *Sunnah* 187
Research of the Language (*Abhath al-Lughah*) 189
The Way to Know the Arabic Language 194
The Expressions of the Language and their Divisions 197
Dividing the Expression with Regard to the (*dāll*) Indicator Alone 198
The Single (*al-Mufrad*) 199
The Noun (*al-Ism*) 200
Dividing the Expression with Regard to the Denoted Meaning Alone 202
The Compound *(al-Murakkab)* 204

Dividing the Expression with Regard to the Denotative *(al-dāll)* and the Denoted meaning (*al-madlūl*) 206

The Synonymy *(al-Taraaduf)* 208

The Polysemy Expression *(al-Ishtirāk)* 209

The Real and the Metaphor *(al-Ḥaqīqah wa'l-Majāz)* 213

The Real Legal Meaning *(al-Ḥaqīqah al-Shar'iyyah)* 222

The Existence of the Real Legal Meanings 223

The Qur'ān is all Arabic and there is not even one non-Arabic word in it 234

The Conventional Reality *(al-Ḥaqīqah al-'urfiyyah)* 243

The Transferred Expressions *(al-Alfāẓ al-Manqūlah)* 247

The Conflict between what Disturbs the Understanding 251

The Verb (*al-Fi'l*) 261

The Particle *(al-ḥarf)* 261

The Pronounced and the Implicit Meanings *(al-Manṭuq wa'l-mafhūm)* 273

The Pronounced Meaning (*al-Manṭūq*) 279

The Implicit Meaning (*al-Mafhūm*) 282

The Required Indication *(dilālah al-Iqtiḍa')* 284

The Warning and Gesture Indication *(dilālah al-Tanbīh wa'l-Īmā')* 287

The Alluded Indication *(dalālah al-Ishārah)* 289

The Agreed Meaning (*mafhūm al-Muwāfaqah*) 291

The Divergent Meaning (*mafhūm al-Mukhālafah*) 299

Indication of the Attribute (*mafhūm al-Ṣifah*) 299

Indication of the Condition (*mafhūm al-Sharṭ*) 302

Implication of the Extent (*mafhūm al-Ghāyah*) 305

Implication of the Stated Number (*mafhūm al-'adad)* 308

What is Invalid (not in use) from the Divergent Meaning (*mafhūm al-Mukhālafah*) 311

The Divisions of the *Kitāb* and the *Sunnah* 319

The Command and the Prohibition *(al-Amr wa'l-Nahī)* 331

The Types of Commands and Prohibitions 332

The Tense of Command (the imperative) [*ṣīghah al-amr*] 339

The Tense of Prohibition [*ṣīghah al-nahī*] 359

The Command of Something is Not a Prohibition of its Opposite and the Prohibition of Something is Not a Command of its Opposite 363

The Prohibition of Dispositions and Contracts 370

The General and the Specific (Expressions) *(al-'Umūm wa'l-Khuṣūṣ)* 377

The General 378

Ways to Affirm the Generality of the Expression 383

The General and the Specific (Expressions) *(al-'Umūm wa'l-Khuṣūṣ)* 389

The General *(al-'umūm)* 390

Ways to Affirm the Generality of the Expression 396

The Consideration is in the Generality of the Expression Not in the Speciality of the Cause (of Revelation) 401

The Generality of the Expression in the Speciality of the Cause is Only in the Subjet of the Incident and the Question, it is Not a Generality in Everything 404

The Address to the Messenger is an Address to his Nation 410

The Address of the Prophet to one of his Nation is an Address to his Nation 412

The Messenger is Included in the Address that He Stated 414

The Specific *(al-khuṣūṣ)* 416

The Evidences that Specify the General (*adillah takhṣiṣ al-'umūm*) 418

The Specification by the Exception *(al-takhṣiṣ bi'l-istithnā')* 418

The Specification by the Condition *(al-takhṣiṣ bi'l-shart)* 420

The Specification by the Quality *(al-takhṣiṣ bi'l-ṣifah)* 421

The Specification by the Objective *(al-takhṣiṣ bi'l-ghāyah)* 422

The Specification by the Detached Evidences *(al-takhṣiṣ bi'l-adillah al-munfaṣilah)* 423

Specification of the *Kitāb* by the *Kitāb (takhṣiṣ al-kitāb bi'l- kitāb)* 427

Specification of the *Kitāb* by the Sunnah 429

Specification of the Book by the Consensus of the *Ṣaḥābah* 432

Specification of the *Kitāb* by the (*Shar'i*) Analogy 433

Specification of the Sunnah by the *Kitāb* 434

Specification of the Sunnah by the Sunnah 436

Specification of the Sunnah by the Consensus of the *Ṣaḥābah* and by the (*Shar'i*) Analogy 437

Specification of the Literal Meaning (*al-Manṭūq*) by the Implicit (*al-Mafhūm*) 437

The Unrestricted (*al-Muṭlaq*) and the Restricted (*al-Muqayyad*) 439

The Concise (*al-Mujmal*) 445

The Clarification and the Clarified (*al-Bayān wa al-Mubayyan*) 451

The Abrogator and the Abrogated (*al-Nāsikh* and *al-Mansūkh*) 457

The Abrogation of the Qur'ān 469

The Abrogation of the Sunnah 477

It is Not Permitted to Abrogate a Verdict Evidenced by the *Ijmā'* 482

It is Not Permitted to Abrogate a Verdict Derived by Shar'i Analogy (*Qiyās*) 483

The Way of Knowing the Abrogator and What has been Abrogated 484

The Third Evidence - The Consensus *(al-Ijmā')* 499

Every Consensus other than the Consensus of the *Ṣaḥābah* is Not a Shar'i Evidence 511

The Silent Consensus (*al-Ijmā' al-Sukūtī*) 531

The Companions (*al-Ṣaḥābah*) 534

The Fourth Evidence - The *Shar'i* Analogy (*al-Qiyās*) 541

The Pillars of *Qiyās* (Analogy) 561

The Conditions of the Branch *(al-far')* 562

The Conditions of the Origin (*al-aṣl*) 564

The Conditions of the Original Verdict *(ḥukm al-aṣl)* 564

The Reason of the Legislation of the Verdict (*al-'illah*) 567

The Difference between the Reason (*al-'Illah*) and the Cause (*al-Sabab*) 573

The Difference between the *'Illah* and the *Manāṭ* (The Object of the Verdict) 576

The Conditions of the *'Illah* 583

The Evidences of the *'Illah* 586

The Aims of the Sharī'ah 611

The Aims of the Sharī'ah [*Maqāṣid al-Sharī'ah*] 615

The Aim of Every Verdict in Specific 620

Bringing Benefits and Avoiding Evils are Not a Reason (*'Illah*) For the Sharī'ah as a Whole, Nor are they a Reason For Any Specific Verdict 630

What is Thought to Be an Evidence But it is Not an Evidence 679

The Law of Those before Us *(shar' man qablana)* 681

The Fiqh School of the Companion (*Madhhab al-Ṣaḥābī*) 703

The Juristic Preference (*al-Istiḥsān*) 709

The (Unmentioned Public) Interest (*al-Maṣāliḥ al-Mursalah*) 721

The Universal Principles (of the Sharī'ah) [*al-Qawā'id al-Kulliyyah*] 747

The Principle of Accompanying the Continuity of the State (*al-Istiṣḥāb*) 761

The Principle of Harm *(qā'idah al-ḍarar)* 767

The Convention *(Iṣṭilāḥ)*, the Estimation *(taqdīr)* and the Tradition *('urf)* 775

Tradition *('urf)* has no Sharī'ah Consideration 778

Consequences of the Deeds (*Mālāt al-Af'āl*) 793

The Opinions of the *Ṣaḥābah*, Their Judgments and Their Jurisprudences 815

Conflict and Out-weighing (Evidences) [*al-Ta'ādul wa'l-Tarājiḥ*]..... 821

Index..... 831

Transliteration Guide

Transliteration	Arabic Letter	Letter name
Short and Long Vowels		
Short vowels, illustrated with letter "*th*"		
tha, *thi*, *thu*	ثَ ثِ ثَ	*Fatha*, *kasra*, *damma*
Long vowels, illustrated with letter "*th*"		
thā, *thī*, *thū*	ثو, ثي, ثا	*`alif*, *yā`*, *wāw*

Consonants			Consonants		
Translit-eration	Arabic Letter	Letter name	*Translit-eration*	Arabic Letter	Letter name
a, i, u	أُ إِ أَ	*Hamza*	*ḍ*	ض	*ḍad*
b	ب	*ba*	*ṭ*	ط	*ṭa*
t	ت	*ta*	*ẓ*	ظ	*ẓa*
th	ث	*tha*	ʻ	ع	*ʻayn*
j	ج	*jĭm*	*gh*	غ	*Ghayn*
ḥ	ح	*ḥā*	*f*	ف	*fa*
kh	خ	*kha*	*q*	ق	*qaf*
d	د	*dal*	*k*	ك	*kaf*
dh	ذ	*dhal*	*l*	ل	*lam*
r	ر	*ra*	*m*	م	*mim*
z	ز	*zay*	*n*	ن	*nun*
s	س	*sin*	*h*	ه	*ha*
sh	ش	*shin*	*w*	و	*waw*
ṣ	ص	*ṣad*	*y*	ي	*ya*

The *hamzah al-wasl* has been ignored and has been transliterated as written not as pronounced.

بِسْمِ اللهِ الرَّحْمَنِ الرَّحِيم

أُصُولُ الفِقْهِ

Principles of Jurisprudence *(Uṣūl al-Fiqh)*

The *aṣl* (principal) linguistically is the foundation that can be built on it, whether the building is tangible, as building a wall up on a foundation, or rational as building the reasoned rule upon the reason and building the verdict upon its evidence (*dalīl*). So *uṣūl al-fiqh* are the foundations (*qawā'id*) on which the *fiqh* can be built. As for the *(fiqh)* jurisprudence linguistically is the understanding, and of that Allah Ta'ala's saying:

{مَا نَفْقَهُ كَثِيرًا مِمَّا تَقُولُ}

"we don't understand much of what you say"[1],

and in the terminology of jurisprudents the *fiqh* is the knowledge in the practical Sharī'ah verdicts extracted from the detailed evidences. What is meant in the knowledge in the verdicts for the scholar who knows them not only the shallow knowledge, but having the skills in the Sharī'ah verdicts, i.e. this knowledge should deepen to the extent that the scholar acquired a good skill in these verdicts and just by having this skill it is enough to consider the one who has it as a jurisprudent (*faqīh*), not necessarily

[1] Surah Hud:91

knowing all the verdicts, but it is necessary for him to know some of the Sharī'ah branches (*furū'iyyah*) verdicts by pondering and research through the evidences. Accordingly the knowledge of one or two verdicts is not named *fiqh*, nor is the knowledge that the kind of evidence is proof to be named (*fiqh*). The term *fiqh* is used and means the sum of the Sharī'ah practical verdicts that are extracted from the detailed evidences, so they say this is a *fiqh* book, i.e. it is a book that contains practical branches verdicts and when it is said the knowledge of *fiqh* it means the knowledge in some practical branches verdicts. That is especially in the practical verdicts, so the belief verdicts are not considered of the *fiqh*, because the *fiqh* is especially the practical verdicts, i.e. the verdicts on which the actions are based not the beliefs.

Accordingly the meaning of *uṣūl al-fiqh* is the foundations (*qawā'id*) on which the skill in the practical verdicts that are extracted from the detailed evidences are built, therefore the (*uṣūl al-fiqh*) is given the definition that it is the knowledge of the foundations (*qawā'id*) that lead to extracting the Sharī'ah verdicts from the detailed evidences, and the name is used for the foundations (*qawā'id*) themselves, you say a book of *uṣūl al-fiqh* means a book that contains these principles, and you say the science of (*uṣūl al-fiqh*) that is the foundations (*qawā'id*) by which the extracting of Sharī'ah verdicts from the detailed evidences is achieved. Accordingly the research of *uṣūl al-fiqh* is a research in the foundations (*qawā'id*), and in the evidences, i.e. a research in the rule, and in the sources of the rule, and in the method of extracting the rule from these evidences. *Uṣūl al-fiqh* consists the general evidence, and the contents of the Sharī'ah, it also consists the situation of the seeker of

the verdict in general not in details, i.e. knowing the (*ijtihād*) extracting of the verdicts, and the method of seeking the evidence, and the similarities and differences in the evidences. But the *ijtihād* and overweighing between evidences depend on knowing the evidences and the ways of their proof, therefore these two researches: The evidences, and the proof they carry, are the foundations of *uṣūl al-fiqh* with the research of the rule and its links.

So the principles of *fiqh* are the general undetermined *fiqh* evidences, like the unrestricted request and unrestricted prohibition, the action of the Prophet ﷺ, the consensus of the companions, and the analogy. So the detailed evidences are excluded from this, like Allah's saying:

{وَأَقِيمُوا الصَّلَاةَ}

"and establish the prayer"[2],

{وَلَاتَقْرَبُوا الزِّنَا}

"do not come near fornication",

and the prayer of the Messenger ﷺ inside the Ka'bah, and the remaining of guardianship over the incompetent (*al-mahjūr*), and that, the agent (*wakīl*) deserves a wages if he is assigned with a wage, measured on the employee, all these are not from *uṣūl al-fiqh*; because they are detailed determined evidences, and having them as examples in the research of *uṣūl al-fiqh*, does not mean that they are from *uṣūl al-fiqh*, but the *uṣūl* are the general evidences, and what they show, the statues of the verdict seeker, and the method of seeking.

[2] Surah al-Baqarah:43

Uṣūl al-fiqh is distinguished from the *fiqh* science, that the subject of *fiqh* is the actions of the servants, with regard that they are allowed and forbidden and being correct and false and corrupted. As for the subject of *uṣūl al-fiqh* that is the auditory evidences (*adillah sam'iyah*), with regard that the Sharī'ah verdicts are derived from them, i.e. that there are proof of the Sharī'ah verdicts. So it is a necessity to research the verdict and what is linked to it, in respect of who has the right to issue the verdict, i.e. who owns this right, meaning who is the (*ḥukm*) rule or verdict issuer. In respect of clarifying upon who the verdict is issued, i.e. who is the (*mukallaf*) responsible in executing the verdict meaning the responsible, and with regard of clarifying the verdict itself, what is it, and what is the reality of it. More over clarifying the evidences and the ways they show their conclusions.

The Legislator *(al-Ḥakim)*

From the most important of inquiries related to the *ḥukm*, necessarily requiring clarification, is the knowing of who it is the issuing of the *ḥukm* returns to, that is, who is the *Ḥakim*? Upon the knowledge of this rests the knowledge of the *ḥukm* and its types.

The intent of '*Ḥakim*' here is not the executive authority who executes all the affairs with the authority it possesses. Rather, the intent of "*Ḥakim*" is the one who possesses the right of issuing the *ḥukm* upon actions and things, because all that exists of the tangible comprises either of the actions of the human or of the things other than the actions of the human. Because the human, by his description of being alive in this universe, is the subject of the study, and issuing of the *ḥukm* is only because of him and is related to him, therefore the *ḥukm* upon the actions of the human and upon things related to these actions is necessary.

So who is the one who alone has the right to issue the *ḥukm* upon that: it is Allah, or the human himself? In other words, is it the *shar'* or the intellect [*'aql*]? That which allows us to know the *ḥukm* of Allah is the shar', and that which the human judges by is the intellect. So what judges (upon the actions and things), the shar' or the intellect?

As for the subject of this *ḥukm*, that is, the thing which judges upon the actions and the things, it is the *ḥusn* [beauty] and the *qubh* [ugliness], because the intent of 'issuing the *ḥukm*' is the specifying of the stance of the human towards an action: should he do it or leave it, or choose between doing it and leaving it, and the specifying

of his stance towards the things related to his actions: should he use them, or leave them, or choose between using and leaving. The specifying of this stance of his depends on his view about the thing: is it *ḥasan* or *qabīh* or neither. Thus the subject of the sought *ḥukm* is the *ḥusn* and *qubh*. So is the judgment of *ḥusn* and *qubh* for the intellect or the shar'? There is no third option with regards to the issuing of this *ḥukm*. The answer to this is that the *ḥukm* on the actions and things can be from a number of perspectives. It can be from the perspective of its Reality; the nature of its reality: what is it?

Accordance or discordance with the nature of the human being and his *fitri* [innate] inclinations; and its commission being praiseworthy and its omission being blameworthy or it being neither praiseworthy or blameworthy, that is, from the perspective of reward and punishment for its commission or omission or the lack of reward or punishment.

Thus these are the three perspectives of the *ḥukm* upon the actions and things: one, its reality, what is it? Two, its harmony, or the lack thereof, with the nature of the human; and three, with regards to reward or punishment and praise or reproach. As for the *ḥukm* upon actions and things from the first perspective, its reality, and the second perspective, its harmony or discord with the nature of the human, then there is no doubt that all of this is for the human himself, that is, for the intellect and not the shar'. The intellect is what judges upon the actions and the things with regards to these two perspectives. The *shar'* does not judge upon either of them, because the *shar'* has no role in them. For example, that knowledge is *ḥasan* and ignorance

is *qabīh*; the reality of the two is apparent in their excellence and deficiency respectively.

Similarly that affluence is *ḥasan* and poverty is *qabīh*, and so forth. For example the rescuing of those drowning is *ḥasan* and the unjust taking of wealth is *qabīh*. Human nature inclines away from oppression and inclines towards the [saving of the *mushraf*] from destruction. All of these return to the reality of the thing which man can sense and which his intellect can comprehend, or they return to the innate nature of man by which he feels and which his intellect comprehends.

Therefore it is the intellect which judges with regards to *ḥusn* and *qubh*, and not the shar', that is, the issuing of the *ḥukm* upon actions and things from these two perspectives is for the human; the *hakīm* in them is man. As for the judgment, upon the actions and things, from the perspective of praise and reproach in the world, and reward and punishment in the hereafter, then without doubt it is for Allah alone, and not for the human, that is, it is for the shar', not for the intellect. For example the *ḥusn* of *imān*, the *qubh* of *kufr*, the *ḥusn* of obedience, the *qubh* of disobedience, the *ḥusn* of lying during war, and its *qubh* with the *kāfir* ruler in peace time, and so forth.

This is because the reality of the intellect (thinking) is (that it requires) sense-perception [*ihsās*], the reality, previous information and the brain. Sense-perception is an essential element of the foundations of the intellect such that if the human being cannot perceive a thing it is not possible for his intellect to issue judgment upon it, because the judgment of the intellect is restricted to that which is sensed and it is not possible for it to issue judgment on that which is not sensed. The nature of oppression [*ẓulm*] as to

whether it is worthy of praise or reproach is not from that which man can sense, because it is not something that can be sensed, so the intellect understanding it and giving judgment on it is not possible.

This even though man may feel, through his innate nature, an inclination towards or away from it, but feeling alone does not benefit the issuing by the intellect of the *ḥukm* upon a thing; nay, sense-perception is a must.

Therefore, it is not possible for the intellect to issue judgment of *ḥusn* or *qubh* upon a thing or action. Thus, it is not permissible for the intellect to issue its judgment of praise or reproach upon actions or things. Nor is it permissible to place the issuing of the *ḥukm* of praise or reproach alongside with the innate human inclinations because these inclinations issue the judgment of praise upon what is in accordance with them (inclinations) and of reproach on what goes against them, and it may be that which accords with them is of that which is worthy of reproach, like fornication, homosexuality, and tyrannical ruling over people; and it may be that which goes against them is praiseworthy, like fighting the enemies, patience upon disliked things and the speaking of the truth in situations where severe harm is bound to eventuate. Thus placing the (issuing) of the *ḥukm* with the inclinations and desires means placing them as a basis upon which praise and reproach (of things and actions) is considered.

They (inclinations) are definitely an erroneous basis of consideration, and therefore judging by them is erroneous, because they make erroneous judgments that contradict the reality, over and above the fact that they judge praise and blame on the basis of whims and desires not on the basis of what is actually upon it. Therefore is it not permissible for

the innate inclinations to issue judgment of praise or reproach, nor is it permissible for the intellect to do so. Thus is it not permissible to place the issuing of the *ḥukm* of praise or reproach with the human being. The one who issues His *ḥukm* of praise or reproach is indeed Allah ﷻ, and not man; it is the shar', not the intellect. If man is left to judge upon actions and things with regards to praise and reproach, the judgment would differ with the difference in personalities and times. It is not in the capability of man to conclusively judge.

Therefore the judgment in this regard is for Allah ﷻ. It is evidently apparent that man judges things to be *ḥasan* today but then judges them to be *qabīh* tomorrow, that he judges things to be *qabīh* yesterday and judges the same things to be *ḥasan* today. Thus man is at variance in judgment upon the same thing and cannot conclusively judge. So his judgment is erroneous and therefore it is not permissible to place the judgment of praise or reproach with the intellect or with man. Thus it is from necessity that the Judge (*al-Ḥakim*) upon the actions of the servants and upon the things related to them from the perspective of praise and reproach is Allah the Exalted and not man, that is, it is the shar' and not the intellect.

This is the rational evidence of *ḥusn* and *qubh*; as for the shar'i evidence, then the shar' has tied *tahsīn* and *taqbīh* with its command to follow the Messenger ﷺ and to restrain the whims. Thus it is from the definitive (principles) of the Sharī'ah that *ḥusn* is what the shar' has made *ḥusn* and *qabīh* is what the shar' has made *qabīh*, from the perspective of reproach and praise. The *ḥukm*, of praise or reproach, upon the actions and things is for the specifying of the stance of the human with regards to them.

In terms of the things, it clarifies whether his using them is allowed (*yajūz*) or prohibited, and there is no third option.

In terms of the actions of man, it clarifies whether he is requested to establishing them or he is requested to leave them, or whether the choice between doing and leaving is his. Because the *ḥukm* from this perspective is not but for the shar', it a must that the *aḥkām* upon the actions and things related to them return to the shar' and not the intellect and it is a must that the shar' alone judge upon them.

Further, the *ḥukm* upon the things of *ḥalāl* [allowed] or *ḥarām* [prohibited], upon the actions of the servants of *wājib* [obligatory], *ḥarām*, *mandūb* [recommended], *makrūh* [reprehensible] or *mubāh* [permissible], and upon the matters [*'umūr*] and contracts [*'uqūd*] of (them being) *asbāb* [causes], *shurūt* [conditions], or *mawān'i* [preventions], or *sahīh* [valid], *bātil* [invalid], or *fāsid* [void], or (them being) *azīmah* [original rule] or a *rukhṣah* [concession], all of this is not judged on the basis of the things or actions being in accordance or discordance with the natural human disposition or on the basis of their reality, but are judged on the basis of whether they merit praise or reproach in this world and reward or punishment in the hereafter.

Therefore the *ḥukm* by its nature is for the shar' alone and not for the intellect. Thus in reality, the *Ḥakim* upon the actions and the things related to them and upon the matters and contracts is not but the shar' alone. The intellect has absolutely no judgment in this.

al-Ḥakim (The Judge)

From the most important of inquiries related to the *ḥukm*, necessarily requiring clarification, is the knowing of who it is the issuing of the *ḥukm* returns to, that is, who is the *Ḥakim*? Upon the knowledge of this rests the knowledge of the *ḥukm* and its types.

The intent of '*Ḥakim*' here is not the executive authority who executes all the affairs with the authority it possesses. Rather, the intent of "*Ḥakim*" is the one who possesses the right of issuing the *ḥukm* upon actions and things, because all that exists of the tangible comprises either of the actions of the human or of the things other than the actions of the human. Because the human, by his description of being alive in this universe, is the subject of the study, and issuing of the *ḥukm* is only because of him and is related to him, therefore the *ḥukm* upon the actions of the human and upon things related to these actions is necessary.

So who is the one who alone has the right to issue the *ḥukm* upon that: it is Allah, or the human himself? In other words, is it the shar' or the intellect [*'aql*]? That which allows us to know the *ḥukm* of Allah is the shar', and that which the human judges by is the intellect. So what judges (upon the actions and things), the shar' or the intellect?

As for the subject of this *ḥukm*, that is, the thing which judges upon the actions and the things, it is the *ḥusn* [beauty] and the *qubh* [ugliness], because the intent of 'issuing the *ḥukm*' is the specifying of the stance of the human towards an action: should he do it or leave it, or choose between doing it and leaving it, and the specifying

of his stance towards the things related to his actions: should he use them, or leave them, or choose between using and leaving. The specifying of this stance of his depends on his view about the thing: is it *ḥasan* or *qabīh* or neither. Thus the subject of the sought *ḥukm* is the *ḥusn* and *qubh*. So is the judgment of *ḥusn* and *qubh* for the intellect or the shar'? There is no third option with regards to the issuing of this *ḥukm*. The answer to this is that the *ḥukm* on the actions and things can be from a number of perspectives. It can be from the perspective of its: Reality; the nature of its reality: what is it?

Accordance or discordance with the nature of the human being and his *fitri* [innate] inclinations; and its commission being praiseworthy and its omission being blameworthy or it being neither praiseworthy or blameworthy, that is, from the perspective of reward and punishment for its commission or omission or the lack of reward or punishment.

Thus these are the three perspectives of the *ḥukm* upon the actions and things: one, its reality, what is it? Two, its harmony, or the lack thereof, with the nature of the human; and three, with regards to reward or punishment and praise or reproach. As for the *ḥukm* upon actions and things from the first perspective, its reality, and the second perspective, its harmony or discord with the nature of the human, then there is no doubt that all of this is for the human himself, that is, for the intellect and not the shar'. The intellect is what judges upon the actions and the things with regards to these two perspectives. The shar' does not judge upon either of them, because the shar' has no role in them. For example, that knowledge is *ḥasan* and ignorance

is *qabīh*; the reality of the two is apparent in their excellence and deficiency respectively.

Similarly that affluence is *ḥasan* and poverty is *qabīh*, and so forth. For example the rescuing of those drowning is *ḥasan* and the unjust taking of wealth is *qabīh*. Human nature inclines away from oppression and inclines towards the [saving of the *mushraf*] from destruction. All of these return to the reality of the thing which man can sense and which his intellect can comprehend, or they return to the innate nature of man by which he feels and which his intellect comprehends.

Therefore it is the intellect which judges with regards to *ḥusn* and *qubh*, and not the *shar'*, that is, the issuing of the *ḥukm* upon actions and things from these two perspectives is for the human; the *hakīm* in them is man. As for the judgment, upon the actions and things, from the perspective of praise and reproach in the world, and reward and punishment in the hereafter, then without doubt it is for Allah alone, and not for the human, that is, it is for the shar', not for the intellect. For example the *ḥusn* of *imān*, the *qubh* of *kufr*, the *ḥusn* of obedience, the *qubh* of disobedience, the *ḥusn* of lying during war, and its *qubh* with the *kāfir* ruler in peace time, and so forth.

This is because the reality of the intellect (thinking) is (that it requires) sense-perception [*ihsās*], the reality, previous information and the brain. Sense-perception is an essential element of the foundations of the intellect such that if the human being cannot perceive a thing it is not possible for his intellect to issue judgment upon it, because the judgment of the intellect is restricted to that which is sensed and it is not possible for it to issue judgment on that which is not sensed. The nature of oppression [*ẓulm*] as to

whether it is worthy of praise or reproach is not from that which man can sense, because it is not something that can be sensed, so the intellect understanding it and giving judgment on it is not possible.

This even though man may feel, through his innate nature, an inclination towards or away from it, but feeling alone does not benefit the issuing by the intellect of the *ḥukm* upon a thing; nay, sense-perception is a must .

Therefore, it is not possible for the intellect to issue judgment of *ḥusn* or qubh upon a thing or action. Thus, it is not permissible for the intellect to issue its judgment of praise or reproach upon actions or things. Nor is it permissible to place the issuing of the *ḥukm* of praise or reproach alongside with the innate human inclinations because these inclinations issue the judgment of praise upon what is in accordance with them (inclinations) and of reproach on what goes against them, and it may be that which accords with them is of that which is worthy of reproach, like fornication, homosexuality, and tyrannical ruling over people; and it may be that which goes against them is praiseworthy, like fighting the enemies, patience upon disliked things and the speaking of the truth in situations where severe harm is bound to eventuate. Thus placing the (issuing) of the *ḥukm* with the inclinations and desires means placing them as a basis upon which praise and reproach (of things and actions) is considered.

They (inclinations) are definitely an erroneous basis of consideration, and therefore judging by them is erroneous, because they make erroneous judgments that contradict the reality, over and above the fact that they judge praise and blame on the basis of whims and desires not on the basis of what is actually upon it. Therefore is it not permissible for

the innate inclinations to issue judgment of praise or reproach, nor is it permissible for the intellect to do so. Thus is it not permissible to place the issuing of the *ḥukm* of praise or reproach with the human being. The one who issues His *ḥukm* of praise or reproach is indeed Allah ﷻ, and not man; it is the shar', not the intellect. If man is left to judge upon actions and things with regards to praise and reproach, the judgment would differ with the difference in personalities and times. It is not in the capability of man to conclusively judge.

Therefore the judgment in this regard is for Allah ﷻ. It is evidently apparent that man judges things to be *ḥasan* today but then judges them to be *qabīh* tomorrow, that he judges things to be *qabīh* yesterday and judges the same things to be *ḥasan* today. Thus man is at variance in judgment upon the same thing and cannot conclusively judge. So his judgment is erroneous and therefore it is not permissible to place the judgment of praise or reproach with the intellect or with man. Thus it is from necessity that the Judge (*al-Ḥakim*) upon the actions of the servants and upon the things related to them from the perspective of praise and reproach is Allah the Exalted and not man, that is, it is the shar' and not the intellect.

This is the rational evidence of *ḥusn* and *qubh*; as for the shar'i evidence, then the shar' has tied *tahsīn* and *taqbīh* with its command to follow the Messenger ﷺ and to restrain the whims. Thus it is from the definitive (principles) of the Sharī'ah that *ḥusn* is what the shar' has made *ḥusn* and *qabīh* is what the shar' has made *qabīh*, from the perspective of reproach and praise. The *ḥukm*, of praise or reproach, upon the actions and things is for the specifying of the stance of the human with regards to them.

In terms of the things, it clarifies whether his using them is allowed (*yajūz*) or prohibited, and there is no third option.

In terms of the actions of man, it clarifies whether he is requested to establishing them or he is requested to leave them, or whether the choice between doing and leaving is his. Because the *ḥukm* from this perspective is not but for the shar', it a must that the *aḥkām* upon the actions and things related to them return to the shar' and not the intellect and it is a must that the shar' alone judge upon them.

Further, the *ḥukm* upon the things of *ḥalāl* [allowed] or *ḥarām* [prohibited], upon the actions of the servants of *wājib* [obligatory], *ḥarām*, *mandūb* [recommended], *makrūh* [reprehensible] or *mubāh* [permissible], and upon the matters [*'umūr*] and contracts [*'uqūd*] of (them being) *asbāb* [causes], *shurūt* [conditions], or *mawān'i* [preventions], or *sahīh* [valid], *bātil* [invalid], or *fāsid* [void], or (them being) *azimāh* [original rule] or a *rukhsah* [concession], all of this is not judged on the basis of the things or actions being in accordance or discordance with the natural human disposition or on the basis of their reality, but are judged on the basis of whether they merit praise or reproach in this world and reward or punishment in the hereafter .

Therefore the *ḥukm* by its nature is for the shar' alone and not for the intellect. Thus in reality, the *Ḥakim* upon the actions and the things related to them and upon the matters and contracts is not but the shar' alone. The intellect has absolutely no judgment in this.

لا حُكْمَ قَبْلَ وُرُودِ الشَّرْعِ

There was No Verdicts before the Arrival of the Sharī'ah

It is not permissible to give things and actions a verdict unless there's a Sharī'ah evidence for this verdict, because there is no verdict for things and actions of the sane before the arrival of the Sharī'ah, Allah ta'ala said:

﴿وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ رَسُولًا﴾

"We were not going to punish until We send a messenger",

and He ta'ala said:

﴿لِئَلَّا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ﴾

"so people will not have an excuse to Allah after the messengers",

and because the verdict can not be proved except by two ways: the Sharī'ah or the mind. As for the mind there's no place for it here, because the issue here is obliging or forbidding and the mind could not oblige or forbid and that is not its duty, it is strictly the Sharī'ah duty, so the verdict stands up on the arrival of the Sharī'ah from Allah ta'ala, i.e. the arrival of the messenger in respect of the whole Sharī'ah, and upon the Sharī'ah evidence in respect of the issue that needs a verdict. As for the messenger, it is apparent in the explicit text of the (*ayah*) verse, because banishing the punishment from people before sending the messenger shows their irresponsibility concerning the verdicts and the beliefs, i.e. not given them any duties before Allah sends a messenger to them. Therefore, the people who lived in (*al-fatrah*) a period since a mission was distorted until a new mission is sent are rescued, and the

verdict for them is like those who lived before sending the Messenger Muhammad ﷺ, and of that also, people who the mission was not conveyed to them in a way that turns on their awareness, they are rescued like *al-fatrah* people, because the verse is applicable to them, and they are considered that no messenger was sent to them, since his mission was not conveyed to them, and the sin of not conveying is upon those who are able to do so but they don't. Accordingly, before sending the messenger, things can not be said that they are lawful or unlawful, because there was no verdict for them, similarly are the actions, but the human could do what he wants without being restricted to a verdict, and he is not responsible before Allah ta'ala until he sends a messenger to him, then he restricts himself to the verdicts of Allah which the messenger conveyed them to him, in accordance to the Messengers conveyance to him.

As for after sending the Messenger and conveying his mission we see, if the mission brought some specific things, and commands them to follow other then his mission in the other things, like the situation of our master Isā, so they are restricted to the verdicts that he conveyed to them and obliged to follow them, and will be punished for not following them until that mission gets abrogated. If the mission of the messenger came with things and did not mention other things, people will be restricted to only what came with it, and will not be punished for what did not come with it. If the mission is general and includes everything and came comprehensive and manifests everything, people then are restricted to it in everything, this is like the situation of our Master Muhammad ﷺ. Verily his mission is general, it includes and manifests

everything, and therefore, there is no verdict except what came with it; because the concept of Allah ta'ala's saying:

﴿وَمَا كُنَّا مُعَذِّبِينَ حَتَّى نَبْعَثَ رَسُولًا﴾

"We were not to punish until We send a messenger"

is that we punish those whom we send to them a messenger and they violate his mission. And regardless what kind of mission the messenger conveyed; people who violate one verdict of it are to be punished. Therefore, the thing and the action would not have a verdict until evidence for it is established. Accordingly, it is not to say that originally things and actions are prohibited because it is a dispassion in the ownership of Allah ta'ala without his permission, measuring on creatures; because the explicitly of the verse shows that Allah ta'ala does not punish until he sends the messenger, so he does not blame until he clarifies the verdict. Moreover, the creatures can be harmed, but Allah *Subhanahu wa Ta'ala* is exalted for being benefited or harmed. Likewise it is not to say that generally actions and things are allowed, because it is a benefit, free from a sign of corruption or harm to the owner, so it should be allowed; we can not say that because the concept of the verse is that, the human is restricted to what the messenger brought, because they will be punished for disobeying him. So the matter became fundamentally, following the messenger, and complying with the verdicts of his mission, and not the non compliance. And because the commonness of the verdicts verses, shows the obligation of referring to the Sharī'ah and complying with it. Allah ta'ala said:

﴿وَمَا اخْتَلَفْتُمْ فِيهِ مِنْ شَيْءٍ فَحُكْمُهُ إِلَى اللَّهِ﴾

"and anything that you dispute over it its verdict is for Allah",

and He ta'ala said:

{فإن تنازعتم في شيء فردّوه إلى الله والرسول}

"so if you dispute over a thing; return it to Allah and to the Messenger"

and He ta'ala said:

{ونزَّلنا عليك الكتابَ تِبياناً لكُلِّ شيءٍ}

"and we have revealed the book unto you (oh Muhammad) clarifying everything",

and because the Messenger of Allah ﷺ said (as al-Dāraquṭnī narrated): **"Every matter contrary to our matter is rejected"**. So that shows that it is fundamental to follow the Sharī'ah and abide by it. And because, the benefit which is free from the sign of corruption and harm to the owner is not a proof of the permissibility, don't you see that, fornication with a distant unmarried woman can be a benefit, free of a sign of corruption and harm to the owner, although it is (*ḥarām*) forbidden, and lying as a joke with anyone to bring laughter and happiness to both the liar and the lied for, is free from corruption and harm sign to the owner, despite that, it is forbidden. And also, after the arrival of the Sharī'ah; things and their actions have had verdicts. So fundamentally we must look in the Sharī'ah for things and their actions, if there are verdicts for them or not and not consider them as originally allowed, setting the allowed verdicts for them directly by the mind, with the existence of the Sharī'ah. And also it is not to be said: that we should stop and avoid issuing any verdict, because not issuing any verdicts means cancelling the action or neglecting the Sharī'ah verdict, that it not allowed, because

it is confirmed in the quran and the *ḥadīth* to ask about the *ḥukm* when there is a lack of knowledge, Allah ta'ala said:

﴿فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾

"so do ask the people of knowledge if you know not"

and the Messenger of Allah ﷺ said in the *ḥadīth* of tayammum as Abū Dāwud narrated on the authority of Jābir: **"would they ask since they know not; verily the cure of illness is by asking"**, these evidences showed, that it is not fundamentally correct to stop and not issuing a verdict. Accordingly, after sending the Messenger ﷺ the *ḥukm* became strictly for the Sharī'ah, so the verdict stands upon the arrival of the Sharī'ah i.e. upon the Sharī'ah evidence for the one issue, therefore no verdict should be given except upon Sharī'ah evidence. As that no verdict should be issued before the arrival of the Sharī'ah, and fundamentally, the Sharī'ah verdict should be looked for in the Sharī'ah i.e. Sharī'ah evidence should be searched for to issue a Sharī'ah verdict.

One more issue remained, and that is: does the Islamic Sharī'ah contain verdicts for all the previous situations, and all the current problems, and all the incidents which may occur? The answer is that: no situation took place, no problem occurred, and no incident happened, but it has a verdict in Islam. Verily the Islamic Sharī'ah surrounds all human actions completely, not a thing situated in the past, nor does a thing confront a human in the present or a thing occur in the future, but here is a verdict in the Sharī'ah for every kind of it, Allah ta'ala said:

{ونزَّلنا عليك الكتابَ تِبياناً لكُلِّ شيءٍ}

"And We have sent down the book unto you; a clarification of everything",

and He ta'ala said:

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي﴾

"Today I have completed for you your Dīn, and I have accomplished my bounty upon you and I have accepted Islam for you as a Dīn",

so the Sharī'ah never neglected a thing from the actions of the servants no matter what it is, it either establishes an evidence for it by a text of the Qur'ān and the *ḥadīth*, or it puts a sign in the Qur'ān and the *ḥadīth* to alert the responsible *(mukallaf)* about the reason of its legislation for the purpose of matching what-so-ever has that sign or reason. It is impossible according to the Sharī'ah that any action of the servants exists without the Sharī'ah getting a verdict for it, or a sign to show its verdict, because of the commonness of Allah ta'ala's saying in the verse: *"...clarification of everything"* and for the explicitly of the clear text, that Allah had completed this *Dīn*. So if it is claimed that some situations are free from Sharī'ah verdicts, it means that, there are some actions of the servants neglected by the Sharī'ah unrestrictedly, without establishing evidence or setting a sign to alert the responsible (*mukallaf*) about its aim in it. If this is claimed it means that there is a thing the book did not clarify, and it means that Allah ta'ala did not complete this *Dīn*, for the claim that there is an action without a verdict mentioned, so it is not a complete *Dīn* and this contradicts the Qur'anic text, therefore it is a false, invalid claim. Even if there are (*āḥād aḥādīth*) narrated by individuals authentic *aḥādīth* carry the meaning that there is some actions of the

servants, that the Sharī'ah did not come with verdicts for them, such *aḥādīth* are to be rejected after knowledge (*dirayah*). For their contradiction with the Qur'anic decisive text in its transmission and meaning, because the verse *"...clarification for everything..."*, and the verse: *"...I have accomplished for you, your Dīn..."*, are decisive in their transmission and their meaning. So any *āḥād ḥadīth* contradicts them, should be rejected *dirayatan* after a comprehensive study. Therefore it is not allowed for the Muslim after understanding these decisive verses to say that: there possibly be one human action the Sharī'ah did not show a verdict for it, not by any way.

As for what Ibn Mājah and al-Tirmidhī narrated on the authority of Salman al-Farisī that he said: the Messenger of Allah ﷺ was asked about the ghee, cheese and furs? He ﷺ said: **"The *(ḥalāl)* allowed is what Allah allowed in his book, and the (*ḥarām*) forbidden is what Allah forbade in His book, and what He *(sakata)* kept silent about is among what He *(afa)* forgave"**, and what Abū al-Darda' narrated on behalf of the Messenger of Allah ﷺ that he said: **"What ever Allah allowed in His book is allowed and what every He forbade is forbidden, and whatever He kept silent about is (*afou*) forgiveness, so do accept from Allah His (*afiyah*) favour, for Allah would not forget anything, then he ﷺ recited this verse** *'...and your God does not forget'"*, al-Bazzar narrated it. And what al-Bayhaqī narrated on the authority of Abū Tha'labah on behalf of the Prophet ﷺ that he said: **"Allah had obliged obligations, do not loose them, and he sat boundaries do not invade them, and he forbade things so do not trespass them, and he kept silent about other things, as a permission for you, not out of forgetness, so do not search for them"**. In view of these *aḥādīth*; they are

āḥād news, so they could not confront the decisive text, and from the other way, these *aḥādīth* do not show that there are things the Sharī'ah did not clarify, but they strictly show that there are things, Allah Ta'ala did not forbid, out of mercy for you, so He (afa) kept silent about them and did not forbid them so the subject of these *aḥādīth* is not the silence of legislating verdicts for those things, but the silence was to avoid forbidding them. The silence from forbidding them does not mean issuing the permissible verdict for every matter the legislator did not clarify it, but this silence of the legislator was to avoid the prohibition. And His silence from forbidding means the *(ḥalāl)* allowed. This silence may include the must, the preferable, the permissible, and the hated, and it applies only on what he kept silent about, not on everything he did not clarify. As for the meaning of the *aḥādīth*; it is the forgiveness for these things like the saying of Allah Ta'ala: (*Allah forgave you...*), and that is by the indication of the text of the *aḥādīth* and the indication of the context which is the prohibition of asking about what is not forbade yet, so it will be forbidden because of the questioning. Ibnu Abbas may Allah be pleased with him said: "what is not mentioned in the Qur'ān, is among what Allah forgave for it", Imam al-Shāṭibī mentioned this quotation in his book *al-Muwafaqat*. And Ibnu Shaybata narrated in his classified book, that Ibrāhīm Ibnu Sa'd asked Ibnu Abbas what should be taken from the money of the Dhimmies (Ahl al-Dhimmah)? He said: (al-Afou) the *ḥalāl* excess. al-Ṭabarī narrated in his (*tafsir*) on behalf of Abū Ubaid Ibnu Umayr said: "Allah Ta'ala had allowed and forbade so whatever he allowed, consider it an allowed and whatever he forbade abstain from, and he left things he did not allow nor did he forbid and that is forgiveness from Allah he forgave". And the

Messenger of Allah ﷺ used to hate the abound questionnaires about which no verdict was descended, basing on the initial innocence verdict. So it refers to this meaning. This means the actions are with that exemption. The Messenger of Allah ﷺ said: **"the greatest Muslim on offence towards Muslims is whoever asked about a thing that wasn't forbidden for the Muslims yet, and then it becomes forbidden because of his question"**, narrated by Muslim. And he ﷺ said: **"Leave me as long as I left you, verily those who were before you perished because of the abound questionnaires, and their differences over their Prophets, whatever I refrain you of, abstain from, and whatever I command you to do, do it at your best"**, narrated by Imām Aḥmad. Imam Muslim and Aḥmad narrated on the authority of Abū Hurayrah said: the Messenger of Allah ﷺ delivered a *khutbah*, said: **"oh people, Allah obliged the hajj on you so do perform hajj", a man said: "is it every year oh Rasul Allah?" he kept silent until he repeated it three times, then Rasul Allah ﷺ said: "if I say yes then it will be obligatory, and you will not be able to do it", then he said: "leave me as long as I left you"**. All these show that, the meaning of his saying in the *ḥadīth*: **"...and kept silent about things..."** is he did not forbid, and this coordinates with his saying in another *ḥadīth*: **"leave me as long as I left you"**, and the other narration of the same *ḥadīth* **"... and He (afa) forgave about things"** determined this meaning i.e. trespassed it and did not forbid it. Accordingly, the saying of the Messenger ﷺ: **"... and kept silent about things..."** or his saying: **"... whatever He kept silent about is forgiven..."** do not mean, that he did not clarify the verdict of some servants actions, but they mean he did not forbid some things out of mercy for you, and what he did not forbid of the determined things which are

included in his silence, that is not forbidden, so they are allowed. So the issue is related to the silence of the legislator from forbidding things, and not related to nonbeing clarifying verdicts for some things. This is in view of the meaning of the *ḥadīth*, where as for the situation of the *ḥadīth* in the Sharī'ah rule, is that the actions of the servants as they are responsible are either generally entered in the call of *(taklīf)* responsibility, which is the command or the optional call, or they are not generally entered in it, so if the actions are generally entered in it they must have verdicts in the Sharī'ah because they fall under the call of *(taklīf)* responsibility. And if actions are not generally entered in the *taklīf* call; there should be some of the (*mukallafīn*) responsible servants excluded from the responsibility call, even at one time or in a certain situation, and this is basically false, because if we suppose that some one is responsible; it is not right to exclude him, and if we suppose him not responsible, it is then a false suppose, because the *taklīf* is common for the generality of its call. Accordingly, the saying of the Messenger ﷺ: **"... and kept silent about things..."** is not possible to mean, that Allah ta'ala did not clarify their verdicts, for what becomes regulated with it that there is someone in a situation or a time at which he is not (*mukallaf*) responsible, so the only remained meaning became that he ﷻ kept silent from forbidding things. Therefore the *ḥadīth* does not show that there is any human action, the Sharī'ah did not clarify, so the derivation of the idea from this *ḥadīth* falls down, and accordingly the Sharī'ah principal

الأَصْلُ بِالأَفْعَالِ التَّقَيُّدُ بِحُكْمِ اللهِ

"The original verdict for the actions is the adherence to the verdict of Allah Ta'ala",

so it is not permitted for the Muslim to come forward for an action unless he knows the verdict of Allah about it from the legislator's call. So the (*ibaḥah*) allowed verdict is one of the Sharī'ah verdicts. So there's no way out of seeking an evidence for the action from the Sharī'ah, and the non clarification of the Sharī'ah is not an evidence to allow an action, but a claim, that the Sharī'ah is incomplete, and the evidence of the permissibility comes by providing an option from the legislator about it.

This is in regard of the actions. As for the things which are links for the actions, the original Sharī'ah verdict for them is the allowance unless prohibition evidence exists. So the original Sharī'ah verdict about the thing is that, it is allowed and it does not become prohibited unless there is a Sharī'ah evidence for its prohibition; and that is because the Sharī'ah texts allowed all things, and these texts are common and include all things, Allah ta'ala said:

{ألم تر أن الله سخّر لكم ما في الأرض}

"Do you not see that Allah has subjected to you (O mankind) all that is on the earth..."[3],

and the meaning of subjecting all what is on earth by Allah Ta'ala for the human is his permission of all that is on earth, and Allah said:

{يأيها الناس كلوا مما في الأرض حلالاً طيباً}

[3] Surah al-Hajj:65

"O mankind, eat of that which is on the earth lawful and good",

and He Ta'ala said:

{يا بنى ءادم خذوا زينتكم عند كلِّ مسجد وكلوا واشربوا..}

"O children of Adam, take your adornment while praying, and eat and drink..."[4],

and He said:

{هو الذى جعل لكم الأرض ذلولاً فامشوا في مناكبها وكلوا من رزقه

{

"It is He (Allah) who has mad the earth subservient to you; so walk in the paths of it and eat of his provision..."[5]

And thus, all the evidences that came to allow the things are in a general form, so their generality shows the permissibility of all the things. So the permissibility of all the things came in the legislator's general call. So the evidence of their permissibility is the Sharī'ah texts which came with permissibility of all things. So if a thing was made (*ḥarām*) forbidden, a text must exist to specify this generality, and show the exemption of this thing out of the general permissibility. So upon this came the principle: *"the original verdict about things is the permissibility"*. Therefore we found that, when the Sharī'ah forbade things it mentioned them in the text as an exception out of the general text, Allah Ta'ala said:

[4] Surah al-A'rāf:31
[5] Surah al-Mulk:15

{حرِّمت عليكم الميتةُ والدم ولحم الخنزير}

"Forbidden to you are (al-maytah) the dead animals, blood, the flesh of swine..."[6]

And the Messenger ﷺ said: **"the (*khamr*) intoxicant drink got forbidden for itself"**, narrated by al-Mabsūt from Ibn Abbas. So what the Sharī'ah mentioned as forbidden things is accepted from the general text, so it is contrary to the general verdict that allowed all things. And it is not right to say, that the thing could not be separated from the action of the servant, and its verdict come only after the verdict of the action of the servant, so it took the verdict of the action, this is not to be said, because, although the things are connected with the actions of the servants, and even though there evidences came in clarifying the verdict of the servants actions; the evidence of the servant's action when it was adjoined with the thing, it clarified for the thing since it is connected to actions, two verdicts and no third for them, it clarified the permission and clarified the prohibition, and not anything else at all for the thing. Therefore it is not right to say that the verdict of the thing is a must or preferable. So it eliminated the verdict to permission or prohibition. So from this perspective it is contrary to the servant's action, and it does not take its verdict, even though its evidence came clarifying the verdict of the servant's action. And the other perspective is that the generality of the permission evidence, and the specification in the determined thing in the prohibition, make the permission general for all the things, and the prohibition specific for what it came to prohibit. And by this, the

[6] Surah al-Mā'idah:3

verdicts of the things are originally, and from the way of describing their verdicts, are contrary to the actions. *"Things are originally allowed unless there is prohibition evidence"*. Where as, actions are originally must be strictly in adherence to the Sharī'ah verdict. And things are not to be described except by permission or prohibition, contrary to the actions. The legislator call connected to them is of two kinds: one of them is the call of *taklīf* and the other is the call of the circumstance, and he made the call of the *taklīf* into fine categories that are: the obligation, the preferable, the forbidden, the hated, and the allowed. And he made the call of the circumstance into five categories that are: the cause, the condition, the preventive, the (correctness, falseness, and the corruption). In conclusion, after sending our Master Muhammad ﷺ to the whole humanity, it is not permitted to say that there is an action or a thing that hasn't got a verdict, and its not permitted to say that any thing or action would have a verdict without a Sharī'ah evidence; because the verdict is the legislators call. And it is not permitted to say that everything the Sharī'ah did not clarify its verdict is the allowed; because the allowed is a Sharī'ah verdict, it is the legislator's call related to the actions of the human with the option, and because claiming that there are things the legislator did not clarify their verdicts means there is a thing the Quran did not clarify and the Sharī'ah is incomplete and this is not permitted to say for its contradiction to the Quran, the decisive in transmission and meaning. Accordingly, there is no action that comes from the human, and no thing connected to the action of the human, but it has a place of a verdict in the Sharī'ah, and no verdict except after the existence of the evidence of the legislator's call that determines it itself, hence there's no verdict before the

arrival of the Sharī'ah and no verdict before the sending of the messenger and no verdict after His sending except according to an evidence from the mission that he brought which shows and determines that specific verdict.

المُكَلَّفُونَ بالأَحْكَام

The Legally Responsible *(al-mukallafūn)* with respect to the *Sharī'ah* Rulings

All the people are assigned to the Sharī'ah verdicts, therefore the verdict was defined that it is the call of the legislator concerning the servants actions. No difference in the Sharī'ah verdict responsibility between the Muslim and the *kāfir*, both are addressed by the legislator's call, and both are responsible for the Sharī'ah verdict. The evidence on that are the co-operated texts about this concern, they all show explicitly without interpretation, that all people are addressed with the whole Islamic Sharī'ah, whether they are Muslims or (*kuffār*) faith rejecters. Allah Ta'ala said:

﴿وما أرسلناك إلا كافّة للناس بشيراً ونذيراً﴾

"And we have not sent you except as a giver of glad tidings and a Warner to all mankind ..."[7],

and Allah Ta'ala said:

{قل يا أيها الناس إنى رسول الله إليكم جميعاً}

"Say: O mankind! Verily, I am the Messenger of Allah to you all ..."[8],

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[7] Surah Saba':28

[8] Surah al-A'rāf:158

and the Messenger of Allah ﷺ said: **"I am sent to every red and black"**, (narrated by Muslim), it means to all people. So this is a common call to all people; it includes the Muslim and the *kāfir*, and it is not right to say that, this call is about believing in Islam, not about the branches verdicts; because it is a call about the mission which means the belief in it, not acting according to the branches verdicts. It is not right to say that, because the mission is general, it includes the belief in it and acting according to its branches verdicts that came with it, so specifying it to the belief has no specifier (*mukhassis*). Also if the call is to all people to believe in Islam, and to the Muslims only to perform the branches verdicts, then it means addressing some people with some verdicts, without the others, and if it is permissible to address some people with some verdicts and exclude some people from the call, it would then be permissible in all what came in the mission, i.e. it would then be permissible to exclude some from the principal of the belief, because what is permissible in the verdicts; is also permissible in the other elements, and this is false, because the call is explicit:

{رسول الله إليكم}

"... I am the Messenger of Allah to you all..."

So the belief in him includes the addressing call by obvious. Whereas the address to all people by the branches verdicts is affirmed by the explicit Quran, like the address by the mission, Allah Ta'ala said:

{وويلٌ للمشركين الذين لا يؤتون الزكاة}

"...and woe to the (mushrikeen) polytheists. Those who give not the zakat and they are disbelievers in the here after"[9],

and He Ta'ala said:

{يقول الإنسان يومئذٍ أين المفر}

"On that day, man will say: "Where is the refuge to flee?"[10],

up until He Ta'ala said:

{فلا صدّق ولا صلّى}

"So he (the disbeliever) neither believed, nor prayed"[11],

and He Ta'ala said:

{كل نفسٍ بما كسبت رهينة}

"Every person is a pledge for what he acquired"[12],

and up until He Ta'ala said:

{ما سلككم في سقر قالوا لم نكُ من المصلين ولم نكُ نطعم المسكين}

"What has caused you to enter hell? They will say: "We were not of those who used to perform the prayers. Nor we used to feed the (miskeen) poor"[13]

Also Allah Ta'ala had commanded all people to worship him, so the *kuffār* are commanded to do the worships, He Ta'ala said:

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[9] Surah Fussilat:6
[10] Surah al-Qiyamah:10
[11] Surah al-Qiyamah:31
[12] Surah al-Muddathir:38
[13] Surah al-Muddathir:42-44

{يا أيها الناس اعبدوا ربكم}

"O mankind! Worship your Lord Who created you ..."[14]

and He said:

{ولله على الناس حجُّ البيت}

"...and hajj (to the Ka'bah) is a duty that mankind owes to Allah..."[15]

these verses are explicit that Allah had made them responsible for the branches verdicts, because they addressed them with the branches verdicts, so they are responsible for them. Have they been not responsible for the branches verdicts; Allah wouldn't have threatened them severely by punishment for not performing them, by his saying:

{ وويلٌ للمشركين الذين لا يؤتون الزكاة}

"...And woe to the (mushrikīn) polytheists. Those who do not give the zakāh, and they are disbelievers in the hereafter"[16]

That affirms that Allah Ta'ala had addressed the *kuffār* with some commands and some prohibitions, of the specified branches verdicts, so likewise they are addressed with the rest of the branches verdicts. So that shows, that the *kuffār* are addressed with all the Sharī'ah principles and branches, and that Allah Ta'ala will punish them for the disbelief and for not performing the verdicts. So from the address

[14] Surah al-Baqarah:21
[15] Surah Āli Imran:97
[16] Surah Fussilat 6-7

perspective; they are without doubt addressed with the verdicts. As for their performance of these verdicts, and the application of these verdicts upon them by the state, and force them to perform them, there are details: as for their self performance of the verdicts without forcing them, the consideration is that, if embracing Islam is a condition for performing these verdicts, that came in the legislators text, like the prayer, fasting, hajj, *zakāh*, and other worships, and similar verdicts, then it is not permissible for them to perform them, and they will be prevented from performing them, because Islam is a condition for those verdicts, and they are not permissible with the *kufr*. Similar to those is the testimony of the *kāfir* on the money rights, like the loan it is not allowed, and to make the *kāfir* a governor or a judge over the Muslims, and the similar of the verdicts, which the Sharī'ah text came with their non permissibility for the *kāfir*, and that Islam is a condition for them. As for the other verdicts, they are permitted for them if they do them, and that is like fighting the disbelievers with the Muslims, hence it is not a condition for the fighter to be Muslim to perform fighting. Therefore it is permissible for the *kāfir* to perform it, likewise are the testimony in the agreements, like sale, and in medicine, and in the technical matters that Islam is not a condition for them. This is about the self performance of the branches verdicts. As for addressing them with enforcement there are some details: if the verdicts are of the kind of the common call, where the belief is not a restriction to perform them, we then see, if the verdicts are of the kind that are not permissible except from the Muslim because Islam is a condition in then, or they are of the kind which the *kuffār* were approved not to perform them, in these two situations they would not be forced to perform them, nor would they be performed up

on them. So the *khalīfah* does not punish the *kuffār* for not believing in Islam, unless they are from the Arab polytheist other than the people of the book; that is for Allah Ta'ala's saying:

{لا إكراه في الدين}

"There is no compulsion in the religion..."[17]

and his saying:

{حتى يعطوا الجزية عن يد وهم صاغرون}

"...until they pay the jizyah with willing submission, and feel themselves subdued"[18]

and for the approval of the Messenger ﷺ to the *kuffār* of Yemen to remain on their religion, and he was satisfied to take the (*jizyah*) tribute from them, excepted from that; the polytheist Arabs other then the people of the book; for Allah Ta'ala's saying:

{تقاتلونهم أو يسلمون}

"...you fight them or they shall surrender..."[19]

This is specifically for the Arab polytheists, and as such they would not be ordered to pray the Muslims prayer, nor would they be prevented from their own prayer; for the approval of the Messenger ﷺ to them for their worship, and their churches that existed in Yemen, Bahrain and the

[17] Surah al-Baqarah:256,
[18] Surah al-Tawbah:29
[19] Surah al-Fath:16

people of Najran, nor did he demolish the churches of those who did not believe. That shows that they will be left to perform their belief and worship. Thus the *jihād* verdict will not be applied upon them nor would they be forced to perform it, because the requested fight in the *jihād* verses is fighting the *kuffār* kind, and it is not imaginable that the *kāfir* fights him self. As such they would not be forced to abstain from (*al-khamr*) the intoxicant, nor its verdict will be applied upon them, nor would they be punished for drinking it, because there were Christians in Yemen that used to drink intoxicant and were approved to drink it, and because when the (*Ṣaḥābah*) companions opened the countries used not to prevent the *kuffār* from drinking it. And like wise are all the verdicts which embracing Islam is a condition in their validity, or the Messenger ﷺ approved them, or the *Ṣaḥābah* had consensus on approving the *kuffār* not to perform them, they will not be forced to perform them, nor will they be applied upon them by the *khalīfah*. But the verdicts that are not as such, i.e. Islam is not a condition in their validity, and no Sharī'ah text came to show that they will not be applied upon the *kuffār*, then they requested to fulfil them, and they will be forced to perform them, and punished for leaving them; that is because they are addressed to do the verdicts by the Sharī'ah call, and no Sharī'ah text shows that the believe in the verdict is a condition to perform it so they are not requested to perform it before believing, and no text came to exclude them from the request; the common request then remains common and includes the *kuffār*. Therefore the *kāfir* will be requested to do them, i.e. requested to do all the Sharī'ah verdicts except what the (*dalīl*) evidence came to exclude. The proof for this is the Messenger's implementation of these verdicts upon the *kuffār*. It is

affirmed that the Messenger ﷺ dealt with them according to the Islamic verdicts, and penalties, it is also affirmed that he ﷺ punished them for the sins. On the authority of Anas: **"That a Jew traumatised the head of a slave girl between two stones, so she was asked who did this to you? Was it so and so? Until they named him, then she nodded her head, so they brought him and he admitted then the Prophet ﷺ commanded to punish him, so his head was bashed by stones"** narrated by al-Bukhārī. On the authority of Abū Salamah ibn Abd al-Rahman and Sulayman ibn Yasar, on the authority of some men of *al-Anṣār*: **"that the Prophet ﷺ said to the Jews and started by them: let 50 men of you make an oath (that Abdullah ibn Sahl was not killed by them), they refused, then he said to the *Anṣār*: (*istahiqou*) do what makes you entitled to your right, they said: "we make an oath on a matter we haven't witnessed O Messenger of Allah? Then the Messenger ﷺ made the blood money on the Jews because he (the victim) was found between them"** narrated by Abū Dāwud. Jabir Ibn Abdullah said: **"The Prophet ﷺ stoned a man from (the tribe of) Aslam and a Jewish man and his wife"**, narrated by Muslim. These *aḥādīth* show that the Messenger ﷺ used to punish the *kuffār* as he used to punish the Muslims, which indicated that they are to be forced to perform the Sharī'ah verdicts, and the verdicts are to be executed upon them as executed upon the Muslims, and they are bound to them as the Muslims are bound to the verdicts of transactions, penal and other verdicts; and nothing can be excluded from that except what the Sharī'ah excluded from the application, not from the addressing with it, and that is what embracing Islam is a condition for its validity, and what is textually affirmed that they should not be forced to perform. Other

than that the verdicts are requested from the *kuffār* and they are forced to perform them.

Accordingly, the call of the legislator concerning the actions of the servants is common, and includes the *kuffār* and the Muslims equally, and no difference in it between the *kāfir* and the Muslim, for the generality of the legislator's address in the mission of Islam, and the necessity of its application upon all people is common, so it must be applied upon the *kuffār* as well as the Muslims, as long as they are under the authority of Islam. They should be obliged to perform the Islamic verdicts and punished for quitting them, without excluding except what the Sharī'ah excluded, and that is what the Sharī'ah made embracing Islam a condition for its validity, or the performance of the verdicts, or what the Sharī'ah approved the *kuffār* on and does not force them to do from the principals and the branches verdicts. Other than that, they and the Muslims are alike. It is not right to say that Allah Ta'ala made some verdicts specially for the believers like the prayers, so they are addressed by it alone, so any address issued with

{يا أيها الذين ءامنوا}

"O you who believe"

is to be considered specially for the Muslims, and what came as common, like the trade and usury, is common for the Muslims and the non Muslims; it is not right to say this, because the objective of what is issued with *"Oh you who believe"* is reminding them of their belief and not that it is especially for them. The proof on this is Allah Ta'ala's saying:

{يا أيها الذين ءامنوا كُتب عليكم القصاص}

"O you who believe, punishment was prescribed to you...",

and it is affirmed that the Messenger ﷺ made the punishment for the killing upon the *kuffār* as it is upon the Muslims alike, and also because of the sayings of Allah Ta'ala:

{لمن كان يرجوا الله واليوم الآخر}

"...for him who hopes for Allah and the last day...",

{فردّوه إلى الله والرسول إن كنتم تؤمنون بالله واليوم الآخر}

"...Refer it to Allah and the Messenger, if you believe in Allah and the last day...",

{من كان يؤمن بالله واليوم الآخر}

"...Him who believes in Allah and the last day..."

the contexts of these verses show that they are a reminder of what the belief in Allah and the last day requires. The first verse:

{لقد كان لكم في رسول الله أسوة حسنة لمن كان يرجوا الله واليوم الآخر}

"Verily in the Messenger of Allah, you have a good example to follow for him who hopes for Allah and the last day..."[20],

and the second verse:

[20] Surah al-Aḥzāb:21

{فإن تنازعتم في شيء فردّوه إلى الله والرسول إن كنتم تؤمنون بالله واليوم الآخر}

"...And if differ in anything, refer it to Allah and His Messenger if you believe in Allah and the last day..."[21]

and the third verse:

{ذلكم يوعظ به من كان يؤمن بالله واليوم الآخر}

"...That will be an admonition given to him who believes in Allah and the last day..."[22]

all these verses are a reminder. Also of this kind, is the *ḥadīth* of the Messenger ﷺ: **"whosoever believes in Allah and the last day should say good saying or keep silent"**, narrated by al-Bukhārī, Muslim and others, so they are all a reminder of the belief, and not a condition for the commandment of the verdicts. Therefore, the conjunction of the address with *"O you who believe"* does not specify it for the Muslims, but it is a reminder of the belief. And accordingly, the address of responsibility remains common; it includes the *kuffār* and the Muslims. And thus the *kuffār* are addressed in the generality of the Sharī'ah's principles and branches, and the *khalīfah* is commanded to implement all the Sharī'ah verdicts upon them, excluding from the implementation but not from the address; are the verdicts which the Qur'anic text and the *ḥadīth* show the non implementation of them upon the *kuffār*, and the verdicts which the text specialized them for the Muslims. Other

[21] Surah al-Nisā':59
[22] Surah al-Talāq:2

than that, all verdicts of Islam will be implemented upon the *kuffār* and the Muslims alike.

شُرُوطُ التَّكْلِيف

The Conditions of Legal Responsibility [*Shurūṭ al-Taklīf*]

(Embracing) Islam is not a condition for the assignment with the branches verdicts, except what a text came to specialize it for the Muslims, either explicitly like:

{يا أيها الذين اتقوا الله}

"O you who believe, fear Allah..."[23]

and like:

{جاهد االكفار}

"... Do strive hard against the kuffār..."[24]

and like:

{ولن يجعل الله للكافرين على المؤمنين سبيلا}

"...and Allah will never make an authority for the kāfirīn over the believers"[25],

or semantically (*dalalah*) like: exempting the *kuffār* from it as the prayer, so it indicates that embracing Islam is a

[23] Surah Āli Imran:102
[24] Surah al-Taubah:73
[25] Surah al-Nisā':141

condition for it. So Islam is one of the conditions of the assignment in accordance to what came in it, but there are common assignment conditions which no difference in them between the Muslim and the *kāfir*. These conditions are: (*al-bulūgh*) the maturity, (*al-'Aql*) the consciousness, and (*al-Qudrah*) the ability. So it is conditional for the assigned one to be mature, sane, and able to perform what he is assigned with. Ali Ibn Abi Taleb may Allah honour his face said: the Messenger of Allah ﷺ said: **"The pen is lifted up of three: the one asleep until he wakes up, and of the insane until he gets his sanity, and of the immature until he becomes mature"**, narrated by Imam Zaid in his Musnad. And Allah Ta'ala said:

{لا يكلف الله نفساً إلا وسعها}

"Allah burdens not a soul beyond its ability..."

The meaning of lifting up the pen is lifting up the assignment so one is not addressed with the verdicts assignment. Although the ayah: (*Allah burdens not a soul...*) has a negation meaning; it contains the prohibition meaning, and that is supported by the *ḥadīth* of the Prophet ﷺ **"and if I command you to do something fulfill it to your best ability"**, narrated by al-Bukhārī and Muslim. And it is not right to say that Allah obliged the *Zakāh*, expenditure, and the liabilities upon the immature and the insane one, so he is assigned, because He assigned him with some verdicts. It is not right to say that because these obligations are not linked with the action of the immature and the insane, but linked with his money and debt. And his money and debt are subject to an assignment. However, the lifting up of the pen is limited by a clear end, **"... until he becomes mature..."**, **"... until he becomes sane..."**, and that denotes

the reasoning. And its (*'illah*) reason is the immaturity, and the insanity, and this has no interference with the money and debt so they are not excluded from the *(taklīf)* assignment.

It is not right to say that, Allah Ta'ala had assigned people with the impossible since He Ta'ala assigned the unable to fulfill what he assigned him with, as He Ta'ala commanded Abū Lahab to believe in what He sent down, while He Ta'ala told that he will not believe so it is a gathering of two contradictories, so Allah Ta'ala assigned with the impossible, i.e., assigned the person with what is beyond his ability it is not right to say that because, Allah first commanded Abū Lahab to believe in what He sent down, and didn't yet send down what tells that aba lahab will not believe, then after that Allah Ta'ala told about him that he will not believe, so His Ta'ala informing that Abū Lahab will not believe did not come with His assignment to him with the belief, because the information was belated then the evidence that showed the obligation to believe.

That is concerning the conditions for the assignment with the verdicts initially. As for lifting up the assigned verdicts after assigning with them, those are not conditions for the assignment, but excuses which allow leaving the verdicts that someone is assigned with. Like the forced one, the mistaken one, the oblivious. The blame is lifted up of them for not fulfilling what they are assigned with, not that they are not assigned initially, so that is not one of the assignment conditions. This is because of the Messenger's ﷺ saying: **"Allah had put down of my Ummah: the mistakes, the forgetfulness, and what they are forced to do"**, narrated by Ibn Mājah. Notice the difference between his ﷺ saying: **"... put down of my Ummah..."**, and his saying: **"the pen is**

lifted up...”, which means the assignment is lifted up, so one is not assigned. His ﷺ saying: **“Allah put down of my Ummah...”** means he put down of the Ummah the blaming, and it does not necessitate lifting up the assignment. And the considered compulsion in the Sharī’ah is the compulsion which forces to an action in a manner that one could not leave it. If it does not force to do the action; it is not considered by the Sharī’ah. So if the compulsion leads to the extent of necessity then one is not blamed, but if the compulsion does not lead to the extent of necessity; then one will be in an optional situation. Therefore one will be blamed.

الحُكْمُ الشَّرْعِيّ

The Legal Ruling [*al-Ḥukm al-Shar'i*]

Allah ta'ala addressed the responsible people with all the Islamic Sharī'ah, (*uṣūl*) principles, and (*furū'*) branches, i.e. creeds and verdicts. The science of *uṣūl al-fiqh* does not research the (*uṣūl al-Dīn*) creeds, but it researches the branches only, i.e. the Sharī'ah verdicts from the perspective of the basis on which they are built, not from the perspective of the issues included in the verdict. So it is a must to know the reality of the Sharī'ah verdict when researching to know the Sharī'ah evidences. The scholars of (*uṣūl al-fiqh*) jurisprudence principles had defined the Sharī'ah verdict, that it is the legislators address concerning the actions of the servants in the (*iqtiḍa'*) command, the (*takhyīr*) giving the option, or the (*al-wada'*) circumstance. The legislator is Allah Ta'ala, and the address of the legislator means the address of Allah. Although the address of Allah is the guideline of what it denotes to the listener or whosoever is of his quality, so it is an address to an existent which is able to understand, but the address is the very same of what it denotes, not the guideline of what it denotes. So the same meanings that are included in the words and the texts are the address. Verily it is said: the address of the legislator, and not the address of Allah; to include the Sunnah and the consensus of the *Ṣaḥābah* with respect that it is an indication of the address so it will not be imagined that it is only the Quran; because the Sunnah is a revelation, so it is an address from the legislator, and the consensus of the *Ṣaḥābah* discloses an evidence from the Sunnah, so it is an address from the legislator. And it is

said: concerning the actions of the servants, not the (*mukallafīn*) assigned people, to include the verdicts concerning the immature and the insane like the *zakāh* of their money. And the meaning of it being concerning the command means concerning the request, because the command is the request, and it is of two kinds: a request to act, and a request to leave. If the request to act is decisive, then it is (*al-wājib* or *al-farḍ*) the imposition or the obligation, and if it is not decisive, then it is (*al-mandūb*) the preferable or the Sunnah or the *nafilah*. If the request to leave is decisive, then it is the prohibition or the forbiddance, and if it is not decisive, then it is the (*karāhah*) hateful. As for the optional, it is the allowable. As for the situation address, or the address concerning the servants actions with respect to the circumstantial address, that is making the thing a (*sabah*) cause or (*māni'*) (interdictor) prevention, or of that kind, like the sunset obliges the existence of the prayer; it is a cause to perform the prayer, and that the impurity prevents from the prayer. Although the sunset and the prevention of the impurity are signs of the verdicts; they are from the verdicts, because Allah Ta'ala made the post meridiem a sign that obliges the performance of the dthuhur prayer to exist, and the existence of the impurity a sign of the nullity of the prayer. There is no meaning of making the pm obliging accept the request to perform the prayer. And there's no meaning of making the impurity abolishing accept avoiding the impurity. And thus, they are an address from the legislator. So the definition of the Sharī'ah verdict, that it is the address of the legislator concerning the actions of the servants; is comprehensive and preventive. So when it says in the command or the option; it includes the five kinds of verdicts: the obligation, the preferable, the forbidden, the

hated and the allowed. And by saying: in the situation it includes what is a cause, a prevention, a condition, a validity, an invalidity, a corruption and what is permission and determination. And according to this definition the address of the legislator is of two kinds: an address of assignment, and an address of the circumstance.

خِطَابُ التَّكْلِيف

The Address of Legal Responsibility *(Khiṭāb al-Taklīf)*

The address of assignment is the address of the Legislator concerning the command or granting the option, i.e. it is concerning the request to act, or the request to leave, or giving the option between acting, and leaving the action. If the address carries a decisive request to act; it is the imposition (*wājib*), and its synonym is the obligation (*farḍ*), and that is what the Sharī'ah blames whoever leaves it with unrestricted intention. The meaning of blaming whoever leaves it is; it has to come in the book of Allah Ta'ala, or in the Sunnah of His Messenger ﷺ, or in the consensus of the *Ṣaḥābah* that if one leaves it; he will be deficient and blameworthy. The considered blame is what comes in the Sharī'ah, and not the people's blame. No difference between the obligation upon the individual and the obligation upon the collective with regard to their imposition. If the address of the Legislator carries a non decisive request to do an action, then it is the (*mandūb*) preferable (to do), and its synonym is the Sunnah in the worships. The *mandūb* is what the Sharī'ah praises its doer, and does not blame for not doing it, and it is also called the (*nafilah*) superfluous. If the address of the Legislator carries a decisive request to leave an action, then it is the (*ḥarām*) prohibited, and its synonym is the (*mahdthour*) forbidden. And that is what the Sharī'ah blames its doer. If the address carries a non decisive request to leave an action, then it is the (*makrūh*) hated (to do), it is defined that whoever leaves

it, is praised by the Sharī'ah, and its doer is not blamed. If the legislator's address carries an option between acting and quitting, whether explicitly by wording, or the optional verdict is understood from the form of the request, like if (the request to do) it comes after a prohibition verdict concerning one issue but in two different situations, then it is the (*mubāh*) allowed, even if the request comes in the (*amr*) imperative form. The Sharī'ah verdicts in the assignment address are not other than these five at all.

الوَاجِب

The Obligation (*al-Wājib*)

The obligation (*al-wājib*) and the imposition (*al-farḍ*) have one meaning and there is no difference between them, and they are synonyms for each other. As for what some scholars said: that if the assignment is proven by definite evidence, like the Quran and the (*mutawātir*) *ḥadīth*, then it is the *farḍ*, and if it is proven by (*ẓannī*) evidence like the (*āḥād*) individually narrated *ḥadīth* and the (*Qiyās*) measurement, it is the *wājib*. This talk is issuing a rule without an evidence to support it because there is nothing in the language, nor there is anything in the Sharī'ah which shows that, and it can not be an (*istilah*) idiom for them, because the idiom is issuing the names for the realities, and this is not of this kind, but it is a definition for a specific (named) thing, so it should be compatible with its reality. And the reality of this named thing is what the legislator decisively requested, no difference whether the request came through definite or indefinite evidence, because the

issue is concerning the guidance of the address, not the authenticity of it.

The *farḍ*, with regard to the performance of it, is of two kinds: an expanded (*muassa'*) *farḍ* like the *ṣalāh* and a confined (*mudayaq*) *farḍ* like the (*sawm*) fasting. If the time of the *wājib* is in surplus of its performance like the (*ẓuhr*) prayer, then it is an expanded *wājib*, and all parts of that time are a time to perform that *wājib* in it, with respect to dropping of the *farḍ* in that time, and the occurrence of the benefit of the *wājib*. The evidence for the (*muassa'*) expanded *wājib* is the order to pray the *ẓuhr* prayer in the *ḥadīth* that Abū Dāwud narrated that Rasul-Allah ﷺ said: **"Jibril ﷺ came to me twice, He led me in the *ẓuhr* prayer when the sun moved from the zenith (middle) of the sky by the size of a shoe lace..."**, until He said: **"... and He led me in the asr prayer when His shadow was at His size..."**, that includes all parts of the mentioned time. And that does not mean doing the first action of the prayer at the beginning of the time and the last action at the end of it, nor does it mean the establishment of the prayer (continuously) in every part of the time, in a way that no part of the time is vacant of the prayer, nor does it mean specifying a part of the time for its specialty for the occurrence of the *wājib* in it, because there is no denotation in the text about it, so the only remained meaning is that, He meant, that every part of the time is suitable for the occurrence of the *wājib* in it, and the *mukallaf* has the choice to performing the *farḍ* in any part of it he wills. Hence the *farḍ* is upon the *mukallaf* (responsible) in all parts of the time so if he does it in any part of it; the *farḍ* is dropped of him, and the benefit of the *wājib* occurred for him, but the *mukallaf* must decide to perform the *farḍ* in

the first part of its time, so if he delays the *ṣalāh* from the beginning of the time with a decision made to perform it within its time, and he died before the end of the time without performing the *ṣalāh*; he will meet Allah Ta'ala not as a sinner. But if the *mukallaf* supposes that he most probably will die, with the estimation of delaying the prayer from the beginning of the time to the end of it: he then sins by delaying the *ṣalāh* from the beginning of its time, even if he does not die. That is because it is a must upon the *mukallaf* to have a most probability that he will perform the (*muassa'*) expanded *wājib* within its time, other wise it is not permissible to delay it. accordingly, the Hajj (pilgrimage) is a *muassa' wājib* upon the capable, so he can perform it at any time after reaching the capability, but if he supposes that most probably he loses the capability before performing the Hajj, then he must perform it immediately from the time that he has the most probability that his capability will vanish. All that is incase if the *wājib*'s time is residual over it, but if the time of the *wājib* is not residual over it like the fasting, then it must be performed immediately when it is due, and it is not permissible to delay it, and if he delays it he sins, and must compensate for it.

As for the *farḍ* with regard to its accomplishment, it is of two kinds: a *farḍ* upon the individual and a *farḍ* upon the collective, and there is no difference in their imposition, because it is one in both of them, and each one of them is a decisive request to act. However, the difference between them is that the individual *farḍ* had been requested from every individual personally, and the collective *farḍ* had been requested from all the Muslims, so if the sufficiency by accomplishing it occurs, then the *farḍ* existed, whether

they all performed it or some of them. And if the sufficiency does not occur by accomplishing it; it remains a *wājib* upon every one of them until the *farḍ* exists.

That is the obligation with regard to the subject (doer). As for the consideration of the object, the *wājib* is of two kinds: (*mukhayar*) an optional *wājib*, and (*muhattam*) a determined *wājib*. The *mukhayar wājib* is what the *mukallaf* is given the choice between a few actions, like the saying of Allah Ta'ala:

{لا يؤاخذكم الله باللّغوِ في أيمانكم ولكن يؤاخذكم بما عقّدتم الأيمان، فكفارته إطعام عشرة مساكين من أوسط ما تطعمون أهليكم أو كسوتهم أو تحرير رقبة، فمن لم يجد فصيام ثلاثة أيام ذلك كفارة أيمانكم إذا حلفتم واحفظوا أيمانكم}

"Allah does not blame (punish) you for what is unintentional in your oaths, but He blames you for your deliberate oaths; for its expiation, feed ten masakeen (poor persons), on a scale of the average of what you feed your families, or close them, or manumit a slave. But whosoever cannot afford, he should fast for three days. That is the expiation for your oaths when you have sworn ..."[26]

So the *mukallaf* has the choice of feeding ten poor people or dressing them or freeing a slave, so the *wājib* upon him is a non determined one of them, and it becomes determined upon the action of the *mukallaf*. As for the *muhattam wājib* it is what is imposed upon the *mukallaf* to fulfill without giving him the option to choose, and that is like the *ṣalāh*, it

[26] Surah al-Mā'idah:89

is imposed upon him to perform it without any options between it itself and any other duties.

مَا لاَيَتِمُّ الوَاجِبُ إِلاَّ بِهِ فَهُوَ وَاجِب

That which the Obligation doesn't get accomplished without it, is an Obligation

Whatever the *wājib* does not get accomplished without it is of two kinds: one of them is that which its obligation is made as a condition for that thing (the *wājib*), and the second is which its obligation is not made as a condition for it. As for the one that its obligation is made as a condition for the other thing; there is no dispute that achieving the condition (*sharṭ*) is not a *wājib*, but the *wājib* is what the evidence came with its obligation, like the obligation of a specific prayer, it is conditioned with the existence of the purity (*ṭaharah*). So the *ṭaharah* (purity) is not an obligation according to the –same- requesting address of the prayer, but it is a condition to perform the *wājib*. The *wājib* in the prayer requesting address is performing the prayer if the (*sharṭ*) condition exists. As for the one that its obligation is unrestricted and non conditional for another thing, but its condition is to exist, this kind divides into two divisions: one of them is what is affordable for the *mukallaf*, and the second one is what is not affordable for the *mukallaf*. As for the one that is affordable for the *mukallaf* it became a *wājib* by the same requesting address by which the *wājib* is requested, and its obligation is exactly like the obligation of the thing that the legislator's address requested without any differences, and that is like washing the elbows, which performing the *wājib*, that is washing the hands up to the

elbows, does not accomplish without washing a part of them, and the accomplishment of this *wājib* is depending on washing a part of the elbow; therefore washing parts of the elbows is a *wājib*, even though the requesting address did not mention it, but it requested that which its existence depends on it. Accordingly, the address of the legislator includes the *wājib* and that which it is impossible to perform (accomplish) the *wājib* without it, and the denotation of the address up on it is an adherence denotation; and therefore it is a *wājib*. And like that is the establishment of a political party to appoint a *khalīfah*, in case of the non existence of a *khalīfah*, or to account the ruler. Verily appointing a *khalīfah* is a *wājib*, and accounting the ruler is a *wājib*, and performing this *wājib* could not be fulfilled correctly by individuals, because the individual by himself is unable to perform this *wājib*, i.e. appointing a *khalīfah*, or accounting the ruler, so it became inevitable to form a party from among the Muslims that is capable to perform (accomplish) this *wājib*, so it became a *wājib* upon the Muslims to establish a capable party to appoint a *khalīfah* or account the ruler. If they don't establish a party, then they are all sinful, because they did not establish what is necessary to perform the *wājib*. If they establish a group that is incapable to appoint a *khalīfah*, or to account the ruler, then they remain sinful, and they have not done the *wājib*; because the *wājib* is not only establishing a group, but establishing a capable group to appoint a *khalīfah*, or account the ruler, which means it has the ability to complete the *wājib*. And as such everything the *wājib* could not be performed (accomplished) without it, is a *wājib*, even if it is not a *sharṭ* (condition) for it. That is if it is affordable for the *mukallaf*. As for the non

affordable for the *mukallaf*; it is not a *wājib*, because of Allah Ta'ala's saying:

{لا يكلِّف الله نفساً إلا وسعها }

"Allah does not burden a person beyond his scope ..."[27]

and for the saying of Allah's Messenger ﷺ " ...وإذا أمرتكم بأمرٍ فأتوا منه ما استطعتم..."**, "... and if I command you to do something, do of it to your best ability ..."**, narrated by al-Bukhārī and Muslim, and because it is not permissible to command what is beyond the ability, because commanding it necessitates attributing injustice to Allah Ta'ala, and that is not permitted.

In conclusion, the thing that the *wājib* does not get accomplished without it, becomes *wājib* either by the same requesting address, or by another address, whether this thing is a *sabab* (cause) which requires by its existence, the existence, (of the *wājib*), and by its absence, the absence. Or it is a *sharṭ* (condition) which its absence requires the absence (of the *wājib*), and its existence does not require existence or absence. And whether, it is a Sharī'ah *sabab*, like the tense of the obligatory freeing of the slave. Or rational like the scrutinizing that leads to the obligatory knowledge, or normally like the cut of the neck in the obligatory slaughtering. And whether the *sharṭ* is Sharī'ah, like the (*wuḍū'*) ablution, or rational which is mentally a necessity for what is commanded to do, like leaving its contraries. Or normally, which cannot be separated from it (the verdict), like washing part of the head in the *wuḍū'*. So the obligation of the thing obliges the obligation of that

[27] Surah al-Baqarah:286

which it does not get accomplished with out it, i.e. the assignment with something necessitates the assignment with what it can not be accomplished without it and this is where the principal came from.

الحَرَامُ

The Forbidden [*al-ḥarām*]

The *ḥarām* is what the auditory (*sam'i*) evidence indicates that it is the Legislator's address with a decisive request to leave the action. It is what its doer will be (punished) blamed by the Sharī'ah. Its synonym is (*al-mahdthour*) the prohibited.

المُبَاح

The Permissible [*al-Mubāḥ*]

The *mubāḥ* is what the auditory (*sam'i*) evidence indicates that it is the legislators address with the optional choice between the acting and the quitting without (giving) an alternative. The permissibility (*ibaḥah*) is one of the Sharī'ah's verdicts, because it is a legislator's address. And to prove the *ibaḥah* (permissibility); it is inevitable to prove that the legislator's address comes with it. And the *ibaḥah* is not lifting up the blame for acting or quitting, otherwise its legislation would be affirmed before the arrival of the Sharī'ah, in spite of the fact that there is no verdict before the arrival of the Sharī'ah, but verily it is the legislators address with the optional choice between the acting and the

quitting, so it had been legislated by the Sharī'ah itself, and existed after its arrival, therefore it is one of the Sharī'ah verdicts. Furthermore, the verdicts in which the permissibility is ascertained; must have a Sharī'ah evidence for every verdict of them by itself. And the permissibility is not what the Sharī'ah kept silent about it and did not make it lawful or unlawful. And as for what al-Tirmidhī narrated on the authority of Salman al-Farisī said: **the Messenger of Allah ﷺ was asked about the ghee, the cheese, and the furs? He said: "the permissible is what Allah permitted in his book, and the forbidden is what Allah forbade in his book, and whatever he kept silent about is of what he (*afa*) overlooked it"**. It does not indicate that whatever the Qur'ān kept silent about is permissible. There are things that where forbade and things made lawful in the *ḥadīth*, and it had been proven that the Prophet ﷺ said: **"Verily I was given the Qur'ān and similar to it with it"**, narrated by Aḥmad, so the meaning is what the (*wahi*) revelation kept silent about. And it does not mean that what the *wahi* kept silent about it is permitted, because his saying in the *ḥadīth*: **"the *ḥalāl* (lawful) is what Allah made as *ḥalāl*..."**, includes everything He did not forbid, so it includes the *wājib*, the *mandūb*, the *mubāḥ*, and the *makrūh*, so it is real that they are *ḥalāl* (lawful) means not forbidden, and accordingly what He kept silent about; could not mean that it is the permissible, and as for the saying of the Messenger ﷺ: **"... and what He kept silent about is of what He (*afa*) overlooked it ..."** and in another *ḥadīth*: **"... and what He kept silent about is a pardoning (*afou*)"** narrated by al-Bayhaqī, and in another *ḥadīth*: **"... and He kept silent about things as a concession for you not forgetting so do not search about them..."**, narrated by al-Bayhaqī, so His silence about things is making them lawful, so their

lawfulness is considered as a pardoning from Allah Ta'ala and as a mercy for the people, because He ﷻ did not forbid them but made them lawful. And the proof for this is the saying of the Messenger ﷺ in the *ḥadīth* narrated by Sa'd Ibn Abi Waqqas: **"The greatest Muslims in offence towards the Muslims is whoever asks about a thing that was not forbidden for the Muslims; then it becomes forbidden because of his question"**, narrated by Muslim. i.e. whoever asks about a thing which the (*wahi*) revelation kept silent about its forbiddance so the silence in these *aḥādīth*, is the silence of forbiddance, and not the silence about the clarification of the Sharī'ah verdict, because Allah Ta'ala never kept silent about clarifying a Sharī'ah verdict, but He ﷻ clarified it for everything, as He ﷻ said:

{ونزَّلنا عليك الكتابَ تِبياناً لكُلِّ شيءٍ}

"And we have sent down the book unto you, (O Muhammad) as an exposition for everything ..."[28]

Accordingly, the *mubāḥ* (permissible) is not what the Sharī'ah kept silent about, but the *mubāḥ* is what the Sharī'ah clarified its verdict as *mubāḥ*. And what so ever the Sharī'ah kept silent about is what the Sharī'ah did not forbid, that means it made it lawful, under which fall the *wājib*, the *mandūb*, the *mubāḥ*, and the *makrūh*. However, there is an evidence for every *mubāḥ* (permissible) verdict which came to show its (*ibaḥah*) permissibility. The permissibility of hunting is clear in Allah Ta'ala's saying:

{وإذا حللتُم فاصْطادوا}

[28] Surah al-Nahl:89

"...and when you finish the ihram (of the Hajj or Umrah) then do hunt..."[29]

and the permissibility of the dispersion after the Jumu'ah prayer is clear in His Ta'ala's Saying:

{فإذا قُضِيَت الصلاةُ فانتشِروا في الأرض}

"Then when the payer is ended do disperse through the land..."[30]

and the permissibility of the sale is clear in His Ta'ala's saying:

{وأحلَّ اللهُ البيعَ}

"And Allah has permitted the sale..."[31]

and the permissibility of (*al-ijarah*) the leasing, (*al-wikalah*) the agency, and (*al-rahn*) the security deposit, and others is clear in their evidences. Accordingly, the *ibaḥah* (permissibility) is a Sharī'ah verdict that is inevitable to prove it by Sharī'ah evidence that indicates it.

[29] Surah al-Mā'idah:2
[30] Surah al-Jumu'ah:10
[31] Surah al-Baqarah:275

خِطَابُ الوَضْع

The Address of Circumstances (*Khiṭāb al-Waḍ'i*)

The legislator's address came with the clarification of the verdicts of the actions that happened in the existence, with regard to the request (*al-iqtiḍa'*) or giving the optional choice (*al-takhyīr*), and set for these verdicts what is necessary of matters on which the fulfilment or the accomplishment of the verdict depends, i.e. they are set for what the Sharī'ah verdict necessitates. So as the legislator's address came with the *iqtiḍa'* and the *takhyīr*; it also came with what is necessary for the *iqtiḍa'* and the *takhyīr*, and that is by making the thing a cause (*sabab*) or a condition (*sharṭ*), or making it a prohibitive (*māni'*) or validity (*siḥḥaḥ*) or invalidity (*būtlān*) or corruption (*fasād*) or determination (*azīmah*) or concession (*rukhṣah*). And as the address of *iqtiḍa'* and *takhyīr* consists of verdicts that treat the actions of the people; the circumstantial address treats those verdicts and their relevants. So the address of the *iqtiḍa'* and the *takhyīr* are verdicts for the actions of the people, and the circumstantial address is verdicts that give those verdicts specific qualities. And being like that does not make them irrelevant to the actions of the people, because the relevant to the connected to something is connected to that thing too, for example, necessity becomes a cause (*sabab*) for permitting eating the dead un-slaughtered animal and the fear of the affliction (*al-anat*) is a cause for marrying the slave women, and the enuresis (*al-salas*) is the cause for abandoning the obligation to make *wuḍū'* for

every outgoing during the prayer, (but it becomes sufficient to make one *wuḍū'* for every prayer even if salas happens during the prayer). Or making the (*zawal*) of the sun or the sunset or the appearance of the dawn causes for obliging the existence of those prayers, and whatever is of this kind. All those are legislator's addresses related to the verdicts which are: the permissibility of the dead animal, the permissibility of marrying the slave women, the abandonment of the obligation of the *wuḍū'* for every outgoing during the prayer, the obligation of the existence of the prayer. Therefore the *sabab* is one of the circumstantial addresses. And since the passing of the year (*al-hawl*) being a condition for the cause of the obligatory of the *zakāh*, and the maturity (*al-bulūgh*) is a condition for the assignment with the Sharī'ah in general, and sending the messengers is a condition for the reward and punishment, and the ability to hand over (*tasleem*) is a condition for the validity of the sale, and the maturity with perception (*al-rushd*) is a condition for paying the money of the orphan to him, all those are addresses from the legislator related to the verdicts, therefore the condition (*al-sharṭ*) is from the circumstantial address. And since the menstruation is being a prohibitive of the intercourse (*jïma'*), the walking around the ka'bah (*al-tawaf*), the performance of the prayers, and the fasting, and since the insanity being a prohibitive of performing the worships and the freedom of disposition, and the similar to that are all legislator's address related to the verdict, therefore the prohibitive (*al-māni'*) is from the circumstantial address. And since the sick who is unable to stand up is given the permission to pray sitting down, and the traveller being permitted to break the fasting in Ramadhan, and the forced one (with compulsion that leads to death) being permitted to utter a disbelief word, all those

are legislator's address related to the verdict, which is praying sitting down, breaking the fast in Ramadan, uttering a word of *kufr*, therefore the concessions (*al-rukhas*) are from the circumstantial address. So there is no confusion that these four show that the legislator's address came with the verdict and with a matter that is related to it. As for what came of the verdicts as a general legislation, and the servants being obliged to act accordingly, like the prayer as it is, the fasting as it is, and the *jihād* as it is; the circumstantial address in these verdicts is there quality as being a general legislation and obliging the servants to act in accordance to them, and this general legislation with its obligation is what is called the determination (*al-'azīmah*), therefore the determinations are from the circumstantial verdicts. The determinations and the concessions are considered as one section because the determinations are the origin and the concessions branch from them, so the concessions and the determinations are from the circumstantial address. As for what is related to the results of the action in the here-life; the circumstantial address appears in the consequences of these results, for example we say: the prayer is valid if all its pillars are fulfilled, and we say: the sale is valid if all its conditions are fulfilled, and we say: the partnership is valid if its Sharī'ah conditions are fulfilled. So these are qualities of the verdicts with regard to their performance, not with regard to their legislation, and the legislator had brought that and considered the sale as valid and the prayer as valid. If the sale misses the offer (*al-ījāb*) or the prayer misses the kneeling (*al-rukū'*), or the partnership misses the acceptance (*al-qabūl*), they are then considered as invalid. So their invalidity is a quality of the verdict with respect to its performance, not to its legislation. And the legislator had brought that and

considered them as invalid, therefore the validity and the invalidity are one section because the validity is an origin and the invalidity depends on the fulfilment of the verdicts of validity, so they both are one section. This is the circumstantial address, and it is related to a matter which the verdict necessitates it, and it is of five sections: the cause *(al-sabab)*, the condition *(al-shart)*, the impediment *(al-māni')* the validity (*al-sihah*) the invalidity (*al-butlān*) the corruption (*al-fasād*), and the determination (*al-azīmah*) and the concession (*al-rukhsah*).

السَّبَب

The Cause [*al-Sabab*]

al-Sabab in the jurisprudents terminology is every apparent precise quality, which the auditory evidence shows that it is an indication sign for the existence of the verdict (*ḥukm*) not the legislation of it, like making the traverse of the sun from the zenith of the sky a sign that indicates the existence of the prayer in the saying of Allah Ta'ala:

{أَقِمِ الصَّلاةَ لِدُلوكِ الشّمسِ}

"Perform the ṣalāh since the traverse of the sun till the darkness of the night..."[32]

and in the saying of the Messenger of Allah ﷺ:" إذا زالَتِ الشَّمسُ فَصَلُّوا" **"if the sun traverses from the zenith of the sky, then do pray"**, narrated by al-Bayhaqī. It is not a sign for the obligation (*wujūb*) of the *ṣalāh*, and like making the

[32] Surah al-Isrā':78

appearance of the crescent of Ramadhan an indication sign for the existence of the fasting of Ramadhan in the saying of Allah Ta'ala:

{فَمَن شَهِدَ مِنكُمُ الشَّهْرَ فَلْيَصُمْهُ}

"...so whosoever from among you witnesses the month; must then fast it..."[33]

and his ﷺ saying: "...صُمُوا لِرُؤْيَتِهِ" **"Do fast for the sight of it (the crescent...)"**, narrated by Aḥmad, and thus the *sabab* (cause) is not a reason for obliging the verdict, but an indicator for its existence. And the reality of the *sabab* is that, it is set by the Sharī'ah for the Sharī'ah verdict, for a wisdom necessitated by that verdict. So the occurrence of the *nisāb* (specified amount) is a *sabab* for the existence of the *zakāh*, and the Sharī'ah agreements are *sabab* for permitting (*ibaḥah*) the utilization or transition of the ownership of the properties, so the (*ḥukm*) verdict is the obligation of the *zakāh* and the occurrence of the *nisāb* is set by the Sharī'ah for this *ḥukm* to indicate the obligation of its existence. And the *ibaḥah* of the disposal or the transition of the property is the *ḥukm*, and the agreements are set by the Sharī'ah for this *ḥukm* to indicate it existence. So the *asbab* (causes) are signs, set by the legislator to inform the *mukallaf* about the existence of the *ḥukm*. So the legislator had legislated the *ḥukm* for the *mukallaf*, and assigned him with it, and set signs that indicate the existence of that *ḥukm*. So these signs are the Sharī'ah *asbaab*. So the *sabab* is a notification and an indicator for the existence of the *ḥukm*, it is not a definer of the reality

[33] Surah al-Baqarah:185

or the quality of the *ḥukm*, but it indicates its existence only, because what obliges the *ḥukm* is the *dalīl* (evidence) which included it, and what indicates its existence is the *sabab*. And this is contrary to the *'illah*, which is the thing for which the *ḥukm* was legislated, so the *ḥukm* was legislated by it, so it is the inducement, and the reason for its legislation, not the cause of its existence. So the *'illah* is one of the evidences for the *ḥukm*, similar to the text in the legislation of the *ḥukm*, it is not a sign for the existence, but an informative sign for the legislation of the *ḥukm*, like the distraction from the prayer which is derived from His Ta'ala's saying:

{يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ}

"O you who believe (Muslims) when it is called for the ṣalāh (al-Jumu'ah) on Friday, come to the remembrance of Allah and leave off the business..."[34]

and His saying:

{فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ}

"Then when the ṣalāh is ended, do disperse through the land..."[35]

so the distraction is the reason for which the *ḥukm* is legislated, that is the forbiddance of the trade at the (*adhān*) call of the Jumu'ah prayer, therefore it is a *'illah* (reason for the legislation not a *sabab*, contrary to the (*dulūk*) traverse

[34] Surah al-Jumu'ah:9
[35] Surah al-Jumu'ah:10

of the sun, it is not a *'illah*, because the *ẓuhr* prayer was not legislated for it but the *zawal* is a sign that the existence of the *ẓuhr* prayer becomes a *wājib*.

الشَّرْط

The Condition [*al-Sharṭ*]

The *sharṭ* is an accomplishment quality for its (*mashrūṭ*) conditioned matter in what that matter requires or in what the rule (*ḥukm*) of that conditioned matter requires. The *hawl* (elapsing of one year) in the money *zakāh* accomplishes the ownership of the *nisāb*, so the hawl is a *sharṭ* in the ownership of the *nisāb* to oblige the *zakāh* in it, so it is of what the *mashrūṭ* requires, and the marriage (*ihsān*) accomplishes the quality for the fornicator in stoning the married (*muhsan*) adulterer, so it is a condition for the adulterer to oblige his stoning, so it is of what the *mashrūṭ* requires. The *wuḍū'* (ablution) accomplishes the performance of the prayer in what the *ḥukm* requires in it, so it is a condition for performing the prayer, and it is of what the *ḥukm* requires in that *mashrūṭ*, and covering the *awrah* is a condition for performing the prayer, and of what the *ḥukm* requires in it, so it is a *sharṭ* and of what the *ḥukm* of the *mashrūṭ* requires, and like such are all the conditions (*shurūṭ*). The *sharṭ* is different to the *mashrūṭ* (conditioned matter) because it is an accomplishment quality for it, not one of its parts, therefore it is different to the pillar, because the pillar is a part of the thing not separated from it, and it is not right to say: the pillar is different to the thing or similar to it because it is one of its parts, whereas the *sharṭ* must be different to the thing and an accomplishment for it

at the same time. The *sharṭ* is defined as which's absence necessitates the absence, and its existence does not necessitate the existence, and this is a clarification for it with regard to its effect. The *sharṭ* (condition) with the *mashrūṭ* (conditioned matter) is like the quality with the described matter, so nothing can be described without the existence of the quality, but the quality may exist without the existence of the described one, and so is the *sharṭ*, the *ṣalāh* does not exist without the existence of the purity, but the purity may exist without the existence of the *ṣalāh*. The *sharṭ* does not come specifically for the assignment verdict, but it may also be for the circumstantial verdict. So there are *shurūṭ* (conditions) related to the assignment address, like the purity, covering the *awrah*, and the purity of the dress, every one of them is a *sharṭ* for praying. And there are *shurūṭ* related to the circumstantial address like the *hawl* (elapsing of one year) with the *nisāb* of the money *zakāh*, the ihsaan (marriage) in the issue of the adultery, and the protection (*al-hirz*) in the stealing (taking the stolen thing from its storage or fortified and walking away with it), they are all *shurūṭ* for the *sabab* (cause). And they are all considered as sharout upon which applies the definition of the *sharṭ*, and they are all Sharī'ah *shurūṭ* for their arrival in the evidence, except that the first type are *shurūṭ* for the *ḥukm* and the second type are *shurūṭ* for what is set for the *ḥukm* of matters it necessitates.

The agreements *shurūṭ* are included in the Sharī'ah *shurūṭ*, like the *shurūṭ* of the sale, the partnership, the entailment *(waqf)*, and the like, but they are not like the assignment verdicts and circumstantial verdicts *shurūṭ* (conditions) with regard to the need of a Sharī'ah evidence that shows the *sharṭ* to make it considered as a *sharṭ*, but it is conditional

for these *shurūṭ* that they don't contradict the Sharī'ah. Which means that, the *shurūṭ* of the assignment or circumstantial verdicts need a Sharī'ah evidence to be considered as *shurūṭ*, contrary to the agreements *shurūṭ*, they don't need to be included in the Sharī'ah *dalīl*, but it is permissible for the two parties of the agreement to set the *shurūṭ* they want, however it is not permissible for them or any of them to set *shurūṭ* which contradict the Sharī'ah text. So the agreement *shurūṭ* must not contradict the Sharī'ah and it is not conditional for them to come through a Sharī'ah *dalīl*, that is for the saying of the Messenger of Allah ﷺ:

"...ما بالُ رجالٍ يشترطون شروطاً ليست في كتابِ اللهِ، ما كان من شرطٍ ليسَ في كتابِ اللهِ فهو باطل، وإن كان مِئَةَ شرط، قضاءُ اللهِ إحقُّ، وشـــرطُ اللهِ أوثَـــقُ ..."

"What is the matter with some men, they set conditions that are not in the book of Allah, what so ever of a condition that is not in the book of Allah; is invalid (*bāṭil*), even if it is a hundred *sharṭ*, the decree of Allah is greater in the right, and the condition of Allah is more binding", narrated by al-Bukhārī. And the meaning of **"not in the book of Allah"** is contrary to what is in the book of Allah, means it is not in His ruling nor is it in accordance with His decree; that is because the Messenger of Allah ﷺ has permitted the setting of the *shurūṭ* (conditions) without restrictions, and clarified that whatever contradicts the *ḥukm* of Allah Ta'ala is *bāṭil* (invalid), so he did not forbid the setting of the *shurūṭ*, and since he ﷺ negated (that the meaning is) the consideration of what is from within the book of Allah (of *shurūṭ*), then the meaning of it is negating

the consideration of what contradicts the book of Allah. The *ḥadīth* in al-Bukhārī is:

"عن عائشةَ رضيَ اللهُ عنها قالت: جاءَتني بُرَيرَةُ فقالت: كاتبتُ أهلي على تِسعِ أواقٍ في كلِّ عامٍ وَقِيَّةٍ، فأعينيني، فقُلتُ: إن أحبَّ أهلُكِ أن أعُدّها لهم ويكونُ ولاؤكِ لِي فَعلتُ. فذهبتْ بُرَيرَةُ إلى أهلها، فقالتْ لهم، فأبوا ذلك عليها، فجاءَتْ من عندهِم ورسولُ اللهِ صلى اللهُ عليهِ وسلَّمَ جالِسٌ، فقالتْ: إنِّي قد عرضْتُ ذلك عليهم فأبَوا، إلا أن يكونَ الولاءُ لَهُم. فسمِع النّبِيُّ صلّى اللهُ عليه وسلَّم، فأخبرت عائِشةُ النبيَّ فقال: خُذيها، واشترطي لَهُم الولاءَ، فإنما الولاءُ لِمن أعتَقَ، ففعلتْ عائِشة. ثُمّ قام رسولُ اللهِ في الناسِ فحمِدَ اللهَ، وأثنى عليهِ، ثُمّ قال: أما بعدُ فما بالُ رجالٍ..."

"'Ā'ishah may Allah be pleased with her said: Burayrah came to me and said: I have made an agreement with my people (my master to free me) over nine ounces, one ounce a year, so help me please, I said: if your people like it I count it to them and your loyalty will be to me, then I will do. Then Burayrah went the her people with the offer, and they refused it, so she came back while the Messenger of Allah ﷺ was sitting, she said I offered them that, but they refused, they want the loyalty for themselves, so the Messenger of Allah heard that, then 'Ā'ishah told Him, and He said: take her and set the loyalty as a *sharṭ*, as the loyalty belongs to whoever sets the slave free, so 'Ā'ishah did. Then the Messenger of Allah ﷺ stood up addressing the people: He thanked Allah and praised Him, then he said "what is the matter with some men...", the *ḥadīth*. This shows that what is prohibited is the condition that contradicts the book of Allah and the Sunnah of His Messenger, and does not show that the *sharṭ* must be in the book of Allah and in the Sunnah. Accordingly the *shurūṭ* in

the agreement must be set so they do not violate the Sharī'ah, that is by not contradicting any of the Sharī'ah texts, or any Sharī'ah verdicts which has a Sharī'ah evidence. For example, the Sharī'ah has made the loyalty to whoever sets the slave free from his master, so it is not right to sell the slave and setting the *sharṭ* of keeping his loyalty, so the *sharṭ* is cancelled and the sale is valid. Another example, it is not right to say: I sold this to you for one thousand in cash (*naqdan*) or for two thousands as credit (*nasi'ah*). So this is one sale consists of two conditions, the aim of it differs in accordance with their differences; so this is an invalid *sharṭ*, for which the sale becomes invalid because of his ﷺ saying "لا يحِلُّ سَلَفٌ وبَيع، ولا شَرطانِ في بَيْعٍ" **"credit and sale is not permissible, nor is it permissible to make two sharts in one sale"**, narrated by Abū Dāwud. And as an example, if a man sells a good to another one and sets a condition for him that he does not sell it to anyone; the *sharṭ* is cancelled and the sale is valid (*saḥiḥ*), because this *sharṭ* contradicts the requirement (*muqtada*) of the agreement, which is the ownership of the sold good and having the right of its disposal, so that contradicts the Sharī'ah verdict. And thus the conditions that contradict the Sharī'ah are not considered at all, whether they violate a Sharī'ah text or a verdict which the Sharī'ah brought it. Has it been a Sharī'ah assignment verdict or one of the circumstantial verdicts.

And what affirms that the Sharī'ah has permitted the Muslim to set the *shurūṭ* he wants in the agreement except what violates the book of Allah or the Sharī'ah verdict; is what came in the *ḥadīth* of 'Ā'ishah about Burayrah in one narration of al-Bukhārī, that he ﷺ said to 'Ā'ishah may Allah be pleased with her:

"إشتريها فأعتقيها، وليشترطوا ما شاءُوا" **"buy her then free her and let them set the *sharṭ* they want"**, so this is clear that the saying of the Messenger ﷺ: **"... Let them set the condition they want"**, is the (*ibaḥah*) permissibility for the human to set the conditions they want, and that is supported by the saying of the Prophet ﷺ "المسلمون عندَ شُروطهم": **"the Muslims are at their conditions"**: narrated by al-Hākim, means they are adherents to the conditions they set, so He referred the conditions to them. Also the Prophet ﷺ acknowledged the setting of conditions that are not mentioned in the book of Allah, in the agreements, Muslim narrated on the authority of Jābir

: ''عن جابرٍ أنه كان يسير على جملٍ لهُ قد أعيا، فأراد أن يُسَيِّبَهُ، قالَ: فلَحِقَنِي النبيِّ الله صلى الله عليه وسلَّم فدعا لي وضربهُ، فسار سيراً لم يسر مِثلَهُ، قالَ: بِعنيه بِوُقِيَّةٍ، قُلتُ: لا، ثُمَّ قال: بِعنيه، فبعتُهُ بِوُقِيَّةٍ، واستثنَيتُ عليه حُملانَهُ إلى أهلي''

"That he was riding his weak camel, so he wanted to leave it, he said: the Prophet ﷺ followed me and made supplication for me and patted on it then it walked actively in a way it never walked like it before, He said: sell it to me for one ounce, I said no, He said: sell it to me, then I sold it to him for one ounce, and I excluded its load for my family", narrated by Muslim. Excluding its load is a *sharṭ* he set in the sale. On the authority of Sufaynah Abi Abdur-Rahman said:

''أعتقتني أُمُّ سلمةَ، واشترطت عليَّ أن أخدُمَ النبِيَّ صلّى اللهُ عليهِ وسَلَّمَ''

"Umm Salamah set me free and set a condition on me that I serve the Prophet ﷺ", narrated by Aḥmad, and in a narration:

"كُنتُ مملوكاً لأُمِّ سلمةَ فقالت: أُعتقُك وأشترطُ عليكَ أن تخدُمَ رسولَ اللهِ صلى اللهُ عليه وسلَّم ما عِشتَ، فقلتُ: وإن لم تشترطي عليَّ ما فارقتُ رسولَ اللهِ صلى الله عليه وسلم ما عِشتُ؛ فأعتقتني واشترطت عليَّ"

"I was a slave for Umm Salamah, she said: I free you under the condition that you serve the Messenger of Allah as long as you live, I said: even if you don't set this condition on me I will not leave the Messenger of Allah as long as I live, then she set me free", narrated Abū Dāwud. And thus many incidents in which conditions are set, not taken from the Sharī'ah, but set by every human as he wants. And all what came in this matter is that the *sharṭ* is restricted by not violating the book of Allah or any verdict of the Sharī'ah. But it is conditional that the set condition does not permit a *ḥarām* or forbid a *ḥalāl*; because of the saying of the Messenger of Allah ﷺ:

"المسلمون عند شروطهم، إلا شرطاً حرَّمَ حلالاً أو أحلَّ حراماً".

"The Muslims are at their *shurūṭ* except a *sharṭ* that forbids a *ḥalāl* or allows a *ḥarām*", narrated by al-Tirmidhī.

المانِع

The Impediment [*al-Māni'*]

The impediment can be a impediment (*māni'*) of the rule (*ḥukm*) or a impediment of the cause (*sabab*). As for the impediment of the rule, it is an apparent specified quality whose existence necessitates the opposite of what the rule necessitates, like the deliberately offensive killing; it is a

māni' for the son who killed from the inheritance of his father.

As for the *māni'* of the *sabab*, it is a apparent specified quality which's existence necessitates the opposite of what the *sabab* necessitates like the existence of the debt, it is a *māni'* of the obligatory of the *zakāh* for whoever has the *nisāb* and the *hawl* elapsed on it, because the debt is a *māni'* from the remaining of the *nisāb* which is the complete *sabab*. So the *nisāb* (the *sabab* of he *zakāh*) necessitates the obligatory of the *zakāh* by the elapsing of the *hawl* (year), and the debt which is the *māni'* of the *sabab* is the big debt that when it exists; the *nisāb* decreases.

The impediments are two types: one of them prevents the request and the performance. The other prevents the request but does not prevent the performance. As for the first type which prohibits the request and the performance, it is like the absence of the mind by the sleep or insanity, it prohibits the request of the *ṣalāh*, the sawm, the selling and other rules and it prohibits their performance. So it prohibits the original requests; because the existence of the mind is a condition to link the address with the actions of the *mukallaf*; as the mind is the (*manāt*) depending basis of the responsibility, and like the menses (*al-haydh*) and confinement (*nifās*), they prohibit the *ṣalāh*, the *ṣawm* and the entry to the *masjid*, and they prohibit their performances, so they are prohibitives of the initial request, because the purity from the *haydh* and the *nifās* is a condition in the *ṣalāh*, the sawm and the entry to the *masjid*, so the absence of the mind and the existence of the *haydh* and *nifās*, every one of them is a *māni'* of the request and of the performance.

As for what prohibits the request and does not prohibit the performance, this is like the femininity with regard to the Jumu'ah prayer, and the maturity with regard to the fasting. The femininity is a prohibitive of the request of the Jumu'ah prayer, and the immaturity is a prohibitive of the request of fasting, because the Jumu'ah prayer is not obligatory upon women, and the prayer and the fasting are not obligatory upon the boy, but if the women performed the Jumu'ah prayer, and the boy performed the prayer and the fasting, they are valid, because this prohibitive is a *māni'* of the request not a *māni'* form the performance. And like this is the traveling, it is a *māni'* of the fasting request and of the request of completing the *ṣalāh*, but if the traveler fasts, and completes and does not shorten the *ṣalāh* it is valid, because this prohibitive is a request *māni'* not a performance *māni'*, and thus are all the causes of the concessions, they are prohibitives of the request not of the performance.

الصِّحَّةُ، وَالبُطْلاَنُ، وَالفَسَادُ

The Validity, the Invalidity and the Corrupted [*ṣiḥḥah, buṭlān, fasād*]

The validity is the compatibility with the legislator's command. When it is said it means the consideration of the result of the action in the herelife, and it also means grading the result of the action in the lifeafter, so the fulfillment of the pillars and conditions of the *ṣalāh* makes the *ṣalāh* valid for the prayer and in reality. So we say the prayer is valid, means it is rewardable and it acquits one's liability, and it

drops the request for the (*qaḍa'*) making up for it. And the fulfillment of all the conditions of the sale makes the sale valid, so we say: the sale is *ṣaḥīḥ*, means it is a Sharī'ah way for possessing something, and allowing the benefit and the disposal of the possessed thing. This is with regard to the consequences of the result of the action in the herelife. As for grading the result of the action in the lifeafter, we say: this *ṣalāh* is valid, meaning we hope that it is rewardable in the lifeafter, and we say: the sale is valid, meaning that the intention to comply with the command of the legislator and directing the sale according to the command and prohibition makes it rewardable, so we hope to get the reward in the lifeafter for the action with this intention and this direction, for the compliance with the law of Allah Ta'ala and the adherence to Him. However the grade of the result of the action in the lifeafter is not noticed except in the worships. As it is seen, its appearance is usually limited to the worships like the prayer, the sawm, the hajj, and the similar. In most cases it is not noticed in transactions, or in the rules of morals like the truth, or in the penalties; therefore the discussion of validity is mostly around considering the result of the action in the herelife with respect to: whether it is rewardable and acquitable of the liability. In issues other than worships, what is meant by the validity (*ṣiḥḥah*) is *ḥalāl*, and what is meant by the invalidity (*buṭlān*) is *ḥarām*, so the validity in transactions means lawfulness, i.e. the benefiting permissibility, and the meaning of the invalidity (*buṭlān*) is the unlawfulness, i.e. the benefiting prohibition, which necessitates punishment in the herelife and in the lifeafter. So whoever possesses money by an invalid contract, that money is considered *ḥarām*, and its perpetrator deserves punishment in the lifeafter.

As for the invalidity (*buṭlān*), it is the opposite of the validity (*ṣiḥḥah*), and that is the non compatibility with the legislator's command, which means the non consideration of the result of the action in the herelife, and the punishment for it in the lifeafter, which means that the action is not rewardable and not acquitable of the liability, and does not drop the necessity of the (*qaḍa'*) making up for it. If one pillar of the *ṣalāh* is skipped; the *ṣalāh* becomes invalid (*bāṭilah*) and if one of the validity's conditions of the partnership is void; the partnership is invalid, for example, if two people deposit money in a bank as (*muḍārib*) partners, then they entrust a person to invest the money on their behalf by buying and selling, and they share the profit equally. This company is invalid, because it did not get established, since there was no offer and acceptance with a body (*badan*) partner. The offer and acceptance with a body partner is a condition for the partnership to get established, therefore it is invalid. And the disposal of the agent they entrusted is invalid, because the (*muḍārib*) partner, if he is supposed to be a partner hasn't got the right of disposal, so he has no right to assign an agent, so it is an invalid agreement. Another example, if the kind of sale is prohibited like selling the (*malaaqeeh*) impregnated, that are in the mothers womb. The consequence of the invalidity is the prohibition of the benefit, and one will deserve punishment for it in the life-after, therefore the invalidity has consequences in the here-life and in the life-after.

As for the corruption (*fasād*), it is different to the *buṭlān*, because the *buṭlān* is basically non compatibility with the legislator's commands, i.e. it is originally forbidden like selling the impregnated (fetus animals). Or that the

unfulfilled condition violates the basis of the action. Contrary to the *fasād*, where the basis of the action is compatible with the legislator's command, but its non violating quality of its basis is contrary to the legislator's command. The *fasād* (corruption) can not be imagined in worships, because whoever follows their conditions and pillars; finds that they are all related to their basis. But the *fasād* can possibly exist in the agreements. As for the example of selling the impregnated; it is *bāṭil* (invalid) from the basis, because it is forbidden originally, contrary to the selling of the townsmen to the Bedouin, it is a corrupted sale, because of the ignorance of the Bedouin about the price, and after he sees the market, he has the option to keep the sale or to revoke it. And for example, the sharing company, its basis is invalid because it misses the acceptance of the body partner, so it misses a condition related to the basis, contrary to the agreement of the partnership with ignorance about the money of the partners, that is a corrupted one, but if the money becomes known the partnership becomes valid or they must clarify the money so the partnership will be completed, and thus.

العَزِيمَةُ وَالرُّخْصَةُ

The Determination and the Concession [*al-ʻAzīmah wa'l-Rukhṣah*]

The determination (*al-azīmah*) is (a quality of) what was legislated of rules as a general legislation, and the servants are obliged by it. And the concession (*al-rukhṣah*) is what was legislated of rules to lighten the determination because

of an excuse, without obliging the servants to act upon it, with the remaining of the determination rule. As an example, the sawm is *azīmah* (determination) and the *fitr* (fast breaking) for the sick person is *rukhṣah* (concession). Washing the organ in the *wuḍū'* is *azīmah*, and wiping the wounded or broken organ is *rukhṣah*. Praying standing up is *azīmah*, and sitting down in the prayer in case of weakness is *rukhṣah*, and as such. So the *azīmah* is what was generally legislated, it is not specific for some *mukallafīn* without the others, and it does not enable to choose between acting according to it or according to something else, but it obliges to act according to it solely. And the *rukhṣah* is what was legislated for an unusual excuse, so its legislation is considered as long as the excuse exists, and it is not considered if the excuse vanishes, and it is especially for the *mukallafīn* that are characterized by this excuse. Accordingly, the rule that is an exception from a general text is not *rukhṣah*, but it is *azīmah*, also the rule that is special for some situations is not *rukhṣah*, but it is *azīmah*, because these are situations not excuses. An example for that is: the *iddah* of the women (period a widow should not remarry in it) that her husband died is four months and ten days, and the iddah of the pregnant women that her husband died is until she gives birth to her baby. This rule is an exception from the general rule so it is not a *rukhṣah*. And also the sale, if its conditions are fulfilled and it is not forbidden; it is *ṣaḥīḥ* (valid), and if the sale happened at *al-ghobn al-faahish* (excessive price), even if all its conditions are fulfilled and it is not forbidden; it is corrupted. Its buyer has the option about it (to return it), but it is not a *rukhṣah*. Selling what is not received is *bāṭil* (invalid), and selling the animal that is not received is *ṣaḥīḥ* (valid) and that is not a *rukhṣah*. Accordingly the *salam* sale (forwarding the price

and delaying the good), the *arāyā* (palm trees given to the needy who could not wait until they are ripen so he is allowed to sell them by dates), the *musaaqaat* (a man allows a worker to water the trees and serve them for a known portion of the fruit), and the likes of the agreements are *azīmah* not *rukhṣah*. And thus all the permissibles are determinations not concessions. And what is meant by obliging the servants to act according to it; is according to the rule, whether it is *wājib* or *mandūb*, *mubāḥ*, *ḥarām* or *makrūh*. Can you see that eating the *maytah* (dead not slaughtered meat) is *ḥarām*, but for the compelled one it is allowed, so it is a *rukhṣah*, so what is considered is the action according to the rule, not the action itself. And as for the saying of the Prophet ﷺ about the *araaya* " أَرخصَ ... في بَيْعِ العرايا..." **"He allowed the sale of the *arāyā* as a *rukhṣah*"** narrated by Mālik. What is meant is the linguistic meaning (of *arkhasa*) and that is He made it easy for you. And similar to that, all the agreements which Allah Ta'ala made easy for the people are determinations, because they are not exception from a rule that is originally forbidden for an excuse, so theire exception vanishes when the excuse vanishes, but these rules are legislated as facilitation for the servants, and their legislation is general and permanent. And there is difference in the case when someone could not stand up in the prayer, or he could with hardship so he prays sitting down, even though he violates one of the *ṣalāh*'s pillars; it is not obligatory upon him to stand up, and that is a concession, and in the case when a man sells the estimated fruits of the palm trees to feed his family dates for the price of the estimated fruits of the palm trees, this is not a concession, because it is not an exception for an excuse, but it is a situation in which it is permitted to sell the ripe by the solid, even though it is an exception, but it

was not legislated for an excuse to be considered as a concession, but it was legislated as a facilitation for the people, so it is of the facilitations of the Sharī'ah and not because of the excuses, so it is not a *rukhṣah*.

It is inevitable that the *rukhṣah* is shown in a Sharī'ah *dalīl* to consider it as a Sharī'ah concession. It is a rule Allah Ta'ala had legislated it for an excuse so the excuse is the cause for considering the rule as Sharī'ah. However, the *rukhṣah* is considered to be from the Sharī'ah causes, and it is one of the circumstantial rules, and it is the legislators address related to the actions of the servants about the circumstance, and since it is a legislator's address; it is inevitable to have a Sharī'ah *dalīl* for it. So the blindness, the limping and the illness are excuses for the sitting down (absence) from the *jihād*, Allah Ta'ala said:

{ليس على الأعمى حرج ولا على الأعرج حرج ولا على المريض حرج}

"No blame is there on the blind, nor is there blame on the lame, nor on the ill one (if he joins not the war)..."[36]

and the traveling is an excuse for the fast breaking in ramadhān, Allah Ta'ala said:

{ومن كان مريضاً أو على سفرٍ فعدةٌ من أيّامٍ أُخر}

"but if any one of you is ill, or on a travel, the prescribed period (should be made up) by days later..."[37]

[36] Surah al-Fath:17
[37] Surah al-Baqarah:185

and the forgetfulness, the mistake and the compulsion are excuses which lift up the sin of the involved person that falls into a forbidden. The Messenger ﷺ said: "إنَّ الله وضعَ عن أمتي الخطأ, والنِّسيان, وما استُكرِهوا عليه" **"verily Allah had put down the blame of my Ummah for the mistake, the forgetfulness, and that which they are compelled to do"** narrated by Ibn Mājah, and the ignorance about what can be ignored by some people is an excuse, because Rasul-Allah ﷺ heard Mu'awiah Ibn al-Hakam saying the *tashmeet* (saying may Allah bless you) to a person that sneezed while in the prayer, so after they finished the prayer, the Messenger ﷺ taught him that speaking in the prayer invalidates it, by saying to him as narrated by Muslim: **"verily nothing of the people's talk is allowed in this prayer, it is but glorifying, praising Allah, and reciting the Quran"**, and He did not command him to repeat the prayer. So these are excuses that came in the Sharī'ah *dalīl* so they are considered excuses, and thus whatever came in the *adillah* (evidences) as specific excuses for specific rules will be considered as excuses, and whatever does not come in the *dalīl* has no value, and will not be considered as a Sharī'ah excuse at all. These excuses are considered for them selves, not because of the *'illah* (reason in them), that is because the Sharī'ah *dalīl* which showed that they are excuses did not set reasoning (*ta'līl*) for considering them as excuses, but left them without reasons, so we don't make *'ilal* (reasons) for them, because the Sharī'ah did not set reasons for them, and made every excuse of them an excuse for the rule which it came for it, not for other rules, so it is considered as a special excuse for the rule which it came for it, not a general excuse for every rule, therefore, the blindness is an excuse to leave the *jihād*, not an excuse to leave the *ṣalāh*. Moreover, these excuses: the illness, he

limping, the traveling, the forgetfulness, the compulsion and the mistake, even though they are qualitys; they are a kind of quality which does not indicate that it can be used for setting reasons (*ta'līl*), and does not show an indication for reasoning, therefore, we don't measure other excuses to it, and we don't seek a cause to set a reason for it, i.e. a reason to consider it as a *'illah* for applying the *'illah* rule on it, therefore, we don't say that traveling is a *'illah* because of its hardship but the travel itself is the *'illah* because Allah Ta'ala considered it as a *'illah* not because of its hardship, i.e. it is an insufficient *'illah*, therefore, the traveler is allowed to shorten the *ṣalāh* for the distance of the shortening (*qasr*), even if he travels by plane, and does not shorten for less then the shortening distance even if he travels in the desert while it is very hot, because the hardship is not the excuse that allowed the shortening, but the excuse that made the *rukhṣah* (concession) to shorten the *ṣalāh* is the travel, for it is a travel regardless of the hardship, and thus are all the excuses because of which the *rukhaṣ* (concessions) are issued by the Sharī'ah text. This is with regard to the reality, that the *rukhṣah* and the *azīmah* are from the Sharī'ah perspectives.

As for acting according to the *rukhṣah* or the *azīmah* (determination); verily acting according to either one of them is a *mubāḥ*, so one can act according to the *rukhṣah* or according to the *azīmah*, because this is shown in the texts of the concessions. Allah Ta'ala said:

{فَمَنِ اضْطُرَّ فِى مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ}

"...But if any is forced by hunger, with no inclination to transgression, Allah is indeed Oft-Forgiving, Most Merciful"[38]

and He said:

{فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيم}

"...But if one is forced by necessity, without wilful disobedience, nor transgressing due limits, then is he guiltless. For Allah is Oft-Forgiving, Most Merciful"[39]

so He Ta'ala showed the *rukhṣah* by lifting up the guilt of the eating and this is the *ibaḥah* (permissibility), and forgave the sin of his action and it is the *ibaḥah*. He Ta'ala said:

{وليسَ عليكُم جُناحٌ أن تَقْصُروا مِنَ الصَّلاةِ}

"When ye travel through the earth, there is no blame on you if ye shorten your prayers, for fear the Unbelievers may attack you: for the Unbelievers are unto you open enemies"[40]

and lifting up the blame means the *ibaḥah*.

Allah Ta'ala said:

{ومن كانَ مَريضاً أو على سَفَرٍ فَعِدَّةٌ مِنْ أيّامٍ أُخَرَ}

"...but if any one is ill, or on a travel, the prescribed period (should be made up) by days later..."[41]

and this is the *ibaḥah*, so the evidences of the *rukhaṣ* themselves give the *ibaḥah* (permissibility) to act according to the *rukhṣah* not the *wujūb* (obligation), nor the *nadb*

[38] Surah al-Mā'idah:3
[39] Surah al-Baqarah:173
[40] Surah al-Nisā':101
[41] Surah al-Baqarah:185

(preference). Also Muslim narrated on the authority of Hamzah Ibn Amrou that he said: " يا رسولَ الله, أجِدُ بي قوةً على الصِّيامِ في السّفَرِ, فهل علَيَّ جُناحٌ؟ فقال رسول الله صلّى اللهُ عليه وسلّم: هِيَ رُخصةٌ من الله, فمن أخذَ بها فَحَسَنٌ, ومَن أحَبَّ أن يصومَ فلا جُناحَ عليهِ" **"Oh Rasūl-Allah, I find strength in myself for fasting while traveling, is it an offence I commit? Rasūl-Allah ﷺ said: it is a *rukhṣah* from Allah Ta'ala, whoever takes it, it is well done. And whoever likes to fast, there is no sin on him"**, and on the authority of Abū Sa'īd that he said: " سافَرْنا معَ رسولِ الله صلى اللهُ عليه وسلَّمَ فَيَصومُ الصائِمُ, ويُفطِرُ المُفطِرُ, فَلا يَعيبُ بَعضُهُم على بعضٍ" **"we traveled with Rasūl-Allah ﷺ the faster would fast and the fast breaker would break the fast, and non of them blame the others"**, narrated by Muslim. These texts indicate explicitly that the *rukhṣah* and the *azīmah* are *mubāḥ* (when the choice is given), so one is free to opt either one of them he wills.

It could be said that the Messenger of Allah ﷺ said: " إنَّ اللهَ يُحِبُّ أن تُؤتَى رُخَصُهُ, كما يُحِبُّ ان تؤتَى عزائِمُهُ" **"Verily, Allah loves that His concessions are taken, as He loves that His determinations are taken"**, narrated by Ibn Hibbān, and this is a request, so it is a *dalīl* that it is a *mandūb*. If the compelled one fears death; he must eat the dead meat, and it is forbidden for him to abstain from eating it. If the choked one could not find except the intoxicant; he must drink it to relief himself from the choke if he fears death, and it is forbidden that he abstain and die. If the fasting person becomes very fatigue to the extant of death; he must break his fast, and it is forbidden for him to remain fasting and die, and as such, which indicate that acting according to the *rukhṣah* could be a *farḍ*, a *mandūb* and could be a *mubāḥ*. The answer to that is: the talk (discussion) is about the *rukhṣah* from the perspective that it is a concession; it is certainly a *mubāḥ* (permissible) because of the previous

evidences. So the *ḥukm* of the concession with regard to its legislation is the *mubāḥ*. As for the saying of the Messenger ﷺ: "إِنَّ اللهَ يُحِبُّ أن تُؤتَى رُخَصُهُ..." **"Verily, Allah loves that His concessions are taken..."**, nothing in the *ḥadīth* indicates the *nadb* (preference), but it indicates the *ibaḥah*, because it clarifies that Allah Ta'ala loves that His *rukhaṣ* (concessions) to be taken (practiced), and He loves that His *azā'im* (determinations) to be taken, and non of the two request has a priority over the other, and this is in the text of the *ḥadīth*: " إِنَّ اللهَ يُحِبُّ أن تُؤتَى رُخَصُهُ, كما يُحِبُّ ان تؤتَى عزائِمُهُ" **"Verily, Allah loves that His concessions are taken, as He loves that His determinations are taken"**, therefore there is no indication in the *ḥadīth* that acting according to the *rukhṣah* is a *mandūb*. As the issue of eating the dead (not slaughtered) meat; the *modhttar* (compelled one) does not mean the one which is ascertained of his death, but just for fearing the death; he is considered as a compelled one, but if death becomes ascertained if he doesn't eat, then it becomes forbidden for him to refrain from eating, and becomes a must (*wājib*) upon him to eat, not because it is a *rukhṣah*, but because eating becomes a *wājib*. That is because acting according to the *azīmah*, which is refraining from eating (in that situation) is a *mubāḥ*, but it definitely leads to the *ḥarām* which is the self perishing. So it becomes *ḥarām* to carry out the *azīmah* in that situation according to the Sharī'ah principle: "الوسيلةُ إلى الحرامِ حَرام" *"the means to the forbidden is a forbidden"* and carrying out the *rukhṣah* becomes a *wājib* because of the emergency cause which is the death certainty, and this is not the rule of the *rukhṣah* (as a concession), but one of the situations on which the principle: "الوسيلةُ إلى الحرامِ حَرام" *"the means to the forbidden is a forbidden"* is applicable. This application is not specially for the *rukhṣah*, but it is general for every *mubāḥ*, and like

that is the drinking of the intoxicant for the choked person, and the fast breaking for the ascertained of death person and others. Accordingly, the rule of the *rukhṣah* as it is and with regard to its legislation is the *mubāḥ* (permissible), but if refraining from it and carrying out the *azīmah* lead certainly to the *ḥarām*, then carrying out the *mubāḥ* becomes *ḥarām*.

الأَدِلَّةُ الشَّرْعِيَّةُ

The Legal Evidences (*al-Adillah al-Shar'iyyah*)

The linguistic meaning of the (word) *dalīl* is the indicator (*dalīl*), and the word *dalīl* can be used for what has indication and guidance, and this is what is named *dalīl* in the definition set by the jurisprudents, as they defined it by: which the correct scrutinize in it leads to an announced request (*matlūb khabarî*). As for the *dalīl* of the *uṣūl* (principals); they defined it by: what leads to the knowledge about the announced request, in another word it is that which is taken as evidence, (to prove) that what is searched for is a Sharī'ah verdict.

Every Sharī'ah *dalīl* indicates the verdict decisively or indecisively. If the *dalīl* indicates decisively, for it is decisively transmitted like the Qur'ān and the *mutawātir ḥadīth*, and its indication is also decisive; there is no dispute over its consideration, and if it indicates the verdict indecisively, but its origin (transmission) is decisive like the Qur'ān and the *mutawātir ḥadīth*; it is also considered. If its origin is indecisive like the *āhād* (individually narrated) *ḥadīth*, then it is a must to verify it, i.e. making sure of the authenticity of the *ḥadīth* before deciding to accept it, and it is not right to accept it unrestrictedly. If the *ḥadīth* is veritable (*ṣaḥīḥ*); it must be accepted even if it is indecisive, because the individually narrated (*khabar*) that has an authentic issuance is considered as an evidence, even if its issuance is indecisive, and the verification is to know the

authenticity and to be tranquilled that it is issued by the Prophet ﷺ.

The Sharī'ah evidences are of two types: one of them is related to the expressions (words) of the text and what is denoted by their literal meaning (*manṭūq*) and their connotation (*mafhūm*). The second type is related to the reasoned meaning (*ma'qūl*) of the text, i.e. related to the Sharī'ah *'illah* (reason of the legislation). As for the first type of the evidences: that is the book (of Allah Ta'ala), the Sunnah and the *Ijmā'* of the *Ṣaḥābah* (consensus of the *Ṣaḥābah*). The second type is the (*Qiyās*) scholarly measuring (analogy), which needs the Sharī'ah *'illah* that is showed in the shar'i text.

The evidence is not considered to be Sharī'ah unless it came from the Messenger ﷺ either through the text or what the text denotes, which is related to the text, otherwise it is not considered to be Sharī'ah *dalīl*. As for the text, it is certainly a *dalīl*, whether it is recited which was revealed as text and meaning, and that is the Qur'ān, or not recited, which was revealed as meaning, and the Messenger ﷺ expressed it by his words, action and approval, and that is the Sunnah. As for what the text denoted, that is considered to be a *dalīl* if its denotation is related to the text itself (not to the *ijtihād*), and that is the *Ijmā'* of the *Ṣaḥābah*, and the *Qiyās*. As for the *Ijmā'* of the *Ṣaḥābah*, it is considered to be Sharī'ah *dalīl* because it discloses that there is a *dalīl* of the text (the Sunnah), and its disclosure makes the evidence for it related to the text itself, and also the texts which came from the Messenger ﷺ denoted the consideration of their *Ijmā'* as a *dalīl*. That is because there came in the Qur'ān and in the *ḥadīth* what explicitly praised the *Ṣaḥābah* and considered imitating them, and

because they saw the Messenger ﷺ in the state of His speech, deed and silence (approval). So their consensus on a matter denotes that they had seen a *dalīl* (for that matter), and it became famous to them, so they had an *Ijmā'* on the Sharī'ah verdict without narrating the *dalīl* of it. Upon that the *Ijmā'* of the *Ṣaḥābah* is considered to be Sharī'ah evidence and a proof which can be based on, with regard to the denotation of the Sharī'ah text on it, and with regard to that, it discloses that there is an evidence, so the evidence for the *Ijmā'* is related to the text itself.

As for the *Qiyās*; its evidence is related to the text itself, because the texts are either containing *ilal* (reasons of the legislation) or not containing *ilal*. If the text contains *'illah*, then the *'illah* is considered to be a proof where ever it exists, and the *Qiyās* will be based on it, and this is the Sharī'ah *Qiyās*. If the text does not contain *'illah*, then there is no *Qiyās* (analogy). Also the texts which came from the Messenger ﷺ denoted the consideration of the *Qiyās* as Sharī'ah evidence; the Messenger ﷺ had guided to the *Qiyās* and approved it. Accordingly the *Qiyās* is considered to be a Sharī'ah *dalīl* and a proof on which verdicts can be based, with regard to the Sharī'ah *'illah* contained in the text. So the evidence on the *Qiyās* is related to the text itself, because the Sharī'ah text denoted it.

الأَدِلَّةُ الشَّرْعِيَّةُ يَجِبُ أَنْ تَكُونَ قَطْعِيَّةً

The Sharī'ah Evidences Must Be Decisive

The *adillah* of the Sharī'ah are the basis (*uṣūl*) of the Sharī'ah verdicts, they are decisive similarly like the *uṣūl* of

the religion (*Dīn*), so they are not indecisive (*ẓanniyah*). The *uṣūl* of the whole Sharī'ah whether they are the *uṣūl* of the *Dīn* or the *uṣūl* of the *aḥkām* which are the Sharī'ah evidences are inevitable to be decisive, and they are not allowed to be indecisive for the saying of Allah Ta'ala:

{وَلا تَقْفُ مَا لَيْسَ لَك بِهِ عِلْم }

"And pursue not that which you have no knowledge..."[42]

and His saying:

{وَمَا يَتَّبِع أَكْثَرهمْ إِلاَّ ظَنًّا إِنَّ الظَّنَّ لا يُغْنِى مِنَ الحَقِّ شَيْئًا}

"But most of them follow nothing but conjecture; truly conjecture can be of no avail against Truth. Verily Allah is well aware of all that they do"[43]

The masses of the scholars had mentioned that *uṣūl al-aḥkām* must be decisive (*qat'iyah*), *al-Hāfidh al-Mujtahid* Abū Ishāq Ibrāhīm Ibn Mūsā al-Lakhmī al-Gharnātī known as al-Shātibī said in his book *al-Muwāfaqāt*: "Verily the *uṣūl* of the *fiqh* of the *Dīn* are decisive, not indecisive, and the evidence on that is, because they are referred to the totalities of the Sharī'ah, and that which is as such; is decisive" and he said: "If the indecisive is related to the totalities of the Sharī'ah, then it is possible to be related to basis of Sharī'ah (the *Aqīdah*), because it is the first totality, and that is not allowed", and he said: "If it is allowed to make the indecisive one of the basis of the *fiqh*, then it becomes allowed to make it basis of the *Dīn*, and it is unanimously not like that, and so is the case here, because

[42] Surah al-Isrā':36
[43] Surah Yūnus:36

uṣūl al-fiqh are of the same relation to the Sharī'ah like *uṣūl al-Dīn*", and he also said: "Some scholars said: there is no way to prove the basis of the Sharī'ah by the indecisive, because it is a legislation, and we don't worship by the indecisive except in the branches", and he said: "The basis however, must be decisive; because if it is indecisive; it would be a possibility of disparity and such thing could not be a basis in the *Dīn*". Imām Jamāl al-Dīn Abd al-Rahīm al-Isnawī, in his book, *Nihayah al-Sūl*, at the discussion of the denotation of the (imperative verb, do) with respect to that, the indecisive *dalīl* is not considered he said: "And as for the *āḥād* (individually narrated); it is invalid (*bāṭil*); because the individual narration avail the indecisive, and The Legislator allowed the indecisive in the branches only, which are the practical issues, without the knowledge issues like the basis of *uṣūl al-Dīn*, and also the basis of *uṣūl al-fiqh*, as al-Anbāri (the explainer of the book *al-Burhān*) transmitted from the scholars all together". However, the verses of the Qur'ān are explicit about forbidding the indecisive in the *uṣūl*, and blaming whoever follows the indecisive, and these texts dictate that the basis (*uṣūl*) of the Sharī'ah in general whether they are *uṣūl al-Dīn* or *uṣūl al-aḥkām* (verdicts *uṣūl*); must be decisive, and it is not valid to be indecisive. Therefore there is nothing indecisive in the basis of the *fiqh* at all, because of the explicit forbiddance about that, but all basis of *uṣūl al-fiqh* are decisive. Accordingly, for the Sharī'ah *dalīl* to be considered as evidence; decisive evidence must be established for it, and unless decisive evidence is established for it; it is not considered as Sharī'ah *dalīl*. The *adillah* which the decisive evidence stood up to prove their validity are four only, they are: the Qur'ān, the Sunnah, the Consensus of the *Ṣaḥābah* and the *Qiyās* which has *'illah* denoted by Sharī'ah

text, and anything other than these four is not considered as Sharī'ah *dalīl*, because there is no decisive evidence for them. Accordingly, the bases of the Sharī'ah verdicts, i.e. the Sharī'ah evidences are confined to these four and nothing else is considered.

The First Evidence – The Book of Allah (*al-Kitāb*)

Al-Kitāb is the Qur'ān descended onto our Master Muhammad ﷺ which is transmitted to us between the two covers of the *Mushaf* by *mutawātir* transmission. The Prophet ﷺ was assigned to recite what was revealed onto him of the Qur'ān to a group of people by whom's saying the decisive proof would establish, and those whom the decisive proof would establish for their saying; it can not be imagined (it is impossible) that they lie, as well as it is impossible to imagine their agreement to add to what they heard from him ﷺ, and as it is impossible to imagine their agreement to not transmitting what they heard from him.

The Qur'ān is an Arabic book, and has the styles of the speech of the Arabs, and made easy to understand. In it there is what Allah Ta'ala commanded, and what He forbade, He Ta'ala said:

{ولقد يَسَّرْنا القُرْءَانَ لِلذكرِ فهَل مِن مُدَّكِر}

"And We have indeed made the Qur'ān easy to understand and remember; then is there any that will receive admonition?"[44]

and He Ta'ala said:

{فإِنَّما يسَّرناهُ بِلِسَانِكَ لَعَلَّهُم يَتَذَكَّرون}

[44] Surah al-Qamar:17

"Verily, We have made this (Qur'ān) easy, in your tongue (language), in order that they may give heed."[45]

and He said:

{قُرءَانًا عَرَبِيًّا لِقَوْمٍ يَعْلَمون}

"A Book, its verses are explained in detail; a Qur'ān in Arabic, for people who understand"[46]

and He said:

{كِتابٌ أنزلناهُ إلَيْكَ مُبارَكٌ لِيَدَّبَّروا ءَاياتِهِ ولِيَتَذَكَّرَ أُلُوا الألباب}

"A Book which We have sent down unto you, full of blessings, that they may meditate on its verses, and that men of understanding may receive admonition."[47]

so this necessitates the possibility to ponder in the Qur'ān and understand it. Although the Qur'ān is miraculous (*mu'jiz*); its miraculous nature (*I'jaaz*) does not make it uneasy to understand.

What is Considered as a Proof (*Hujjah*) of the Qur'ān

What is transmitted to us of the Qur'ān as *mutawātir* transmission and we know that it is of the Qur'ān; is the *hujjah* (proof). As for what was transmitted to us by individuals like the *mushaf* of Ibn Mas'ūd and others are

[45] Surah al-Dukhaan:58
[46] Surah Fussilat:3
[47] Surah Saad:29

not *hujjah*, that is because the Prophet ﷺ was assigned to recite what was revealed to Him of the Qur'ān onto a group of people a decisive proof would establish for their saying, and those whom the decisive *hujjah* would establish by their saying it could not be supposed that they agree not to transmit what they heard, so if anything of the Qur'ān exists not transmitted by a group who's saying would establish a *hujjah*, but transmitted by individuals; is not considered because it came individually transmitted, contrary to what the Messenger ﷺ was assigned with, and contrary to the way the Qur'ān used to be recited by the Messenger ﷺ to a number of Muslims to memorize it, and they are of whom the proof is established by their saying, beside His order to write It. So it does not apply to this situation that one or a number of people that the decisive proof could not be established by their saying transmitted anything of the Qur'ān, therefore, what was transmitted of the Qur'ān by individuals is not a proof at all. It could be said that: the memorizers of the Qur'ān at the time of the Messenger ﷺ did not reach the number of the *tawātur* for their fewness, and Its gathering was by receiving Its individual verses from individuals, therefore, the *masāhif* of the *Ṣaḥābah* differ from each other, and if he ﷺ recited it onto a group of people a proof would establish by their saying, it wouldn't be like that. The answer to that is from a few directions:

Firstly: the recital of the Qur'ān onto a number of people whom their saying would establish a proof is not disputed over by anyone of the *Ṣaḥābah*, nor is it disputed over by anyone of the Muslims. Also the Qur'ān is the miracle showing decisively the truthfulness of the Messenger ﷺ, and its non-conveyance to the one who did not see it by the

mutawātir; makes it (that which is transmitted individually) not a decisive proof for himself, then it would not be a proof to believe the Prophet ﷺ.

Secondly: it is affirmed that when the verse or verses were descended onto him ﷺ, he used to call the revelation writers to write them, and used to recite them onto a number of Muslims a decisive proof would establish for their saying, and he used to recite them onto the Muslims who used to come to him or attend the prayers with him, so the practicality of the recital of the Qur'ān is that it was not recited onto one, but onto a mass of Muslims, so those who used to hear it reached the extent of the *tawātur*, and thus, the reality of its recital is that it used to be recited onto those which the decisive proof would establish for their saying.

Thirdly: the issue is not about memorizing the whole Qur'ān, but about the transmission of the individual verses, so if we suppose that the memorizers of the whole Qur'ān did not reach the extent of the *tawātur*; it does not mean that the transmission of the individual verses was not by the extent of the *tawātur*, so the non reaching of the memorizers of the whole Qur'ān at the time of the Prophet ﷺ the extent of the *tawātur* does not necessitate that the memorizers of its individual verses are like that, so the memorizers of every verse reached the number of the *tawātur*, in addition to registering them by writing, and everyone of its verses was transmitted from the Prophet ﷺ by *mutawātir* transmission. Accordingly, it is not valid to say that: the memorizers of the Qur'ān at the time of the Prophet ﷺ did not reach the number of the *tawātur*.

Fourthly: gathering the Qur'ān is different to transmitting it from the Messenger ﷺ, because the transmission is the

hearing from the Messenger ﷺ verbally, and this is the issue under discussion. As for gathering the verses of the Qur'ān in one *mushaf* (book); the research was not to prove that they are Qur'ān, but for forwarding or back warding them with regard to the other verses and the research was about their length and shortness. Moreover the gathering of the Qur'ān was not writing what the memorizers memorized, but gathering the pages that were written in the presence of the Messenger ﷺ and placing them after each other in every Surah as the Messenger of Allah ﷺ commanded, and comparing them to what the Qur'ān memorizers had, and placing them in one place. So the issue of the gathering is different to the issue of the transmission and the discussion is about the transmission, and therefore, the issue of gathering the Qur'ān should not be mentioned here. As for the difference between the *masāhif* (books); whatever in them is of the (*āḥād*) individually transmitted, that is not of the Qur'ān, and it is not a proof, and whatever is *mutawātir* it is from it and it is a proof. So the issue is not related to the *mushaf*, but it is related to the verses contained in the *mushaf*, so if the verse is transmitted from the Messenger ﷺ as *mutawātir* transmission, i.e. received from him by a number who reached the extent of the *tawātur* (frequent transmission), i.e. the decisive proof would establish for their saying, then it is considered to be from the Qur'ān and it is a proof, and what is not like that, it is not considered to be of the Qur'ān, therefore, all the *mushaf* of Uthman is Qur'ān, because all the verses contained in it are *mutawātir* transmitted. Those whom the decisive proof is established for their saying transmitted them, whereas the *mushaf* of Ibn Mas'ūd; whatever it contains of verses transmitted by *tawātur* are considered to be of the Qur'ān, and whatever it contains of verses

transmitted individually, like the verse: " فصيامُ ثلاثةِ أيامٍ مُتتابِعاتٍ" (so fasting three sequent days) is not considered to be of the Qur'ān and is not a proof.

Accordingly the objection standing on the Qur'ān memorizers and on the *masāhif* of the *Ṣaḥābah* is rejected, and affirmed is that the *mutawātir* transmitted is the Qur'ān, and what was individually transmitted is not of the Qur'ān. And what we should draw the attention to, is that the Qur'ān was transmitted by sighting from the Messenger ﷺ, from the revelation at the time of his descent with it and was registered by writing and by memorizing it. So the *Ṣaḥābah* ﷺ did not narrate the Qur'ān as a narration from the Messenger but transmitted it, i.e. they transmitted the selfsame that was descended, and what the Messenger ﷺ commanded to write, unlike the *ḥadīth*; it was narrated on behalf of the Messenger ﷺ and not written when he said it, nor was it written during its narration but it was written and registered at the time of *Tābi'ī al-Tābi'īn*. The Qur'ān got written and registered at the descent of the *Wahi* with it, and the *Ṣaḥābah* transmitted the selfsame that was descent by the *Wahi*, and therefore it is said that: the *Ṣaḥābah* transmitted the Qur'ān to us as a transmission.

The Firm and the Similar (*al-Muḥkam wa'l-Mutashābih*)

The Qur'ān contains Firm (*Muḥkam*) and Similar verses according to what Allah Ta'ala said:

{منه ءَايَاتٌ مُحكماتٌ هُنَّ أُمُّ الكتابِ وأُخَرُ مُتَشابِهاتٌ}

"...some of it are firm verses; they are the foundation of the Book and others are similar..."[48]

The *muḥkam* (precise) is what its meaning appears and exposes an exposure that removes the possibility (of different meanings) like His Ta'ala's saying:

{وأحلَّ اللهُ البَيْعَ وحَرَّمَ الرِّبا}

"...Allah has permitted trade and forbidden usury..."[49]

{والسارِقُ والسارِقَةُ فاقْطَعوا أَيْدِيَهُما}

"And the thief, male or female, cut off his or her hands..."[50]

{ولكُم في القِصَاصِ حَياةٌ ياأُلِى الأَلْبابِ}

"In the Law of Equality there is life for you, O you men of understanding; that you may restrain yourselves"[51]

and other alike verses.

As for the *mutashābih* (imprecise), it is the contrary of the *muḥkam*, and has the probability of more than one meaning, either equal to each other or not equal. An example for which the meaning came equal is His Ta'ala's saying:

{والمُطَلَّقاتُ يتربَّصْنَ بِأَنْفُسِهِنَّ ثَلاثَةَ قُرُوءٍ}

"Divorced women shall wait concerning themselves for three monthly periods..."[52]

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[48] Surah Āli Imraan:7
[49] Surah al-Baqarah:275
[50] Surah al-Mā'idah:38
[51] Surah al-Baqarah:179

the word (*qurū'*) probably means the menses (*hayd*) or the purity (*ṭuhr*), and His Ta'ala's saying:

{أَو يَعْفُوَ الذى بِيَدِهِ عُقْدَةُ النِّكَاحِ}

"...unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie..."[53],

so the one that has the tie of the marriage is probably the husband or the guardian (*wali*), and His Ta'ala's saying:

{أَو لامَسْتُمُ النِّسَاءَ}

"...or ye have been in contact with women..."[54],

for the hesitation of it between the touching by hand and the copulation. An example for what the meaning came as not equal to each other is His Ta'ala's saying:

{ويَبْقَى وَجْهُ رَبِّكَ}

"But will abide (forever) the Face of your Lord, The Full of Majesty, Bounty and Honour"[55],

{ونَفَخْتُ فيهِ مِن رُوحِى}

"When I have fashioned him (in due proportion) and breathed into him of My spirit..."[56],

{مِمَا عَمِلَتْ أَيْدِينَا}

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[52] Surah al-Baqarah:228
[53] Surah al-Baqarah:237
[54] Surah al-Nisā':43
[55] Surah al-Rahmān:27
[56] Surah al-Hijr:29

"...among other things which Our Hands have fashioned..."[57],

{اللهُ يَسْتَهزِئُ بِهِمْ}

"Allah will throw back their mockery on them, and give them rope in their trespasses; so they will wander like blind ones (to and fro)"[58],

{ومَكَرُوا ومَكَرَ اللهُ}

"And (then Unbelievers) plotted and planned, and Allah too planned, and the best of planners is Allah"[59],

{والسَّمَاوَاتُ مَطْوِيَّاتٌ بِيَمِينِهِ}

"...and the heavens will be rolled up in His right hand: Glory to Him and High He is above the Partners they attribute to Him"[60],

and the like, it has the probability of several meanings according to the understanding of the Arabic language with respect to the Arabs' styles, and according to the Sharī'ah meanings, all that is *mutashābih* (imprecise). Verily it is named *mutashābih* for the uncertainty of its meaning to the listener. The *mutashābih* is not what its meaning is not understandable because there's nothing in the Qur'ān that is not understandable, because there inclusion of the Qur'ān of something not understandable makes it out of being a clarification to the mankind, and that is contrary to His Ta'ala's saying:

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[57] Surah Yā Sīn:71
[58] Surah al-Baqarah:15
[59] Surah Āli Imrān:54
[60] Surah al-Zumar:67

{هَذَا بَيَانٌ لِلنَّاسِ}

"Here is a plain statement to mankind, a guidance and instruction to those who fear Allah"[61]

As for the alphabetic letters in the beginning of the chapters (Surah); they do have meanings, because they are names for the chapters and definers for them, we say Surah: ألم البَقَرَة and Surah: الم آل عِمْرَان and Surah: كهيعص مَرْيَم and Surah: حم فُصِّلَت etc. There is nothing in the Qur'ān that has no meaning and could not be understood, but all what came in the Qur'ān can be understood and exalted be Allah Ta'ala that He addresses mankind by that which is impossible for them to understand.

[61] Surah Āli Imrān:138

The Second Evidence – The *Sunnah*

Al-Sunnah linguistically is the method, and in the Sharī'ah it is the name of some of the supererogatory worships transferred from the Prophet ﷺ, and the Sunnah is the name of what came from the Messenger ﷺ of saying, action and approval, when we talk about the Sharī'ah evidences, all that is the sunnah and it is all what is received by the revelation, Allah Ta'ala said:

{وما يَنطِقُ عن الهَوى} {إن هُوَ إلاَّ وَحْىٌ يوحَى}

"Nor does he say (aught) of (his own) Desire" "It is no less than inspiration sent down to him"[62],

and He Ta'ala said:

{قُل إِنَّما أُنذِرُكُم بِالوَحْىِ}

"Say: I do but warn you according to revelation..."[63]

The Status of the Sunnah in relation to the Qur'ān

The Sunnah is Sharī'ah evidence for the decisive evidence of the Prophet-hood of our Master Muhammad ﷺ and his message (*risālah*), and for the decisive evidence in both transmission and denotation that he ﷺ speaks not after his own desire, it is but a revealed revelation, and that what he warns with is only revelation from Allah Ta'ala. So the

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[62] Surah al-Najm:3

[63] Surah al-Anbia':45

Sunnah is revelation from Allah Ta'ala, except that the revelation is the contents and meanings of the Sunnah not its words. Allah Ta'ala revealed it to him ﷺ and he expressed this revelation by his own words or actions or approvals i.e. silence.

The Sunnah is an evidence similar to the Book and not less then it for the established decisive evidence for it, as it is established for the Qur'ān, and the limiting (of the taking) to the Book is the opinion of the apostates, Allah Ta'ala said:

{وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا}

"So take what the Messenger assigns to you, and abstain from that which He withholds you from..."[64],

and He Ta'ala said:

{من يُطِعِ الرسولَ فقد أطاعَ اللهَ}

"He who obeys the Messenger, indeed obeys Allah..."[65],

and He said:

{فَلْيَحذرِ الذين يُخالفون عن أمرهِ أن تُصيبَهُم فِتنةٌ أو يُصيبَهُم عذابٌ أليمٌ}

"...Let those beware who withstand the Messenger's order, lest some trial befall them, or a grievous Punishment be inflicted on them."[66],

and He said:

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[64] Surah al-Hashr:7
[65] Surah al-Nisā':80
[66] Surah al-Nūr:63

{وما كان لمؤمنٍ ولا مؤمنةٍ إذا قضى اللهُ ورسولُهُ أمراً أن يكونَ لَهُمُ الخِيَرَةُ مِن أمرِهِم}

"...It is not fitting for a Believer, man or woman, when a matter has been decided by Allah and His Messenger, to have any option about their decision..."[67],

and He said:

{فَلا وَرَبِّكَ لاَ يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لاَ يَجِدُوا فِى أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا}

"But no, by your Lord, they can have no (real) Faith, until they make you judge in all disputes between them, and find in their souls no resistance against your decisions, but accept them with the fullest conviction...."[68],

and He said:

{فَإِنْ تَنَازَعْتُمْ فِى شَىْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ}

"...If you differ in anything among yourselves, refer it to Allah and His Messenger..."[69],

and the returning to the Messenger after his death is returning to his Sunnah and Allah Ta'ala said:

{قُلْ أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ}

"Say: Obey Allah and obey the Messenger...."[70],

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[67] Surah al-Aḥzāb:36
[68] Surah al-Nisā':65
[69] Surah al-Nisā':59
[70] Surah Āli Imrān:32

and He said:

{قُلْ إِنْ كُنْتُمْ تُحِبُّونَ اللَّهَ فَاتَّبِعُونِي يُحْبِبْكُمُ اللَّهُ}

"Say: (Muhammad) If you do love Allah, then follow me Allah will love you..."[71],

So these decisive texts in their transmission and their denotation are explicit in obliging taking the Sunnah as taking the *Kitāb*, and the denier of the Sunnah is definitely *kāfir*, so the Sunnah must be taken as the Qur'ān must be taken, similarly without any differences between them. It is not permitted to say: we have the Book of Allah, we take what is in it, because it can be understood as leaving the Sunnah, but it is inevitable to combine the Sunnah and the *Kitāb*, and the Messenger ﷺ has warned us from that in his *ḥadīth* he ﷺ said: " يُوشِكُ رَجُلٌ مُتَّكِئاً عَلى أَرِيكَتِهِ, يُحَدَّثُ بِحَدِيثٍ مِن حَدِيثِي, فَيَقُولَ: بَيْنَنَا وَبَيْنَكُم كِتَابُ اللهِ عَزَّ وَجَلَّ, مَا وَجَدْنَا فِيهِ مِنْ حَلالٍ اسْتَحْلَلْنَاهُ, وَمَا وَجَدْنَا فيهِ مِن حَرَامٍ حَرَّمْنَاهُ, أَلاَ وإِنَّ مَا حَرَّمَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ مِثْلُ ما حَرَّمَ اللهُ" **"It is imminence that a man resting on his couch would be told one of my *aḥādīth*, he would say: between us and you is the Book of Allah the Great and the Almighty, what we find in it as *ḥalāl* we consider it *ḥalāl*, and what we find in it as *ḥarām* we consider it *ḥarām* indeed it is that what the Messenger of Allah ﷺ forbade is like what Allah forbade"** Ibn Mājah narrated it. He also said: " يُوشِك أَحَدُكُم يَقُولُ: هذا كِتَابُ اللهِ, ما كَانَ فيهِ مِن حَلالٍ أَحْلَلْنَاهُ وما كَانَ مِن حَرَامٍ حَرَّمْنَاهُ, أَلا مَن بَلَغَهُ عَنِّي حَديثٌ فَكَذَّبَ بِهِ, فَقَدْ كَذَّبَ اللهَ ورَسُولَهُ والذي حَدَّثَهُ" **"It is imminence that one of you would say: this is the Book of Allah whatever is *ḥalāl* in it we consider it *ḥalāl* and whatever is *ḥarām* we consider it *ḥarām*, indeed whoever denies a *ḥadīth* transmitted to him, he belied Allah**

[71] Surah Āli Imrān:31

and His Messenger and whoever transmitted the *ḥadīth* to him" Ibn Abd al-Barr narrated it. The Sunnah adjudges the Book, because the Book may have two possibilities or more, the Sunnah then comes to determine one of them so the matter will be returned to the Sunnah and what the Book seemingly necessitates will be left, Allah Ta'ala said:

{وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ}

"...All others are lawful for you, provided ye seek (them in marriage)...."[72],

after His saying:

{حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللَّهِ عَلَيْكُمْ وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ}

"Prohibited to you (for marriage) are: your mothers, daughters, sisters; father's sisters, mother's sisters; brother's daughters, sister's daughters; foster-mothers (who gave you suckle), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom you have gone, no prohibition if you have not gone in; (those who have been)

[72] Surah al-Nisā':24

wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-Forgiving, Most Merciful. Also (prohibited are) women already married, except those whom your right hands possess: thus has Allah ordained (prohibitions) for you: except for these, all others are lawful, provided you seek (them in marriage)...."[73]

what shows the permissibility of all that are not mentioned, then the Sunnah came and excluded from that marrying the women over her paternal aunt or her maternal aunt, for the saying of the Messenger ﷺ: "لا تُنكَحُ المرأةُ عمَّتِها ولا على خالتِها" **"The women is not to be married over her paternal aunt nor over her maternal aunt"**, Muslim narrated it. So this is leaving the seeming (*ẓāhir*) of the Book and forwarding the Sunnah over it. The seeming of the Book could show a matter then the Sunnah comes to get it out of its seeming. Seemingly, the Qur'ān came with the order to take the *Zakāh* from all the properties, the Sunnah came and specified it for specific properties, and limited the taking of the *Zakāh* to those properties only, so it would not be taken from others.

In comparison with the Qur'ān, the Sunnah most generally is a clarifier for it, Allah Ta'ala said:

{وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ}

"...And We have sent down unto you the Message; that you may explain clearly to the mankind what is sent for them..."[74]

[73] Surah al-Nisā':23-24
[74] Surah al-Nahl:44

that is because the informing of the Qur'ān about the Sharī'ah verdicts is mostly totally not partially, and where the informing comes as partially; it is to be taken on the total basis, and the Qur'ān in comprehensive and it can not be as such except that what is gathered in it are general matters, because the Sharī'ah was completed by the completion of its descent. And because of the numerousness of the Sunnah and the multitude of its issues; it is a clarifier for the Book. All that is in the Sunnah have origins in the Book, whether it (the Book) clarifies it either in summing up or in details or in both ways the Sunnah came adjudging all that by clarifying and explaining. The Sunnah brought many verdicts that are not textually mentioned in the Qur'ān al-Karīm, but these verdicts came as supplements for origins for them mentioned in the Qur'ān, and they are a kind of clarification for what is in the Qur'ān. So the Sunnah is a clarifier for the Book.

The clarification of the Book by the Sunnah is summed up by the following:

1. Detailing its concise (تفصيلُ مُجْمَلِه): From that, is that Allah Ta'ala commanded in the Book to perform the prayer, without a clarification of its times, pillars, and the number of its prostration (*Rak'ah*); the Sunnah clarified that. The Messenger ﷺ said: "صَلُّوا كَما رأيتُموني أُصَلِّي" **"do pray as you see me praying"** narrated by al-Bukhārī. And there came in the Book the obligation of the pilgrimage (*hajj*), without clarifying its ceremonies (*manāsik*), the Sunnah clarified that, and he ﷺ said: " أَلا فخُذُوا عَنِّي مَناسِكَكُم" **"Do your best to take your *manāsik* from me"** narrated by Aḥmad. And there came in the Book the obligation of the *Zakāh* without clarifying for which properties the obligation is,

nor does it clarify the *nisāb* for its obligation, the Sunnah clarified that, and as such.

2. (تخصيصُ عُمومِهِ) Specifying its general: there are generalities in the Qur'ān and the Sunnah came to specify them, and of that, is that Allah Ta'ala commanded that the children inherit the parents the way He Ta'ala clarified in His saying:

{يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ}

"Allah commands you regarding your children's (inheritance): to the male, a portion equal to that of two females..."[75],

so this is general for every father got inherited and every child that inherits, the Sunnah then specified the inherited father by other then the Prophets for his ﷺ saying: " لا... نُورَثُ, ما تَرَكناهُ صَدَقَة" **"...we do not get inherited, what we left is *sadaqah*"** al-Bukhārī, Muslim and Aḥmad narrated it. And the Sunnah specified the inheritor by other then the killer by His ﷺ saying: "...ولا يرِثُ القاتِلُ شيأً" **"...And the killer does not inherit anything"** Abū Dāwud narrated it. And of that is Allah Ta'ala's saying:

{وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا}

"If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days...."[76]

this verse denoted the (*iddah*) period in which the widow may not remarry then the verse got specified by the *ḥadīth*

[75] Surah al-Nisā':11
[76] Surah al-Baqarah:234

of Subay'ah al-Aslamyah, when she gave birth 25 days after the death of her husband, then the Prophet ﷺ told her that she became allowed (to remarry) so that showed that the verse is specific for the non pregnant.

3. (تقييدُ مُطلَقِه) Limiting its unrestricted (absolutes): There came in the Qur'ān verses that are unrestricted, so the Sunnah came and limited this unrestricting with determined restriction, and from that is His Ta'ala's saying:

{وَلَا تَحْلِقُوا رُءُوسَكُمْ حَتَّى يَبْلُغَ الْهَدْيُ مَحِلَّهُ فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ بِهِ أَذًى مِنْ رَأْسِهِ فَفِدْيَةٌ مِنْ صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ}

"...And do not shave your heads until the offering reaches the place of sacrifice. And if any of you is ill, or has an ailment in his scalp, (necessitating shaving), (he should) in compensation either fast, or donation, or offer sacrifice..."[77],

so these three: fasting, donation, or sacrifice, are confirmed indefinite, they are unrestricted words, but they became limited by the *ḥadīth* that Muslim narrated from the way of Ka'ab Ibn Ajrah that the Prophet ﷺ said to him: " فاحلِقْ رَأْسَكَ وأطْعِم فَرْقاً بين ستَّةِ مَساكينَ والفرقُ ثلاثةُ آصُعٍ أو صُم ثلاثة أيام أوِ انسَك نسيكةً" **"Shave your head or feed one *faraq* to six needy and the *faraq* is three *saa'* or fast three days or do a *nusuk*"** so he limited the unrestricted fasting by three days, and the unrestricted donation by one *faraq* for six needy, and the *faraq* is three *saa'*, and the unrestricted *nusuk* by slaughtering one female sheep.

4. Attaching a branch of the verdicts' branches to its origin which came in the Qur'ān, as this branch seems to be a new

[77] Surah al-Baqarah:196

legislation, but after scrutinizing it appears to an annexation to its origin in the Qur'ān, and there is many like this: from that manner is that Allah Ta'ala mentioned (in the inheritance) the determined statutory portions (الفرائض المقدَّرة), and not mentioned the inheritance of the (*asabaat*) (relatives from the father side and the paternal cousins) except what came in His Ta'ala's saying:

{ يُوصِيكُمُ اللَّهُ فِى أَوْلادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ}

"Allah (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two females..."[78],

and His Ta'ala's saying:

{وَإِنْ كَانُوا إِخْوَةً رِجَالاً وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ}

"...if they are brothers and sisters, (they share), the male having twice the share of the female..."[79],

which necessitate that there is no determined statutory portions obliged for the (*aasib*) (paternal relative) other than the children and the brothers, but he takes the remainder rafter paying the obliged inheritance, and the Messenger of Allah ﷺ clarified this as he said: " ألحقوا الفرائضَ بأهلِها, فما بقيَ فهو لأَوْلِ رجلٍ ذكَرٍ" **"Attach (pay) the obliged statutory portions to their eligible people, then whatever remains is for the closer man"** al-Bukhārī narrated it. So he ﷺ attached the *aasib* other than the children to the brothers and the children. The sisters also were attached to the daughters as a *asabah*, on the authority of al-Aswad: " أنَّ مُعاذُ

[78] Surah al-Nisā':11
[79] Surah al-Nisā':176

بنُ جبلٍ ورَّثَ أُختًا وابنةً, فجعل لكلِّ واحدةٍ منهما النِّصفَ, وهُوَ باليمنِ, ورسولُ اللهِ صلى اللهُ عليهِ وسلَّمَ يومئِذٍ حيٌّ" **"That Mu'ādh Ibn Jabal executed the inheritance of a sister and a daughter, while he was in Yemen, so he gave to each one of them the half, and the Messenger of Allah ﷺ was then alive"** Abū Dāwud narrated it. Mu'ādh would not issue this in the life of the Prophet ﷺ except after a *dalīl* he knew it, and had he not know the *dalīl*; he would not rush in the matter.

And from that manner is that Allah Ta'ala forbade the gathering of two sisters (in the marriage) by Saying:

{وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ}

"...and gathering two sisters in wedlock at the same time..."[80],

and did not mention the gathering of the woman and her paternal or maternal aunty, but the Messenger ﷺ clarified it by his saying:

" لا تُنكَحُ المَرْأَةُ على عمَّتِها, ولا على خَالتِها, ولا المرأةُ على ابنَةِ أَخيها, ولا على ابنةِ أُخْتِها" **"The woman must not be married over her paternal aunty, nor over her maternal aunty, nor must the woman be married over her brother's daughter, nor over her sister's daughter"**, Aḥmad narrated it on the authority of Abū Hurayrah. Ibn Hibbān narrated on the authority of Ibn Abbas that he said: " نهَى رسولُ اللهِ صلى اللهُ عليهِ وسلَّمَ أن تُزَوَّجَ المرأةُ على العمَّةِ والخالةِ. قالَ: إنَّكُنَّ إذا فعَلتُنَّ ذلك قطَّعْتُنَّ أرحامَكُنَّ" **"The Messenger of Allah ﷺ forbade marrying the women over her paternal or maternal aunty. He said: if you women do that; you will cut your (*arhaam*) kinships"**. So he attached all that to the forbiddance of gathering the two sisters (in the marriage).

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[80] Surah al-Nisā':23

Also from that manner is that Allah Ta'ala said:

{وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ}

"...He allows them as lawful what is pure and prohibits them from what is impure..."[81],

and did not mention details, then the Sunnah text provided what helps the *mujtahid* to know the verdicts of what seems to be from the impurities and purities and attached it to them, the Sunnah provided the prohibition of eating the meat of the donkeys, every beast prey with canine tooth, and every bird with claw, and attached them to the impurities. Ibn Abbas said: " نهى رسولُ اللهِ صلى اللهُ عليهِ وسلَّمَ عن كُلِّ ذي نابٍ مِنَ السِّباعِ, وعن كُلِّ ذي مِخلَبٍ منَ الطَّيرِ" **"The Messenger of Allah ﷺ forbade every beast prey with canine tooth and every bird with claw"**, narrated by Muslim. Jābir said: " حرَّمَ رسولُ اللهِ صلَّى اللهُ علَيهِ وسلَّمَ يَعني يَومَ خَيبرَ الحُمُرَ الإنسيَّةَ ولُحومَ البِغالِ, وكُلَّ ذي نابٍ مِنَ السِّباعِ, وَذي مِخْلَبٍ منَ الطَّيْرِ" **"The Messenger of Allah ﷺ forbade on the day of Khaybar the donkeys, the mules' meat's, the beast prey with canine tooth, and the birds with claws"** narrated by al-Tirmidhī. The Sunnah provided the permissibility of eating the *dabb* lizard, the rabbit, and the like and attached them to the purities, Ibn Umar said: " سألَ رجلٌ رسولَ اللهِ صلى اللهُ علَيهِ وسلَّمَ عن أكلِ الضَّبِّ. فقالَ: لا آكُلُهُ ولا أُحرِّمُهُ" **"A man asked the Messenger of Allah ﷺ about eating the *dabb* lizard. He ﷺ said I do not eat it nor do I forbid it"**, narrated by Muslim. Abū Hurayrah said: " أتى أعرابيٌّ رسولَ اللهِ صلَّ اللهُ علَيهِ وسلَّمَ بِأَرنَبٍ قد شَواها, ومعها صِنابُها وأَدَمُها, فوضَعَها بينَ يدَيْهِ, فأمسَكَ رسولُ اللهِ صلى اللهُ علَيْهِ وسلَّمَ فَلَم يأْكُلْ, وأَمرَ أصحابَهُ أن يأْكُلوا" **"a Bedouin brought to the Messenger of Allah ﷺ a rabbit that he grilled and brought with it its**

[81] Surah al-A'raaf:157

sinaab and adam, and put it within his hands, then the Messenger ﷺ refrained from it and did not eat and ordered his companions to eat" narrated by Aḥmad, the sinaab is a dip made from mustard and sultanas.

And from that manner is that Allah Ta'ala permitted from the hunting, what is caught by trained hunting animals

{قُلْ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَمَا عَلَّمْتُمْ مِنَ الْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ فَكُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ وَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهِ}

"...Say: Lawful for you are (all) pure things: and what you have taught your trained hunting animals (to catch) in the manner directed to you by Allah: so eat what they catch for you, but pronounce the name of Allah over it..."[82],

accordingly we know that if the animal is not trained; its hunt is *ḥarām* because it only caught for itself, so between the two origins revolves that if the hunting animal is trained but ate from its hunt, the training necessitates that it caught for you, and its eating from it necessitates that it hunted for itself not for you so the two origins conflict each other, then the Sunnah brought the clarification for that, the Messenger ﷺ said: " ...فإن أكلَ فلا تَأْكُلْ, فإنِّي أخافُ أن يكونَ إنَّما أمْسَكَ على نفسِهِ" **"...If it (the trained dog) ate do not eat I'm afraid that it caught for itself ...."**, narrated by Muslim.

Also from that manner is that Allah Ta'ala mentioned from those who are prohibited (to marry) because of their (*raḍa'ah*) breastfeeding, in His saying:

{وَأُمَّهَاتُكُمُ اللَّاتِى أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ}

[82] Surah al-Mā'idah:4

"...your foster-mothers (who breast fed you), your foster-sisters..."[83],

then the Prophet ﷺ attached to these two the rest of the relatives from the breastfeeding those who are *ḥarām* (to marry) because of their kinship, like the paternal aunty, maternal aunty, the niece from the brother and sister and the likes, he ﷺ said: "يَحْرُمُ مِنَ الرَّضاعِ ما يَحرُمُ مِنَ النَّسَبِ" **"The suckling prohibits what the kinship prohibits"**, narrated by al-Bukhārī.

And from that manner is that Allah Ta'ala said:

{وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ}

"...And get two witnesses, from your own men, and if there are not two men, then a man and two women, such as you choose, for witnesses..."[84],

so in the money issue He commanded to take the testimony of women joined with a testimony of a man, then the Sunnah attached to that the oath with the witness, as the Messenger ﷺ decreed, it is narrated on the authority of Ali رضي الله عنه: " أنَّ النّبيَّ صلى الله عليه وسلم قضَى بشَهادةِ شاهِدٍ واحدٍ ويَمينِ صاحِبِ الحقِّ" **"The Prophet ﷺ decreed after a testimony of one witness and an oath"** narrated by al-Dāraquṭnī, so the witness and the oath would have the manner as the two male witnesses, or one male and two female witnesses. On this manner the Sunnah brought many verdicts that did not come in the Book, they are new legislation but attached to their origins. That does not mean that the Messenger ﷺ did not bring new legislation unless it is attached to it's origin

[83] Surah al-Nisā':23
[84] Surah al-Baqarah:282

in the Qur'ān, nor does it mean that every new legislation the messenger brought must be attached to its origin in the Qur'ān, but that is the majority in most cases. However, the Messenger ﷺ may bring a new legislation not attached to its origin in the Qur'ān, but it may not have an origin in the Qur'ān. An example for this, the affirmation of the public utilities to be from among the public ownership is a new legislation the Messenger ﷺ brought when he said: "المسلمون شُركاءُ في ثلاثٍ: في الكلإِ والماءِ والنارِ" **"The Muslims are partners in three: in the pasture, the water and the fire"** Abū Dāwud narrated it. This is not attached to its origin in the Qur'ān. And from that is the prohibition to take the custom tax which is affirmed by his ﷺ saying: " لا يدخُلُ الجنَّةَ صاحِبُ مَكْسٍ" **"whoever imposes max (custom tax) does not enter paradise"** narrated by Aḥmad. It is not attached to its origin in the Qur'ān. This is only few, but the majority in most cases the new legislations the Messenger ﷺ brought are attached to their origin in the Qur'ān.

Thus we find that the Sunnah is referable to the Book, and what came in it is a kind of explanation and elucidation of the verdicts meanings of the Book, like detailing its summed-up, specifying its general, limiting its unrestricted, and attaching a branch to its origin, and in spite of that, the Sunnah has new legislation for which no origin came in the Qur'ān. So the Sunnah is clarification for the Qur'ān, and new legislation for the verdicts. As for the clarification; it is indicated by the saying of Allah Ta'ala:

{وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ}

"...and We have sent down unto you (also) the Message; that you may explain clearly to menkind what is sent to them..."[85],

and as for the new legislation; it is indicated by His Ta'ala's saying:

{فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ}

"...If you differ in anything among yourselves, refer it to Allah and the Messenger..."[86],

and the returning to Allah is by returning to His Book, and the returning to the Messenger when he was alive, then when Allah Ta'ala made him died; the returning became to his Sunnah. The dispute in understanding the Qur'ān and deriving the verdicts is unrestricted, and the returning to the Sunnah is also unrestricted in both: what exist in the Qur'ān and what came as new legislation, therefore Allah Ta'ala said:

{مَنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ}

"He who obeys the Messenger, he indeed obeyed Allah..."[87], and He said:

{فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ}

"...then let those beware who withstand the Messenger's order..."[88],

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[85] Surah al-Nahl:44
[86] Surah al-Nisā':59
[87] Surah al-Nisā':80
[88] Surah al-Nūr:63

and that is general, because it is an adjunct generic noun (اسمُ جِنْسٍ مُضَافٍ). Accordingly, the Sunnah is a Sharī'ah evidence like the Book, and the Messenger of Allah ﷺ said: " تَرَكْتُ فِيكُمْ أَمْرَيْنِ لَنْ تَضِلُّوا مَا تَمَسَّكْتُمْ بِهِمَا: كِتَابَ اللهِ وسُنَّةَ نَبِيِّهِ" **"I have left with you two things you will never stray if you adhere to them: the Book of Allah and the Sunnah of His Prophet"** Mālik narrated it.

Divisions of the Sunnah (*Aqsām al-Sunnah*)

The Sunnah is divided regarding to its transmission authenticity (*al-sanad*) into three divisions, they are: the *mutawātir*, the *mashhūr* and the *khabar al-āḥād*. So if the *ḥadīth* is transmitted by a group of the *Tābi'ī al-Tābi'īn* from a group of the *Tābi'īn* from a group of the *Ṣaḥābah* from the Messenger ﷺ, then it is the *mutawātir*. If the *ḥadīth* is transmitted by a group of the *Tābi'ī al-Tābi'īn* from a group of *al-Tābi'īn* from a group of the *Ṣaḥābah* whose number does not reach the extent of the *tawātur*, then it is the *mashhūr*, because the Ummah received it with acceptance and it became (famous) *mashhūr* within the Ummah. And if the *ḥadīth* is narrated by one or more whose number does not reach the extent of the *tawātur* from the *Ṣaḥābah* and who was after them of the *Tābi'īn* and *Tābi'ī al-Tābi'īn*, then it is *khabar al-āḥād*. The Sunnah is only these three divisions. However, with respect to its denotation to the certainty (*al-yaqīn*) or the most probability (*al-ẓann*) the Sunnah is only of two divisions, because the *mashhūr* is considered to be of the *āḥād*, because if the *ḥadīth* is narrated by a number of people that are secured from the collusion (agreement) to lie of the *Tābi'ī al-Tābi'īn*, from another number of *al-Tābi'īn* that are

secured from the collusion to lie, from another number of the *Ṣaḥābah* by whose saying a decisive proof would be established, then it is the *mutawātir*. It means that the *mutawātir* is what has a number of narrators in everyone of its three stages reaches the extent of the *tawātur*, but if that is lacked in one of the stages then the *ḥadīth* is *khabar al-āḥād*, whether the insufficient number of narrators for the extent of the *tawātur* are of the *Ṣaḥābah*, or of the *Tābi'īn* or of the *Tābi'ī al-Tābi'īn* or of all of them, it is then considered to be *khabar al-āḥād*, that does not denote the certainty, it only denotes the most probability, but it is agreed to name *al-mashhūr* that which lacked the sufficient number of the *Ṣaḥābah*, but it has a sufficient number of the others, because it became *mashhūr* (well known between the Ummah), whereas, the verdict for it is not different from *khabar al-āḥād* which does not denote the certainty.

The *Mutawātir*

The *tawātur* linguistically is the succession of the things one after the other with a time limit in between, and of this is the saying of Allah Ta'ala:

{ثُمَّ أَرْسَلْنَا رُسُلَنَا تَتْرَىٰ}

"Then sent We Our Messengers in succession..."[89],

means one after one with time limit. The *tawātur* is the recurrence, and *al-khabar al-mutawātir* in the terminology

[89] Surah al-Mu'minūn:44

of the *uṣūl* scholars is the report (*khabar*) transmitted by a group which reach in their multitude the extent of the certainty (*'ilm*) which occurred for their saying, the certainty would not occur for the saying of this group and it would not be *mutawātir* unless they are certain of what they told, and not in any doubt about it. Their knowledge must be based on the hearing and the witnessing not on the figuring out, there must be a group that fulfills these conditions in the era of the *Ṣaḥābah*, the era *Tābi'īn* and the *Tābi'ī al-Tābi'īn*, so the two sides and the middle of the *khabar* are equal. Accordingly, the *mutawātir* report is what was narrated in the three eras by a large gathering that their collusion to lie is normally impossible, and no consideration at all for any era other then those three in the narration of the *ḥadīth*.

The *mutawātir ḥadīth* is decisively transmitted from the Prophet ﷺ, so it denotes the certainty knowledge, and acting according to it in all aspects is a must, whether it is of the saying, acting, or approving Sunnah. One of the *mutawātir aḥādīth* is the saying of the Prophet ﷺ: " وَمَن كَذَبَ عَلَيَّ مُتَعَمِّدًا فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنَ النَّارِ" **"And whoever fabricates a lie on my behalf let him occupy his place in hell fire"** narrated by al-Bukhārī and Muslim. The five prayers, the number of their *rak'ah* and also what came about the method of the prayer, the *ṣawm* and the *hajj* are of the acting *mutawātir* Sunnah.

The Number by Which the Certainty Occurs

There is a dispute about the least number by which the certainty occurs, some said: five, others said: the least is

twelve, and some of them said: the least is twenty, some others said: the least is forty, others said: seventy and some said: three hundreds and thirteen etc. All these sayings which determined a specific number have neither transmitted or rational basis, since no text came with a specific number, nor does the mind outweigh a specific number. What is considered in the *mutawātir* report is the occurrence of the certainty by it, not the narration of a specific number, because in addition to the number there are indications that show the strength or the weakness of the *ḥadīth*. A *khabar* may possibly be narrated by a specific number by whose narration the certainty knowledge does not occur, and a *khabar* may be narrated by similar to that number, then the certainty knowledge occurs for their narration, since the consideration of the *khabar* differs for the difference of the indications with the equality of the number. Accordingly, the *mutawātir ḥadīth* by which certainty knowledge occurs is inevitable to be narrated by a group not by a specific number, and that the number of the group, and the farness of their places, in such a manner that it is impossible with it that they collude to lie, and what is considered in the number is the impossibility of the collusion to lie with it. So it is inevitable to narrate the *ḥadīth* a group which reach in their number an extent that prevents their collusion to lie, and that differs for the differences of the reporters, the situations, and the indications.

The Famous (*ḥadīth) [al-Mashhūr]*

The *mashhūr ḥadīth* is which's transmitters are over three in all its stages but do not reach the extent of the *tawātur*. It

does not denote the certainty; it verily denotes the most probability like any *āḥād* report. They said: it denotes a most probability close to the certainty, because the Ummah received it with acceptance in the era of the *Tābi'īn*, therefore it is decisively affirmed by one *Ṣaḥābī*, and it is outweighed about the *Ṣaḥābah* of the Messenger ﷺ is their integrity from any lie. But this saying does not give the *mashhūr ḥadīth* any quality more than those of any *khabar al-āḥād*, because the saying that it denotes a most probability close to the certainty has no value. The matter is either most probability, or certainty, and there is no third for them, so there is nothing between the most probability and the certainty, and nothing is close to this and far from that, therefore this saying is meaningless, so the *mashhūr* denotes the probability. And the saying that it is decisively transmitted from the *Ṣaḥābī* has no value, because it is required to be decisively transmitted from the Messenger ﷺ not from the *Ṣaḥābī*, and the research is about the *ḥadīth* of the Messenger not about the sayings of the *Ṣaḥābī*, therefore there is no benefit in this saying, and accordingly, the *mashhūr ḥadīth* is not any more than the *khabar al-āḥād*. Except that the *khabar al-āḥād* is not taken until making sure of its narration, because it has individuals other than the *Ṣaḥābah*, whereas the *mashhūr* can be taken without verification, because the individuality came in the narration of the *Ṣaḥābah* and they are just and need not to be investigated. The *Mashhūr ḥadīth* is the one that became famous at the time of the *Tābi'īn* and *Tābi'ī al-Tābi'īn*. If it became famous after those two eras, then that is not considered, therefore we don't say about the *khabar al-āḥād* that became famous between the people after the two eras that it is a *mashhūr ḥadīth*, but we say: it is *khabar āḥād* regardless how much famous it became, and of the *mashhūr*

aḥādīth is the saying of the Prophet ﷺ: "إِنَّما الأَعمالُ بِالنِّيَّاتِ" **"Verily the actions are by the intentions"** narrated by al-Bukhārī and Muslim.

The Individuals Report (*Khabar al-āḥād*)

The individuals report is what was narrated by a number which does not reach the extent of the *tawātur* in the three eras (*al-Ṣaḥābah*, *al-Tābi'īn*, and *Tābi'ī al-Tābi'īn*), and no consideration to what came after them. It denotes the most probability, not the certainty. The verdicts base on it in their derivation as they base on the *mutawātir ḥadīth* and on the *mashhūr ḥadīth*. The research of *khabar al-āḥād* is from among the most important *uṣūl* issues, because it is the basis of most of the verdicts for the fewness of the *mutawātir* Sunnah. *Khabar al-āḥād* must be taken as basis for the actions when it fulfills both: the conditions of the transmission (*riwayah*) and the knowledge of its content (*dirayah*). The Messenger ﷺ used to send individuals from the *Ṣaḥābah* to the countries to call to Islam, teach the verdicts, and narrated the *aḥādīth*, the way he sent Mu'ādh to Yemen. So had it not been a must for the Muslims to act according to *khabar al-āḥād*; the Messenger ﷺ would not be satisfied by sending individuals from among the *Ṣaḥābah*, but he would then send groups. The *Ṣaḥābah* consented on acting according to *khabar al-āḥād* and that has been transmitted from uncounted and various situations which support their action according to the individuals report, and the obligation to act according to it. Ibn Mājah narrated in his Sunnah book that Abū Bakr al-Siddiq acted according to the report of al-Mugheerah and Muhammad Ibn Maslamah in the inheritance of the grandmother that

the Prophet ﷺ gave her the sixth. And from that is what al-Bukhārī narrated that 'Umar Ibn al-Khattaab acted according to the *khabar* of Abdur-Rahmān Ibn Awf in taking the *jizyah* from the *magus* (magi), in His ﷺ saying: "سُنُّوا بِهِم سُنَّةَ أهلِ الكتابِ" **"Do treat them the way you treat the people of the book"** Mālik narrated it. And from that is the action of Uthmān and Ali according to the report of Faree'ah Bint Mālik, that the widow (whom her husband died) spends her iddah in the house of her husband, and that is when she said: I went to the Prophet ﷺ seeking his permission about the place of the iddah, then he ﷺ said **"stay in your house until the end of your waiting period"** Abū Dāwud and Mālik narrated it. And from that is what became famous about Ali's action according to the individual report, and his saying: " كنتُ إذا سَمِعتُ مِنْ رسولِ اللهِ صَلى اللهُ عليْهِ وسلَّمَ حَديثًا نَفَعَنِي اللهُ بِما شَاءَ مِنهُ, وإذا حدَّثَنِي عنهُ غَيْري استحلفتُهُ فإذا حَلَفَ لِي صَدَّقْتُهُ" **"when I used to hear a *ḥadīth* from the Messenger of Allah ﷺ Allah made me benefit from it as much as he wills, and if someone reported to me from the Messenger, I used to ask him to swear, if he swears I believe him"** narrated by Aḥmad. And from that is what al-Bukhārī and Muslim narrated that Ibn Abbaas acted according to the report of Abū Sa'eid al-Khudrī about the *riba* in the cash transaction after he used not to consider any *riba* in other then the credited sale. And from that is the action of Zaid Ibn Thaabit according to the report of a women from the *Anṣār* (proponents) that the menstruous can hasten in the Hajj without the farewell walking around the Ka'bah (*tawaaf al-wadaa'*) i.e. she can return to her county without performing tawaaf al wadaa'. And from that is what al-Bukhārī and Muslim narrated on the authority of Anas Ibn Mālik that he said: " كُنتُ أَسقي أَبا طَلحَةَ الأَنصاري وأَبا عُبَيْدَةَ بنَ الجَرّاحِ وأُبَيَّ بنَ كَعْبٍ شَرَابًا مِن فَضِيخٍ, وهو تَمْرٌ,

فَجَاءَهُم آتٍ فَقالَ: إِنَّ الخَمْرَ قَدْ حُرِّمَتْ, فَقالَ أبو طَلْحَةَ: يا أَنَسُ قُم إلى هذه الجِرَارِ فاكسِرْهَا, قالَ اَنَسٌ: فَقُمتُ إلَى مِهرَاسٍ لَنَا فَضَرَبْتُهَا بِأَسْفَلِهِ حتى انكَسَرَتْ" "I was giving Abū Ṭalḥa al-Anṣari, Abū Ubaidah Ibn al-Jarraḥ and Ubay Ibn Ka'b drink made from (*fadheekh*) dates, when a man came to them and said: the intoxicant became *ḥarām*, then Abū Ṭalḥa said: O Anas stand up to these jars and brake them, Anas said: I got to our large pestle (*mihraas*) and hit them with its bottom until they broke. And from that is what al-Bukhārī narrated about the deviation of the Qibaa' people from the Qiblah according to the report of an individual that the qiblah has been abrogated, and then they turned to the Ka'bah direction for his report. ... Many other reports indicate the consensus of the *Ṣaḥābah* on the obligation to act according to the individuals report.

The Narrators of the *ḥadīth* (*Ruwāt al-ḥadīth*)

The narrators of the *ḥadīth* are the *Ṣaḥābah*, *al-Tābi'ūn* (the followers) and *Tābi'ū al-Tābi'īn* (the followers of the followers), and none other than them is considered to be from the narrators of the *ḥadīth* at all. That is guided to by the narration of al-Tirmidhī from Ibn Umar that he said: Umar delivered a *khutbah* to us at the Jaabyah he said: O people, I stood in front of you like the standing of the Messenger of Allah ﷺ in front of us, he said: " أُوصِيكُم بِأَصحابي ثُمَّ الذين يَلونَهُم ثُمَّ الذين يَلونَهُم ثُمَّ يَفشُو الكَذِبُ" **"I command you to follow my companions then those who come after them then those who come after them then the lie gets spread"** so he ﷺ occasioned the spreading of the lie by the extinction of the third (generation). So in the generation after, then the one after, until the resurrection day; the lie has spread

as stated in this text. al-Bukhārī narrated on the authority of Ubaidah, from Abdullah Ibn Mas'ūd ﷺ that the Messenger ﷺ said: " خَيْرُ النَّاسِ قَرْنِي, ثُمَّ الذين يَلونَهُم, ثُمَّ الذينَ يَلونَهُم, ثُمَّ يَجِيءُ قَوْمٌ تَسْبِقُ شَهادَةُ أَحَدِهِم يَمِينَهُ, وَيَمِينُهُ شَهادَتَهُ" **"the best people are my generation, then those who come after them, then those who come after them, then will come people the testimony of the one of them proceeds his oath, and his oath proceeds his testimony"**. He (al-Bukhārī) also narrated on the authority of Imrān Ibn al-Husayn ﷺ that he said: the Messenger of Allah ﷺ said: " خَيرُ أُمَّتِي قَرْنِي, ثُمَّ الذين يَلونَهُمْ, ثُمَّ الذين يَلونَهُم, قَالَ عِمرَانُ: فَلا أَدْرِي أَذَكَرَ بَعْدَ قَرْنِهِ قَرْنَيْنِ أَوْ ثَلاثًا. ثُمَّ إِنَّ بَعْدَكُمْ قَوْمًا يَشْهَدُونَ ولا يُسْتَشْهَدُونَ, ويَخُونُونَ ولا يُؤْتَمَنُونَ, ويَنْذُرُونَ ولا يَفُونَ, ويَظْهَرُ فِيهِمُ السِّمَنُ". **"The best of my nation are my generation then those who come after them, and then those who come after them, Imraan said: I don't know whether He mentioned two generations or three after His generation. Then will come after you people who testify without being requested to do so, and they betray and can not be trusted, and they make vow (*nadhr*) and don't carry out their *nadhr*, and fatness appears on them"**. So these *aḥādīth* guide that the sayings of those who come after the three generations are object of accusation, which means that their narrations are not accepted. The three generations are the generation of the *Ṣaḥābah*, the *Tābi'īn* and the *Tābi'ī al-Tābi'īn*. Although these *aḥādīth* are not explicit texts to limit the narration to those generations; they guide to that. But what determines that those are the only narrators of the *ḥadīth* is that the narration of the *ḥadīth* ends after the *aḥādīth* got recorded in the books, so there is no narration of the *ḥadīth* after the time of registering the *aḥādīth* in the books, and that is the time of al-Bukhārī, Muslim and the other compilers of the Sunnah, that is because the narration is the transmission and this transmission had ended.

Therefore, the narrators of the *ḥadīth* are the *Ṣaḥābah*, the *Tābi'ūn* (the followers) and *Tābi'ū al-Tābi'īn* (the followers of the followers), because their narration ended by registering the *aḥādīth*. It is true that some people said that the narrators of the *ḥadīth* are the *Ṣaḥābah*, the *Tābi'ūn* and whoever below them; since there is no text prohibits the narration of the *ḥadīth* of the Messenger ﷺ until the resurrection day, but realistically there was no place for the narration nor for the narrators after the registration of the *aḥādīth* and the ending of the transmission, and thereby the era of the narration has practically ended since the writing down of the *aḥādīth*, i.e. the era of the *Tābi'ī al-Tābi'īn*, and therefore the practical narration of the *ḥadīth* is limited to those three eras: the era of the *Ṣaḥābah*: the era of the *Tābi'īn* and the era of *Tābi'ī al-Tābi'īn*.

The history of the narrators of the *aḥādīth* verily got written, and every one of them is known and they are not infallible. But the narration of the *Ṣaḥābah* is accepted and they don't need justification for what came in the Qur'ān and the Sunnah of praising them, and for the saying of the Messenger of Allah ﷺ: "أَصْحَابِي كَالنُّجُومِ بِأَيِّهِمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ" **"my companions are like the stars which ever one of them you imitate; you will be guided"** narrated by Ruzayn, and it is a *ḥasan ḥadīth*, the scholars and the jurisprudents accepted it and used it as they accepted this kind of *al-ḥadīth al-ḥasan*, as the scholars of the *ḥadīth* terminology stated. Therefore the narration of the *Ṣaḥābah* is unrestrictedly accepted without any justification, as for other then the *Ṣaḥābah*; the condition for the one whose narration is accepted is to be just and knowledgeable of what he narrates.

Types of the Individuals Report *(Anwā khabar al-āḥād)*

The *ḥadīth* divides into: *Ṣaḥīḥ* (correct), *ḥasan* (Good) and weak *(ḍa'īf)*, according to the *ḥadīth* scholars.

The *Ṣaḥīḥ ḥadīth* is the related (*Musnad*) *ḥadīth* which its relation (*Isnād*) is connected by the transmission of the just and accurate narrator from the just and accurate narrator up to the end of it, and it should not be irregular (*shādh*), or problematic (*mu'allal*). This is the *ḥadīth* that the scholars of the *ḥadīth* decided -without dispute- its authenticity (*ṣiḥḥaḥ*, i.e. being *Ṣaḥīḥ*). Therefore that which has a cut in its relation (*Isnād*) is not considered an authentic (*Ṣaḥīḥ*), like the cut (*munqaṭi'*) and the problematic (*mu'ḍal*). Also it is not considered an authentic what has been transmitted by he whose outward and inward situation is unknown, nor if himself is unknown, or known by weakness, nor is it considered to be *Ṣaḥīḥ* that which is transmitted by other than the attentive memorizer, as if it has been transmitted by an inattentive who commits lots of mistakes, nor what is narrated by the trustworthy but his narration is different to the narration of the people, then it is the irregular (*shādh*), nor what has a hidden defamation reasons, then it is the problematic (*mu'allal*).

When seeking knowledge about the *Ṣaḥīḥ ḥadīth*; the matter ends to what the famous Imams of the *ḥadīth* compiled in their books. The *Ṣaḥīḥ* is what was found certified as authentic in one of the two *Ṣaḥīḥ* books or in any of the famous reliable books of the *ḥadīth* Imams.

The divisions of the *Ṣaḥīḥ* (authentic) are:

1. A *Ṣaḥīḥ* which is compiled by al-Bukhārī and Muslim.
2. A *Ṣaḥīḥ* which al-Bukhārī compiled without Muslim.
3. A *Ṣaḥīḥ* which Muslim compiled without al-Bukhārī.
4. A *Ṣaḥīḥ* according to their conditions but they did not compile it.
5. A *Ṣaḥīḥ* according to al-Bukhārī condition but he did not compile it.
6. A *Ṣaḥīḥ* according to Muslim condition but he did not compile it.
7. A *Ṣaḥīḥ* according to other Imams but not according to either one of the two Imams.

These are the mothers of the *Ṣaḥīḥ* divisions. The highest of them is the first one which the people of the *ḥadīth* usually call it "agreed on" "مُتَّفَقٌ عَلَيْهِ".

The *ḥasan* (good) *ḥadīth* is the one that its compiler is known and its men became famous, and the majority of the *aḥādīth* revolve on this, and it is accepted by most scholars and used by common scholars. It had been narrated that Abū 'Isā al-Tirmidhī, may Allah have mercy on him, meant by *al-ḥasan*: is that which there is no suspect of lie in its *Isnād* (relation), nor is it an irregular (*shādh*), and it is called *ḥasan* for the favourable judgment for its narration (لِحُسْنِ الظَّنِّ بِرِوَايَتِهِ).

The *ḥasan ḥadīth* is two types:

1- The *ḥadīth* which the narration of it is not free from a concealed person who did not achieve the capability, but he is not that inattentive who makes lots of mistakes in what he narrates, nor is he accused to lie in the *ḥadīth*.

2- The *ḥadīth* that its narrator is one of the known by his truthfulness and trustworthiness, but he did not reach the level of the *Ṣaḥīḥ ḥadīth* men for he is lesser (weaker) than them. The *ḥasan ḥadīth* is capable to be a proof same like the *Ṣaḥīḥ ḥadīth*. The *aḥādīth* which came in the books of the Imams and their students, and in the other scholars and jurisprudents' books are considered to be from the *ḥasan ḥadīth*, and it is used as a *dalīl*, since they used it as a *dalīl* for the verdict, or they derived a verdict from it, so it is a *ḥasan ḥadīth* whether it came in the *uṣūl* or in the *fiqh* books which are proven that they are of the considered books like *al-Mabsūt*, *al-Umm*, *al-Mudawwanah al-kubra* (the big record) and the likes. Not like the books of al-Baajoury, al-Shanshoury and the likes. As for what came as *aḥādīth* in the *tafsīr* books; they are not to pay attention to, nor are they to be advanced as a proof even if the explainer (*mufassir*) is a *mujtahid* imam, that is because it came to explain a verse (*Ayah*) not to derive a verdict, and there is difference between them, and because the explainers are not usually concerned to investigate the *aḥādīth* which they invoke in the *tafsīr*, therefore these *aḥādīth* should not be considered (accepted) as soon as they are found in the *tafsīr* books, as if they are in the Imams and scholars of *fiqh* books, but it is inevitable to investigate the *ḥadīth* even by imitation way, i.e. by asking a scholar of *ḥadīth*, or by referring to the considered *ḥadīth* books.

The weak *ḥadīth* is the one that does not gather the qualities of the *Ṣaḥīḥ ḥadīth*, nor the qualities of the *ḥasan ḥadīth* which are mentioned previously, i.e. it is the one which the authenticity of all or some of its narrators is not proven, for the ignorance of their situation or for a scratch in their truthfulness or as such, which necessitates negating

their justness and their trustworthiness. The weak *ḥadīth* is not advanced as a proof nor is it taken as an evidence for the Sharī'ah verdicts.

Conditions for Accepting the Individuals Report (*Shurūṭ qabūl Khabar al-āḥād*)

Khabar al-āḥād is accepted if it meets the acceptance conditions of the narration (*riwāyah*) and the knowledge about its content (*dirāyah*). As for the acceptance conditions of the narration; they are that, the narrator of the *ḥadīth* must be: Muslim, mature, sane, just, truthful, accurate in what he heard and remembering the *ḥadīth* since he carried (heard) it until he narrated it. The scholars of the *uṣūl* and the scholars of the *ḥadīth* terminology had clarified the conditions of the narration in details. And the biography of the men of the *ḥadīth* and their narrations had shown every narrator and what he fulfills of these qualities in details.

As for the knowledge (*dirāyah*) conditions for accepting *khabar al-āḥād* they are, that it does not contradict what is stronger (more authentic) then it, like an ayah or a *mutawātir* or a *mashhūr ḥadīth*, like what was narrated from Fatimah Bint Qays that she said: " طَلَّقَنِي زَوْجِي ثَلاثًا فَلَمْ يَجْعَلْ لِي رَسُولُ اللهِ صَلَى اللهُ عَلَيْهِ وَسَلَّمَ سُكْنَى وَلا نَفَقَةً" **"My husband had divorced me by three then the Messenger of Allah ﷺ did not make (command) for me neither dwelling or alimony"** narrated by Muslim. This *ḥadīth* contradicts the saying of Allah Ta'ala:

{أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنتُمْ مِنْ وُجْدِكُمْ}

"Let them (the divorced women) live (during the ʿiddah,) where you live, from your means..."[90],

Therefore it must be rejected and it is not permissible to act according to it.

If the individuals report contradicts the *Qiyās*; the *ḥadīth* will be preferred and the *Qiyās* will be left if the *ʿillah* (reasoning) of the *Qiyās* is derived, or taken from the denotation of the text, or measured on another Sharī'ah *ʿillah*. So the *ḥadīth* is preferred over the *Qiyās* in all these situations. If the comprehensive *ʿillah* of the *Qiyās* came explicitly in a decisive text, like an ayah or *mutawātir ḥadīth*; the action then must be according to the *ʿillah*, because dictating the *ʿillah* in the text is like dictating its verdict, and then the issue will be as a kind of contradiction between *khabar al-āḥād* and what is stronger then it, like an ayah or a *mutawātir ḥadīth*, not contradicting with the *Qiyās*.

In conclusion, if the individuals report contradicts an ayah of the Qur'ān or a *mutawātir* or a *mashhūr ḥadīth* or an *ʿillah* explicitly dictated by the Qur'ān, *Mutawātir* or *Mashhūr*; the *ḥadīth* will be not accepted as per *dirāyah* (after knowledge), and if it does not contradict any of those; it will be accepted. And if the *ḥadīth* contradicts the *Qiyās*; the *ḥadīth* will be accepted and the *Qiyās* will be rejected.

[90] Surah al-Ṭalāq:6

The Actions of the Messenger *(Af'āl al-Rasūl)*

The actions of the Messenger ﷺ are of three divisions:

The first division: the natural (*jibilliyah*) actions, i.e. actions that are part of the human structure and his nature that he performs, like standing up, sitting down, drinking and the likes. There is no dispute that these kinds of actions are permissible for him ﷺ and for his nation.

The second division: the actions that are proven to be for the Messenger alone ﷺ and no one shares them with him, like his specialty in the obligation of the Witr prayer, the night prayer (*tahajjud*), the consultation, giving his wives the choice (of whether they stay with him or he divorces them), and like his specialty in connecting the day with the night in his fasting (*al-Wisaal fi al-sawm*) and the like which is proven to be the Messenger's specialty. There is no dispute that it is not permissible to imitate the Prophet ﷺ in these actions because they are his specialties.

The third division: the actions that are not of the Prophet's nature and not of His specialties, i.e. all the other actions, and there is no dispute that we are commanded to imitate the Messenger ﷺ in them, and no dispute that they are Sharī'ah evidences like his sayings and his silence (approval), so we must act according to his action because he ﷺ did it. That is for the saying of Allah Ta'ala:

{لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ}

"Indeed you have in the Messenger of Allah a good example..."[91],

and for His Ta'ala saying:

{إِنْ أَتَّبِعُ إِلَّا مَا يُوحَى إِلَيَّ إِنِّي}

"...I follow naught but what is revealed unto me..."[92],

and His Ta'ala saying:

{قُلْ إِنَّمَا أَتَّبِعُ مَا يُوحَى إِلَيَّ مِنْ رَبِّي}

"...Say: 'I but follow what is revealed to me from my Lord'..."[93],

and the generality of this is explicit, clear and apparent, so it includes all the actions which the Messenger ﷺ performed, as it includes his sayings and his silence, therefore following the Messenger ﷺ in all his actions which are not his specialties or of his nature is a must upon every Muslim, because the Messenger ﷺ follows nothing except that which is revealed to him. However following the Messenger ﷺ does not mean the obligation of performing the action that He performed, but it means the obligation of the following according to the action. So if the action is of the obligatory; its performance is an obligation, and if the action is of the preferable; performing it is preferable, and if the action is of the permissible; performing it is permissible. So the following is a must in accordance with the action type, and this is like following the orders of the Messenger ﷺ, since Allah Ta'ala said:

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[91] Surah al-Aḥzāb:21
[92] Surah Yūnus:15
[93] Surah al-A'rāf:203

{فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ}

"...then let those who withstand the Messenger's order, beware lest some trial befall them, or a grievous Punishment be inflicted on them"[94],

which denotes the obligation of obeying the Messenger ﷺ in what he commands, but does not denote the obligation of performing what he commands, but the performance must be in accordance with what he commanded, so if he commanded to act as an obligation, then the performance of the action is an obligation, and if he commanded to act as a preferable, then the performance of the action is a *mandūb*, and if he commanded to act as a permissible, then the performance is permissible, and so are all his actions, they must be followed, but in accordance with their types.

As for when the action denotes the obligation, and when it denotes the preference and when does it denote the permissibility; there are details for that by scrutinizing the action, if it is coupled with an indication which shows that the action is a clarification for a previous address, so it a clarifier to us, as when the Messenger ﷺ says explicitly: this is a clarification for so and so, like his saying: "صلُّوا كما رأَيْتُموني أُصَلِّي" **"Do pray as you see me praying"**, compiled by al-Bukhārī, and His saying: "ألا خُذوا عَنِّي مَناسِكَكُم" **"Do your best to take your rites of pilgrimage (*manaasik*) from me"**, compiled by Aḥmad, or that the contexts of the situations denote that it is a clarification, like if there is a summed up text (*mujmal*) which needs detailing, or a general which needs specifying, or an unrestricted which

[94] Surah al-Nūr:63

needs limiting, and the Messenger did not clarify it before the need for it, then when it became necessary to clarify; he ﷺ performed an action to clarify it, so his action became a clarification. So these actions which are clarification to us, i.e. for a previous address like an *Āyah* or a *ḥadīth*; they take the verdict of the clarified matter, if the clarified matter is a obligation, then performing the action is an obligation, and if the clarified matter is a preferable, then performing the action is a *mandūb*, and if the clarified matter is permissible, then performing the action is *mubāḥ*.

If the action is not coupled with something that indicates that it is a clarification, neither as negation nor as affirmation, i.e. no indication is coupled with the action to show that it is a clarification for a previous address, then it needs an indication to determine whether it is an obligation, a preferable or a permissible, because it is then like the request to act, it is only a request, and it needs an indication to determine if it is a decisive request to act or a non decisive request, or an optional request. So the action which is not coupled with what indicates that it is a clarification for a previous address, that action itself needs an indication to determine that performing it is an obligation, preferable, or permissible, and the verdict of performing it will be according to the indication. However, by studying the actions that are not coupled with what shows that the action is meant to clarify a previous address; we can see that they are of two types: one of them is what the aim of getting closer to Allah Ta'ala (pious act) appears in it. The other type is what the aim of getting closer to Allah Ta'ala does not appear in it. As for the action in which getting closer to Allah Ta'ala is apparent; the performance of it is *mandūb*, because being from which one

can get closer to Allah Ta'ala is an indication to overweigh performing it over leaving it, and being without punishment for leaving is an indication that the request is non decisive, therefore it is *mandūb*, not obligation. So the indication determined that it is a non decisive request to act, i.e. *mandūb*. As for the action in which the aim of getting closer to Allah Ta'ala is not apparent; it is *mubāḥ* to perform it, that is because, being performed by the Messenger denotes the request (to do it), and being not of which one can get closer to Allah Ta'ala by performing it does not denote overweighing, but it shows the non overweighing between the performance and the quitting, and if we join this with the denotation of the request; it shows that the request is optional between the performance and the quitting, and that is the *mubāḥ*.

Some people say that: it is obligatory (*wājib*) to perform the action which the Messenger ﷺ had performed, and they infer this from: the Qur'ān, the Sunnah, and the consensus of the *Ṣaḥābah*.

As for their inference from *al-Kitāb*: That is the saying of Allah Ta'ala:

{فَآمِنُوا بِاللَّهِ وَرَسُولِهِ النَّبِيِّ الْأُمِّيِّ الَّذِي يُؤْمِنُ بِاللَّهِ وَكَلِمَاتِهِ}

"...So believe in Allah and His Messenger, the unlettered Prophet, who believes in Allah and His Words and follow him..."[95],

so Allah commanded to follow the Messenger ﷺ, and that is by submitting to His saying and performing like His performance, and the command is the obligation (*wujūb*),

[95] Surah al-A'rāf:158

so it is obligatory to perform the action. And He Ta'ala said:

{قُلْ إِنْ كُنْتُمْ تُحِبُّونَ اللَّهَ فَاتَّبِعُونِي يُحْبِبْكُمُ اللَّهُ}

"Say: If you do love Allah, then follow me: Allah will love you..."[96],

which shows that loving Allah necessitates the following, and loving Allah Ta'ala is obligatory (*wājib*) by consensus, and that which the *wājib* necessitates is *wājib*, so the following is *wājib*. Also His Ta'ala saying:

{فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ}

"...then let those who violate the Messenger's order, beware lest some trial befall them, or a grievous Punishment be inflicted on them"[97],

so He warned for the violation of his command (*Amr*), and the warning is an indication for *wujūb*, and the command is for the action as it is for the saying. Also His Ta'ala saying:

{وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ}

"...And take what the Messenger assigned to you..."[98],

the taking here means the adherence, and it is undoubtedly that the Messenger ﷺ gave us the action he performed, so adhering to it is *wājib* according to the *Āyah*. Also His Ta'ala saying:

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[96] Surah Āli Imrān:31
[97] Surah al-Nūr:63
[98] Surah al-Hashr:7

{لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِمَنْ كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ اللَّهَ كَثِيرًا}

"You have indeed in the Messenger of Allah a good example (of conduct) for any one who seeks (to please) Allah and (to be successful in) the Final Day"[99],

it is literally that the good example is for whoever believes, so He linked it to the belief, i.e. whoever believes in Allah and in the Final Day must take the Messenger of Allah ﷺ as the best example, which means that he whoever does not take the Messenger as the best example is not a believer in Allah nor in the Final Day, and this is an indication for the decisive request and an evidence for the *wujūb*. Also His Ta'ala saying:

{قُلْ أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ}

"Say: Obey Allah, and obey the Messenger..."[100],

He commanded to obey the Messenger ﷺ and the command denotes the obligation (*al-wujūb*), and he who performs the same action like someone with the intention to ennoble him; he is an obedient to him, accordingly performing the action is a *wājib*. Also the saying of Allah Ta'ala:

{فَلَمَّا قَضَى زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا لِكَيْ لا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ إِذَا قَضَوْا مِنْهُنَّ وَطَرًا}

[99] Surah al-Aḥzāb:21
[100] Surah al-Nūr:54

"Then when Zaid had dissolved (his marriage) with her, (with the necessary formality), We joined her in marriage to you..."[101],

so He made his action a must be followed legislation, which shows that his action must be followed.

As for their inference from the Sunnah: It has been narrated that the *Ṣaḥābah* ﷺ took of their shoes in the prayer when the Messenger ﷺ took of his shoes, so they understood that following the action of the Messenger is obligatory, and the Prophet ﷺ approved them, then He clarified to them the reason (*'illah*) for doing it alone, Abū Sa'eid narrated that: " عَنْ أَبِي سَعِيدٍ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: أَنَّهُ صَلَّى فَخَلَعَ نَعْلَيْهِ, فَخَلَعَ النَّاسُ نِعَالَهُمْ, فلمَّا انصرَفَ قَالَ: لِمَ خَلَعْتُمْ نِعالَكُمْ؟ فَقَالوا: يا رسولَ اللهِ رَأَيناكَ خَلَعْتَ فخلَعْنا, قالَ: إنَّ جِبريلَ أَتاني فَأَخْبَرَني أَنَّ بِهِما خَبَثًا" **"The Prophet ﷺ prayed then took off his shoes, then the people took off their shoes, then when He left He said: why you took off your shoes? They said: O Rasūl-Allah, we saw you took them off so we took them off, He said: Jibreel came and told me that there is impurity in them"** compiled by Aḥmad. Also what was narrated that he ﷺ commanded them to separate the Hajj to the Umrah, but he did not separate, so they said to him: " أَمَرتَنَا بِفَسْخِ الحَجِّ ولَم تَفْسِخْ" **"You commanded us to separate the Hajj and you did not separate"** so they understood that their verdict is like his, and the Prophet did not disapprove their understanding, but he clarified to them his excuse, that is his bringing of the sacrifice. Also it was narrated that he ﷺ forbade the (*Wisaal*) connection of the day and the night while fasting, but he did connect, so they said to him: You forbade the *wisaal* for us and you did it, then he said: " إِنِّي

[101] Surah al-Aḥzāb:37

لَسْتُ مِثْلُكُم, إِنِّي أَظَلُّ عِندَ رَبِّي يُطْعِمُنِي وَيَسقِينِي" **"I am not like you, I remain with my God, He feeds me and quenches my thirst"** compiled by Aḥmad, so he approved their understanding that they share the verdict with him, but he expressed to them an excuse that is specially for him. Also what Muslim compiled that Umar Ibn Abi Salamah that سَأَلَ رَسولَ اللهِ صلى اللهُ علَيهِ وَسَلَّمَ أَيُقَبِّلُ الصَّائِمُ؟ فقالَ لَهُ رسولُ اللهِ: سَلْ هذِهِ " -لأُمِّ سَـلَمَةَ- فأَخْبَرَتْـهُ أنَّ رسُـولَ اللهِ يَـصْنَعُ ذَلِـكَ" **"He asked the Messenger of Allah ﷺ can one kiss while fasting? The Messenger of Allah ﷺ said to him: Ask this to Umm Salamah, then she told him that Rasūl-Allah ﷺ does that"** and had his actions not been followed that would have no meaning. Likewise what was narrated from him ﷺ about washing the head in the ritual ablution (*Ghasl al-janaabah*) that he said: "أمَّا أنا فأُفِيضُ على رأْسِي ثَلاثَ أكُفٍّ" **"As for Me I pour three handfuls on My head"** compiled by al-Nasā'ī, and that was an answer given when the people disputed at him ﷺ about *Ghasl al-janaabah*. Moreover, what the Bukhārī narrated that the Messenger ﷺ commanded the *Ṣaḥābah* to disengage from their ritual consecration (*Ihrāaam*) by cutting the hair and slaughtering (the sacrifice), so they stopped (did not respond), so he complained to Umm Salamah, then she advised him to walk out to slaughter and cut his hair, so he did that, then they slaughtered and cut their hair, and it would not be like that unless his action must be followed.

As for the Consensus (*Ijmā'*), that is because the *Ṣaḥābah* disputed about the obligation of the washing (ritual ablution) after the sexual intercourse (*Jimā'*) without ejaculation, so when conveyed to them the action of Rasūl-Allah ﷺ that 'Ā'ishah رضي الله عنها narrated saying: " فَعَلتُهُ أَنَا وَرَسُولُ اللهِ صلى اللهُ علَيهِ وسَلَّمَ فاغْتَسَلْنَا" **"I and Rasūl-Allah ﷺ have**

done it, then we washed", so they agreed (had consensus) that it is obligatory, compiled by al-Tirmidhī, Ibn Mājah and Aḥmad. Also what was narrated that Umar ﷺ used to kiss the black stone and say: " إِنِّي أعلمُ أَنَّكَ حجرٌ لا تضُرُّ ولا تنفَعُ ولولا أَنِّي رأيتُ النبيَّ صلى اللهُ عليْهِ وسَلَّمَ استلمَكَ ما استلمتُكَ" **"I certainly know that you are a stone, you cannot harm nor can you benefit, and had I not seen the Prophet ﷺ handled you; I would not handle you"** compiled by al-Bukhārī. That was well known between the *Ṣaḥābah* without denial, so it was a consensus to follow his action ﷺ.

The answer to all these evidences can be narrowed down to one single point, that is, there is difference between the following and performing the action, i.e. there is difference between following the Messenger ﷺ performing what the Messenger did, so following the Messenger is obligatory and no dispute about that. But the performance of the action in which the Messenger ﷺ must be followed varies in accordance with the action. If the action is permissible; then the follow in it is following in the permissible, i.e. it is optional between doing it or leaving it, so this is the following in this situation, and if someone obliged its performance on himself and made it obligatory (for the others) he would not be following the Messenger, but he would be differing with him, because the following occurs by performing the action in accordance with its type, if it came as *wājib*, then its performance is *wājib*, if it came as *mandūb*, then its performance is *mandūb* and one will not be sinning for leaving it, and if it came as *mubāḥ*, then its performance is *mubāḥ*, so he follows the Messenger by acting in accordance with type of the action, and if he differs that; he would not be following. All the previous evidences are for the following, not for performing the

action, therefore they are not good evidence that performing the action which the Messenger ﷺ did is obligatory, and so their inference that it is obligatory is void. And this is like the command (*al-Amr*), as the *amr* is not the obligation, and not all that Allah Ta'ala commanded is obligatory, but it varies by the variation of the indications, so what He commanded could be *wājib*, *mandūb*, and it could be *mubāḥ*. The obligation concerning the command is the compliance with the command, not performing what he commanded, and the compliance with the command can only be in accordance with what He Ta'ala commanded. So if He commanded as obligation (*wujūb*), then performing it is *wājib*, and if He commanded as preference (*nadb*), then performing it is *mandūb*, and if He commanded as permissibility (*ibāhah*), then performing it is *mubāḥ*. And turning the *mubāḥ* into an obligation is not obedience to the commander, but differing to what he commanded, so is following the actions of the Messenger, it is but in accordance with how the action came.

Some people say that: performing the action that the Messenger did is *mandūb*, and they infer this from the saying of Allah Ta'ala:

{لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِمَنْ كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ اللَّهَ كَثِيرًا}

"Indeed you have in the Messenger of Allah a good example (of conduct) for any one who seeks (to please) Allah and (to be

successful in) the Final Day, and who engages much in the praise of Allah."[102],

so qualifying the (*uswah*) example as (*hasanah*) good indicates overweighing (the performance), and the obligation is negated because it is contrary to the principle (*asl*), and for His saying: (لَكُمْ) (For you), and did not say: (عَلَيْكُم) upon you, so the preference is determined.

The answer to this is that, what is meant by imitating his action is that we make the action performed the way he ﷺ made it performed, though if he prayed a *wājib* and we prayed it as (*nāfilah*) supererogatory or vice versa it would not be imitating him, for the imitation is performing the action the way he performed it, and this is *wājib* not *mandūb*, and about His saying: (حَسَنَة) (good) is a quality for the *uswah*, which means good imitation, and this is not an evidence for the preference. The imitation is *wājib* as the *Āyah* denotes, for His Ta'ala saying: *"for whoever seeks (to please) Allah and (be successful in) Last Day"*, He said:

{ أُسْوَةٌ حَسَنَةٌ لِمَنْ كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ}

"...a good example (of conduct) for any one who seeks (to please) Allah and (to be successful in) the Final Day ...",

it is an indication that shows the obligation of the imitation. But the imitation here does not mean the obligation to perform the action, but the obligation to follow, and since his action is not determined whether it is *wājib*, *mandūb*, or *mubāḥ* except by the indication; the performance cannot be *wājib* unless it is proven by the indication that it is *wājib*, and accordingly the *Āyah* denotes

[102] Surah al-Aḥzāb:21

the following, and does not denote performing the action, so it has no denotation that performing the action is *mandūb*.

Some other people say that: performing the action which the Messenger ﷺ did is *Mubāḥ*, and not obligatory nor is it *mandūb*, and their inference to this is that his action cannot be *ḥarām*, nor can it be *makrūh*, because it is originally (basically) negated, and apparently it is different, because if committing the *ḥarām* and the *makrūh* rarely occurs by the rightful individual Muslims, then how could it occur by the most honorable Muslim, then the action can be either *wājib*, *mandūb*, or *mubāḥ*. And since the obligation (*wujūb*) and the preference (*nadb*) are originally negated, because lifting up the blame for acting or quitting is affirmed, and the addition of the *wujūb* and the *nadb* is not proven without evidences, and they do not exist, so what remains is the *Ibāhaḥ*.

The answer to that is: if getting closer to Allah Ta'ala does not appear in the abstract (not a clarifier) action of the Messenger ﷺ, then it is *mubāḥ*, because being not of which the servant can get closer to Allah by (doing) it; is an indication (*qarīnah*) that imitating the Messenger in it is not requested, and being that the Messenger did it; means He requested to do it, so the request to do it is optional, and that is the *mubāḥ*. As for other than that; the *qarīnah* determines if it is *wājib* or *mandūb*. Accordingly, limiting the denotation of the actions of the Messenger that they denote: the *wājib* or the *mandūb* or the *mubāḥ*, and that they do not denote the *ḥarām* and the *makrūh*; is correct, but limiting their denotation to the *Ibāhaḥ* (permissibility) is wrong, because the indication (*qarīnah*) is the *dalīl* for the *wujūb* or the *nadb* (preference), and it existed in the action

which the aim of getting closer to Allah Ta'ala appeared in it, therefore it is *mandūb*, and if a *qarīnah* that denotes the obligation exists; it is then *wājib*.

It becomes clear from all the previous, that the actions of the Messenger ﷺ do not denote the *wujūb*, nor the *nadb*, nor the *Ibāhaḥ*, but they only denote the request to act, and the *qarīnah* is what determines whether it be *wājib*, *mandūb*, or *mubāḥ*. That is in the actions that did not come as clarification for previous address, and as for the actions that came as clarification for previous address; they follow the clarified matter whether it is *wājib*, *mandūb*, or *mubāḥ*.

The actions performed by the Messenger of Allah ﷺ which are not clarifier for previous address, nor that the *dalīl* has been furnished that they are of His specialties, and we know their type is either obligation, preference, or permissibility, either by His clarification to us, or by any other *dalīl*, i.e. a *qarīnah* (indication), imitating Him in such actions is obligatory, i.e. following Him is *farḍ*, and the evidence for this is the text and the consensus of the *Ṣaḥābah*. As for the text, that is for the saying of Allah Ta'ala:

{فَلَمَّا قَضَىٰ زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا لِكَيْلَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ إِذَا قَضَوْا مِنْهُنَّ وَطَرًا}

"...Then when Zaid had divorced her, We joined her in marriage to you: in order that there will be no offence to the Believers (in the matter of marrying) with the wives of their adopted sons, if the latter have divorced them..."[103],

[103] Surah al-Aḥzāb:37

and if He is not being imitated in His action and followed; the verse would have no meaning. Also His Ta'ala saying:

{قُلْ إِنْ كُنْتُمْ تُحِبُّونَ اللَّهَ فَاتَّبِعُونِى يُحْبِبْكُمُ اللَّهُ}

"Say: If you do love Allah, then follow me; Allah will love you..."[104],

and the point of inference (*al-istidlāl*) is that Allah made His following a necessity for the obligatory love of Allah, and since following Him is a necessity; the lack of it lacks the obligatory love (of Allah), and that is unanimously forbidden. That is because following the Messenger is a condition for proving the love of Allah, and if the condition (which is the following) does not occur; the conditioned matter (which is proving the love of Allah) will not occur, and since loving Allah is *farḍ*, then following the Messenger is *farḍ*. Also His Ta'ala saying:

{لَقَدْ كَانَ لَكُمْ فِى رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِمَنْ كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ}

"Indeed you have in the Messenger of Allah (uswah) a good example (to follow) for the one whose hope is in Allah and the Last Day..."[105],

and the proof in this is that He Ta'ala made imitating (*al-ta'assi*) the Prophet ﷺ from the necessities of having hope in Allah Ta'ala and the Last Day, and the non-imitation necessitates the lack of what necessitated it, i.e. having hope

[104] Surah Āli Imrān:31
[105] Surah al-Aḥzāb:21

in Allah and the Last Day, and that is *kufr*. So that is an indication for the obligation of the imitation.

As for the consensus of the *Ṣaḥābah*, that is because the *Ṣaḥābah* unanimously used to refer to his actions, like their referring to him ﷺ in kissing the Black Stone, the permissibility of kissing while he was fasting, and many other uncountable events.

So those evidences are sufficient to prove the obligation to imitate. And the imitation is performing like his action. So the imitation in the action is to act: like his action, in accordance with its quality, and because of his action. So the term: "Like his action" is a restriction since there is no imitation with the variation of the actions figures. And the term: "In accordance with its quality" is a second restriction, because it means sharing the purpose and the intention of the action, since there is no imitation with the variation of the two actions (the action of the Messenger ﷺ and the action of the imitator) if one of them being an obligatory and the other is not, even if they have one figure. And the term: "Because of his action" is a third restriction because if the actions two people are the same in the figure and the quality but none of them has acted because the other acted. Like the agreement of some people to pray the *ẓuhr* prayer, or to fast the month of Ramadhan responding to the command of Allah Ta'ala; we do not say: they are imitating each other. Accordingly if his action happened in a specific place or time; the place or the time have no interference (consideration) in following and imitating (the Messenger ﷺ) whether the action happened repeatedly or not repeatedly, unless the *dalīl* denotes that the worship is specific for a particular place or time, like the specification of the Hajj for Arafaat, the specification of

the prayers for their times, and the specification of the sawm for Ramadhan. This is the imitation. Hence if the Messenger performed an action as *mandūb*, and we performed it as *wājib*, our action would not be imitation, rather it is breaching the command of the Messenger and that is *ḥarām*, so the *ta'assi* (imitation) is that we do the same like his ﷺ action, according to its quality, and because of his action. To imitate his action; it is inevitable to achieve these three restrictions.

The Ways by which the Direction (Quality) of the Action of the Messenger Can be known

Since the obligation of imitating the Messenger ﷺ is proven, and that the condition of the imitation is that the same like his action should be acted, then the (*'ilm*) knowledge of the direction (quality) of his action is one of the conditions for the carrying on. Therefore it is inevitable to know the ways by which the quality of his action can be known, in order that the action will be performed in accordance with the quality that he performed it as, i.e. *wājib*, *mandūb*, or *mubāḥ*. As for his action that is not a clarifier for a previous address, it is apparent that knowing the quality of the action is by knowing the selfsame action, if it is of that which one can get closer (to Allah Ta'ala) by performing it, then it is the *mandūb*, and if it is not of that which one can get closer by performing it, then it is the *mubāḥ*. As for his action which is a clarifier for a previous address, it is limited to the obligation (*wujūb*), preference (*nadb*), or the permissibility (*Ibāhaḥ*), so there are four ways to know the (direction) quality of his action:

1- The way that includes the three (directions/qualities).

2- The way of knowing the *wājib*.

3- The way of knowing the *mandūb*.

4- The way of knowing the *mubāḥ*.

1- The way that includes the three, it is of four things: one of them is by mentioning, i.e. the Prophet ﷺ mentions the obligation, the preference, or the permissibility of the action, i.e. by saying: this action is *wājib*, or *mandūb*, or *mubāḥ*.

The second thing is the equality: that is when the Prophet ﷺ equalizes an action to another action which has a known (direction) quality, by performing an action then saying: this action is like or equal to that so and so action which has a known quality, so that shows the quality of the action what ever it is.

The third thing is: by knowing that his action is adherence to an *Āyah* that determines one of the three verdicts, like if it is known that a certain action was adherence to an *Āyah* which denotes the obligation as an example, so if he equalized it to another action, then it becomes known that it is *wājib* too, and the same would be said in the preference and the permissibility.

The forth thing is: by knowing that his action is a clarifier for a summed up (*mujmal*) *Āyah* which denotes one of the verdicts, so if it denotes the permissibility, or the preference, or the obligation of a summed up matter, then the Messenger ﷺ clarified it by his action, then his action would be *mubāḥ*, or *mandūb*, or *farḍ*, because the clarifier is like the clarified matter, like the saying of Allah Ta'ala:

{وَأَقِيمُوا الصَّلَاةَ}

"And do establish the prayer..."[106],

He ﷺ said while performing it: "صَلُّوا كَما رَأَيْتُمونِي أُصَلِّي" **"Do pray as you see me praying"** compiled by al-Bukhārī, and the same in the Hajj (*manaasik*) rituals...and so on.

2- The way of knowing the *wājib*, it is of three things:

The first: the signs that show that the thing is *wājib*, like the *adhān* (call to prayer) and the *iqāmah* (call to establish the prayer), they are signs for the obligation of the prayer.

The second: if the performance of the action being fulfillment of a vow (*nadhr*) he made, since fulfilling the *nadhr* is *wājib*, as if he says: if the enemy got defeated, then it is my duty to Allah Ta'ala that I fast tomorrow, then he fasted the morrow after the defeat, so that shows that it is *wājib*.

The third: being the action forbidden if it is not *wājib*, like the two extra *ruku'* (kneeling) in the eclipse prayer; that is because adding a practical pillar deliberately abolishes the prayer, so if they are not *wājib* they would have been forbidden. The second *ruku'* in the eclipse prayer is additional, and it abolishes the (normal) prayer, but being performed by the Messenger means it is *farḍ* (in the eclipse prayer). The legitimacy of the second *ruku'* cannot be of the *mandūb* or the *mubāḥ* in this particular prayer, because the first *ruku'* is *wājib*; its repetition shows that the repeated one is *wājib*, since it is a repetition of a *wājib*, like the second *sujūd* (prostration). As for the inattentiveness

[106] Surah al-Baqarah:43

sujūd (al-sahoo) and the recitation *sujūd (al-tilaawah)* in the prayer and others, they are not repetition because the verbal *dalīl* beside the action show that they are *mandūb*, so they have a *dalīl* for the *nadb* (preference). And as for lifting up the hands successively in the feast ('eid) prayer, that is not adding a pillar deliberately, moreover, lifting up the hands is a movement and it does not abolish the prayer. Accordingly the action that denotes the obligation is an action that whish if it is not *wājib*; it would be forbidden, i.e. if it is not *farḍ*; we would be ordered to abstain from it.

3- The way of knowing the *mandūb* is of two things:

The first of them: is that the action has been performed with the intention of getting nearer to Allah Ta'ala, and it is abstracted from any additional indication to the origin of the nearness, i.e. it is abstracted from any indication that specifies the obligation or the permissibility, because the obligation is originally negated, and because it is for the nearness; it negates the permissibility, so the *nadb* (preference) gets determined.

The second of them: if the action was performed as a making up (*qaḍa'*) for a *mandūb*, then it will be *mandūb* too, since the making up resembles the original performance (*aḍā'*). And it is not correct to say: if one slept the whole time; the *adaa'* (of the prayers) is not obligatory upon him with the obligation of the *qaḍa'*, it should not be said so, because the adaa' in this situation became obligatory upon him by the occurrence of the cause (*sabab*) of the obligation in his right.

4- The way of knowing the *mubāḥ* is of two things:

The first: If the Messenger ﷺ continued to do an action then he quitted it without abrogation. His complete

quitting of what he used to do continuously, it denotes the optional request, and this is the *mubāḥ*, so it is a *dalīl* of the permissibility (*Ibāhaḥ*).

The second: If the Messenger performs an action which has no sign of any thing (direction or quality), and since the Messenger does not do a forbidden or hated (action), and since the obligation and the preferable are originally negated, so that action is *mubāḥ*.

The Silence *(Sukūt)* of the Prophet ﷺ

The silence of the Prophet ﷺ, i.e. his approval is from the Sunnah, it is like his saying and his action equally the same, so if one did an action in the presence of the Prophet, or in his era and he knew about it, and was able to forbid it, then he kept silent about it and approved it for him without dispraising his action; it will be looked, if there is no previous forbiddance for that action from the Prophet ﷺ, and no forbiddance is known for it, then His silence about its doer, and His approval to him on it denotes the permissibility of that action and the lifting up of the blame for doing it. That is because, if his action is not permissible; the Prophet would forbid him, since the Messenger does not keep silence if He knows about an evil (*munkar*) action, therefore His silence is a *dalīl* for the permissibility. If the Prophet had previously forbade that action and its forbiddance became known; the silence of the Messenger can not be imagined, because it would be an approval to do what is forbidden. And this is impossible for the Prophet ﷺ. As for his silence about the *kuffār* under the Muslims' protection (*ahl al-dhimmah*), who used to frequently go to

their churches, which is a *kufr* action; it does not denote his approval to do the *kufr*, but it denotes leaving *ahl al-dhimmah* to perform their own worship, and it is not a *dalīl* for the permissibility to go to the church. So the conditions to consider the silence to be from the Sunnah (approval) are: that there is no previous forbiddance for the action, and the Messenger ﷺ knew about it, i.e. it was done in his presence, or in his era and he knew it, and that the Messenger was able to forbid (prevent) it, except that the silence is not considered to be from the Sunnah. The meaning of the forbiddance it is restraining its doer, and not that the Messenger does not trend to it, because the *dab* lizard got eaten in the presence of the Prophet and he did not eat from it, and when he was asked he said: " لَم يَكُن بِأَرضِ قَومي فأجِدُنِي أعافُهُ" **"It did not exist in the land of my people so I find myself detests it"** compiled by al-Bukhārī. So being that the Messenger detests it is not of the forbiddance, and his none restraining those who ate it is considered to be silence about it, so it is a *dalīl* for the permissibility. Also it was narrated from Nāfi': " أَنَّ ابنَ عُمَرَ سَمِعَ صَوتَ زَمَّارَةِ رَاعٍ, فَوَضَعَ أُصبَعَيْهِ فِي أُذُنَيْهِ, وعَدَلَ رَاحِلَتَهُ عَنِ الطَّرِيقِ وهُوَ يَقُولُ: يَا نَافِعُ, أَتَسْمَعُ؟ فَأَقُولُ نَعَمْ, فَيَمْضِي, حَتَّى قُلتُ لا, فَوَضَعَ يَدَيْهِ, وأَعَادَ رَاحِلَتَهُ إِلَى الطَّرِيقِ, وَقَالَ: رَأَيْتُ رَسولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَسَمِعَ صَوْتَ زَمَّارَةِ رَاعٍ فَصَنَعَ مِثْلَ هذا" **"That Ibn Umar heard the sound of a shepherd's pipe, then he put his finger tips in his ears, and deviated his riding camel from the way while he was saying: O Nāfi' could you hear? I say: yes, then he keeps going away until I said no, then he put his hands down, and returned his riding camel to the way, and said: I saw the Messenger of Allah ﷺ when he heard the sound of a shepherd's pipe and he did like this"** compiled by Aḥmad. This is not considered to be forbiddance for the shepherd, but it is a silence about him, and it is a *dalīl* for the permissibility of the pipe and the

permissibility of hearing it, and as for blocking his hearing; it is possible that he avoided it as he used to avoid many permissible things, as he avoided to keep in his house *dirham* or dīnār overnight, and as he avoided eating the lizard. Accordingly, the silence of the Messenger means not restraining the one who does the action, even if he shows his self detest of the action.

The Conflict between the Actions of the Messenger

The conflict between the actions of the Messenger of Allah ﷺ is not imaginable, because the conflict between two matters is their opposition in a manner that every one of them prevents its opponent. This conflict between two of the Messenger's actions so that one of them abrogates or specifies the other is not imaginable to occur, because if their verdicts do not contradict; there is no conflict between them, and so if the verdicts of the actions contradict; also there is no conflict, because it is possible that the action is *wājib* at a time, and contrary to it at the similar time without invalidating the verdict of the first one, because the actions have no generality; unlike the sayings. Indeed, if the first action is accompanied with a saying that necessitates the obligation of the repetition, then the second action would be an invalidator or a specifier for that saying not for the action. So basically, the conflict between the two actions is not imaginable. As for the reason why the conflict is not imaginable, that is because the two conflicted actions are either of the similar to each other like the action of the *ẓuhr* prayer at two

similar or different times, or the conflicted actions are of the different to each other. As for the two similar; being not conflicted is apparent in them, that is like praying the *ẓuhr* prayer at two different times. And as for the two different actions, if their gathering is permissible like the prayer and the fasting; it is also apparent that they are not in conflict. And if the actions are of that which is impossible to imagine their gathering, and their verdicts do not contradict like the *ẓuhr* and the *'Asr* prayers; also there is no conflict between them for the possibility of the gathering, so it is possible to gather the prayer and the fasting, and it is possible to gather the *ẓuhr* prayer and the *'Asr* prayer. And if the actions are of that which is impossible to imagine their gathering and their verdicts are different, like the fasting on a certain day and braking the fasting on another day; also there is no conflict between them, for the occurrence of the obligation at one time and the permissibility at another time, i.e. the action could be *wājib* or *mandūb* or *mubāḥ* at a time, and differently at another time, and none of them removes or invalidates the verdict of the other, since there is no generality in the two actions, neither in one of them.

The Conflict between the Action of the Messenger and his Saying

The conflict between the saying of the Messenger ﷺ and his action does not happen except in one situation: that is the abrogation (*al-naskh*), and except this there is no conflict between the saying and the action at all. But it may appear for the first sight at some of his sayings and actions that

there is conflict between the saying and the action, but the scrutinizing shows that the situation of every one of them is different from the other, so there is no conflict, therefore is possible to gather (harmonize) between them. And that which appears to be conflict has three situations:

One of them is: the saying is precedent, i.e. if the Prophet ﷺ did an action and there is no *dalīl* that it is of his specialties, then it abrogates the preceded saying that conflicts it, whether the saying is common like if he said: fasting a particular day is obligatory upon us, then he broke the fasting on that day, and the *dalīl* has been furnished to follow him ﷺ as we proved, or it was specially for him by a *dalīl* which denotes that, or specially for us by a *dalīl* which denotes that. It means that his action which is affirmed to be repeated, and which must be imitated, if it is belated from the saying it conflicts with and which is his specialty, our specialty, or common for him and for us; it abrogates the saying that is concerning him, or concerning us, or both him and us. As for action which is his specialty; the abrogation is apparent in it, and as for the action which is our specialty; that is for the obligation of the imitation, and as for the action which is common for him and us; that also is for the obligation of the imitation.

The second of them is: if the saying is belated from the mentioned action, that which the *dalīl* denoted that we must follow him in it, because there is no evidence that it is his specialty; it should be looked at, if the *dalīl* does not show the obligation of repeating the action, then there is no conflict between it and the belated saying, because the action occurred once only and it is over, and its repetition is not requested, and it became none, so the saying is not in conflict with it because its repetition is not requested. And

if the evidence denoted the obligation of its repetition upon him ﷺ and his nation, then the belated saying could be common for him and his nation, and it could be his specialty, or our specialty. So if the saying is common, then it abrogates the precedent action, for example if he ﷺ fasted the day of Āshurā', and the *dalīl* obliges its repetition and assigned us with it, then he ﷺ said: it is not obligatory upon us to fast it, this is if it is common. And as if the belated saying is specially for the Prophet ﷺ, then the belated saying abrogates the precedent action concerning him, not concerning us, and if the belated saying is concerning us the nation, like if he said: it is not obligatory upon you to fast it, then there is no conflict in that concerning the Prophet ﷺ, so his assignment with it continues. And it shows the none assignment for us with that action, and if it came before the Ummah performed the action, then it is a specifier, i.e. a clarifier for the none obligation, i.e. we are exempted from the action, and if the saying came after the Ummah performed the action, then it is not possible to consider it a specifier, because it necessitates the delay of the clarification from the time it is needed, so it abrogates his precedent action.

The third of them is: if the belated is unknown whether it is the saying or the action, i.e. it is unknown if the action is the precedent or the saying. In this situation we look, if it is possible to gather them both, there will be no conflict, but if it is impossible to gather them, then we take the saying in that which is concerning us, or common for him ﷺ and us, without that which is concerning him, if so the saying must be forwarded and taken, and the action will be left, that is because the saying is particular for the denotation and set for it, unlike the action, it is not set for the denotation, and

if it denotes; it is but with the aid of the saying, and because the saying has more common denotation because it includes the nonexistent and the existent, the rational and the tangible, unlike the action for it is only for the existent and the tangible.

In the situation where the action and the saying that are likely to be in conflict are clarifier for a previous text like his ﷺ saying after the verse of the Hajj: " مَن قَرَنَ حَجًّا إلى عُمْرَةٍ "فَلْيَطُفْ طَوَافًا وَاحِدًا, وَيَسْعَ سَعْيًا وَاحِدًا **"whoever combines the Hajj to the Umrah should perform one *tawaaf* and one *sa'i* (the seven courses walk between the Safa and the Marwa)"** al-Aamidi mentioned it in his book *al-Ihkaam*. And that which the Dāraquṭnī narrated that: " أَنَّهُ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَرَنَ فَطَافَ طَوَافَيْنِ وَسَعَى سَعْيَيْنِ **"he ﷺ combined (joined the Hajj to the Umrah) so he performed two tawaaf and two sa'i"**. Gathering between the action and the saying in this situation is as it is detailed in the divisions of the *Kitāb* and the Sunnah —the clarification and the clarified matter.

These are the situations of the conflict between the saying and the action, and an examples for that is that which Abū Dāwud narrated from the way of al-Rubay' the daughter of Mu'awwith Ibn Afraa':" أَنَّ رَسولَ اللهِ صَلَى اللهُ عَلَيْهِ وَسَلَّمَ مَسَحَ بِرَأْسِهِ مِنْ فَضْلِ مَاءٍ كَانَ فِي يَدِهِ **"That Rasūl-Allah ﷺ wiped his head with a remainder of water that was in his hand"**, and Sufyan al-Thawrī said: al-Rubay' the daughter of Mu'awwith Ibn Afraa' told me: " كَانَ رَسُولُ اللهِ صَلَى اللهُ عَلَيْهِ وَسَلَّمَ "يَأتِينَا...,وَمَسَحَ رَأْسَهُ بِمَا بَقِيَ مِنْ وَضُوئِهِ فِي يَدِهِ **"Rasūl-Allah ﷺ used to come to us..., and he wiped his head with a remainder of his wudhu' in his hands"** compiled by Aḥmad. So this action conflicts that which al-Ṭabarānī compiled that the Prophet ﷺ said: "خُذُوا لِلرَأْسِ مَاءً جَدِيدًا" **"Take new water for the head"**, so the gathering between them is that his saying:

"خُذُوا" "Take" is a special address for the Ummah, not a general address, although the address of Messenger to his Ummah is an address to himself too, because he is included in the generality of his words, but if an indication shows that he has a special verdict for himself; it would be of his specialties, and if his wiping his head is put beside his saying: **"Take new water for the head"**, that is an indication that his action is specially for himself, and the saying is specially for the Ummah. Accordingly there is no conflict between his saying: **"Take new water for the head"** and his action ﷺ being did not take new water for the head, but he wiped with the remainder of his *wuḍū'* in his hands, so it is specially for him, that is because his order to the Ummah is specially for them by the indication of his action, so it is more specific than the evidences of the imitation which necessitate following him in his sayings and his actions, so the general got based on the specific, and we must not imitate him in this action which the order to the Ummah came contrary to it.

Also of the examples is what was narrated from Ibrāhīm al-Taymi from ʻĀ'ishah رضي الله عنها : " أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ كَانَ يُقَبِّلُ بَعْضَ أَزْوَاجِهِ, ثُمَّ يُصَلِّي وَلا يَتَوَضَّأُ" **"That the Prophet ﷺ used to kiss some of his wives, then he used to pray without performing the ablution"** compiled by al-Nasā'ī. This *ḥadīth* has been certified as weak *(ḍa'īf)*, but it became clear that who said it is weak; said it is because this *ḥadīth* is mursal. But the *mursal* is of the considered proves, al-Nasā'ī said about this *ḥadīth*: "There is nothing in this subject better than this *ḥadīth*, even though it is *mursal*" and al-Dāraquṭnī narrated this *ḥadīth* with a linked narration, he said: from Ibrāhīm from his father from ʻĀ'ishah رضي الله عنها. And from ʻĀ'ishah رضي الله عنها that she said: " فَقَدْتُ رَسُولَ

اللهِ صَلَى اللهُ عَلَيْهِ وَسَلَّمَ لَيْلَةً مِنَ الفِرَاشِ فَالتَمَسْتُهُ فَوَقَعَتْ يَدِي عَلَى بَطْنِ قَدَمَيْهِ وَهُوَ فِي المَسْجِدِ وَهُمَا مَنْصُوبَتَانِ "**I missed Rasūl-Allah ﷺ one night of the bed, so I searched for him then my hand touched the bottom of his feet while he was in his prayer and they were erected"** compiled by Muslim. So these *aḥādīth* that show his action conflict the *Āyah*:

{أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا}

"...or you have been in contact with women, and you find no water, then perform the tayammom..."[107],

so this *Āyah* clarifies that the touching is of the things which necessitate the *wuḍū'*, and the real meaning is touching by the hand, where as metaphorically it is the sexual intercourse, and it should not end up to the metaphor (*majāz*) unless the real meaning is impossible, and the real meaning here is not impossible but it is certainty, and we don't end up to the metaphor without an indication (*qarīnah*), and there is no indication here to render it to the metaphoric meaning, so this determines the real meaning of it. And the recitation: {أَو لَمَسْتُمُ} (*or if you touch*) supports the remaining of the real meaning because it is clear only the touching by hand not the SI. Accordingly, the action of the Messenger ﷺ in touching the woman and the woman touching him, particularly touching 'Ā'ishah the bottom of the foot of the Prophet is authentically proven with reference to the Messenger *(marfu')* and pending on the companion *(mawquf)*, and the reference to the Messenger (*al-rafa'*) is an additional authenticity which determines the acceptance of the *ḥadīth*. This *ḥadīth* conflicts saying text of

[107] Surah al-Nisā':43

the *Āyah*, i.e. the Qur'ān. The gathering between them is that the *Āyah* says: {أَو لامَسْتُمُ} (*or if you touch*), so it is special for the Ummah, although the Messenger is included in its generality; his action contrary to the text is an indication that the action is concerning him, and the saying text is concerning the Ummah. So the touch by the hand occurred by the Messenger and he did not perform *wuḍū'* that is because it is especially for him ﷺ. So his action does not contradict the saying text which is concerning the Ummah, but it is especially for him, because the conjunction of the *Āyah* and the action of the Messenger that is contrary to it is an indication that the *Āyah* is especially for the Ummah. And thus some actions of the Prophet ﷺ may appear that they contradict his saying, so we try to reconcile between them, but if the reconciling is impossible; we apply on them the principles of the three situations.

The Conflict Between the Sayings of the Messenger

The conflict between two of the Messenger's sayings does not occur except in one situation, that is the abrogation (*al-naskh*), and other than this it would be either a kind of equality and outweighing, or it is possible to conciliate between them. As for the *naskh*; the talk about it will come in the discussion of it, and the talk about the equality and the outweighing will be in the topic of the equality and the outweighing of the evidences. As for the reconciliation between the two conflicted sayings; it is by scrutinizing each one of them to clarify its circumstances and situations, then the non confliction becomes apparent, that is because

the situations in the life differ from each other, so none of its situations should be measured to one another just for the likeness between them, because the likeness may exist in a matter while the difference exist in various matters, therefore the generalization and the abstraction must be avoided in the legislation and the politics, because the legislation is the treatment of the servants actions by clarifying their verdicts, and the politics is taking care of the peoples affairs in their benefits on which their actions are based. And every one of them is related to the life and its circumstances and situations, and they are various, different and disparate, but they often seem to be similar to each other. So there is fear that the disparity, the difference and the variety are not noticed, which leads to generalize the verdict, i.e. issuing one verdict for all those which are of its kind, and may also lead to the abstraction, i.e. by freeing every action or matter from the circumstances and situations related to it, and this is where the mistake happens, and because of that a conflict would be supposed between two treatments of one action or matter, i.e. it seems that the two sayings are in conflict, and from here the supposed conflict between some of the sayings of the Messenger came, but by avoiding the generalization, and by limiting every treatment to the incident that it came for it, and by avoiding the abstraction, i.e. freeing the incident from its circumstances, i.e. by relating the treatment to its incident and relating the incident to its circumstances; it will be noticed that there is a difference between the two incidents, and it will be cleared out that there is no conflict between the two *aḥādīth* for the differences in the circumstance and the situation of each one of them, or for the relation of one of them to the other so they are made together as a basis for the treatment viewpoint, or a basis

for the incident viewpoint, and none of them is isolated from the other. The scholar or the politician must isolate every incident from the other, so that he can accurately see the difference between them, and he comes to the conclusion that their treatments are different, so he can approach the nearest to the truth and the correct in treating the incidents, and in understanding the legislation or the politics. As for the legislation, the legislative texts are verdicts for the events and the incidents, so they are different from each other by their nature, and they naturally seem to be in conflict, for the little difference between them, and for the definite similarity along with this difference. So the scholar must scrutinize the legislative texts before he issues his decision about them, because they are not literary expressions which denote meanings only, but they are treatments for events, so it is inevitable that he joins their meanings that are in his mind with the events that he senses, so that he pinpoints the reality, in order that he can understand the legislation and perceive the reality he wants to treat, then he perceives the fine differences between the denotations of the texts and the danger of the generalization and the abstraction. The *aḥādīth* of the Prophet should be looked at on this basis, and then the non confliction will be perceived.

The observer into the *aḥādīth* of the Prophet ﷺ which seem to be in conflict with each other finds that they are all reconcilable after scrutinizing. And there are many examples on this, for example the *aḥādīth* in which the Messenger ﷺ commands something, and get conflicted by other *aḥādīth* in which the Messenger refuses to accept things he had commanded, which seems to be conflict between them, but the reality is that there is no conflict,

because the command of the Messenger is a request to act which does not denote the *wujūb*, the *nadb* or the *ibaḥah* without an indication, so being that he ﷺ did something which denotes that he does not do it after the request to do it, that is an indication that the request is for the *ibaḥah*, so his refusal to accept things that he commanded would not be in conflict with his command about it, but it is an indication that his command is for the *ibaḥah*, not for the *wujūb* nor for the *nadb*.

From that is what was narrated from Qays Ibn Sa'd that he said: " زَارَنَا رَسولُ اللهِ صلَّى اللهُ عَلَيْهِ وسَلَّمَ في مَنزِلِنَا ..., فَأَمَرَ لَهُ سَعْدٌ بِغُسْلٍ فَوُضِعَ فَاغْتَسَلَ ثُمَّ نَاوَلَهُ أَو قَالَ نَاولُوهُ مِلْحَفَةً مَصْبوغَةً بِزَعْفَرَانٍ ووَرْسٍ, فَاشْتَمَلَ بِهَا" **"The Messenger of Allah ﷺ visited us in our house ..., then Sa'd ordered a ritual wash for him so he washed, then he handed him ... a sheet dyed by saffron and wars (a reddish colour dye plant), so he wrapped himself with it"** compiled by Aḥmad. This *ḥadīth* denotes the permissibility of drying from the ritual wash, and the *wuḍū'* is similar to it, and this *ḥadīth* conflicts what is narrated from Maimunah that she said:" "... ثُمَّ أُتِيَ بِمِنْدِيلٍ فَلَمْ يَنْفُضْ بِهَا" **"... then he was given a handkerchief but he did not dry with it"** compiled by al-Bukhārī, because it denotes that the Messenger did not dry. Some people attempted to reconcile between the two *aḥādīth* by (carrying it on the *karāhah*) regarding his non-drying as if it is *makrūh*. If the Messenger ﷺ forbade something and he commanded it; then his forbiddance will be regarded as *makrūh*, but here did something once and he did not do it the other time, so there is no conflict between the two actions, and supposing that there is a conflict; it should be carried on the *ibaḥah*, because if something nonbeing acted by the Messenger; it

does not denote the prohibition, because he frequently used not to do some of the permissible.

And from that is what was narrated from Abd al-Rahmān Ibn Ka'b Ibn Mālik: " أَنَّ عَامِرَ بنَ مالِكٍ مُلاعِبَ الأَسِنَّةِ قَدِمَ عَلى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ وَهُوَ مُشْرِكٌ, فَأَهْدَى لَهُ, فَقَالَ: إِنِّي لا أَقْبَلُ هَدِيَّةَ مُشْرِكٍ" **"That 'Aamir Ibn Mālik the arrowhead player came to the Messenger of Allah ﷺ when he was polytheist and offered him a gift, the Messenger said: I do not accept a polytheist's gift"** compiled by al-Ṭabarānī. This *ḥadīth* conflicts what is affirmed about the Prophet ﷺ that he accepted the gift from the polytheists and commanded to accept it. From Ali ﷺ that he said: " أَهْدَى كِسْرَى لِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ فَقَبِلَ مِنْهُ, وأَهْدَى لَهُ قَيْصَرُ فَقَبِلَ مِنْهُ, وأَهْدَتْ لَهُ المُلُوكُ فَقَبِلَ مِنْهُمْ" **"Kisra (the king of Persia) sent a gift to the Messenger of Allah ﷺ and he accepted it from him, and Qaysar (the king of the Romans) sent a gift to him and he accepted it from him, and kings sent gifts to him and he accepted from them"** compiled by Aḥmad. And from 'Aamir bin Abdullah bin al-Zubayr from his father that he said: " قَدِمَتْ قُتَيْلَةُ ابْنَةُ عَبْدِ العُزَّى بْنِ عَبْدِ أَسْعَدَ مِنْ بَنِي مَالِكِ بنِ حَسَلٍ عَلَى ابْنَتِها أَسْمَاءَ ابْنَةِ أَبِي بَكْرٍ بِهَدَايَا: ضِبَابٍ وأَقِطٍ وسَمْنٍ, وهِيَ مُشْرِكَةٌ, فَأَبَتْ أَسْمَاءُ أَن تَقْبَلَ هَدِيَّتَهَا وتُدْخِلَهَا بَيْتَهَا, فَسَأَلَتْ عَائِشَةُ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ, فَأَنْزَلَ اللهُ عَزَّ وجَلَّ: {لا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ ...} إلى ءَاخِرِ الآيَةِ, فَأَمَرَهَا أَن تَقْبَلَ هَدِيَّتَهَا, وأَن تُدْخِلَهَا بَيْتَهَا" **"Qutailah Ibnat Abd al-'uzza Ibn Abd As'ad from (the tribe of) Banī Mālik Ibn Hasal came to her daughter Asmaa' Ibnat Abi Bakr with gifts: lizards, cheese and ghee, and she was polytheist, so Asmaa' refused to accept her gift and to let her enter her house. 'Ā'ishah asked the Prophet ﷺ, then Allah the Great and Almighty revealed down: Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loves those who are just). So he commanded her to accept her gift, and**

to allow her enter her house" compiled by Aḥmad. So the conflict appears between the Messenger's acceptance the gift from the polytheist and his refusal the gift from the polytheist. The reconciling between them is that his refusal of the gift from the *mushrik* is an indication that accepting the gift is permissible, and neither a *wājib* nor a *mandūb*, because the Messenger used to refuse many of the permissible, he refused to eat from the *dab* lizard and said what denotes that he detests it, and he refused to eat the rabbit.

From that also is what the Bukhārī narrated about the believers migrated women he said: " لَمَّا أنزلَ اللهُ فيهِنَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلاَ تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لاَ هُنَّ حِلٌّ لَهُمْ وَلاَ هُمْ يَحِلُّونَ لَهُنَّ ...} قالَ عُرْوَةُ: فَأَخْبَرَتْنِي عائِشَةُ: أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ كانَ يَمْتَحِنُهُنَّ بِهَذِهِ الآيَةِ, {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ ... (إِلَى) غَفُورٌ رَحِيمٌ}, قَالَ عُرْوَةُ: قَالَتْ عائِشَةُ: فَمَنْ أَقَرَّ بِهَذَا الشَّرْطِ مِنْهُنَّ قَالَ لَهَا رَسُولُ اللهِ: بَايَعْتُكِ كَلاَمًا يُكَلِّمُهَا بِهِ, وَاللهِ مَا مَسَّتْ يَدُهُ يَدَ امْرَأَةٍ قَطُّ فِي الْمُبَايَعَةِ, وَمَا بَايَعَهُنَّ إِلاَّ بِقَوْلِهِ" **"When Allah sent down about them:** *"O you who believe, when believing women come to you as emigrants, examine them; Allah knows best as to their faith, then if you ascertain that they are true believers; do not return them back to the disbelievers, they are not lawful (wives) for the them nor are the disbelievers lawful (husbands) for them ..."* **'Urwah said: 'Ā'ishah told me: that the Messenger of Allah ﷺ used to examine them by this *Āyah*,** *"O you who believe, when believing women come to you as emigrants, examine ...* (to) *Allah is Oft-Forgiving, most Merciful."* **'Urwah said: 'Ā'ishah said: so any woman of them acknowledges this condition, the Messenger of Allah ﷺ used to tell her: I have taken your pledge (bai'ah), that is by talking he says it to her, by Allah his hand did not touch the hand of any woman while taking the pledge, he only took it by his talk"**

compiled by al-Bukhārī. And from Umaimah the daughter of Raqiqah that she said: " أَتَيْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي نِسْوَةٍ بَايَعْنَهُ عَلَى الإِسْلاَمِ, فَقُلْنَ: يَا رَسُولَ اللهِ نُبَايِعُكَ عَلَى أَنْ لاَ نُشْرِكَ بِاللهِ شَيْئًا, وَلا نَسْرِقَ, وَلا نَزْنِيَ, وَلا نَقْتُلَ أَوْلاَدَنَا, وَلاَ نَأْتِيَ بِبُهْتَانٍ نَفْتَرِيهِ بَيْنَ أَيْدِينَا وَأَرْجُلِنَا, وَلاَ نَعْصِيكَ فِي مَعْرُفٍ, فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: فِيمَا اسْتَطَعْتُنَّ وَأَطَقْتُنَّ, قَالَتْ فَقُلْنَ: اللهُ وَرَسُولُهُ أَرْحَمُ بِنَا مِنْ أَنْفُسِنَا, هَلُمَّ نُبَايِعْكَ يَا رَسُولَ اللهِ, فَقَالَ رَسُولُ اللهِ: إِنِّي لاَ أُصَافِحُ النِّسَاءَ, إِنَّمَا قَوْلِي لِمِئَةِ امْرَأَةٍ كَقَوْلِي لِامْرَأَةٍ وَاحِدَةٍ" **"I came to the Messenger of Allah ﷺ with some women whom gave him the pledge (bai'ah) on Islam, they said: O Messenger of Allah, we give you the pledge that we will not associate anything in worship with Allah, we will not steal, we will not commit unlawful sexual intercourse, we will not kill our children, we will not utter slander that we forge it between our hands and our feet (by claiming that unlawful children belong to their husbands), and we do not disobey you in *Ma'rūf* (that which Islam commands), then the Messenger ﷺ said: In that which is possible and bearable for you, she said: they said: Allah and His Messenger are more merciful to us than ourselves, let us give you the bai'ah O Rasūl-Allah, then Rasūl-Allah said: I do not shake hands with women, my talk to a hundred women is like my talk to one woman"** compiled by Mālik. al-Bukhārī narrated from 'Urwah from 'Ā'ishah رضي الله عنها she said: "وَمَا مَسَّتْ يَدُ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَدَ امْرَأَةٍ إِلاَّ امْرَأَةً يَمْلِكُهَا" **"And the hand of the Messenger of Allah ﷺ did not touch the hand of any woman except a woman that he possessed"**, so these *aḥādīth* conflict that which al-Bukhārī narrated from Um 'Atiyah that she said: " بَايَعْنَا النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَرَأَ عَلَيْنَا: {...عَلَى أَنْ لاَ يُشْرِكْنَ بِاللَّهِ شَيْئًا...} وَنَهَانَا عَنِ النِّيَاحَةِ, فَقَبَضَتِ امْرَأَةٌ مِنَّا يَدَهَا, فَقَالَتْ: فُلاَنَةٌ أَسْعَدَتْنِي, وَأَنَا أُرِيدُ أَنْ أَجْزِيَهَا, فَلَمْ يَقُلْ شَيْئًا" **"We pledged the Prophet ﷺ then he recited to us: "*... that they do not associate anything in worship with Allah...*" and he forbade the loud weeping for us, then a woman from among us withdrew her hand then said: she**

so-and-so made me happy, and I want to repay her, then he did not say anything". This *ḥadīth* denotes that the Messenger accepted the women's bai'ah by shaking hands for her saying: "... فَقَبَضَتِ امْرَأَةٌ مِنَّا يَدَهَا ..." **"... then a woman from among us withdrew her hand ..."** which means that the women who were with her withdrew not their hands, meaning that they performed the bai'ah by their hands, i.e. by hands shake. And the *ḥadīth* of Umaimah says:" ... إِنِّي لاَ أُصَافِحُ النِّسَاءَ ..." **"... I do not shake hands with women ..."** and says: " ... مَا مَسَّتْ يَدُهُ يَدَ امْرَأَةٍ ..." **"... his hand did not touch the hand of any woman ..."**, so there is conflict in that, because the *ḥadīth* of the bai'ah with the hands shake conflicts with the *ḥadīth* that he did not shake hands with women. The reconciliation between this *ḥadīth* and the other *aḥādīth* is that the refusal of the Messenger of doing an action is not a forbiddance, so it denotes not the forbiddance of the hands shake, by it is his abstention from one of the permissible, and it is an indication that his action of taking the bai'ah from the women by the hands shake is not *wājib*, nor is it *mandūb*, but it is *mubāḥ*, because the saying of the Messenger ﷺ that he does not shake hands means not that he forbade the hands shake, so it is definitely not a forbiddance, but possibly he avoided it as he used to avoid many of the permissible, as he avoided to keep a *dirham* or a dinar overnight in his house, and as he avoided to hear the shepherd's pipe that is in the *ḥadīth* of Nāfi' from Ibn 'Umar, and he did not forbid the shepherd nor did he restrain him, which denotes his approval but he avoided hearing it, and as he avoided eating the lizard and the rabbit and the likes. Accordingly there is no conflict between the *ḥadīth* of Umaimah and the *ḥadīth* before it. The attention in the *ḥadīth* of Umaimah should be drawn to that, the suspicion of the conflict in it is only because of

the *ḥadīth* of Um Atiyah about the bai'ah by the hands shake, because it is specific for the bai'ah, and those *aḥādīth* are also specific for the bai'ah, therefore there is a conflict suspicion, and as for the evidences that denote the permissibility of touching like the *Āyah*: " أَوْ لاَمَسْتُمُ النِّسَاءَ ... ..." "*... or you have been in contact with women ...*" and in a recitation: "... أَوْ لَمَسْتُمُ النِّسَاءَ ..." "*... or you have touched the women ...*"[108], it denotes by the signal denotation the permissibility of touching the woman by the man, so there is no conflict suspicion between the *ḥadīth* of Umaimah and this *Āyah* because this is general for every touch, and the *ḥadīth* of Umaimah is specific in the bai'ah.

Accordingly, if a *ḥadīth* denotes the abstention of the Messenger from doing something, and his statement that he does not do it, that is not forbiddance nor does it denote the forbiddance, so it does not conflict with his deed of that action in another time, nor does it conflict with his command to do that thing, and the whole matter is that it is a *qarīnah* (indication) that the action which the Messenger did or commanded is *mubāḥ*, not *wājib* nor *mandūb*, and the Messenger ﷺ abstained from many of the permissible.

From among the *aḥādīth* that seem to be in conflict with each other but it is possible to conciliate between them, there are *aḥādīth* in which the Messenger ﷺ forbids something and he commands it, from that, there are *aḥādīth* that forbid to cure by the impure or forbidden things, from Wa'il al-Hadhrami: " أَنَّ طارِقَ بْنَ سُوَيْدٍ الجُعْفِيِّ سَأَلَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الخَمْرِ, فَنَهَاهُ, أَوْ كَرِهَ أَنْ يَصْنَعَها. فَقالَ: إنَّما أَصْنَعُها لِلدَّوَاءِ, فَقالَ: إنَّـهُ

[108] Surah al-Nisā':43

"لَيسَ بِدَوَاءٍ ولَكِنَّهُ داءٌ" **"that Ṭāriq ibn Suwaid al-Ja'fi asked the Prophet ﷺ about the intoxicant, and he forbade him, or he detested that he makes it. Then he said: I only make it for medication, he said: it is not a medication but it is a disease"**, compiled by Muslim. And from Abū al-Dardaa' that the Messenger of Allah ﷺ said: " إِنَّ اللهَ أَنْزَلَ الدَّاءَ والدَّوَاءَ, وَجَعَلَ لِكُلِّ داءٍ دَواءَ, فَتَداوَوْا, وَلا تَدَاوَوْا بِحَرَامٍ" **"Allah sent down the disease and the cure, and He made a cure for every disease, so do cure your selves, but do not cure your selves by a forbidden"** compiled by Abū Dāwud. And from Abū Hurayrah said: " نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ عَنِ الدَّوَاءِ الخَبِيثِ" **"the Messenger of Allah ﷺ forbade the impure medicine, means the poison"** compiled by Aḥmad. These *aḥādīth* are in conflict with other *aḥādīth* in which the Messenger commands to cure by the impure and the forbidden things. Qataadah narrated from Anas: " أَنَّ أُنَاسًا مِنْ عُكْلٍ وعُرَيْنَةَ قَدِموا المَدِينَةَ عَلَى النَّبِي صَلَى اللهُ عَلَيهِ وسَلَّمَ وتَكَلَّمُوا بِالإِسلامِ فَقالُوا: يَا نَبِيَّ اللهِ, إِنَّا كُنَّا أَهْلَ ضَرْعٍ ولَمْ نَكُنْ أَهْلَ رِيفٍ, واسْتَوخَمُوا المَدِينَةَ, فَأَمَرَ لَهُمْ رَسولُ اللهِ بِذَوْدٍ ورَاعٍ, وأَمَرَهُمْ أَنْ يَخْرُجوا فِيهِ فَيَشْرَبوا مِنْ أَلْبَانِهَا وأَبْوَالِهَا" **"That people from 'Ukal and 'Urainah came to the Madīnah to the Prophet ﷺ and talk about Islam, they said: O Prophet of Allah, we were owners of cattle but we are not from the country, and they detested to stay in the Madīnah for a disease they caught, then the Messenger of Allah ﷺ ordered a *dthawd* (three to nine camels) and a shepherd, and commanded them to go out riding them and to drink from their milk and urine"** compiled by al-Bukhārī. And from Anas that the Prophet ﷺ: " رَخَّصَ لِعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ والزُّبَيْرِ بْنِ العَوَّامِ فِي لُبْسِ الحَرِيرِ؛ لِحَكَّةٍ كَانَتْ بِهِمَا" **"allowed Abd al-Rahmān ibn Awf and al-Zubair ibn al-Awwam to wear silk for an itch they had"** compiled by Aḥmad. And al-Tirmidhī narrated it saying: " أَنَّ عَبْدَ الرَّحمَنِ بْنَ عَوْفٍ وَالزُّبَيْرَ بْنَ العَوَّامِ شَكَيَا القَمْلَ إِلَى النَّبِيِّ صَلَى اللهُ عَلَيْهِ وَسَلَّمَ فِي غَزَاةٍ

لَهُمَا, فرخَّصَ لَهُمَا فِي قُمُصِ الحَرِيرِ. قَالَ: وَرَأَيْتُهُ عَلَيْهِمَا "**That Abd al-Rahmān ibn Awf and al-Zubair ibn al-Awwam complaint the lice to the Prophet ﷺ during an incursion they were in, so he allowed the silk shirts for them. Anas said: I saw it on them"** so these two *aḥādīth* permit to cure by the impure and the forbidden. The first *ḥadīth* permits to cure by drinking the urine which is impure, and the second *ḥadīth* permits to cure by wearing the silk which is forbidden, and the *aḥādīth* before them forbid to cure by the forbidden and the impure, and here is where the conflict falls. The gathering between them is that the prohibition should be carried as (*karāhah*) hatred, because the prohibition is a request to keep away from, and it needs a *qarīnah* (indication) to show if it is decisive or indecisive request, so being that the Messenger permits to cure by the impure and the forbidden, while he prohibits to cure by them is a *qarīnah* that his prohibition to cure by them is not decisive, so it is *makrūh*.

And from the *aḥādīth* that seem to be in conflict but they can be conciliated with each other, are the *aḥādīth* which are united in their subject but their circumstances differ. From that is what is narrated from Zaid ibn Khaaled al-Juhany that the Messenger of Allah ﷺ said: " أَلاَ أُخْبِرُكُمْ بِخَيْرِ الشُّهَدَاءِ, الذِي يَأْتِي بِشَهَادَتِهِ قَبْلَ أَنْ يُسْأَلَهَا "**Shall I tell you who is the best witness, it is he who brings the testimony before he is asked for it"** compiled by Muslim. It conflicts what is narrated from ibn Umar that he said: " خَطَبَنَا عُمَرُ بِالجابِيَةِ فَقالَ: يَا أَيُّها النَّاسُ, إِنِّي قُمْتُ فِيكُم كَمَقامِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ فِينا, فَقالَ: أُوصِيكُم بِأَصْحابِي, ثُمَّ الَّذِينَ يَلُونَهُمْ, ثُمَّ الذِينَ يَلُونَهُمْ, ثُمَّ يَفْشُو الكَذِبُ حَتَّى يَحْلِفَ الرَّجُلُ ولا يُسْتَحْلَفُ, ويَشْهَدَ الشَّاهِدُ ولا يُسْتَشْهَدُ "**Umar delivered a sermon to us in the Jaabyah, he said: O people, I stood for you the way the Messenger of Allah ﷺ stood for us, then he said: I recommend to you my companions, then those who**

come after them, then those who come after them, then telling lie will spread until the man would swear without being asked to do so, and he would testify without being asked to give a testimony" compiled by al-Tirmidhī. In this *ḥadīth* the Messenger dispraises the witness who gives a testimony without being asked for it, and in the *ḥadīth* before it the Messenger praises the one who gives his testimony before being asked to give it, so it appears that they are in conflict. The gathering between these two *aḥādīth*, is that the first *ḥadīth* in which he praised the witness who gives his testimony before he is asked for it, is in the issue of al-*hisbah* testimonies, which are testimonies concerning the right of Allah Ta'ala, like the slavery freeing (*al-ataaq*), the entailment (*al-waqf*), the general will *(al-wasiyah al-'ammah*) and the likes. So this witness which is the *hisbah* witness (*shaahid al-hisbah*) is the best of witnesses, because if he does not clarify it (by witnessing) a verdict of the religion and a principle of the shariah may get lost, and like this is who has witnessed a right for a person that he does not know about it, so he goes to him and tells him about it.

As for the second *ḥadīth* in which the Messenger dispraised the witness who gives his testimony before he is asked for it, that is concerning the rights of the human being, and that is how the circumstances of the *aḥādīth* differed despite that their issue is one.

And from the *aḥādīth* that seem to be conflicting each other but it is possible to conciliate between them are the *aḥādīth* that their issue is united but their situations are different. From that is what is narrated from 'Ā'ishah رضي الله عنها the wife of the Messenger ﷺ that she said: " خَرَجَ رَسولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قِبَلَ بَدْرٍ, فَلَمَّا كانَ بِحَرَّةِ الوَبْرَةِ أَدْرَكَهُ رَجُلٌ قَدْ كانَ يُذْكَرُ مِنْهُ جُرْأَةٌ

ونَجْدَةٌ, فَفَرِحَ أَصْحابِ رَسولِ اللهِ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ حِينَ رَأَوْهُ, فَلَمَّا أَدْرَكَهُ قالَ لِرَسولِ اللهِ: جِئْتُ لأَتَّبِعَكَ وَأُصِيبَ مَعَكَ. قالَ لَهُ رَسُولُ اللهِ: أَتُؤْمِنُ بِاللهِ وَرَسُولِهِ؟ قالَ لا, قَالَ فَارْجِعْ, فَلَنْ أَسْتَعِينَ بِمُشْرِكٍ, قالَتْ: ثُمَّ مَضَى حَتَّى إِذا كَانَ بِالشَّجَرَةِ أَدرَكَهُ الرَّجُلُ, فَقالَ لَهُ كَمَا قالَ أَوَّلَ مَرَّةٍ, فَقالَ لَهُ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ كَما قالَ أَوَّلَ مَرَّةٍ, قالَ: فَارْجِعْ فَلَنْ أَسْتَعِينَ بِمُشْرِكٍ, قالَتْ: ثُمَّ رَجَعَ, فَأَدْرَكَهُ بِالبَيْدَاءِ, فَقالَ لَهُ كَما قالَ أَوَّلَ مَرَّةٍ: أَتُؤْمِنُ بِاللهِ ورَسُولِهِ؟ قالَ نَعَمْ, فَقالَ لَهُ رَسولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: فَانْطَلِقْ" **"The Messenger of Allah ﷺ went out towards Badr. When he reached Harrat al-Wabrah, a man attained him, his courage and rescue were mentioned, and so the companions of the Messenger of Allah ﷺ became happy when they saw him, so when he came to the Messenger ﷺ he said: I came to follow you and gain with you. The Messenger of Allah ﷺ said to him: do you believe in Allah and His Messenger? he said: no, he said: then go back, I never seek the help of a polytheist, she said: then the Messenger kept going until when he reached the tree the man came to him and said as he said the first time, then the Prophet ﷺ said to him as he said the first time, he said: go back I never seek the help of a polytheist, she said: so he returned, then he came to him in the desert, then he said to him as he said the first time: do you believe in Allah and His Messenger? he said: yes, then the Messenger of Allah said to him: go ahead"** compiled by Muslim. And from Khubaib from Abd al-Rahmān from his father from his grand father who said: " أَتَيْتُ رَسولَ اللهِ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ وَهُوَ يُرِيدُ غَزْوًا, أَنا وَرَجُلٌ مِن قَوْمِي وَلَمْ نُسلِمْ, فَقُلْنا: إِنَّا نَسْتَحْيِي أَن يَشْهَدَ قَوْمُنا مَشْهَدًا لا نَشْهَدُهُ مَعَهُمْ, قالَ: أَوَ أَسْلَمْتُمَا؟ قُلْنا: لاَ, قَالَ: فَإِنَّا لاَ نَسْتَعِينُ بِالمُشرِكِينَ عَلَى المُشْرِكِينَ, قَالَ فَأَسلَمْنَا وشَهِدْنا مَعَهُ" **"I came with a man of my people to the Messenger of Allah ﷺ while he wanted to invade, we had not embrace Islam yet, and we said: we are ashamed that our people get involved in a scene (battle) and we are not with them, he said: have you believed? We said: no, he said: we do not seek the help of the polytheists against the polytheists, he said: we then embraced Islam**

and got involved with him" compiled by Aḥmad. And from Anas that he said: The Messenger of Allah ﷺ said: " لا تَسْتَضِيؤُا بِنارِ المُشرِكِينَ, ولاَ تَنْقُشُوا خَوَاتِيمَكُمْ عَرَبِيًّا "**Do not seek light from the fire of the polytheists, and do not engrave your rings in Arabic"** compiled by Aḥmad. And from Abū Hameed al-Saa'idy that he said: " خَرَجَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ حَتَّى إِذَا خَلَّفَ ثَنِيَّةَ الوَدَاعِ, إِذَا كَتِيبَةٌ, قَالَ: مَنْ هَؤُلاَءِ؟ قَالُوا: بَنُوا قَيْنُقَاعٍ, وَهُمْ رَهْطُ عَبْدِ اللهِ بنِ سَلاَم, قَالَ: وَأَسْلَمُوا؟ قَالُوا: لاَ, بَل هُم علَى دِينِهِم, قالَ: قُلْ لَهُم فَلْيَرْجِعُوا, فَإِنَّا لاَ نَسْتَعِينُ بِالمُشْرِكِينَ" **" The Messenger of Allah ﷺ went out (in a raid), when he passed Thaniyat al-Wadaa' a battalion (troop) came by, he asked: who are they? They said: banu qainuqaa', they are the group of Abdullah ibn Salaam, he asked: have they embraced Islam? They said: no, but they are still on their own *Dīn*, he said: tell them to go back, we seek not the help of the polytheists"** compiled by al-Hāfidh Abū Abdullah and the author of *Nayl al-Awtār* mentioned it. These *aḥādīth* conflict with the other *aḥādīth* that came with the permissibility to seek the help of the polytheists. From dthy Makhbar he said: I heard the Messenger of Allah ﷺ saying: " سَتُصالِحونَ الرُّومَ صُلْحًا آمِنًا, وَتَغْزُونَ أَنتُمْ وَهُمْ عَدُوًا مِن وَرَائِكُمْ" **"You will make a peaceful treaty with the Romans, and you will invade with them an enemy from behind you"** narrated by Abū Dāwud. al-Tirmidhī compiled from al-Zuhri: " أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ أَسْهَمَ لِقَومٍ مِنَ اليَهُودِ قَاتَلُوا مَعَهُ" **"That the Prophet ﷺ gave a share (of the spoils) to people from the jews who fought with him"** and it is narrated: " أَنَّ قَزْمَانَ خَرَجَ مَعَ أَصْحَابِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ يَوْمَ أُحُدٍ وهُوَ مُشْرِكٌ, فَقَتَلَ ثَلاَثَةً مِنْ بَنِي عَبْدِ الدَّارِ حَمَلَةِ لِوَاءِ المُشْرِكِينَ" **"that Qazmaan went out (fought) with the Prophet ﷺ on the day of 'Uhud and he was polytheist, and he killed three of Bani Abd al-Daar the carriers of the polytheists banner"** transmitted in *Nayl al-Awtār* from the authors of the (*siyar*) biographies. These *aḥādīth* denote the permissibility of

seeking the help of the polytheists, and the previous *aḥādīth* denote the non permissibility of seeking their help, so they seem to be in conflict with each other, and the following is the conciliation between them: In the *ḥadīth* of ʻĀ'ishah, there is the negation by the Messenger that he seeks the help of the polytheist, and the refusal of the Messenger to do an action does not denote its forbiddance, because it is possible that he avoids it as he used to avoid any permissible, but it is an indication that the matter is contrary to it, or acting in contrary to it is not *wājib*, nor is it *mandūb*, or *mubāḥ*, so there is no conflict with this *ḥadīth*. As for the *ḥadīth* of Abū Hameed al-Saa'idy, he said in it: "... إِنَّا لاَ نَسْتَعِينُ بِالمُشْرِكِينَ ..." **"... we do not seek the help of the polytheists"**, it is common for him and for the Ummah, therefore it denotes the forbiddance, but its subject was that a battalion wanted to fight under its own banner, not an individual person, so the forbiddance is for seeking the help of an army who fight under their own banner, and the *aḥādīth* in which the Messenger accepted the help, he accepted the help of the individuals, so the situation of the two *aḥādīth* is different, so the forbiddance is for seeking the help of the army that fights under its own banner, and the permissibility is for seeking the help of the individuals. And as in the *ḥadīth* of Anas, the fire is a metaphoric of an entity, because the tribe lights the fire as a sign of declaring the war, and seeking the light of its fire is entering under its entity, and this is forbidden. And the *ḥadīth* of the Romans means that they pay us the *jizyah* and entered under our protection, because the treaty necessitates that, so that they become fighting under our banner, and accordingly there is no conflict between these *aḥādīth*, because the forbiddance is for seeking the help of the polytheist in the situation of seeking his help as he is an army and under his banner, and

the permissibility of seeking the help of the *mushrik* is but in the situation of being an individual or an army under the banner of Islam.

From the *aḥādīth* that seem to be in conflict but it is possible to conciliate between them are the *aḥādīth* in which the Messenger forbids something in general and allows it in a specific situation, so the specific situation becomes an exception, so the matter contrary to the situation that allows it becomes the *'illah* of the forbiddance. And from that is what is narrated from Abū Khaddash from a man of the companions of the Prophet ﷺ said: The Messenger of Allah ﷺ said: " المُسلِمونَ شُرَكاءُ فِي ثَلاَثٍ: والنَّارِ, والكَلَإِ, الماءِ" **"The Muslims are partners in three: the water, the pasture, and the fire"** compiled by Aḥmad. This *ḥadīth* conflicts that which is affirmed from him ﷺ that he permitted for the individuals the possession of the water springs as individual ownership for themselves in the Taa'if and the Madīnah. But it is possible to conciliate between them, for the water that the Messenger permitted to be owned by individuals were not needed by the society (*jamā'ah*), so they are a remainder over the need of the *jamā'ah*. The *dalīl* on this is the other *ḥadīth* in which the Messenger ﷺ says: "لاَ يُمْنَعُ فَضْلُ ماءٍ بَعْدَ أَن يُسْتَغْنَى عَنْهُ" **"A remainder of the water should not be prevented if it is not needed"** compiled by Aḥmad. It means that the water which is permitted to be individually owned; the *jamā'ah* has no need in it, so its contrary, that is the water which the *jamā'ah* needs is what the people are partners in it, so this is the *'illah* of making the people partners in it, and accordingly there is no conflict between the two *aḥādīth*.

And thus all the *aḥādīth* that seem to be in conflict, it becomes clear after scrutinizing in them that they are not in

conflict for the differences in them, and it becomes clear that there is no conflict between the sayings of the Messenger except in one situation, which is the abrogation.

The Inference (*al-istidlāl*) from the *Kitāb* and the *Sunnah*

The inference from the *Kitāb* and the Sunnah depends on knowing the language of the Arabs, and knowing its divisions, because they are sent down in the language of the Arabs. Allah Ta'ala said:

{بِلِسَانٍ عَرَبِيٍّ مُبِينٍ}

"In an Arabic clarifier tongue"[109],

therefore it is inevitable to mention the discussions of the language and its divisions. And what would be discussed from the divisions of the saying is that which is related to the derivation of the verdict only, since there is no need to discuss other than that in *uṣūl al-fiqh*. Further more both the *Kitāb* and the Sunnah are divided into tiding (*khabar*/news) and composition (*inshaa'*), however the scholar of the *uṣūl* ponders to the *inshaa'* only without the *khabar* because in most cases the verdicts are not established in it, from here the saying in the *Kitāb* and Sunnah is divided into: command (*amr*) and prohibition (*nahi*), general (*'amm*) and special (*khass*), unrestricted (*mutlaq*) and limited (*muqayad*), summed up (*mujmal*) and detailed (*mubayan*), abrogator (*nāsikh*) and abrogated (*mansūkh*). Accordingly it is inevitable to summing up a discussion in the language, and in these divisions of the *Kitāb* and the Sunnah, to be able to infer from the *Kitāb* and the Sunnah over the Sharī'ah verdicts.

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[109] Surah al-Shu'arā':195

Research of the Language (*Abhath al-Lughah*)

The languages are the expressions set (made) for the meanings, so since the expressions' denotation for the meanings is benefited from the set up of the composer; it is inevitable to know the set (expression), then to know the denotation of the expressions. The setting is specifying an expression for a meaning in a way that if or when the first is uttered; the second is understood. The reason behind setting the language is that the human is in need of others of the humankind, because he can not independently possess all that he needs for his life of food, clothing, housing, weapon, for maintaining the body and protecting it from the heat, the cold and the aggression, therefore it was inevitable for him to get together with others of the humankind, and from here it was natural that the human meets with the other human, so the human is social by his nature. And this meeting between the people could not be cooperative, nor could it achieve the aim of fulfilling the satisfaction without knowing one another what is in them selves, so there was a need for something by which this acquainting occurs. And from here the setting of the languages came, because this acquainting to what is in the mind does not occur without an expression, a sign or a example. The expression is more beneficial than the sign and the example for its generality, since the expression includes the tangible and intelligible existents, and it includes the possible and impossible information, for the possibility of setting the expression for what is wanted from those meanings. It is different from the sign which can not be set for the intelligible, nor the absent, or the

nonexistent. And it is different from the example, for it is impossible or difficult to have compatible examples for everything, because the solid examples are not adequate for the nonexistent, and supposedly it is adequate; it is difficult. Moreover the expression is easier than the sign and the example, because the expression is compounded from the letters occurred by the voice, and it naturally occurs by the human, so using it as a means for expressing what is in oneself is more apparent and more appropriate. Therefore the reason for setting up the languages was to express what is in the mind, and their subject is the expressions compounded from the letters. As for the things which these expressions are set for; they are the meanings in the mind without the external meanings, because setting up (an expression) for something is a branch of its imagination, so it is inevitable to imagining the image of the human (as an example) in the mind when setting up an expression for him, and this mental image is what the expression (human) is set for it, not the external essence, because the expression is set to express what is in the mind and not for the essence, so it is other than the thought. The thought is judging the reality, since it is transferring the reality by the senses to the brain with previous information to explain the reality. The expression is contrary to that, it was not set to denote the actuality of the reality, nor is it set to issue the judgment on it, but it was set to express what is in the mind, whether it corresponds the reality or it differs from it, because uttering the expression revolves with the mental meanings without the external meanings. If we saw something and thought that it is a rock; we utter the expression of the rock on it, then if we get closer to it and we thought it is a tree; we utter the expression of the tree on it, then if we thought that it is a human; we utter the

expression of the human on it, so the external meaning did not change with the change of the expression, so it denotes that the set expression is not made for it, but it is made for what is in the mind. And also if we say Zaid is standing up, and we make this expression for the standing up of Zaid which exists externally, then Zaid sat down, or he walked, or slept; our uttering becomes null despite that it is not void, which shows that setting the expression is not for the existing reality but it is an expression for that which is in the mind, so it may be corresponding with the reality, or not corresponding with it. And the expressions were set to denote the attribution, the restriction, or for governing the words by adding them to each other, like the subjective and objective nouns and others, and to denote the meanings of the compounded words like standing up and sitting down. For example the expression: Zaid is standing up was made so the news of its denoted meaning will be benefitted from it, like the standing up or others, and the purpose of setting the expression is not to benefit the individual meanings of the expressions, i.e. imagining those meanings, but the purpose of setting the expression is benefitting the attribution so the expressing occurs, i.e. the aim of the setting is making the expression provides the attribution for the purpose of expressing what is in the mind.

As for the composer of the languages it is that all languages are conventional, they are set by the human, and not by Allah Ta'ala, and the people agreed on them. And the Arabic language is like the other languages, it is conventional and set by the Arabs and they agreed on it, and it is not divine from Allah Ta'ala. Because if al-Baari' Ta'ala had set it and informed us about it; this informing would be thru one of His ways, i.e. by the revealing, or by

creating a necessary knowledge in a sane person that Allah Ta'ala had set it for these meanings. As for the information thru the revelation; it is invalid because it necessitates that the sending of the Messengers precedes their knowledge in the languages so that they know the language that Allah Ta'ala had set, and then He reveals the mission to them, but the sending with the mission is belated, for the saying of Allah Ta'ala:

{وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إِلاَّ بِلِسَانِ قَوْمِهِ }

"We sent not a Messenger except (to teach) in the language of his (own) people..."[110],

so by this it gets proven that the language is not a revelation from Allah. And as for informing the language thru creating a necessary knowledge; it is also invalid, because it necessitates knowing Allah Ta'ala by the necessity not by the acquisition of the knowledge, because the occurrence of the necessary knowledge that Allah had set the language necessitates the necessary knowledge in Allah Ta'ala, but knowing Allah Ta'ala is not by the necessity, but by the occurrence of the knowledge, so the knowledge in Allah is not by the necessity, but by the acquisition of the knowledge, and that proves that the language is not (tawqifiyah) informed to us by Allah, and this is proven, so it is set by the human, i.e. it is convention from the people.

As for the saying of Allah Ta'ala:

{وَعَلَّمَ آدَمَ الأَسْمَاءَ كُلَّهَا }

[110] Surah Ibrāhīm:4

"And He taught Aadam all the names ..."[111],

the meaning of this is the named things not the languages, i.e. He taught him the realities of the things and their qualities, it means He gave him the information that he uses to judge the things, because feeling the reality is not sufficient by itself to judge the thing and perceiving its reality, but it is inevitable to have previous information by which the reality is explained. So Allah Ta'ala had taught Ādam the names means the named things, so He gave him information by which he can judge the things that he feels. And as for expression of the Qur'ān by the word "الأَسْمَاءَ" "the names", it metaphorically said the name and meant the named thing, as the reality denotes, because Ādam got to know the things but did not know the languages, so every essence that is able to be known and discloses a reality is subject to the teaching and the knowledge, and the language is only a means for the expression and not more than that, and the context of the *Āyah* denotes that the meaning of

{ الأَسْمَاءَ كُلَّهَا }

"...all the names ..."

is the named things, i.e. the realities and the qualities.

As for His Ta'ala saying:

{وَمِنْ آيَاتِهِ خَلْقُ السَّمَاوَاتِ وَالأَرْضِ وَاخْتِلَافُ أَلْسِنَتِكُمْ}

"And among His Signs is the creation of the heavens and the earth, and the variations in your languages ..."[112],

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[111] Surah al-Baqarah:31
[112] Surah al-Rūm:22

it means your languages, so there is no denotation in it that the languages are set by Allah, because the meaning of the *Āyah*: and from the evidences on the power of Allah the differences in your languages, and it does not mean that Allah had set different languages. So the *Āyah*, i.e. the *dalīl* is differences between the languages, not that Allah had set different languages.

And as for His Ta'ala saying:

{إِنْ هِيَ إِلاَّ أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ }

"These are nothing but names which you have devised, you and your fathers, for which Allah has sent down no authority ..."[113],

Allah did not dispraise them for setting names, but He dispraised them for uttering the word lord for the idol and their belief that they are lords. Since the Laat, the 'Uzza, and Manaat are proper nouns for idols, so the indication of their specialty in the dispraising without the other names is an evidence for it, so there is no denotation in these verses that the languages are revealed by Allah (*tawqifiyah*). And thus there is no Sharī'ah *dalīl* that the languages are (*tawqifiyah*) revealed by Allah Ta'ala, but the seen reality is that they are convention from the people, so they are set by the human, not from Allah Ta'ala.

The Way to Know the Arabic Language

The Arabic language is a convention the Arabs agreed on it, so they set specific words to denote specific meanings, as

[113] Surah al-Najm:23

they set the expression "السَّماء the sky, الأَرض the earth, المَـاء the water" for the denotation of specific meanings, and as they set the expression "القُرُء al quru' for the menses and the purity, and as they set the expression "الجَوْن al jawn for the black and for the white, and the expression "السَّلِيم al saleem, for the stung person and for the sound one, and so on. Since the Arabic language is a convention for Arabs; the way to know it is taking it from them. So if they say: "The so and so expression is set for the so and so meaning" or they say: "The so and so meaning is set for the so and so expression"; their saying will be accepted and approved, and will not be argued, because the convention is indisputable, and it is something they agreed on it, and not a mental issue nor is it related to the perception, and therefore whatever the Arabs say about the language will be approved. And what is meant by the Arabs, is the real genuine Arabs (*al-aqhaah*) whom used to speak the Arabic language before the corruption of the Arabic (speaking) tongue and some of them remained until the fourth Hijrī century, they used to live in the desert and their language did not get corrupted, therefore the language can be taken from. And the way to take from them is through the authentic narration, from here the way to know the Arabic language is the *mutawātir* and *āḥād* transference. The *mutawātir* transference is known by certainty and undoubted if suspicion exists, i.e. it does not accept doubt, like our knowledge in naming the essence (*jawhar*) as such, and the qualities (*'araqh*) as such, and the other names like tha sky (*al-samaa'*), the earth (*al-ardh*), the heat (*al-harr*), the cold (*al-bard*), and others. We perceived this knowledge through the decisive *tawātur*. And the *āḥād* is what is not known by us, and it is not transferred as the *mutawātir*, so the way of obtaining the probability in it is the transference

of the individuals, like the expressions narrated from the authors and researchers of the language like al-Khaleel, al-Asma'y, and the likes. And most of the expressions of the Arabic language are of the *mutawātir*, and the least are of the *āḥād*. This is the way of knowing the Arabic language; it is the narration from the Arabs by either the *tawātur* or the *āḥād*, and there is no other than these ways. As for the mind; it is not beneficial in knowing the Arabic language, and it has no value because the issue is the transference from those who set the language, it is not a perception issue, and because the mind can only perform independently to proof the necessity of the existents, and the impossibility of the nonexistent.

And mind could not be guided independently to the occurrence of either of the two possibilities, and the languages are of this kind, because they are limited to what they were set for, since a specific expression was set for a specific meaning of the possibilities, and the mind could not independently perceive that the author of the language had set this or that expression for this or that meaning, because it depends on the transference from the author, therefore the mind has no role in knowing the language, but its knowledge depends on the transference from the author. And as for what was said: that it is known by the mind that the definite plural noun denotes the generality because the exception could be included in it, the matter is not like that, but it is a knowledge that came through the transference, because it is transferred to us that the exception is excluding what the text mentions, so from that we understood that the definite plural noun denotes the generality, so the mind did not independently judge that the author set this expression for this meaning, but the

mind understood from what was transferred from the author that this expression brings out this meaning, it is like the understanding that the existence of Islamic states is not permissible for the saying of the Messenger ﷺ: " إِذَا بُوِيعَ لِخَلِيفَتَيْنِ فَاقْتُلُوا الآخَرَ مِنْهُمَا" **"If two khalifahs were given the pledge of allegiance; do kill the latter of them"** compiled by Muslim. So non permissibility of the multitude of the Islamic state is not set by the mind, but the Sharī'ah brought it, so it is a Sharī'ah verdict, not mental verdict, and the mind only understood it from the Sharī'ah text. And likewise is the language, so being the definite plural for the generality is not from the mind, but it is from the set up of the Arabs, so it is of their conventions and not from the mind. And the mind alone is not a way to know the language at all. But there are only two ways to know the language, one of them is the *tawātur* and the other is the *āḥād*, in other word the way to know the language is the narration only.

The Expressions of the Language and their Divisions

The Arabs composed specific expressions to denote specific meanings, so the expression is what denotes the meaning, and the meaning is what is denoted by the expression, therefore the discussions of the language are: discussions regarding the expressions only, discussions regarding the expressions and the meanings, and discussions regarding the meanings, and from here the set expressions are of three divisions: The first is regarding the (*dāll*) indicator alone, i.e. the expression. The second is regarding the (*dāll*)

indicator and the (*madlūl*) denoted meaning. The third is regarding the (*madlūl*) denoted meaning only.

Dividing the Expression with Regard to the (*dāll*) Indicator Alone

The expression divides with regard to the indicator only, i.e. with regard to the semantics of the expression into three divisions: one of them is the denotation of correspondence (al-mutaabaqah), and that is a denotation of the expression to its complete named meaning, like the denotation of the word mankind (insaan) to the animal with the ability to speak (the actual human), and it is named as such because the expression corresponds its meaning. The second is the denotation of inclusion, and that is the denotation of the expression to a part of the named meaning, like the denotation of the word mankind (insaan) to the animal only, or to the able to speak only, and it is called like this because it includes it, i.e. it is called inclusion denotation because the denoted meaning is included in its composition. The third is the binding denotation, and that is the denotation of the expression to what it necessitates, like the denotation of the word Lyon to the bravery, and it is named like this because the denoted meaning is necessitated in the expression's composition. What is considered by the necessity is the mental necessity that which the mind shifts to it when the expression is heard, whether it is necessitated externally as well as mentally like the bed and the height, or it is not necessitated externally like the blindness and the sight, and that does not happen only in the external necessity, because

if the mind does not shift to the meaning when the expression is heard; the denotation does not occur at all. This necessity is a condition (*sharṭ*) and not a must; it means that the necessity alone is not the cause (*sabab*) for the occurrence of the binding denotation, but uttering the expression is the *sabab*, and the necessity is a *sharṭ*. The expression with regard to its denotation is divided into complex and single, that is because if part of it denotes a part of the benefitted meaning then it is the complex, whether it is a reliance complexity like our saying: Zaid stood up and zaid is standing up, or a mixing complexity like (*khamsata 'ashar*) fifteen and Ba'albak, or adjunction complexity like zaid's boy and like the house door. And if part of the expression does not denote a part of its meaning; then it is single, and that is by initially not having a part like the preposition baa' (baa' al jarr), or it has a part but it does not denote part of its meaning like Zaid, (زَيد), although any of its letters (ز ي د) denotes an alphabetical letter; it is not part of its meaning, i.e. not part of its denotation which is the specified being. And so is the name Abdullah, Ta'abbata sharran, etc. they are proper nouns, used as names for they are denotation for a person.

The Single (*al-Mufrad*)

The single expression (*al-mufrad*) is divided into three divisions: the noun (إسم), the verb (فِعْل), and the particle (حَرْف). That is because the single expression denotes its meaning either dependently or independently. If the single expression denotes its meaning dependently, then it is the particle, because its composed meaning can not be understood without the consideration of another

expression which denotes a meaning related to the particle, in your saying: "قَبَضْتُ مِنَ الدَّرَاهِم" "I have received some of the dirhams" the word "الدراهم" denotes a meaning that is the related denotation of "مِن" because the partition (*al-tab'eedh*) (التَّبْعِيضْ) denoted by "مِن" is related to the meaning of the "دَرَاهِم". And if the single expression denotes its meaning independently without the need of another expression, we scrutinize it and see if -by its actual conjugation- it indicates one of the three times: the past, the present, or the future, then it is the verb like: (قَامَ, يَقُومُ, وَقُمْ)(stood up, standing up, and stand up). But if -by its actual form- it does not indicate any time, then it is the noun, whether it does not indicate a time at all like (Zaid), or it means the time not by its tense but by its reality like: the morning, yesterday, now, and tomorrow, so the mufrad is divided into three divisions: the particle, the verb, and the noun.

The Noun (*al-Ism*)

The noun is that which denotes a meaning in itself and does not necessitate a time other then its meaning for the composition of it. The noun is either general or partial, because its concept can be either shared by many (things) or not shared, if it is of the first kind, then it is the general, and if it is of the second kind; it is the partial. The general is that which its imagination does not prevent it to be shared, whether the sharing in it did occur, like the words animal, the human, and the author, or did not occur but it is possible, like the word sun, or the sharing did not occur for the impossibility like the word Ilaah (Deity). So if the meaning of the noun is able to be shared, then it is the

general. As for the partial noun, it is that which not many (things) share its meaning, like Zaid as a proper noun for a man, and the pronouns like he (هُوَ) and she (هِيَ), the meanings of the expressions: Zaid and he do not accept the sharing so they are of the partial nouns.

If the meaning of the general noun is equal in all its named things without any differences in the intensity, or the primacy, or the priority, then it is the conniver (*mutawāṭi'*) (مُتَوَاطِئ), like the expression: human, for its individuals are equal in their animalism and their ability to speak, and so is the expression: horse, because no one of its individuals has priority over the other. And it is named conniver (*mutawāṭi'*) because it is correspondent, they say: so-and-so connive means they correspond.

If the meaning of the general noun differs, then it is the uncertain (*mushakkak*) (مُشَكَّك) like the expression: (الوُجُود) the existence and (الأَبْيَض) the white, whether its difference is in the necessity and possibility, as the existence is necessity for the Creator and possible for the others, or its difference is in the self sufficiency and the insufficiency, like the existence, it is used for bodies with their non neediness to a place, and it is used for the qualities with their neediness to a place, or the difference is by the increase and decrease, like the light, it is stronger in the sun than it is in the lamp. And it is called uncertain because the overseer at it could be in doubt whether it is of the (*mutawāṭi'*) because the reality is being one, or it is uncertain for the difference between them.

The general noun is two kinds: generic noun and derived noun, because if it denotes a specified thing, like the horse, the human, and others which indicate a certain essence, then it is the generic noun, which is the expression

composed for a specific reality in the mind. And if the general noun denotes something that has a specific quality, then it is the derived (al mushtaq), like the black, the horseman, and the likes.

As for the partial noun, it is two kinds: a proper noun (*ism alam*) and a pronoun (*ḍamīr*), and that is if the expression denotes independently, not needing anything to explain it, then it is the proper noun, like Zaid and Abd Allah. And if the partial noun is dependent, i.e. it needs something to explain it, so it is the implicit, like: he and she, because it is inevitable for the implicits (the pronouns) to have something to explain them. And the difference between the pronoun (الضَّمِير) and the particle (الحَرْف) is that the particle does not have a meaning alone, and its meaning could not be understood without an expression which has a meaning related to the meaning of the particle. Where as the pronoun is initially independent in its meaning, and its meaning can be understood without the need to another expression, and its meaning is not related to the meaning of any expression, but it only needs explanation, therefore the pronoun is a noun, and it is different from the particle.

Dividing the Expression with Regard to the Denoted Meaning Alone

The expression divides with regard to its denoted meaning alone into five divisions: one of them is that the denoted is a meaning, the second is, the denoted is a used single expression, the third is, the denoted is an unused single expression, the forth is, the denoted is a used compound expression, and the fifth is, the denoted is an unused

compound expression. That is because what is denoted from the expression can be a meaning or an expression. If it is an expression, it can be single or compound, and either one of them can be used or unused and the sum of them is five divisions:

The first division, the denoted is a meaning, i.e. something not an expression, like animal, and like Zaid as a proper noun for a man, and this is what we previously divided into general and partial noun.

The second, the denoted is a used single expression, like the expression "word", what is denoted from it is an expression composed for a single meaning, and that is the noun, the verb, and the particle. So it is an expression and its meaning is also an expression.

The third, the denoted is a single unused expression, like the names of the alphabetical letters. The letters: *ḍād*, *rah*, and *bah* of the word (ضَرَبَ) were not composed for a meaning, despite that every one of them has a name been set for it, the first is *ḍād*, the second is *raa'*, and the third is *baa'*, so the expressions of the alphabetical letters have denotation, and what is denoted from them have no meanings, but they are expressions, and they are the alif, baa', taa' ... etc. so the word alphabetical letters is an expression, and its meaning is also an expression but it is unused (*muhmal*).

The forth, the denoted is a used compound expression, like the report (*al-khabar*), that which is denoted from it is a composed compound expression like: Zaid is standing up. So what is denoted from the expression "report" is not a meaning but it is an expression.

The fifth, what is denoted is an unused compound expression, and that is the delirium (irrational talk) (الهَذَيَان), and that is by collecting some unused expressions and saying them, or that the collection of the word does not denote a meaning, even if part of it denotes a meaning, like intentionally compounding a phrase: "he beat a house" this has no meaning as a phrase, but every expression of it has a meaning. And this division is not composed by the Arabs, because the purpose of the composition is benefitting a meaning, and this does not benefit, so it is not composed, but it exists, so it is the delirium which is compounded but unused. So the expression "delirium" has a denotation but what is denoted from it is not a meaning, but an unused expression.

The Compound *(al-Murakkab)*

The compound is that which part of it denotes a part of the meaning, and it is from the divisions of the denotative alone, which is coined for the listener to understand the relations and the compound meanings after knowing the situations of the vocabulary. The compound is divided into six divisions, they are: the inquiry (الاسْتِفْهَام), the order (الأَمْر), the solicitation (الالتِماس), the supplication (السُّؤال), the report (الخَبَر), and the warning (التَّنْبِيه), that is because the speaker has structured the compound from the words and composed it from them to tell the others what is in his mind, so some time it denotes an order, and some time it denotes other thing. If it denotes a specific request, i.e. the circumstance we scrutinize it, I the request is about the essence, then it is the inquiry, like your saying: what is the reality of the human? And has Zaid stood up? And if the

request is to obtain the essence with superiority over the person requested from, then it is the order, like the saying of Allah Ta'ala:

{وَأَقِيمُوا الصَّلاةَ وَآتُوا الزَّكَاةَ }

"And perform the prayer and give the Zakāh ..."[114].

and if the request is for obtaining the essence with the equality, then it is the solicitation like the request of a person from his counterpart, as when you tell your friend: give me the book, and take the jug. And if the request is for obtaining the essence with lowering or humbling oneself, then it is the supplication, like the saying of the servant: O Allah forgive me, O Allah bestow your mercy upon me. And if the compound does not benefit an actual request by its form, means it does not initially denote the request, like: Zaid stood up, or it does denote the request but not by its form, like: I am seeking something, if it has the potential of certification or refutation, then it is the report, like: Zaid stood up, and if it hasn't got the potential of certification or refutation, then it is the alerting (التَّنْبِيه), also to hope (التَّرَجِّي), to wish (التَّمَنِّي), the oath (القَسَم), and the call (النِّدَاء) can fall under this, therefore the divisions of the compound are six divisions, considering all that fall under the alerting as one division.

[114] Surah al-Baqarah:43

Dividing the Expression with Regard to the Denotative *(al-dāll)* and the Denoted meaning (*al-madlūl*)

The expression is divided with regard to the denotative and the denoted meaning, i.e. the expression and the meaning, into seven divisions: the unique (المُنْفَرِد), the dissimilar (المُتَبَايِن), the synonym *(al-mutarādif)* (المُتَرَادِف), the common (المُشْتَرَك), the transformed (المَنْقُول), the real meaning (الحَقِيقَة), and the metaphor (المَجَاز), that is because the expression and the meaning can either unite, or both the expression and the meaning increase, or the expression increases while the meaning unites, or the meaning increases while the expression unites.

The first one is when the expression and the meaning unite, like the expression (الله) Allah, it is one and its denoted meaning is one, and this is the unique, and it is named the unique because its expression is solely for its meaning.

The second is when the expression and the meaning increase like (السَّوَاد) the blackness and (البَيَاض) the whiteness, and that is the dissimilar, and they are called dissimilar expressions because every one of them is contrary to the other in its meaning.

The third is when the expression increases and the meaning unites like (al-asad) (الأَسَد) and (al-sab') (السَّبْع) mean the lion, and that is the synonym, and they are called *(al-mutarādif)* (المُتَرَادِف) after the word (رَدِيف) (radeef) means one riding behind another, since the *mutarādif* expressions denote one meaning.

The fourth is when the meaning increases and the expression unites, i.e. when there is one expression with

many meanings, so that the expression is set for every one of those meanings, like (*al-ʿayn*) (العَيْن) for the eye that sees and for (*al-jaariah*) the water spring, and this is the common expression (المُشْتَرَك).

The fifth is when the expression is one with many meanings, but the expression was not set for every one of the meanings, but it was set for one meaning then it got transformed to another meaning and became famous in the second meaning like (*al-ṣalāh*) (الصَلاَة) the prayer, (*al-dābbah*) (الدَّابَـة) the animal, and like (*al-faa'il*) (الفاعِل) the term subject as a terminology for the grammarians, and that is the transformed. The first meaning is called (transformed from) and the second meaning is called (transformed to), and it is called (Sharī'ah transformed) if the Sharī'ah transformed it like the *ṣalāh*, and it is called (conventionally transformed) if it is transformed by the general convention like the word (*dabbah*), and it is called (idiomatically transformed) if it is a special idiomatic transformation like the term subject for the grammarians.

The sixth is when the expression is one and the meanings are many, but the expression was not set for every one of the meanings; it was set for a meaning then got transformed to another one for relevance, but it was not famous in the second meaning, i.e. the second meaning was not precedent over the first meaning. In this situation if it is uttered for the set meaning; it is the reality, and if it is uttered for the meaning to which it is transformed; it is the metaphor, and this is the seventh of the expression's divisions with regard to the denotative and the denoted meaning.

(التَّرَادُف)

The Synonymy *(al-Taraaduf)*

The synonymy is the existence of single expressions that denote one meaning with equal consideration, like (الإِنسَان) mankind and (البَشَر) human being that denote one meaning, that is the speaking animal, and like (al-burr) (البُرّ) and (al-qamh) (القَمْح) they mean wheat, and like (jalasa) (جَلَسَ) and (Qa'ada) (قَعَدَ) for sitting down, and like that which is transmitted from among the Arabs' sayings: (*al-ṣahlab*) (الصَّهْلَب) and (*al-shawdhab*) (الشَّوْذَب) from among the names of the tall person, and like (al-bahtar) (البَهْتَر) and (al-baḥtar) (البَحْتَر) from among the names of the short one, etc. and the reason behind the existence of the synonymy in the language is that they are composed by composers, it happens that one tribe sets the expression (qamh) for example for the known grain, and another tribe sets the expression (*burr*) for it too, and both compositions become famous. Or they are set by one composer, either to increase the means of telling what is in the mind, or to broaden field of the wonderful rhetoric of the language (al-badee'). al-badee' is a name for the wonderful talk, like the rhyme in the prose and the poem, like (مَا أَبْعَدَ مَا فَاتَ ومَا أَقْرَبَ مَا هُوَ آت) (how far is that which passed, and how close is that which is coming), so if we use the expression "madha" "مَضَى" passed instead of "faata" "فَاتَ" which means the same, then the rhyming would not happen. Also in the similarity style (*al-mujaanasah*) like when you say: (اشْتَرَيْتُ البُرَّ وأَنْفَقْتُهُ فِي البِرِّ) (I bought the wheat and spent it in the obedience), so if you use the expression (qamh) instead of (*burr*), then you miss out on what is desired of the similarity. And in the reversal (القَلْب) like the saying of Allah Ta'ala:

{وَرَبَّكَ فَكَبِّرْ}

"and magnify your Lord",

if He used the word (الله) instead of (رَبَّك), then what is desired of the reversal would be missed out, because (رَبَّكَ) can be read forward as (رَبَّكَ) and backward as (كَبِّرْ), so the synonymy enriched the Arabic language. However the synonymy is contrary to the origin, since the principles is the nonexistence of the synonymy, so if an expression hesitates between being a synonym or not a synonym, then it is a priority to consider it as not a synonym, because principally the expression is set for a meaning which no other expression is set for it, and because the second expression determines the meaning which was determined by the first expression, therefore some people have the opinion that synonymy does not exist and that every expression was set for a meaning no other expression was set for it, but the reality is that the synonymy does exist in the Arabic language and narrated from the Arabs, and since the language is composed by the Arabs and they were tribes, it necessitates the existence of the synonymy, but it is contrary to the origin.

الاشْتِرَاك

The Polysemy Expression *(al-Ishtirāk)*

The polysemy is when the expression has been composed initially for two different realities as they are. And the common expression is the expression composed for each one of the two meanings or more, like (al-ʿayn) (العَيْن) is it for the eye that sees, for the water spring, and for the gold, and like the expression (al-*Rūḥ*) (الرُّوح) is for the secret of

life, for perceiving of the relationship with Allah Ta'ala, and for Gabriel, and so are the other common expressions. It is admissible that common expression exists in the Arabic language for the possibility to be set by two composers that every one of them had set the expression for a different meaning than the other set it for, like one tribe sets the expression (*al-'ayn*) for the eye that sees, and another tribe sets it for the water spring, then both settings become famous. Or it is set by one composer for the purpose of confusion that he sets an expression for two different meanings to enable the speaker to confuse the listener, where the clarification causes harm, as it is narrated from Abū Bakr ﷺ when he went with the Messenger of Allah ﷺ to the cave: " ... فَيَلْقَى الرَّجُلُ أَبَا بَكْرٍ, فَيَقُولُ: يَا أَبَا بَكْرٍ, مَنْ هَذَا الرَّجُلُ الَّذِي بَيْنَ يَدَيْكَ؟ فَيَقُولُ: هَذَا الرَّجُلُ يَهْدِينِي السَّبِيلَ" **"... the man would come across Abū Bakr and says: O Abū Bakr, who is this man with you? Abū Bakr says: this man guides me the way"** narrated by al-Bukhārī. The common expression does exist in the Arabic language, Abū al-*ḥasan* al-Basrī said: "The people (composers) of the language set the name (*al-quru'*) (الْقُرْءُ) for the purity and for the menses, and they are two contraries, and that indicates the existence of the common names in the language". And it exists in the great Qur'ān like the saying of Allah Ta'ala:

{ثَلاثَةَ قُرُوءٍ}

"... three quru' ..."

and His Ta'ala's saying:

{وَاللَّيْلِ إِذا عَسْعَسَ}

means *'when the night comes and departs'*, so it is common between the coming and departing of the night. And that

shows that the common does exist in the Arabic language. Whoever, the polysemy is contrary to the origin, and the meaning originally has one expression specially composed for it, i.e. non polysemy, so if the expression revolves between the possibility of polysemy and exclusiveness, then the exclusiveness is the most probable, and the possibility of polysemy is outweighed, and even if it is not outweighed; it is contrary to the origin, because the possibility of polysemy and the possibility of exclusiveness are equal, and theses possibilities exist in every expression, and the determined meaning could not be understood from the expression without an indication that clarifies it, therefore determining the meaning of the common expression and specifying it to one of its meanings needs an indication, and if the polysemy is not contrary to the origin then inferring from the texts would be impossible for the possibility of the polysemy, and the meaning which the legislator wanted being different then the meanings appear to us, then these meanings would not be beneficial for the probability. Therefore the polysemy is contrary to the origin.

It is permissible to use the common expression in all its meanings as a reality for the evidence that it exists in the Qur'ān, Allah Ta'ala said:

{إِنَّ اللَّهَ وَمَلَائِكَتَهُ يُصَلُّونَ عَلَى النَّبِيِّ }

"Allah and His angles pray on the Messenger ..."[115],

the prayer from Allah Ta'ala is His forgiveness, and the prayer from other than Him is seeking forgiveness, so the

[115] Surah al-Aḥzāb:56

word prayer is a common expression between the forgiveness and seeking the forgiveness, and here it is used for both meanings at once, since He Ta'ala referred it to Himself and to the angles, and it is known that what comes from Allah Ta'ala is the forgiveness, not seeking the forgiveness, and what comes from the angles is seeking the forgiveness not the forgiveness. And He Ta'ala said:

{أَلَمْ تَرَ أَنَّ اللَّهَ يَسْجُدُ لَهُ مَنْ فِي السَّمَاوَاتِ وَمَنْ فِي الأَرْضِ وَالشَّمْسُ وَالْقَمَرُ وَالنُّجُومُ وَالْجِبَالُ وَالشَّجَرُ وَالدَّوَابُّ وَكَثِيرٌ مِنَ النَّاسِ }

"See you not that to Allah bow down in worship all things that are in the heavens and on earth, the sun, the moon, the stars, the hills, the trees, the animals, and a great number among mankind ..."[116],

so Allah Ta'ala meant by the bowing down (*al-sujood*) in this *Āyah*: the humbleness, because it is supposed from the animals, and He Ta'ala meant placing the forehead on the ground by the people, which proves that both meanings are wanted as realities. And as for using the common expression for one of its meanings without the others; that needs a clarifying indication to determine the wanted meaning.

الحَقِيقَةُ وَالمَجَازُ

[116] Surah al-Hajj:18

The Real and the Metaphor *(al-Ḥaqīqah wa'l-Majāz)*

The real meaning (*al-Ḥaqīqah*) is the expression used for the meaning it was composed for initially in the language, like (*al-asad*) (الأَسَد) the word lion used for predator animal. And the metaphor (*al-majāz*) is the expression used for other than the meaning it was composed for it in the language for relevance between them like (al-Asad) the lion used for the brave man. The metaphor is of three divisions:

One of them is where the metaphor is in the individual words like your saying: I have seen a lion. You mean the brave man.

The second is where the metaphor is in the compound only, like the poet's saying: أَشَابَ الصَّغِيرَ وَأَفْنَى الكَبِيرَ كَرُّ الغَدَاةِ وَمَرُّ العَشِيِّ which translates to: The attack early in the morning and the passing by of the army in the evening turned the young into white-haired and exterminated the elderly. So turning the young into white-haired, and the extermination, and the morning attack, and the evening passing by have really occurred, so this is a real meaning, but attributing the turning into white-haired and the extermination to the morning attack and the evening passing by is attribution to other than who made them happened, so this is metaphor, because Allah Ta'ala is the doer of the turning into white-haired and the extermination.

The third is where the metaphor is in the individual words and the compound together like your saying to some one you joke with: أَحْيَانِي اكْتِحَالِي بِطَلْعَتِكَ which translates to: it survived me that your appearance eye lined my eyes. That means seeing you made me happy. So he used the surviving

for happiness, and the eye lining for the seeing, and that is metaphor, then he attributed the surviving to the eye lining, despite that the life giver is Allah Ta'ala. So the phrase contains metaphor in the individual words and in the compound together.

Using the metaphor is conditional to the relevance between the real meaning and the metaphoric meaning, and this relevance between the two meanings must be of the kinds which the Arabs used, but it is not conditional that the phrase was used by the Arabs, that means every one can metaphorically express by using the expression and the phrase he wants, for the relevance between the real meaning that he used and the metaphoric meaning that he takes from it. But the kind of relevance whether it is causality (to do with the *sabab*) or circumstantial or others, it is inevitable to be from what the Arabs used, so it is inevitable that the Arabs set the kind of metaphor for using the expression of the whole for the part, as an example, and using the cause for the caused thing, and as such. As for the partial things like composing phrases and different usage, they are not conditional that the Arabs had used, but every one can innovate by using the metaphoric expressions the way he wants within the kinds that the Arabs used. And the considered relevance for using the metaphor according to the Arabs are many, some counted them twenty five, others counted them thirty one, and others counted them twelve, and the most important are the following kinds:

The first kind: the causality (*al-sababiyah*), that is calling the caused matter by the name of its cause. The causality relevance is of four divisions:

1- The causality of containment, which is naming the thing by the name of what contains it like someone says: "the

valley flowed", it means the water in the valley, so he used the expression valley for the water, because the valley is a cause that contains it, so he called the caused thing by the name of the cause.

2-The figurative causality like naming the hand by might, because the might is the figure of the hand, for it resides in it like the figure resides in the matter, like calling the might by hand in the saying: "the hand of the leader reaches every mischievous" means the power of the leader reaches the mischievous, so the hand has a special figure, which is the might over something, so calling the might by hand is out of calling the caused thing by the name of the figurative cause.

3- The activity causality, like saying: "the cloud came down" means the rain, which is calling the thing by the name of its doer, since the rain comes out of the clouds.

4- The causality of purpose, like naming the grapes by wine in the saying of Allah Ta'ala:

{ إِنِّى أَرَانِى أَعْصِرُ خَمْرًا }

"...I see myself (in a dream) pressing wine..."[117],

it means grapes, so He named the grapes by wine, because the purpose of pressing it is to make it wine.

The second kind: the consequentiality, which is calling the cause by the name of its consequence, like naming the deadly disease by death, so the name of the death is used for the deadly disease, out of calling the cause by the name of the caused matter.

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[117] Surah Yūsuf:36

The third kind: the similarity, and that is sharing a quality, and it must be apparent so the mind moves to it and understands the purpose of it when there is proven indication, and the indication is either rational like the lion for the brave one or it is tangible like the lion in the engraved picture on the wall.

The fourth kind: the contrariety, which is naming the thing by the name of its contrary, like the saying of Allah Ta'ala:

{وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا}

"The recompense for an evil is an evil equal to it ..."[118],

so He named the recompense by evil despite that the recompense is reward. Or it is a contrariety ranked by intimation and irony the rank of harmony and similarity, like telling the stingy that he is Haatim al Taa'i, and telling the coward that he is a lion.

The fifth kind: the totality, and that is by mentioning the whole of the thing and meaning a part of it, like saying: the Qur'ān for a part of it, and like the saying of Allah Ta'ala:

{ يَجْعَلُونَ أَصَابِعَهُمْ فِى آذَانِهِمْ }

"...they press their fingers in their ears ..."[119],

it means their fingertips, so He mentioned the finger for the fingertip.

The sixth kind: the partial relevance, and that is by naming the whole by the name of the part, like the saying of Allah Ta'ala:

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[118] Surah al-Shura:42
[119] Surah al-Baqarah:19

{ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ }

"... then he must free a believing neck ..."[120],

it means freeing a slave, so He mentioned the neck which is a part of the slave and meant the slave.

The seventh kind: the ability, that is by naming something that has the ability to become another thing by the name of that other thing, like naming the wine in the cask intoxicant, because the wine in that situation is not intoxicant yet, but it has the ability to be intoxicant.

The eighth kind: the nearness, and that is by naming the thing by the name of what is near it, like naming the water skin by the (*raawiyah*) quencher, because the *raawiyah* linguistically is the name of the camel or the mule or the donkey on which they used to carry the drinking water, then they called the water skin quencher because of its nearness to water.

The ninth kind: the additional, and that is when the talk can still be well arranged by dropping a ward of it, so they judge that it is additional like the saying of Allah Ta'ala:

{ لَيْسَ كَمِثْلِهِ شَيْءٌ }

"...there is nothing like unto Him..."[121],

it means: (لَيْسَ مِثْلَهُ شَيْءٌ) *there is nothing like Him*, this is called additional metaphor, because the letter (ك) (*kaaf*) is additional, since the aim is negating the similar not the similar of the similar, because the (ك) *kaaf* means similar,

[120] Surah al-Nisā':92
[121] Surah al-Shura:42

then it necessitates a similar to Allah Ta'ala and this is impossible, so the (ك) *kaaf* must be additional for more affirmation.

The tenth kind: naming something regarding to its previous state, whether it is defective (non derivable) like calling the freed person slave, or it is derivable like calling the one who finished beating the beater.

The eleventh kind: the relevance between the infinitive (verbal noun) (المَصْدَر) and the passive participle (اسْمُ المَفْعُول), and the active participle (اسْمُ الفَاعِل), every one of their forms can be used metaphorically for the other, and it is of six divisions:

1- Using the active participle expression for the passive participle like the saying of Allah Ta'ala:

{خُلِقَ مِنْ مَاءٍ دَافِقٍ}

"He has been created from a (daafiq) gashing out water"[122],

the word *daafiq* is in active participle form, it means gashed out (*madfooq*) which is passive participle, and of that kind is their saying: "سِرٌّ كَـاتِمٌ" "concealing secret" which means (مَكْتُوم) concealed.

2- Using the passive participle form for the active participle like in the saying of Allah Ta'ala:

{ حِجَابًا مَسْتُورًا}

"... a concealed screen"[123],

[122] Surah al-Tāriq:6
[123] Surah al-Isrā':45

the word (مَسْتُورًا) concealed is in the passive participle form, and it means concealing screen which is active participle, because it conceals the disbelievers from seeing, hearing or understanding. And His Ta'ala's saying:

{إِنَّهُ كَانَ وَعْدُهُ مَأْتِيًّا}

"...for His promise must be reached"[124],

means His promise must come to pass, He used the word (مَأْتِيًّا) (ma'tiya) in the form of passive participle, means it will be reached, instead of (آتِيًا) which is an active participle, and means coming to pass.

3- Using the infinitive form for the active participle like their saying: "رَجُلٌ صَوْمٌ وَ عَدْلٌ" "a man fasting and justice" means he is fasting and he is just, so they used the adjectives in the infinitive form instead of the active participle form.

4- Using the active participle form for the infinitive like their saying: "قُمْ قَائِمًا وَاسْكُتْ سَاكِتًا" "Stand up be the standing up one, and keep silent be the silent one" meaning the standing up and the silence.

5- Using the passive participle form for the infinitive like the saying of Allah Ta'ala:

{بِأَيِّيكُمُ الْمَفْتُونُ}

it translates literally to *"In which of you is the (maftūn) afflicted with madness"*[125],

the word *al-maftūn* which is in passive participle means the *fitnah* which is infinitive.

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[124] Surah Mariam:61
[125] Surah al-Qalqm:6

6- Using the infinitive form for the passive participle like His Ta'ala's saying:

{هَذَا خَلْقُ اللَّهِ }

"Such is the Creation of Allah ..."[126],

means created by Allah. And His Ta'ala's saying:

{ وَلَا يُحِيطُونَ بِشَيْءٍ مِنْ عِلْمِهِ }

"...and they will never compass anything of His knowledge ..."[127],

the word knowledge is in infinitive form, it means what is known to Him and this is passive principle form.

The metaphor in the speech can be in the essence, i.e. the original, and it can be in the subsequence. The metaphor in the essence can only be in the generic noun which denotes the selfsame essence which is applicable to many things without any consideration to other qualities, like the word lion for the brave person, and the word killing for the hard beating, and it cannot be in other than that. And the matters in which the metaphor cannot essentially exist are:

One of them: the particle. The metaphor cannot be in the particle because it does not denote its meaning by itself, but it does not denote it except by mentioning its relevance with it, so since it does not denote by itself; the metaphor cannot exist in it, because its existence is a branch of that the speech benefits a meaning. And as for the existence of the metaphor in the particle subsequently; it can be by

[126] Surah Luqmaan:11
[127] Surah al-Baqarah:255

using the attached word to it metaphorically, then the metaphor extends from the attached words to the particles, like the saying of Allah Ta'ala:

{فَالْتَقَطَهُ آلُ فِرْعَوْنَ لِيَكُونَ لَهُمْ عَدُوًّا وَحَزَنًا }

"Then the people of Fir'awn picked him up (from the river) so that he (Mūsā) becomes to them an enemy and a sorrow ...",

since reasoning picking him up by becoming an enemy is a metaphor, so the performance of the *'illah* particle (لِ) is also a metaphor, so the metaphor came in the particle following what is attached to it, but the metaphor does not exist initially in the particle.

The second: the verb in all its divisions, and the derived noun in all its divisions, like beater and the similar, because the verb and the derived noun follow their origins which is the infinity whether it is of the real meaning or the metaphor. So calling someone by the beater after or before the beating is a metaphor, because using the beating in this situation like saying: "so and so has beating" is metaphor not real.

The third: the proper noun, because if it is improvised (مُرْتَجَل) or transformed without a relation (to a quality), there is no doubt that it is not a metaphor, and if it is transformed for a relation, like if someone named his son Mubarak means blessed for the blessing that accompanied his pregnancy or birth, it is also not metaphor, because if it is metaphor then it will be prevented to call it after the disappearance of the relation, and the situation (with the names) is not as such, which shows that it is not metaphor.

This is the summary about the real meaning (الحَقِيقَة) and the metaphor (المَجَاز). And the speech is originally carried by its

real meaning. And if the real meaning and the metaphor conflict; the priority is for the real meaning, because the metaphor is contrary to the origin, and if the expression revolves between the real meaning and the metaphor, the real meaning outweighs, and carrying it on the metaphor is inferior, for the need of the metaphor to the first composition of the real meaning, and to the relation between it and the metaphoric meaning, and to the transformation from the real meaning to the metaphoric meaning, while the real meaning needs nothing except the first composition, and this alone is sufficient to make the metaphor contrary to the origin.

الحَقِيقَةُ الشَّرْعِيَّةُ

The Real Legal Meaning *(al-Ḥaqīqah al-Shar'iyyah)*

The Sharī'ah names are the expressions which their meanings are benefited from the composition of the legislator, like (الصَّلاَة) (al *ṣalāh*) the prayer for the specific actions, and (الزَّكَاة) (al *Zakāh*) the charity for the payable sum, and like (الصَّوْم) (al sawm) the fasting for the known abstention, and like (الإِيمَان) (al *Imān*) the belief for the decisive believe that is compatible with the reality and supported by the evidence, and other names which the Sharī'ah brought. So if these expressions are used for the meanings which the Sharī'ah primarily composed for them, then they are Sharī'ah real meanings. So the Sharī'ah real meaning is the expression used for what it is composed for it in the Sharī'ah convention, i.e. it is the expression which got transformed from its linguistic meaning to another

meaning, because the Sharī'ah used it for the meaning it is transformed to it.

To consider the name as Sharī'ah it is inevitable that its composition is benefited from the legislator, i.e. from that which the revelation brought from Allah Ta'ala, i.e. the *Kitāb* and the Sunnah, so the usage of the expression by the scholars does not make it Sharī'ah name, also the usage of the expression by the imams and the mujtahidine in a meaning does not make it Sharī'ah name, but it will be considered as Sharī'ah name only if the Sharī'ah used it, i.e. if it is used in the *Kitāb* and the Sunnah and in the (ijma') consensus of the *Ṣaḥābah*. As for the *Kitāb*; it is revealed in both the text and the meaning. And as for the Sunnah; the revelation brought it as meanings, and the Messenger ﷺ expressed them by his expressions, so it is of that which the wahi brought. And as for the consensus of the *Ṣaḥābah*; it discloses evidence, so it is of that which the wahi brought. So if an expression of which the Arabs composed is used for a specific meaning other than that they composed it for it, and this usage came in the *Kitāb* or in the Sunnah or in the consensus of the *Ṣaḥābah*; this expression for this meaning became a Sharī'ah name that is composed by the (shaari') legislator for this meaning, and its usage for what the legislator composed it is a Sharī'ah real meaning.

The Existence of the Real Legal Meanings

The real legal meaning *(al-Ḥaqīqah al-Shar'iyyah)* is the expression that is set by the Sharī'ah for a meaning it denotes it without any indication. And they disputed about the existence of the real legal meaning and whether it falls

in the Sharī'ah expressions. Qāḍī Abū Bakr al-Bāqillani said that they don't exist and had the opinion that they are prevented. The Mu'tazilah said that the real legal meanings exist, and they proved their occurrence, also the Khawarij and the jurisprudents said that they exist. Qāḍī Abū Bakr proved the prevention of their occurrence by two evidences:

Firstly: If this is made by the Legislator, then it necessitates that He informs the nation about the transportation of those names (to the Sharī'ah meanings) by revelation *(al-tawqīf)*, otherwise He would be assigning them to understand the meaning He wants from those names and they can't understand it, and this is assigning with the unbearable. And it is inevitable that the informing revelation *(al-tawqīf)* should be *mutawātir*, because the *āḥād* is not a poof for this matter, and no *tawātur* exists for it, which proves that they don't exist in the Sharī'ah.

Secondly: These expressions are included in the Qur'ān, and if they denote other than their linguistic meanings; they would not be of the tongue of the people of the language, because being an Arabic expression is not for the expression itself or its figure, but for the denotation composed by the people of the language for it, otherwise all their expressions before their composition would be Arabic, and this is impossible, and it necessitates that the Qur'ān is not in Arabic, and this is contrary to His Ta'ala's saying:

{إِنَّا جَعَلْنَاهُ قُرْآنًا عَرَبِيًّا }

"We made it an Arabic Qur'ān ..."[128],

and His Ta'ala's saying:

{بِلِسَانٍ عَرَبِيٍّ مُبِينٍ}

"In a distinct Arabic tongue"[129],

and His Ta'ala's saying:

{وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إِلاَّ بِلِسَانِ قَوْمِهِ }

"We sent not a Messenger except (to teach) in the tongue (language) of his people ..."[130],

and that is impossible, and it is a proof that they don't exist.

Qāḍī Abū Bakr said: what came of Sharī'ah names like the *ṣalāh*, the *zakāh*, and the hajj, the legislator had not used them except in the linguistic real meanings, so the meaning of the commanded *ṣalāh* is the supplication, but the legislator provided other evidences that this supplication will not be accepted without some other conditions combined to it.

The Mu'tazilah proved the existence of the real legal meanings by two evidences:

Firstly: The legislator had innovated meanings were unknown to the Arabs, and it is inevitable to have names that denote those meanings, and it is impossible that they are set by the Arabs, because they didn't know them, so the

[128] Surah al-Zukhruf:3
[129] Surah al-Shu'arā':195
[130] Surah Ibrāhīm:4

composer of them is Allah Ta'ala, so therefore they are Sharī'ah and not linguistic, and this is a proof for the existence of the Sharī'ah real meanings.

Secondly: The word *Imān* is used in other than its linguistic meaning, since the *Imān* linguistically means the belief, and in the Sharī'ah it is used for other than the belief, and that is indicated from the saying of the Messenger ﷺ: " الإِيمَانُ بِضْعٌ وَ سَبْعُونَ شُعْبَةً, أَعْلاَهَا شَهَادَةُ أَنْ لاَ إِلَهَ إِلاَّ اللهُ, وَأَدْنَاهَا إِمَاطَةُ الأَذَى عَنِ الطَّرِيقِ" **"The īmaan is has (bidh' means three to nine) some and seventy branches, the highest of them is the testimony that no Ilaah except Allah, and the lowest of them is removing the harm out of the way"** narrated by Ibn Hibbān, so removing the harm is named *Imān* and it is not belief. And also the word *Dīn* in the Sharī'ah means performing the worships, establishing the prayer, and giving the *zakāh* for the saying of Allah Ta'ala:

{وَمَا أُمِرُوا إِلَّا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ وَذَلِكَ دِينُ الْقَيِّمَةِ}

"And they have been commanded no more than worshiping Allah, being sincere and devoted to His Dīn, to establish the Prayer; and to give the zakāh and that is the Religion right and Straight",

so the word *Dīn* refers to all that is mentioned. And the *Dīn* is the Islam for the saying of Allah Ta'ala:

{إِنَّ الدِّينَ عِنْدَ اللَّهِ الإِسْلاَمُ }

"Truly, the religion with Allah is Islam ...",

and the (adherence to) Islam is the *Imān*, so the word *Imān* in the Sharī'ah is performing the worships. And also Allah Ta'ala said:

{ وَمَا كَانَ اللَّهُ لِيُضِيعَ إِيمَانَكُمْ }

"...And Allah would never make your belief (prayer) to be lost ..."[131],

He meant the prayers offered towards Jerusalem, so He set expressions for meanings other than those which the people of the language composed for them. And there is no relevance between those meanings and the meanings composed by the Arabs, like using the word *Imān* for the prayer towards Jerusalem, so this is a proof that the Sharī'ah real meanings are used in the expressions of the Sharī'ah so they exist.

Imām Jamāl al-Dīn al-Isnawī said: The truth is: the Sharī'ah expressions have linguistic metaphors in their meanings and became famous in those meanings after the Sharī'ah had used them metaphorically for those meanings, for the support of the indications, then after they became famous; there are understood without indications, and their linguistic real meanings became abandoned in the Sharī'ah, and this is how they became Sharī'ah real meanings not that they are composed initially by the Sharī'ah.

Imām al-Haramayn (al-Juwainī) selected that the Sharī'ah expressions were not used for the linguistic meanings nor were they ignored during the usage (set up), but the Sharī'ah used them for these meanings for the relevance between them and the linguistic meanings. The *ṣalāh* as an

[131] Surah al-Baqarah:143

example, since it is linguistically composed for the supplication and the supplication is part of the Sharī'ah meaning, it got used metaphorically for the Sharī'ah meaning out of naming the thing by the name of its part, and accordingly it is not excluded from the language of the Arabs, because the language is divided into real and metaphor, which means that these expressions were used as linguistic metaphor then became famous then became Sharī'ah real meanings.

These two sayings of the Imām al-Isnawī and Imām al-Haramayn are of the saying of the Qāḍī Abū Bakr; they are not new sayings. There is dispute in the explanation of Qāḍī Abū Bakr's saying that the existence of the Sharī'ah real meanings is prevented, al-Ustadh Abū Ishaq al-Isfarayini said: It means that what the Sharī'ah used of names like the prayer and others for the Sharī'ah meanings are not excluded by that usage from the composition of the people of the language, but they are determined upon their linguistic realities. al-Maraaghy said: It means that their Sharī'ah meanings are their linguistic realities. And al-Khangi said: what the judge meant is that everything called Sharī'ah reality is linguistic metaphor. And the Jarirdy added to his saying: they did not reach the level of realities, i.e. they remained on their linguistic meanings, and the additional to them are not included in their meanings. So from all these explanations of the Qāḍī Abū Bakr's saying, and specifically from the explanation of al-Khangi, it is inferred that the sayings of al-Isnawī and Imām al-Haramain are not new but they are the saying of Qāḍī Abū Bakr.

The reality is that the Sharī'ah names exist in the Sharī'ah expressions as distinguished realities from the linguistic real

meanings. They are expressions composed by the Arabs, then the Sharī'ah transformed it to another meaning and it became famous in it, its transformation is not a kind of metaphor, but it is a kind of transforming to the conventional reality, because the Sharī'ah did not transform it to the second meaning for a relevance as it is a condition in the metaphor, in addition, it became famous in the second meaning, and the metaphor (in comparison) is an expression composed for a meaning then got transformed to another meaning for a relevance, and the second meaning does not prevail over the first meaning, therefore the transformation of the name to the Sharī'ah meaning that the Sharī'ah set for it is not a matter of metaphor by no means, but it is a matter of the Sharī'ah reality, and the proof for this is that the Sharī'ah transformed it to a meaning other than the meaning composed by the people of the language without observing any relevance between them, that means it transformed it whether it had or it did not have relevance with the first meaning. The *ṣalāh* (for example) is an expression the Arabs composed it for the supplication, and the Sharī'ah transformed it to another meaning which is the specific actions and sayings, and the name of the prayer could be used for the prayer in which there is no supplication like the prayer of the mute who doesn't understand the supplication in the prayer to perform it. And the *zakāh* is an expression composed by the Arabs for the growth and the increase, then the Sharī'ah transformed it to another meaning that is giving a specific money from a specific amount, and the name of the *zakāh* could be used for the money that decreases and does not increase, like paying the *zakāh* of the orphan's money in the situation of freezing it and not trading with it, which decreases it with no doubt. And the word hajj is an

expression composed by the Arabs for any objective, and the Sharī'ah transformed it to another meaning which is a specific objective to a specific place. And the word siyam is an expression composed by the Arabs for any abstention, then the Sharī'ah transformed it to another meaning which is the specific abstention (fasting). So the Sharī'ah transformed these names to different meanings other than what the Arabs composed for them, and although there is relevance between the meaning composed by the Arabs and the meaning set by the Sharī'ah; the Sharī'ah did not consider this relevance and did not transform for it, and the listener does not understand this relevance in the Sharī'ah meaning at all, in addition, sometimes it doesn't exist at all, and this indicates that it is not metaphoric transformation. There are Sharī'ah names were known by the Arabs, but they didn't know the meanings set by the legislator for them, like the expression al-Rahmān for Allah Ta'ala, the Arabs did not compose the expression al-Rahmān for Allah, therefore when the saying of Allah Ta'ala:

{قُلِ ادْعُوا اللَّهَ أَوِ ادْعُوا الرَّحْمَنَ }

"Say: Call upon Allah, or call upon al-Rahmān ..."[132],

when it came down they said: 'we don't know the Rahmān except the Rahmān of the Yamāmah' (a place in Najd near Yemen). So all these indicate that there are names composed by the Arabs for meanings, and Legislator transformed them to other meanings without the existence of the relevance, and without any observation of the relevance in the transformation. And there are names the

[132] Surah al-Isrā':110

Arabs never composed them for any meanings, but the Sharī'ah composed them for specific meanings, and there are names the Arabs never knew their meanings before, and shows that the Sharī'ah names exist in the expressions of the Sharī'ah, and that invalidates the saying of Abū Bakr al-Bāqillānī, and consequently the sayings of al-Isnawī and Imām al-Haramain. It is affirmed that the Legislator had informed the Ummah about the transformation of those names from their linguistic meanings to the new meanings set by the Sharī'ah for them, and that is by the clarification of the Messenger ﷺ of these meanings. Allah Ta'ala said:

{ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ }

"...and We have sent down unto you (O Muhammad) the dhikr (i.e. the Qur'ān) that you may explain clearly to mankind what is sent down to them ..."[133],

that means clarifying its meanings, and of that are the meanings of the Sharī'ah names, and the Messenger ﷺ said: "صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي" **"Do pray as you see me praying"** compiled by al-Bukhārī. So He assigned them with deeds and made them understand them and did not assign them with that which they don't understand, and this also invalidates the proof of Abū Bakr that the existence of the Sharī'ah names necessitates assigning the Arabs with what they don't understand, which is assigning them with what they are incapable to do. Truly the clarification of the Messenger ﷺ and his explanation of the meanings of the Sharī'ah names had made the Sharī'ah assignment within

[133] Surah al-Nahl:44

their ability of understanding, so the Sharī'ah names practically exist.

As for the saying: "The consideration of the existence of the Sharī'ah names in the Qur'ān necessitates that the Qur'ān is not Arabic, because being the expression Arabic is not for itself and its figure, but for its denotation over what the people of the language composed it for. And these Sharī'ah meanings are not composed by the Arabs in front of the expressions by which they are denoted, so they are not Arabic, which means the existence of non-Arabic expressions in the Qur'ān, so it is not Arabic". This saying is rejected, because the Arabs composed the Sharī'ah expressions not the Legislator, but the Arabs composed them to denote specific meanings, then the Sharī'ah came and used them for meanings other than the meanings composed by the Arabs, then the Arabs also used them for these Sharī'ah meanings, and this does not exclude them from being Arabic, but it makes them same like the conventional reality, one of the language divisions, that is the transformed, it is one of the expression's divisions with regard to the denotative and the denoted (al daall wa al madlool), i.e. the expression was composed for a meaning then got transformed to another meaning, and it became famous in the second meaning by the Arabs usage of that expression for the second meaning. And the Sharī'ah names are exactly like that, they are an expression composed by the Arabs, and the Sharī'ah used it for a meaning other than what it is composed for, and the Arabs used it for the Sharī'ah meaning as the Sharī'ah used it, and by that it became Arabic, and it is a Sharī'ah linguistic reality, exactly like the conventional linguistic reality, equally the same without any difference. The conventional reality is an

expression the Arabs used it for a meaning other than that for which it was composed, so by their usage it got transformed to another meaning and the first meaning became abandoned, like the expression (*dābbah*) (الدَابَّـة) and (*ghā'it*) (الغَـائِطْ). The Sharī'ah reality is an expression the Sharī'ah used it for a meaning other than the meaning it was composed for it, and the Arabs used it after the use of the Sharī'ah for the meaning that the Sharī'ah used it for it so it got transformed by the use of the Sharī'ah, then by the use of the Arabs for another meaning and the first meaning became abandoned, like the *ṣalāh* expression, and the expressions of the alphabetical letters, so the Arabs' usage of the expression in accordance with the usage of the Sharī'ah became like their usage of the expression that is originally composed by them. Both usages had transformed the expression from its composed meaning to another meaning, so both of them are Arabic, the first one is a conventional linguistic reality, and the second one is a Sharī'ah linguistic reality. And thereby all the Sharī'ah names are from the Arabic language, and there doesn't exist any Sharī'ah name at all that is not from the Arabic language. So the evidences the Judge brought forward to negate the existence of the Sharī'ah names are nullified, and the citation by them falls down. From all that it becomes clear that the Sharī'ah real meaning exists in the expressions of the Sharī'ah, and that all Sharī'ah names are from the Arabic language same like the linguistic names.

The Qur'ān is all Arabic and there is not even one non-Arabic word in it

The Qur'ān doesn't consist of any non Arabic word at all, but it is all Arabic, and there isn't even one non Arabic expression in it, and the evidence for this is the saying of Allah Ta'ala:

{إِنَّا جَعَلْنَاهُ قُرْآنًا عَرَبِيًّا }

"We made it an Arabic Qur'ān ..."[134],

and His Ta'ala's saying:

{بِلِسَانٍ عَرَبِيٍّ مُبِينٍ}

"In a distinct Arabic tongue"[135],

and His Ta'ala's saying:

{وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إِلاَّ بِلِسَانِ قَوْمِهِ }

"We sent not a Messenger except (to teach) in the tongue (language) of his people ..."[136],

so if the Qur'ān consists non Arabic; it would contradict these verses, because a portion of it would be Arabic and a portion non Arabic, so the Qur'ān would not be Arabic, and the Messenger would be sent with other than his people's language so long as he conveyed to them in other than their language, and both matters are impossible, so it is impossible that a non Arabic expression exists in the

[134] Surah al-Zukhruf:3
[135] Surah al-Shu'arā':195
[136] Surah Ibrāhīm:4

Qur'ān, and if one non Arabic expression exists in the Qur'ān; it would not be from the Qur'ān, because Allah Ta'ala described the Qur'ān that it is Arabic, and the word Qur'ān is used for the whole, for the Surah, and for the word. And if one part of it is not Arabic; it would not be from the Qur'ān, and that is invalid. So it is invalid that the Qur'ān consists of a non Arabic word. Also Allah Ta'ala says:

{وَلَوْ جَعَلْنَاهُ قُرْآنًا أَعْجَمِيًّا لَقَالُوا لَوْلا فُصِّلَتْ آيَاتُهُ ءَاَعْجَمِيٌّ وَعَرَبِيٌّ }

"And if we had sent it as a Qur'ān in a foreign language (other than Arabic); they would have said: why its verses are not explained in details (in our language)? What! A foreign and Arabic ..."[137],

so He negated that it is a foreign Qur'ān, and he negated that it is a foreign and Arabic in His saying:

{ ءَاَعْجَمِيٌّ وَعَرَبِيٌّ }

"...What! foreign and Arabic ..."

in a form of the condemnation interrogation (*al-istifhām al-inkāri* الاسْتِفْهَامُ الإنْكَارِي), so this is a proof that there is no foreign (other than Arabic) expression in it.

As for the inclusion of the Qur'ān of some expressions taken from other languages like the expression *al-mishkāt* (المِشْكَاة) which is Indian or Abyssinian and it means the niche, and *al-qisṭās* (القِسْطَاس) which is Roman and it means the scales, and *al-istabraq* (الإسْتَبْرَق) which is Persian and it means the thick brocade, and *sijjīl* (سِجِّيل) which is also

[137] Surah Fussilat:44

Persian and it means the clay stone, and the expression *Ṭaha* (طَـهَ) which is Nabati (the language of the Anbaat, Semitic people used to live in al-Batra' of Jordan), that does not make the Qur'ān include non-Arabic words, because these expressions are arabized (adapted to the Arabic pattern), so it includes arabized expressions not non Arabic expressions, and the arabized expression is Arabic same like the expression composed by the Arabs. And the pre-Islamic poem included arabized expressions before descending the Qur'ān, like the word *al-sajanjal* (السَّجَنْجَل) which means the mirror in the poem of Imru'u al-Qays, and other words used by many of the pre-Islam poets. And the Arabs used to consider the arabized expression as Arabic same like the expression they composed. The arabizing is not taking the word as it is from other languages and set it in the Arabic language, but it is by adapting the non Arabic expression to the Arabic pattern, so it becomes Arabic after it gets adapted to one of the Arabic language patterns. The Arabs used to get to the foreign expression and measure it on one of their patterns like: (أفعل, وفعل, وفاعل, وافتعل, وانفعل) (*Af'ala*, *fa'ala*, *faa'ala*, *ifta'ala*, *infa'ala*, and others), if it corresponds one of the patterns and its letters correspond the letters of the Arabic language; they take it, and if the foreign expression does not correspond any of the Arabic patterns; they reform it by adding a letter to it or by removing a letter or more from it, and reform it to one of the Arabic patterns, then they take it. And they do the same to its letters by removing the one which is not correspondent with the language of the Arabs and replacing it with one of the Arabic letters, until the expression is formed from Arabic letters, and then they take it. So arabizing is coining the foreign word newly by the patterns and the letters until it becomes Arabic expression in its pattern and its letters,

then it becomes arabized, and it becomes Arabic same like the expression composed by the Arabs, and accordingly the Qur'ān inclusion of arabized expressions does not mean that it includes non Arabic expressions, because the arabized is an Arabic and not foreign expression, it had been arabized by the Arabs who composed the Arabic language, and from this it becomes clear that the Qur'ān does not include any non-Arabic expression at all.

On the occasion of talking about the arabized expressions a question may come through that is: is the arabizing special for the genuine Arabs who composed the language and it is narrated from them, or is it allowed for every Arab in every era? The answer is that the scholars had disputed about this issue. Some of them said that it is special for the Arabs who composed the language because it is composition, so as they composed the so and so expression from themselves to denote the so and so meaning, likewise they coined the foreign expression by the patterns and letters of their language and composed it for the so and so meaning. Accordingly the arabizing is composition and it is special for the genuine Arabs and not allowed for other than them. And other Arabic scholars said that arabizing is allowed for every Arab in every era, provided that it is performed by a scholar in the Arabic language who is acquainted with its patterns and versed in its letters and has deep knowledge in language sciences, especially the grammar and morphology.

The truth is that the second saying is the correct. Arabizing is allowed for every Arab, it is conditional that he is scholar in the Arabic language. So every scholar in the Arabic language in every era, is allowed to arabize any non Arabic expressions to the Arabic language, and after he arabizes

them; they become Arabic same like the expression the Arabs composed, and whether this happened before the corruption of the language, i.e. before the fourth Hijrī century or after that, and whether it happens in this era or in the coming eras, because the arabizing is not an initial composition, but it is coining by specific pattern and specific letters. This is the reality of the arabizing, and there is big difference between it and the composition. Although the composition is special for the genuine Arabs only, and not allowed for the others, because it is origination from non existence of speeches, and an initial convention, so it is not allowed except for people of the convention, but the arabizing is not origination of that which doesn't exist, but it is diligence in something existent, and it is not an initial convention, but it is diligence in the existing convention. Indeed the Arabs had determined the patterns of the language and determined the Arabic letters and their number, and the arabizing is coining an expression with these letters to one of the Arabic letters. And this is undoubtedly diligence not composition, and therefore it is allowed for every scholar in the Arabic language. It is equal to the derivation. The derivation is coining from the infinitive (origin) a verb, an active noun, a passive noun or other than that by using Arabic letters the way the Arabs used them, whether what you coined is from that which the Arabs said or not, and likewise is the arabizing, you take a foreign expression and you coin it on one of the Arabs' patterns and by the Arabic letters and the use of the Arabs, and you bring out of it an Arabic expression as the derivation brought the active noun or the passive noun from the infinitive. There is no dispute that the derivation is allowed for every scholar in the Arabic language, because it is coining and not composition, therefore the arabizing is

not for the genuine Arabs, but it is generally allowed for every Arab with the condition that he is a scholar in the Arabic language, to be able to make the foreign expression an Arabic expression like the other expressions of the Arabs. However, it must be known that the arabizing is specifically for the names of things, and not general for every foreign expression. So the arabizing does not enter the expressions which denote meanings, nor does it enter the sentences that denote imagination (fantasy), but it is specifically for the names of things and it is not right in other things at all. The Arabs arabized only the names of things, and arabizing never happened in other things, because they set the derivation to obtain more meanings, and they set the metaphor for the imaginations and the assimilations, and they did not use the arabizing except for the names of things, and that includes the proper nouns like Ibrāhīm, and therefore arabizing is allowed only in the names of things and in the proper nouns. As for other than the names of things and the proper nouns; there is a wide field in the derivation and the metaphor to take from it. The derivation is a wide field to obtain the meanings and express them regardless their multitude and variety. The metaphor is also a fertile field to obtain the imagination and the assimilations and express them whatever they are.

Arabizing is a necessity for the life of the Ummah like the derivation and the metaphor, and one of the necessities of the life of the Arabic language and its continuity, but it is one of the necessities for the Islamic Sharī'ah, because the meanings and the things are renewing every day, and for the reason of the Muslims' conveyance of the Islamic da'wah to the world; it is inevitable that they mix with other nations. And for the reason of the Muslims' need to

the sciences, the discoveries, and the inventions; it is inevitable that they take them from the other nations. And for the reason of the Muslims' adherence to the Sharī'ah verdicts; it is inevitable that they know the verdict concerning every new thing, and every new incident that occurs, all of that seriously oblige them to arabize, to derive and to use the metaphor, and put them in front of it face to face, since it is inevitable for them to clarify the thoughts and the verdicts of Islam applied upon the incidents and the things which other nations have. And it is inevitable that the Muslims set names for the new sciences, discoveries, and inventions, and it is inevitable that they show the Sharī'ah verdict for everything recently develops, and every incident occurs, therefore it is incumbent upon them to find new expressions for the new things and meanings which did not exist before, it is unavoidable that they find these new names, otherwise they will stop carrying the da'wah, and they will stop proceeding with the life and its requirements, and they will stop the clarification of the Sharī'ah verdicts about incidents and thing that they must clarify the Sharī'ah verdict about them, and therefore arabizing is one of the necessities of the Ummah's life like the derivation and the metaphor, and a necessity for the Sharī'ah. Arabic language remains and survives by utilizing it, so if new necessary meanings for the life of the Ummah exist, and no expressions found in the Arabic language to express them; the Ummah will definitely turn away to another language to express its necessities with it, and that causes the language to stagnate, and become obsolete with the time. From here the arabizing is a necessity for the life and the remaining of the Arabic language like the derivation and the metaphor, and it is inevitable to arabize.

The Arabic language does not need that the meaning of a foreign expression is taken and expressing it by an Arabic expression which denotes a similar meaning to it, as the Muslims attempted to do, but the foreign expression itself should be taken and coined according to an Arabic pattern, with Arabic letters, and Arabic utilization, and set as an arabized expression. So what they did of the setting the words (قِطَار) (*qidtaar* for train), (عَرَبَة) (‘arabah for vehicle), (سَيَّارَة) (*saiyarah* for car), (هَاتِف) (*haatif* for telephone), and (مِقْوَد) (*miqwad* for steering wheel) and the similar, that is all wrong deed, and it shows an intellectual frigidity and an enormous ignorance, for these are things not meanings, nor are they imaginations or assimilations, so they should not set for them names for meanings similar to them, nor should they derive names for them, but their foreign names should be taken and coined according to one of the Arabs patterns, with Arabic letters, and according to the utilization of the Arabs, then it will be added as a new expression to the Arabic language, and it becomes an arabized expression, and it is equal to the expression composed by the Arabs. So the word (تَلَفُون) (telephone) should be taken as it is, because its pattern is like the Arabic pattern (فَعَلُول) (*fa’alūl*) and from that is (عَربون) (‘*arbūn*) and all its letters are Arabic. And the word (جِدُون) (*Gidon*) has an Arabic pattern like (فَعُول) (*fa’ūl*) and of that pattern is the word (جَهُول) (*jahūl*), but the letter G does not exist in the Arabic language, so it can be replaced with the letter (ج) or the letter (غ) so we say (غِدُون) or (جِدُون) and the expression becomes arabized. And thus are the other words, it is not right to set for them Arabic expressions which denote things similar to them, for this contradicts the Arabic language and its basis, because the Arabic language made the arabizing to set the names of things and the proper

nouns, and did not make the assimilations a tool for setting the names of things and the proper nouns. However these expressions which set as names for the new things like the words (قِطَار) (*qidtaar* for train), (عَرَبَة) (*'arabah* for vehicle), (سَيَّارَة) (*saiyarah* for car), and the likes are not considered to be from the expressions of the Arabic language at all, i.e. they are not linguistic real meanings, nor are they Sharī'ah real meanings, or conventional real meanings, so they are not Arabic at all, because the Arabic expression is the expression composed by the Arabs to denote a specific meaning, so if an expression composed by the Arabs is used for a meaning they did not compose it for it, and this usage is by the Arabs; it would be a Sharī'ah real meaning or a conventional real meaning, not a linguistic real meaning.

Verily for the linguistic real meaning, it is inevitable that the Arabs compose the expression for that denoted meaning. The expressions of the Arabic language are limited to these three: either linguistic real meaning, Sharī'ah real meaning or conventional real meaning. And setting the expression (القِطَار) (*al-qidtaar* for the train), (العَرَبَة) (*al-'arabah* for the vehicle) and (الهَاتِف) (*al-haatif* for the telephone) ... etc. they set them to denote something according to the composition of the language, and they meant them to be their linguistic real meanings. But the linguistic real meaning is the expression used for that which it was initially composed for it in the language, i.e. it is the expression the people of the language composed it opposite to a specific meaning to indicate it, and the expression (*al-qidtaar*) and the similar is not composed by the Arabs opposite to this meaning to indicate it, so it is not a linguistic real meaning, and since it is not a Sharī'ah real meaning, nor is it a conventional real meaning, so it is a

non Arabic expression. So the words: (القِطَار) (*al-qidtaar* for the train), (العَرَبَة) (*al-'arabah* for the vehicle) and (الهَاتِف) (*al-haatif* for the telephone) which were set lately as names for things are not Arabic expressions.

The Conventional Reality *(al-Ḥaqīqah al-'urfiyyah)*

The reality is defined that it is the expression used for that which it was composed for it in the addressing convention, and this definition includes the linguistic reality, the Sharī'ah reality, and the conventional reality. However, the specific definition of each one of them is that the linguistic reality is the expression used for what it is initially composed for in the language. And the Sharī'ah reality is the expression used for what it is initially set for it in the Sharī'ah terminology, i.e. it is the expression that is transferred from its linguistic meaning to another meaning for the use of the Sharī'ah in the meaning it is transferred to it. And the conventional reality is the expression conventionally used it the language, i.e. it is the expression transferred from its linguistic meaning to another meaning for the general use in the language so that the first meaning is obsolete, and it is of two divisions:

The first: The name was composed for a general meaning, and then it was conventionally specified by the use of the people of the language to some of its named things, like the specification of the expression (الدَّابَّة) (*al-daabbah*) to the quadrupeds conventionally, although it was originally in the language for everything that crawls on the earth, and it includes the human and the animal, but its general use in the language specified it to the quadrupeds and abandoned

the first meaning, so it became a linguistic conventional reality in the meaning it is transferred to it.

The second: the name was originally composed in the language for a meaning, than by the convention of the use of the people of the language; it became famous in a meaning irrelevant to the linguistic composition, so that when the expression is used nothing can be understood from it except the new famous meaning, like the name (الغائِط) (*al-ghaa'idt*), although in the origin of the language it means the peaceful place of the earth; it became famous in their convention by the impure that comes out of the human, so that when the expression is used nothing can be understood except that meaning, so the general use of the people o the language transferred it from the meaning of the low place to the impure that comes out of the human, and the first meaning became abandoned, so this word became a conventional linguistic reality for the meaning it is transferred to it.

It must be known that what is meant by the conventional reality in these two divisions is the linguistic reality, i.e. that which the experts (people) in the language used it as convention, not what the common people agreed on without the experts in the language. So the reality according to the experts is of two divisions: one of them is the composition reality, and the other one is the experts' conventional reality. So the expression that the Arabs composed to indicate a specific meaning is the linguistic reality, i.e. real meaning by composition, like (الأَسَد) *al-Asad* for the predator animal. And what became famous conventionally by the Arabs' usage in a meaning other than the composed meaning for it, so that the first meaning becomes abandoned, that is the conventional reality if they

initiated the usage, not as following the Sharī'ah, and both of them are from the experts in the language, i.e. the Arabs. So the linguistic reality is composed by the Arabs, so it is a reality by the composition, and the conventional reality is used by the Arabs, i.e. they agreed on using it as convention, so it is a reality by the convention.

As for the conventions that every group of scholars have for their specialty, like the convention of the grammarians about (الرَّفَع) (*al-raf'*) the nominative case (when the noun is the subject and when the verb is in the present or future tense etc.), (النَّصْب) (*al-nasb*) the accusative case (when the noun is the object and when the verb is in the past tense etc.), and (الجَرُّ) (*al-jar*) the jenitive (when the noun is preceded by a preposition etc.), they are special conventional realities, that is other than the linguistic conventional reality, because the linguistic conventional reality is from the Arabs themselves, they had conventionally agreed on it by using it. As for the special conventional realities, they are not from the Arabs, but the scholars of every science had agreed on them to indicate specific meanings, so they are not from the composition of the Arabs, nor are they from their usage, but they are special convention, therefore they are called special customary, and that includes all terminologies in the special knowledge, whether they were taken as convention on the days of the genuine Arabs, or by the scholars of the language, like the grammar, the morphology, the philology, and the similar, or they were taken as convention by the scholars who came after them, or those who will come in the future up until the resurrection hour like the engineering, the chemistry, the medicine, and the likes, so everything made up by the scholars of any science

or technique as convention is a special conventional reality, and it is from the Arabic language equally like the general conventional reality, because the general convention is used by the Arabs in other than what they composed it for, and it became famous in it, so it is Arabic because the Arabs used it, so it is like their own composition, and so is the special conventional reality, its convention is made by the Arab scholars, and in their hearing, and they approved it and considered it from the language, they even used it in the made up meanings of it like they used the conventional reality, so they generally used the expression in a meaning other than that which it was composed for it, so it became Arabic like the expressions they composed, and thus they used the expression in the grammar a specific use in a specific science for other than what it was composed for, and therefore it became Arabic like that which they generally used and like that which they compose. What applies to the sciences they composed and the sciences they approved their utilization; does apply to every kind of sciences. And lets not say this is an analogy because it is not so, but it is the applicability of the expression to comes under it. Verily the Arabs named after the (فَرَس) horse and the (إنْسَان) human that which exist at their time, and thus they described (الفاعِل) (*al-faa'il*) the subject that it is (رَفْع) (*marfū'*) a noun in the nominative form, and they describe the (مَفْعُول) (*al-maf'ūl*) object that it is (نَصْب) (*mansūb*) a noun in the accusative form. Verily they described the two kinds of *faa'il* and the two kinds of *maf'oul*, and in spite of this the name in our time is steady for every human and horse and *faa'il* and *maf'ūl*. And thus the Arab scholars made up conventions for the sciences of their time, and they did not make them up for a specific science, but for the sciences of their time, so the convention is steady in

every science of the sciences for the scholars that science. And it is considered to be Arabic so long as it is formed on an Arabic pattern, with Arabic letters and style, hence the specific conventional reality is Arabic equally like the general conventional reality.

The Transferred Expressions *(al-Alfāẓ al-Manqūlah)*

The transferred expressions are the conventional reality and the Sharī'ah reality; every one of them is transferred by the use from its composed meaning to another meaning that is the meaning for which it is used, so it became a reality in it. These transferred expressions have three discussions:

First discussion: The transference is contrary to the original status, that means if the expression has the possibility of being or not being transferred form the linguistic reality to the Sharī'ah or the conventional reality; the originality is the non transference because of two reasons: one of them is that originally what exists remains at its status, and in the transference there is a transfer of status, so the transference is contrary to the original status. The second is that the transference depends on the first composition, i.e. the linguistic composition and the abrogation of it, then on the second setting, but the linguistic composition is made by one thing that is the first composition, and what depends on three matters is outweighed in comparison with that which depends on one matter, because the ways of its nonexistence are more, i.e. what depends on one matter to prove it, that is the linguistic origin, outweighs that which depends on three matters to prove it, accordingly if the

expression has the possibility of being transferred or not; the originality is the non transference.

Second discussion: The transference of the Sharī'ah names does exist, but no transference exists for particles. And as for the verbs; their transference exists by following not as original transference. The transference of the names exists in their divisions: the dissimilar (المُتَبَايِنَـة), the connivers (المُتَوَاطِئَـة), the commons (المُشْتَرَكَة), the synonyms (المُتَرَادِفَـة), and the uncertain (المُشَكَّكَة), same like they are in the linguistic composition. As in the dissimilar, they do exist like the *ṣalāh* (الصَّلاة) and the sawm (الصَّوْم), and as in the connivers (المُتَوَاطِئَـة), it is like the hajj, it is called for the *ifraad* (الإفْرَاد) (the performance of hajj only), for the *tamattu'* (التَّمَتُّع) (the performance of the umrah and the hajj separately by releasing the ihram between them), and for the qiraan (القِرَان) (the performance of the hajj and the umrah joined with one *ihraam*), and these three have the same essence of the hajj which is the *ihraam*, the standing in Arafaat, the tawaaf around the Ka'bah, and the sa'ei between the Safa and Marwa. And as in the commons, it is like the *ṣalāh* which is called for the *ṣalāh* that includes the pillars like the *ẓuhr* prayer, and for the prayer that does not include the *ruku'* and *sujūd* like the funeral prayer, and similar to that is the *ṭuhūr* (الطُّهُور) the purification, it is called for the true purification (ablution) with water, and for the true purification (*tayammum*) with soil, and for the true purification the tanning of the animal skin. And as in the synonyms, it is like *farḍ* and the *wājib*, they are synonyms, and the *ḥarām* and the *mahdthūr*, they are synonyms. This proves that the Sharī'ah names really exist, and the divisions of the linguistic names are also current in the Sharī'ah names. The Mu'tazilah said: the Sharī'ah

realities are divided into verbal nouns like al sawm and al *ṣalāh*, and into the names of the subjects derived from those verbs like the active participle, passive participle, the adjective, and the superlative adjective (صِيغَةُ المُبَالَغَة), like our saying: Zaid is *mu'min* or *faasiq* or *mahjūj* on his behalf (the hajj was performed on his behalf) or afsaq (more fasiq) than Amro. As for the particles, the Sharī'ah particles do not exist at all, because they do not benefit (give meanings) alone, and because the meanings that every particle is composed to denote in conjunction with other words like the particle (ب) baa' for the attachment, and the particle (ل) laam for the specification and the likes, there is no transference for their meanings in the Sharī'ah use, therefore Sharī'ah particles do not exist. And as for the verb, the transferred did not exist by originality; it existed by following the transferred Sharī'ah name like the verb *salla al-ẓuhr* (صَلَّى الظُّهْرَ) he prayed the *ẓuhr* prayer, the verb is a derivation from the infinitive plus the tense, so if the infinitive is Sharī'ah; it is impossible for the verb not to be Sharī'ah, and if infinitive is linguistic; likewise is the verb.

Third discussion: The agreements' tenses (صِيَغُ العُقُود) like (بِعْتُ) I sold, and also the annulments (الفُسُوخ) like (فَسَخْتُ) I had annulled, (أَعْتَقْتُ) I had freed (the slave), (طَلَّقْتُ) I had divorced, and their similar are linguistically for reporting, i.e. they are in the origin of the language for reporting not for the composition, whereas in the Sharī'ah they can be used for reporting and composition, but if they are used in the Sharī'ah to establish a verdict; then they are transferred for the composition not for reporting, and the difference between the composition and the reporting is that the composition does not have the possibility to be believable or unbelievable, it is in contrast with the report. And the

composition's meaning is always in conjunction with the expression, in contrast with the report that may precede or delay. And the proof that these tenses are for the composition is that if they are reporting about the past or the present; it necessitates that the divorce does not accept the dependency (to be conditional), because the dependency means that the occurrence of something depends on something else, and the past and the present exist so it does not accept it, and it is not like that, and if it is a report about the future it occurs, because according to this saying I divorce you has the same intensity as saying I will divorce you and the divorce does not occur by it. And also if these tenses were reports, then they are either false or true. If they are false, then there is no consideration based on them. And if they are true and their truthfulness occurred by these same (linguistic) tenses; this necessitates the turn around and around, so the occurrence of the truth will depend on the occurrence of the tense, and the occurrence of the tense will depend on the occurrence of the truth, because being the report (for example) (طَلَّقْتُكِ) I had divorced you true depends on the occurrence of the reported matter, that is the occurrence of the divorce, then if the reported matter, i.e. if the occurrence of the divorce depends on the report (I had divorced you) the turn around will be necessitated and this is false, so their truthfulness by the (linguistic) tenses is false. And if the truth occurs by other than these tenses; it is unanimously false; for the agreement upon the non occurrence (of the divorce) at the (absence) non occurrence of this tense.

The Conflict between what Disturbs the Understanding

The disturbance in understanding what the speaker wants occurs by five possibilities which are: the polysemy (الإِشْتِرَاكُ), the transference (النَّقْلُ, the metaphor (المَجَازُ), the ellipsis (الإِضْمَارُ), the specification (التَّخْصِيصُ), because if the possibility of the polysemy and the transference is banished, then the expression is composed for one meaning, and if the possibility of metaphor and the ellipsis, i.e. the estimation is banished, then what is meant by the expression is what it is composed for it, and if the possibility of the specification is banished, then what is meant by the expression is all those for which it was composed, then there will not be any disturbance in the understanding, then the wanted meaning of the auditory (*sam'i*) evidence will be understood, this is with regard to the most probability (غَلَبَةُ الظَّنِّ) because it is sufficient in extracting the Sharī'ah verdict, that means if these five possibilities are banished; nothing remains to disturb the most probable understanding, then the Sharī'ah verdict will be understood, As for the non disturbance in the certainty which is inevitable for the believes; the banishment of these five possibilities only is not enough, i.e. it is not enough to infer from the auditory evidence on the belief, i.e. to benefit the certainty, but it is inevitable have other things with them, since the auditory evidences do not benefit the certainty except by ten conditions, they are the banishment of these five, plus the banishment of the abrogation, the precede and delay, the change of the syntax and the conjugation, and the rational contradiction, so if these ten are banished and in addition to that, its authenticity must

be certain (decisive), then the auditory evidence benefits the certainty and the belief can be inferred from it, and by greater reason the Sharī'ah verdict, then its denotation will be certain.

The conflict between the five possibilities (the polysemy, the transference, the metaphor, the ellipsis, and the specification) happens in ten ways, and to govern that we take every one of them with what come after it, the polysemy conflicts the remained four: the transference, the metaphor, the ellipsis, and the specification. The transference conflicts the remained three: the metaphor, the ellipsis, and the specification. The metaphor conflicts the ellipsis and the specification. And the ellipsis conflicts the specification. So these are ten ways. And if you want to know the first of these five at the conflict that is every one of them is inferior to all what come after it, and superior to what is before it, except the ellipsis and the metaphor they are equal to each other, and the details of that is in the following:

The first: the transference is worthier than the polysemy, because the transferred noun has one meaning in either of its two situations, i.e. before and after the transference. As for before the transference; its denotation that it is transferred from it is the linguistic meaning, and as for after the transference; the meaning that it is transferred to is the Sharī'ah or the conventional meaning, and if its denotation has one meaning, then its utilization is not banned, in contrast with the common that its denotation is numerous at the same time so it should not be carried out without an indication, like the expression *al-zakāh*, it has the possibility of being common between the increase of the wealth, and the paid amount of the *nisāb*. Or it has the possibility of

being composed for the increase of the wealth only, then it got transferred by the Sharī'ah to the paid amount, then the transference is worthier for the previously mentioned reason.

The second: the metaphor is worthier than the polysemy for two reasons: one of them is: the study shows that there is more metaphor than polysemy in the language, which made Ibn Jinni exaggerate saying: most of the languages are metaphor, and the multitude benefit the most probability with doubt. The second of them is: it has continuous utilization of the expression, because if it accompanied by an indication to determine that it is a metaphor; we utilize as a metaphor, otherwise we utilize it as a reality, in contrast with the common expression, it is inevitable to have an indication for utilizing it, for example al nikaah is possible to be common between the marriage contract and the intercourse, or it is a reality in one of them and a metaphor in the other, then the metaphor is worthier for the previously mentioned reason.

The third: the ellipsis is worthier than the polysemy, because it does not need an indication except in one figure, that is when it is impossible to carry out the expression by its literal meaning, then it is inevitable to have an indication to determine the meaning, but if it is carried out by its literal meaning it does not need an indication, in contrast with the common which is needy to an indication in all its figures. An example for it is the saying of Allah Ta'ala:

{وَاسْأَلِ الْقَرْيَةَ}

"And ask at the town where we have been..."[138],

it is possible that the expression *al-qaryah* (the town) is common between the people and the buildings, or that it is a reality in the buildings only but He hid the people, so the ellipsis is worthier for the previously mentioned reason.

The fourth: the specification is worthier than the polysemy, because the specification is better than the metaphor, and the metaphor is better than the polysemy, so the specification is better than the polysemy with greater reason, in addition to that the better than the better is better, an example for that is the saying of Allah Ta'ala:

{وَلَا تَنكِحُوا مَا نَكَحَ آبَاؤُكُمْ}

"And do not (do nikaah) marry women whom your fathers married..."[139],

it is possible that the expression *al-nikaah* is common between the marriage contract and the intercourse, or that it is a reality in the contract as in His Ta'ala's saying:

{وَأَنكِحُوا الْأَيَامَى مِنكُمْ}

"And marry those among you who are single (allow them to do nikaah)..."[140],

but if it is considered to be the contract; it includes the corrupted and the valid contracts, so specifying it to the correct contract is worthier than making it including the contract and the intercourse, so it is carried out to be a

[138] Surah Yūsuf:82
[139] Surah al-Nisā':22
[140] Surah al-Nūr:32

specification, because it is worthier than the polysemy for the previously mentioned reason. And accordingly the *Āyah* does not benefit the forbiddance of marrying a woman with whom the father committed fornication.

The fifth: the metaphor is worthier than the transference, because the transference necessitates the abrogation of the first meaning, in contrast with the metaphor, an example for that is the saying of Allah Ta'ala:

{إِنَّمَا الْمُشْرِكُونَ نَجَسٌ}

"...truly the Pagans are impurity..."[141],

it is possible that the expression *najas* is a metaphor, i.e. a moral impurity means like the impurity, and it is possible that it is transferred to the Sharī'ah reality, that is the Sharī'ah impurity, and carrying it out on the moral impurity is worthier than carrying it out on the Sharī'ah impurity, because the metaphor is worthier than the transference. The expression *al-ṣalāh* in the saying of Allah Ta'ala:

{وَأَقِيمُوا الصَّلاَةَ }

"And establish the prayer (al ṣalāh)..."[142],

is not of this kind, for there is no metaphor here, because the metaphor is using the expression for other than what it was composed for, for an indication that prevents the advent of the original meaning, and using the expression al *ṣalāh* for the specific sayings and actions is not for an

[141] Surah al-Tawbah:28
[142] Surah al-Baqarah:43

indication that prevents the original meaning, but it is because the Sharī'ah used it for other than the meaning that it was composed for it, without noticing the indication, then for the Arabs' use of it for this meaning, and according to this use it was transferred to the second meaning, like the expressions al-daabbah (الدَّابَّة) and al-ghaa'idt (الغَائِط) were transferred, for the Arabs' use of it, so it is a Sharī'ah reality same like the conventional reality, therefore it is not a good example here because the metaphor is worthier than the transference.

The sixth: the ellipsis is worthier than the transference, because the ellipsis and the metaphor are equals, and the metaphor is better than the transference as previously mentioned, so the ellipsis is better than the transference, since the equal to the better is better, an example for that is the saying of Allah Ta'ala:

{وَحَرَّمَ الرِّبَا}

"*...and forbidden usury (al riba)...*"[143],

it is possible that what is meant by the expression *al-riba* (الرِّبا) is the contract, i.e. He forbade the *riba* contract, so it has the possibility of the ellipsis, that is concealing something, i.e. He forbade the *riba* contract and not the *riba*, and it is possible that what is meant by it is the increase itself transferred to its Sharī'ah meaning, i.e. He forbade the *riba* means the increase. If it has the ellipsis possibility; the forbiddance would be set up for the contract so it is invalid. And if it has the possibility of the transference; the forbiddance would be set up for one of the

[143] Surah al-Baqarah:275

conditions of the contract, so the contract will be corrupted, i.e. its basis is valid, and so if the increase got returned the contract becomes valid. And carrying it out on the contract is worthier than on the increase, i.e. carrying the forbiddance on the ellipsis is worthier than carrying it on the transference, so what is forbidden is the contract itself , whether the two parties agreed to drop off the increase or not.

The seventh: the specification is worthier than the transference, because the specification is better than the metaphor, and the metaphor is better than the transference, so the specification is better than the transference, since the better than the better is better, an example for this is the saying of Allah Ta'ala:

{وَأَحَلَّ اللَّهُ الْبَيْعَ}

"...Allah has permitted trade (al-bay')..."[144],

so it is possible that what is meant by the expression *al-bay'* (البَيْع) (the sale) is the linguistic sale, that is exchanging commodity by commodity unrestrictedly, so it is from the general expressions specified by a Sharī'ah text, and it is possible that what is meant by it is Sharī'ah *bay'* (sale) that gathers its Sharī'ah conditions, so the expression *al-bay'* is transferred to its Sharī'ah meaning, i.e. the *Āyah* has the possibility that the *bay'* is the linguistic sale that Allah Ta'ala made it lawful got specified by other texts so they have the possibility of specifying, or it is the Sharī'ah *bay'* that gathers all its conditions, and carrying it on the linguistic *bay'* that is specified by other texts is worthier

[144] Surah al-Baqarah:275

than carrying it on the transference of the linguistic *bay'* to the Sharī'ah *bay'*, because the specification is worthier than the transference.

The eighth: the ellipsis is equal to the metaphor, none of them outweighs the other without an indication, for their equality in the need to it and for the possibility of its disappearance, that is because every one of them needs the indication that prevents the addressee (listener) from understanding the substantive (literal meaning). And as the disappearance possibly happens in determining the implied (pronoun); it possibly happens in determining the metaphor so they equal each other, for example a man says about other than his son: this is my son, it is possibly a metaphor, meaning that he is honored and loved to me, and it is possibly the ellipsis, i.e. supposing the simile particle (kaaf ك), meaning this is like my son, so both possibilities are equals, and none of them outweighs the other without an indication.

The ninth: the specification is worthier than the metaphor, because the remainder can be determined and known after the specification, because the general indicates all its individuals, then if some got excluded by the specification; its indication remains over the remainder without scrutinizing to determine them. As for the metaphor, it could be determined or not, because the expression was composed to indicate the real meaning, so if the real meaning gets banished by an indication; that necessitates directing the expression to the metaphor, to a kind of scrutiny and inference for the possibility of metaphors multitude, hence its determination is not determined, in contrast with the specification that its determination is ascertained. And that which its determination is ascertained

is worthier than the uncertain, so the specification is worthier than the metaphor, its example is the saying of Allah Ta'ala:

{وَلَا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ }

"And eat not of (meats) that which Allah's name has not been mentioned on it ..."[145],

it is possible that the expression "that which the name of Allah is not mentioned on it" indicates the generality, i.e. what the name of other than Allah is mentioned on it, and that which the name of Allah is not mentioned on it at all, and it is specified by other texts that it is what the name of other than Allah is mentioned on it. And it is possible that the meaning of it is what the name of other than Allah as a metaphor, i.e. it has the possibility of the specification and the metaphor, and carrying it out on the specification is worthier, i.e. it is specified by other texts to that which other than the name of Allah is mentioned on it.

The tenth: the specification is worthier than the ellipsis, because the specification is worthier than the metaphor, and the metaphor and the ellipsis are equals, so the specification is worthier than the ellipsis, an example for it is the saying of Allah Ta'ala:

{وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ }

"And there is (saving of) Life for you in al-Qiṣāṣ (the Law of Equality in punishment), O you men of understanding ..."[146],

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[145] Surah al-An'ām:121

[146] Surah al-Baqarah:179

it is possible that the meant by the expression {لَكُمْ} is the generality, i.e. in the punishment there is life for all people, and it is specified for survival of the killed one, because there is life for him in restraining the killer from killing him, i.e. killing the killer restrains him from the killing, so it keeps him away from killing a person, then there will be life for the one who was going to be killed. And it is possible that it is an ellipsis, i.e. the legitimacy of the punishment is life, because it necessitates the remaining of two lives by discouraging the killer from killing as a precaution to avoid the punishment. Carrying it out on the specification is worthier, i.e. there is life for you in the punishment which is killing the killer, because people will be secured from his evil, so that who was going to be killed survives, it is worthier than carrying it on the ellipsis (hiding something), i.e. the supposition of a Sharī'ah word, i.e. it is worthier than carrying it out on the supposition of the punishment legitimacy. Or that the expression life is possible to be the real life for all people, and it is specified by other than the murderer, because there is no life for him but he will be killed. And it has the possibility of supposing something, i.e. you have life in the legitimacy of the punishment, because if the person knows that he will be punished; he refrains from committing the killing. So the specification, i.e. the meant is the life of other than the killer outweighs that the meant is the absolute restraining, i.e. the ellipsis, because the specification is worthier than the ellipsis.

The Verb (*al-Fi'l*)

After discussing the noun it is inevitable to discuss the verb and the particle. The verb is what indicates an action coupled with an occurrence time. The action is the infinitive and it is the verbal noun. And the occurrence time is the past, the present, and the future. The past of it is like (قَامَ) stood up and (قَعَدَ) sat down, the present and the future is like (يَقُومُ) standing up and (يَقْعُدُ) sitting down, and the future is like (سَوْفَ يَقُومُ) will stand up. The expression of the present and the future is one and it is called the (mudhaari') (مُضَارِع) present and the future tense, and it is what takes in the beginning of it the particle (hamzah ء or taa' ت or noon ن or yaa' ي). The exclusion of the future tense from the present tense is by adding the particle (sine س or sawfa سَوفَ) like your saying: (سَيَقُومُ) or (سَوْفَ يَقُومُ) will stand up, and as for the imperative (الأَمْر) it is what the mudhaari' particle is removed from it.

The Particle *(al-ḥarf)*

The particle is what denotes a meaning in other than itself, so it does denote a meaning if it is coupled with other things, but if it is not coupled with other things then it has no meaning. So the particle does not give its meaning independently, because the composed meaning for it cannot be understood except by considering another expression which denotes a meaning that is the relevance of the particle's meaning. And it is inevitable to explain the particles that are strongly needed to be known in the *fiqh*,

for their existence in its evidences, and some of its categories are in the followings:

The first: The supplementary particles and they are what conduces the meanings of verbs into nouns, and some of them can only be particles, and some can be particles and nouns, and some can be particles and verbs, as for those which are particles only, they are: (مِن) from/of, (إلى) to, (حَتَّى) till/until/even, (في) in, (الباء) by/with/in, (الأَم) for, (رُبَّ) many/may, the (واو القَسَم), and (تاء القَسَم) for the oath , and their meanings are in the following:

(مِن): it is for the beginning of the aim like your saying: (سِرتُ مِن بَغداد) I moved from Baghdad, and it is for the division like your saying: (أكلت مِن الخُبزِ) I ate from the bread, and it is for the clarification of the kind like your saying: (خَاتَمٌ مِن حَديد) an iron ring, and it could be additional like your saying: (ما جاءَني مِن أحَد) no one came to me.

(إلى): it is for the end of the aim like your saying: (سِرتُ إلى بَغداد) I walked to Baghdad, and it has the meaning of with like Allah Ta'ala's saying:

{ وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ }

"...and devour not their substance (by mixing it up) with your own ..."[147]

(حتَّى): it is for the end of the aim and it also has the meaning of with like (إلى).

(في): it is for the adverb like your saying: (زَيدٌ في الدَّارِ) Zaid is at home, and it could come in the meaning of on like His Ta'ala's saying:

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[147] Surah al-Nisā':2

{ وَلَأُصَلِّبَنَّكُمْ فِى جُذُوعِ النَّخْلِ }

"...and I will crucify you on trunks of palm-trees ..."[148],

and it can be used for overlooking like in their saying: (نَظَرتُ في العِلمِ الفُلاني) I have pondered in that knowledge.

(بِـ): it is for the attachment (of a quality to something) like your saying: (بِهِ داء) he has a disease, and it can be used to state the use of something like your saying: (كَتَبتُ بِالقَلَمِ) I wrote with the pen, and it can be used to state an accompaniment like your saying: (اشْتَرَيْتُ الفَرَسَ بِسَرْجِهِ) I have bought the horse with its packsaddle, and it can come in a meaning of over like the saying of Allah Ta'ala:

{وَمِنْ أَهْلِ الْكِتَابِ مَنْ إِنْ تَأْمَنْهُ بِقِنْطَارٍ يُؤَدِّهِ إِلَيْكَ وَمِنْهُمْ مَنْ إِنْ تَأْمَنْهُ بِدِينَارٍ لَا يُؤَدِّهِ إِلَيْكَ }

"Among the People of the Book are some who, if entrusted on a hoard of gold, will (readily) pay it back; others, who, if entrusted on a Dīnār, will not repay it to you ..."[149],

it means on a hoard and on a dīnār, and it means because of like in the saying of Allah Ta'ala:

{ وَلَمْ أَكُنْ بِدُعَائِكَ رَبِّ شَقِيًّا }

"...and I am never unblest, O my Lord, in my invocation to you ..."[150],

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[148] Surah Ṭāha:71
[149] Surah Āli Imrān:75
[150] Surah Mariam:4

it means because of my invocation to you, and it is said that it means in the invocation to you, and it could be additional like His Ta'ala's saying:

{وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ }

"And spend in the cause of Allah, and make not your own hands contribute to (your) destruction ..."[151]

The particle (بـِ) can be indistinct with the particle (في) in what it joins, since the particle (بـِ) can be used having the meaning of the particle (فِي) like the saying of Allah Ta'ala:

{ بِدُعَايِكَ }

"... in my invocation to you ..."[152],

and meaning can have the possibility of being (بـِ) and (في) like in your saying: (أُلَخِّصُ لَكَ قَولي بِما يَلي) I summarize my saying to you by the following, it is correct to say: (فيما يَلي) in the following, that is like your saying: (نَظَرتُ في العِلمِ) I had contemplated in the science, so the summarize is occurring over the meanings, and it is correct to say: (بِما يَلي) by the following, i.e. by means of the meanings. The removal of the possible confusion in the use of the particle (في) and the particle (بـِ), is that what ever is of the kind of the moral adverb, the particle (في) can be used in it like the in sensational adverb, and what ever is unable to be of the moral adverb like the "stick" in your saying: (ضَرَبتُ بِالعصَا) I hit with the stick, only the particle (بـِ) is can be used, since the particle (في) never came for the (sababyah) causality, and the particle (بـِ) makes the intransitive verb (الفِعلُ

[151] Surah al-Baqarah.:195
[152] Surah Mariam:4

(اللازمُ(the verb which is limited to its subject and doesn't have any objects) transitive, and it makes the transitive verb (الفِعلُ المُتَعَدِّي) (the verb that does have one object or more) parted and divided.

(اللام): is for the specialty like your saying: (المالُ لِزَيْدٍ) the money is for Zaid, and it can be additional like in His Ta'ala's saying:

{ رَدِفَ لَكُمْ }

"... close to you ..."[153]

(رُبَّ) it means: perhaps, it is for lessening, and it only comes to an indefinite noun like in your saying: (رُبَّ رَجُلٌ عالِم) perhaps there is a knowledgeable man.

(واو القَسَم) (the waaw of the oath): it replaces the attachment (بـِ) in your oath: (أُقْسَمْتُ بِاللهِ) I swear by Allah. And the particle (تاء القَسَم) (taa' of the oath) replaces the waaw in your saying: (تَاللهِ) by Allah.

As for the supplementary particles which are particles and nouns, they are: (على), (عَن), (الكَاف/كَ), (مُذ) and (مُنْذُ). And their meanings are the following:

(عَلَى) it means: on/ upon/ over/ above/ on top of, it is for the superiority, and it is either a particle like your saying: (عَلَى زَيْدٍ دَيْنٌ) (there is debt on Zaid) Zaid is in debt, or a noun like the poet's saying:

(غَدَتْ مِن عَلَيْهِ بَعدَمَا تَمَّ ظِمْؤُها تَصِلُّ وعَن قَيْضٍ بِزَيْزَاءَ مِجْهَلُ) this line of poetry describes a mother bird (sand grouse) and her nestling baby, it says: (She left early morning from over it

[153] Surah al-Naml:72

after her thirst became severe so that her interior clatters, and off egg shells in a harsh deserted land) so the particle (عَلى) is a noun here because the preposition (مِن) came before it.

(عَن): from/ off/ away from/ towards, it is for the separation, and it is either a particle like His Ta'ala's saying:

{ فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ }

"... then let those who act different from the Messenger's order ..."[154]

or a noun like your saying: (جَلَسْتُ مِن عَن يَمِينِهِ) I sat towards his right, so the particle (عَن) is a noun here because the preposition (مِن) came before it.

(الكاف/كَ): as/ like/ such as/ the same as/ similar to, it is a simile particle like your saying: (فُلانٌ كَالبَدرِ) so and so is like the moon, and it could be a noun like their saying: (يَضحَكْنَ عَن كَالبَرَدِ) they (females) laugh showing hail like teeths.

(مُذْ and مُنْذُ): since/ for/ in/ ago/ from then, they are for the beginning of the aim in time, we say: (مَا رَأَيْتُهُ مُذْ اليَوْمِ) and (مُنْذُ يَوْمِ الجُمُعَةِ)I have not seen him since today and since Friday, and they are nouns if they are followed by (*marfou'*) nominative.

As for the supplementary particles which are particles and verbs, they are: (حَاشَا) (*hasha*) except/ with the exception of/ with the exclusion of/ far from/ save/ but, (خَلاَ) (*khala*) except/ save/ but/ without/ apart from, (عَدَا) (*'ada*) except/ but/ without/ excluding, they make the noun genitive (مَجرور) (*majrour*) if they are particles, and they make the

[154] Surah al-Nūr:63

noun in the accusative form (مَنصوب) (*mansoub*) if they are verbs, and they mean the exception.

The second category of particles is the particles similar to verbs and they are: (إِنَّ) (inna) it means: verily/ truly/ indeed, (أَنَّ) (anna) it means: that, (لكِنَّ) (lakinna) it means: but/ however/ yet/ on the other hand/ nevertheless/ still, (كَأَنَّ) (ka'anna) it means: as if/ as though/ like, (لَيْتَ) (laita) it means: would that/ if only/ I wish, and (لَعَلَّ) (la'alla) it means: perhaps/ may be. They make the (مُبْتَدَأ) subject in the nominal sentence in the accusative form, and (الخَبَر) the predicate in the (مَرفُوع) nominative form. (إِنَّ) and (أَنَّ) are for the assertion, (لَكِنَّ) is for the averting, (كَأَنَّ) is for the likening, (لَيْتَ) is for expressing the wish, and (لَعَلَّ) is for expressing the hope.

The third category of particles is the conjunction particles (حُرُوفُ العَطْف) they are: (الواو), (الفَاء), (ثُمَّ), (حَتَّى), (أَو), (أَم), (لا), (بَل), and (لَكِنْ), and their meanings are the following:

(الوَاو) (and): it is for the general gathering; it does not benefit a sequence or accompaniment like your saying: (جَاءَ زَيْدٌ وَعَمرُو) Zaid and Amro came.

(الفَاء) (then): it benefits the sequence and the succession like your saying: (جَاءَ زَيْدٌ فَعَمرُو) Zaid came then Amro.

(ثُمَّ) (afterwards): it benefits the sequence and slackening like your saying: (جَاءَ زَيْدٌ ثُمَّ عَمرُو) Zaid came afterwards Amro came.

(حَتَّى) (even/ until/ up to): it benefits the sequence and that the coupled thing is part of what is coupled to it, like your saying: (مَاتَ النَّاسُ حَتَّى الأَنبِيَاءُ) people had died even the prophets, and (قَدِمَ الحَاجُّ حَتَّى المُشَاةُ) the pilgrims came even the walkers.

(أَوْ) (or/ if not): it benefits the suspension of the verdict to the mentioned conditions or matters, it comes in the report, in the request, and in the inquiry, if it comes in the report; it benefits the doubt, if it comes in the order; it benefits the option, and the permissibility, and if it come in the inquiry; it benefits the doubt that both matters exist.

(أَمْ) (or/ whether): if benefits the suspension of the verdict to one of the mentioned matters, it comes only in the inquiry, with certainty of one of the matters but doubt in determining it.

(لا) (no/ not/ don't/ non), (بَلْ) (rather/ however/ yet/ but), and (لَكِن) (nevertheless/ still/ however/ but): they commonly share that the coupled matter is different to the matter that is coupled to it, you say: (جَاءَنِي زَيدُ لا عمرو) Zaid came to me not Amro, (ما جَاءَني زَيدٌ لَكِن عَمرُو) Zaid didn't come to me but Amro, (سِرتُ على الطَّريقِ بل رَكَضْتُ فيها) I walked on the way, nay but I ran on it.

The forth category: the negation particles (حُروفُ النَّفي), they are: (مَا), (لا), (لَم), (لَمَّا), (لَنْ), (إِنْ), and their meanings are:

(مَا) means: not, it negates the present and the near past like your saying: (مَا تَفعَل) she is not doing, and (مَا فَعَلَ) he didn't do.

(لا) means: no, not, don't, it is for negating in the future tense either by reporting like saying: (لا رَجُلَ في الدار) no man is in the house, or by banning like saying: (لا تَفعَلْ) don't do, or by supplication like saying: (لا رَعَاكَ اللهُ) may Allah not protect you.

(لَمْ) and (لَمَّا) they mean not, they turn the present tense (mudaari') into past tense, we say: (لَمْ يَفعَلْ) and (لَمَّا يَفعَلْ) he doesn't, means he didn't.

(لَنْ) means: not, never, nevermore, it is for the affirmation of the future tense like your saying: (لَنْ أبرَحَ اليَوْمَ مَكَانِي) I will never leave my place today, it is an affirmation for your saying: (لا أبْرَحُ اليَومَ مَكَانِي) I will not leave my place today.

(إن) means: he/she/it is but, nothing but, no more than, it is for negating a case, a circumstance, or a situation like the saying of Allah Ta'ala:

{إِنْ كَانَتْ إِلَّا صَيْحَةً وَاحِدَةً }

"It is no more than one mighty shout then suddenly they are all quenched and silent"[155]

The fifth category: the attention particles, they are: (هَا), (أَلا) and (أَمَا), you say: (هَا أَنَا ذَا) here I am, and (هَذَا) the letter هـ is an attention particle and ذَا is a demonstrative pronoun, and (هَا إفْعَلْ) here do, and you say: (أَلا رَجُلٌ يَدُلُّنِي عَلَى الطَّرِيقِ) is there a man to show me the way? And you say: (أَمَا إِنَّكَ خَارِجٌ) verily you will go out.

The sixth category: the vocative (call) particles and they are: (يَا), (أَيَا), (هَيَا) are to call the one that is far, and (أَي), (الهَمْزَة) are to call the one that is near, and the (واو) is for the lamentation (nadbah).

The seventh category: the answering particles and they are: (نَعَم), (بَلَى), (أَجَل), (جَيْر), (أَيْ) and (إنَّ), and their meanings are the following:

(نَعَمْ) means yes: it verifies what comes before it of the saying (question) like: (قَامَ زَيْدٌ) did Zaid get up? The answer would be (نَعَم) yes, or the saying: Zaid didn't get up? Then it would be said (نَعَم) yes.

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[155] Surah Yā Sīn:29

(بَلَى) means: yea/ yes surely, it is to affirm what is negated like your saying: (بَلَى) to the whom said: Zaid did not get up, and like the saying of Allah Ta'ala:

{ قَالُوا بَلَىٰ }

"... They said: yea! We do testify! ..."

as an answer to His Ta'ala's saying:

{ أَلَسْتُ بِرَبِّكُمْ }

"... Am I not your Lord ..."[156].

(أَجَل) means: yes/ indeed, it is only for certifying the report like your saying: أَجَل to whom said (reported): (جَاءَ زَيْدٌ) Zaid has came.

(جَيْر) , (إنَّ) and (إي) are to express a certainty, you say: (جَيْرُ) (لأفعَلَنَّ كَذَا certainly I will do so, (إنَّ الأمرَ كَذَا) verily the matter is as such and (إيْ واللهِ) yes indeed by Allah.

The eighth category: The exception particles and they are: (إلاَّ), (حَاشَا), (عَدَا), (خَلا) they mean except, the infinitive particle (مَا) (what) like your saying: (أعْجَبَنِي مَا صَنَعْتَ) I like what you did, means your deed, and (أنَّ) (that) in your saying: (أُرِيدُ أنْ تَفْعَلَ كَذَا) I want that you to do as such, I.e. your deed is to be as such, it interprets by an infinitive. And the urging particles, which are (you can say): (لَوْمَا, لَولا if then, why then), (هَلا would you ...) and (ألا will you), (فَعَلْتَ كَذَا) you do so, if you want urge someone to do something. And (قَد) means: (already, maybe) it is the particle that approximates the past tense to a circumstantial expression like your saying: (قَد قَامَ زَيْدٌ) Zaid has already

[156] Surah al-A'rāf:172

stood up. And the interrogative particles that are: (الهَمْزَة) the letter hamzah like your saying: (أَزَيْدٌ قَامَ) is it Zaid who stood up? And (هَلْ) means is ...? Are ...? Do/ does/ did ...? Etc. like your saying: (هَلْ زَيْدٌ قَامَ) did Zaid stand up? And the future tense particles that are: (سَ), (سَوْفَ) in your saying: (سَيَفْعَلُ), (سَوْفَ يَفْعَلُ) he will do, (أَن) (أُرِيدُ أَن تَفْعَلَ) I want you to do, (لا) (لا تَفْعَلْ) don't do and (إِن) (إِن تَفْعَلْ) if you do. And the conditional particles that are: (إِن) and (لَو) in your saying: (إِن جِئْتَنِي, أُكْرِمْتُكَ) if you come to me, I honor you, (لَو جِئْتَنِي, أَكْرَمتُكَ) if you came to me, I would have honored you. And the reasoning particle (كَيْ) in your saying: (قَصَدْتُ فُلانًا كَيْ يُحسِن إِلَيَّ) I went to Mr. X so that he may give me some charity. And the deterrence particle (كَلاَّ) means: no, certainly not, by no means, in your answer to whoever tells you: the matter is as such.

The ninth category: the (لام) particles, they are: the definitive particle that goes to indefinite noun to make it definite like (الرَجُلُ) the man.

The (لام) that is a response to the oath in your saying: (واللهِ لَأَفْعَلَنَّ كَذَا) by Allah I shell do as such.

The (لام) that precedes the oath in your saying: (وَاللهِ لَإِنْ أَكْرَمْتَنِي لَأُكْرِمَنَّكَ) by Allah if you honor me, I will honor you.

The particle (لام) that is a response to the particle (لَو) if in your saying: (لَو كَانَ كَذَا لَكَانَ كَذَا) if it was so, it would be as such.

The (لام) of the imperative (order verb) in your saying: (لِيَفْعَلَ زَيْدٌ) let Zaid do.

And the commencement (لام) in your saying: (لَزَيْدٌ مُنْطَلِقٌ) verily Zaid is going ahead.

The tenth category: the particle (تاء) of the feminine form in your saying: (فَعَلَتْ كَذَا) she did so, the silent (تاء) is added to the verb to make it feminine.

The eleventh category: (التَّنْوِين) the tanween that is by putting two fathah, dhammah or kasrah to the noun and its adjective to make it emphatic. And the emphatic (نون) in your saying: (وَاللهِ لَأَفْعَلَنَّ كَذَا) by Allah I shall do so.

اَلمَنطُوقُ وَاَلمَفْهُوم

The Pronounced and the Implicit Meanings
(al-Manṭuq wa'l-mafhūm)

After knowing the Arab's language and its divisions by clarifying its expressions and divisions, it becomes possible to infer from the *Kitāb* and the Sunnah, for the inference from the *Kitāb* and the Sunnah is but an inference from their expressions, and when the Arabic language expressions are clarified, there exists what is needed to infer by the language, that is the clarification of its expressions and divisions. But the inference by the expressions depends on knowing the method of the inference whether it is through the pronounced meaning (*al-manṭūq*) or through the indirect implicit meaning (*al-mafhūm*), i.e. it is either by the direct denotation of the text, or by the denotation of the meaning upon another meaning, that means through the meaning that the text denotes, or the meaning that the meaning of the text denotes, not directly from the text itself, therefore it is inevitable to discuss the *manṭūq* and the *mafhūm*. Before discussing the *manṭūq* and the *mafhūm*, it is inevitable to discuss two matters: one of them is that the Qur'ān does not contain any meaningless expression, and similar to it is the Sunnah. The second matter is that Allah Ta'ala does not mean in His words anything contrary to the real meaning without a clarification. As for the first matter, it is that Allah Ta'ala does not address us with the meaningless that has no denotation over a meaning, because it is a hallucination and blemish, and it is impossible for Him Ta'ala, because the meaningless is the hallucination

and that is by gathering meaningless words and saying them, or that the combination of words as they are do not denote a meaning even if every part of it denotes a meaning, and both images do not befit Allah Ta'ala, therefore it is impossible that Allah addresses us with the meaningless, so there isn't any meaningless in the Qur'ān. The Sunnah also hasn't got any meaningless, because its meanings are revelation from Allah Ta'ala and the Messenger ﷺ expressed them by his expressions, so it is impossible that it contains any meaningless. As for the letters in the beginnings of some Surats of the Qur'ān, they do have meanings, but the scholars of *tafsīr* have different opinions about them, and the truth is that they are names for the Surats and accordingly they are not of the meaningless. And as for the stopping at {... إِلاَّ اللهُ ...} (... except Allah ...) in His Ta'ala's saying:

{ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِى الْعِلْمِ يَقُولُونَ ءَامَنَّا بِهِ }

"...but no one knows its true meanings except Allah. And those who are firmly grounded in knowledge say: we believe in it ..."[157],

and considering His saying:

{ وَالرَّاسِخُونَ فِى الْعِلْمِ }

"...And those who are firmly grounded in knowledge ..."

as a resumption talk (اسْتِئْنَاف), so that there is something in the Qur'ān which no one knows its meaning except Allah Ta'ala, and thereby He had addressed us with that which

[157] Surah Āli Imrān:7

we don't know its meaning and it is of the meaningless. This saying is rejected for two reasons:

The first reason: it is not proper to stop at His Ta'ala's saying: {إِلاَّ اللهُ} (except Allah) because the particle (وَ) is a (coupling) coordinating conjunction (واو العَطْف) not a resumption waaw (وَاو الاسْتِئْنَاف), so the clause

{وَالرَّاسِخُونَ فِى الْعِلْم}

"And those who are firmly grounded in knowledge"

is coupled to the Majesty expression (الله), so the meaning is: Allah knows its meanings, and the firmly grounded in knowledge know its meanings. The resumption waaw comes when the talk and the meaning end and a new talk and meaning commence, and it is not for other than that at all. And the talk and the meaning here are not completed. As for His Ta'ala's saying in the same *Āyah*:

{يَقُولُونَ ءَامَنَّا}

"they say: we believe",

it is their circumstance (حَال) of His saying:

{وَالرَّاسِخُونَ فِى الْعِلْم}

"And those who are firmly grounded in knowledge",

so it is a circumstantial phrase and not a predicate (report) (خَبَر) of the subject. It is improper to say that if the circumstantial expression (الحال) comes after the coupled noun (المَعطُوف) and the noun being coupled to (المعطُوفُ عَلَيْهِ), it goes to both of them so it becomes a circumstantial expression of both of them, but here it cannot be a circumstantial expression of the coupled noun {الرَّاسِخُونَ فِي

{العِلْمِ} and the noun being coupled to (the Majesty expression) for the impossibility that Allah Ta'ala says about Himself: {ءَامَنَّا بِهِ} (we believe in it) so it becomes a circumstantial expression of the coupled noun only and this is contrary to the language so it is determined to be a predicate (خَبَر) of the {الرَّاسِخُونَ فِي العِلْمِ} (those who are firmly grounded in knowledge) and not a circumstantial expression of it; it is improper to say that, because this befits a situation where there is no indication, whereas if the indication exists and the circumstantial expression comes after the coupled noun and the noun being coupled to; it goes only to the coupled noun without the noun being coupled to, like the saying of Allah Ta'ala:

{وَوَهَبْنَا لَهُ إِسْحَاقَ وَيَعْقُوبَ نَافِلَةً }

"And We bestowed on him Ishaaq and Ya'qub, as an additional gift (naafilah) ..."[158],

the word naafilah {نَافِلَةً} is a circumstantial expression for Ya'qub, i.e. it is for the coupled noun without the noun being coupled to, because the naafilah is the son of the son, so the circumstantial expression is for Ya'qub. And likewise is the *Āyah*, the impossibility that Allah Ta'ala says: (We believe in it) is an indication that the circumstantial expression is for the (*ma'dtoof*) coupled noun without the (*ma'dtoof 'alaihi*) noun being coupled to. And thereby it becomes clear that the firmly grounded in knowledge know its interpretation, so there isn't any expression in the Qur'ān that doesn't denote a meaning, so there is no meaningless in it.

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[158] Surah al-Anbiyā':72

The second reason: the saying of Allah Ta'ala: {وَالرَّاسِخُونَ فِي العِلْمِ} (and those who are firmly grounded in knowledge) makes the coupling ('adtf) outweighs the resumption (isti'naaf), because if it is Isti'naaf; He would have said: and no one knows its interpretation except Allah, and the scholars say we believe in it, however He Ta'ala didn't say that, but He said: {وَالرَّاسِخُونَ فِي الْعِلْمِ} (and those who are firmly grounded in knowledge), so He gave an additional quality to the knowledge that is the word {الرَّاسِخُونَ} (the firmly grounded), and this quality is given only where the talk is about the knowledge, and it wouldn't be given where the talk is about the lack of knowledge, that means Allah Ta'ala knows its interpretation and also know it those who are firmly grounded in knowledge from among the scholars. As for His Ta'ala's saying about the zaqqoom tree:

{طَلْعُهَا كَأَنَّهُ رُءُوسُ الشَّيَاطِينِ}

"The shoots of its fruit-stalks are like the heads of devils"[159],

it is known to the Arabs, for it is an example of ugliness that had been used by them, because they imagine it as ugly, so the address has a known meaning to the Arabs, and it is not of the meaningless. Accordingly, Allah Ta'ala doesn't address us with a meaningless.

As for the case that Allah Ta'ala doesn't mean in His talk what is contrary to the real meaning without a clarification, that is because the expression had been composed to denote a meaning, so when someone says it he means the meaning which the expression denotes, and if the speaker of the

[159] Surah al-Sāffāt:65

expression means other than the meanings it denotes; he puts an indication to indicate that he means other than the meaning the expression is composed for it, or he clarifies that he said something and meant something else. But if there is no indication to show that he meant other than the meaning which the expression is composed for it, and he didn't clarify that he meant by his speech a certain meaning, then nothing can be understood from the expression except the meaning that the people of the language had composed it for it, or they used it for it as a conventionally or Sharī'ah use, hence it is incorrect to say that Allah Ta'ala meant in His so and so saying what is contrary to the real meaning without clarifying that it is contrary to it, because nothing can be understood from the expressions except their denotations, and there doesn't exist anything in the Qur'ān that other than the expressions' denotations are meant by them, i.e. there doesn't exist in it words that Allah meant by them other than the real meanings without clarifying that. And also saying that Allah Ta'ala meant by the talk what is contrary to the real meaning is saying that Allah had addressed people with talk that doesn't denote what he meant by the expression, that means He addressed them with the meaningless, because the talk that doesn't have a meaning in accordance with the denotation of its expressions is a meaningless talk, since the expression is meaningless in relation to the meaning that is meant by it, because it hasn't got a declaration or a denotation on it. And it doesn't befit Allah Ta'ala that He addresses us with the meaningless. Thus it is proven that there isn't any words in the Qur'ān that Allah had meant by them what is contrary to the real meaning without clarification, accordingly there isn't in the Qur'ān what is known by mysterious and exterior meanings (المَعْنَى البَاطِن

(وَالمَعنَى الظَّاهِر, but everything that is in the Qur'ān Allah Ta'ala verily means by them the denotations of the expressions that the people of the language composed for them or used them as conventional or Sharī'ah use, and they mean nothing other than that at all, unless there is an indication or a clarification.

المَنْطُوق

The Pronounced Meaning (*al-Manṭūq*)

If the denotation of the assignment address over the verdict is benefited directly from the expression, then it is the literal denotation (دَلالـةُ المَنْطُوق), and if the denotation is from the meaning which the expression denotes, then it is the connotation denotation (دَلالَةُ المَفْهُوم). The *manṭūq* is that which the expression denotes it decisively in the place of its utterance, that is which is understood from the expression directly without any means or possibility, so the requirement denotation is excluded, because it is not understood decisively but possibly, and it is not understood directly from the expression but what is understood from the expression requires it like the saying of the Prophet ﷺ: "لا صَلاةَ إلاَّ بِفَاتِحَةِ الكِتَـابِ" **"No prayer without the Faatihah of the Book (Surah al-Faatihah)"** compiled by Abū 'Awaanah, it is a banishment of the existence of the prayer despite that it practically existed, so what is meant is the banishment of its validity or the banishment of its completeness. So the denotation of the *ḥadīth* is upon the invalidity or the incompleteness of the prayer is not of the (*manṭūq*) literal denotation, because it is not understood directly from the

expression, but the meaning that is understood from the expression required it, therefore in the definition of the *manṭūq* it is not sufficient to just say that it is what is understood from the expression by the place of its utterance, but it is inevitable to mention that the expression denotes it decisively, and that is by adding the word (decisively) so that the requirement denotation would be excluded. Accordingly, the literal denotation is what the expression denotes decisively by the place of its utterance like the obligation of fasting the month of Ramadhan which is understood from the saying of Allah Ta'ala:

{ فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ }

"...So whosoever of you is present during (witnesses) that month must fast it ..."[160],

and that is when the expression is uttered, it denotes the meaning, which is called the expressional denotation. So what the expression denotes by correspondence or inclusion is the literal denotation, it is not that which is understood from the context of the talk, because the expression with regard to the denotative is divided into three divisions, they are: the corresponding denotation (دلالة المُطابَقة), the inclusion denotation (دلالة التَّضَمُّن), and the binding denotation (دلالة الالتِزام). So the denotation of the expression upon its meaning completely and correspondingly is from the literal denotation, and the denotation of the expression upon its meaning partially is inclusion denotation and it is from the literal denotation too. And if the address denotes the verdict by its literal

[160] Surah al-Baqarah:185

denotation, it should primarily be regarded as a Sharī'ah reality like the saying of the Messenger ﷺ: " لَيْسَ مِنَ البِرِّ الصِيَامُ فِي السَّفَرِ" **"It is not of the piety to fast while travelling"** compiled by Aḥmad, it should be regarded as the Sharī'ah sawm not the linguistic sawm, because the Prophet ﷺ was sent to clarify the Sharī'ah matters. If the expression is not a Sharī'ah reality or it is but it cannot be carried out on it; it should be regarded as the conventional reality that existed at era of the Prophet ﷺ, because this should be firstly regarded to understand, and because the Sharī'ah considers the convention in many issues like the belief. If it is impossible to carry it out on the Sharī'ah reality, or on the conventional reality which existed at Messenger's era, then it should be regarded as a linguistic reality. So the texts of the Sharī'ah are legislative expressions came to clarify the Islamic Sharī'ah, so properly their denotation is the Sharī'ah meaning, then the conventional meaning, then the linguistic meaning. This is if the use of the Sharī'ah and conventional meanings increase so that one of them overcomes the linguistic meaning, but if it is not like that then the meaning is common between the three and cannot be outweighed without an indication, and if it is impossible to carry it out on the three realities; it should be carried out on the metaphorical meaning to safeguard the talk from the negligence.

المَفْهُوم

The Implicit Meaning (*al-Mafhūm*)

The *mafhūm* (implicit meaning) is what is comprehended from the expression by other than the place of its utterance, i.e. the meaning which is denoted by meaning of the expression. The *manṭūq* is what is understood from the denotation of the expression, but the *mafhūm* is what is understood from the denoted meaning of the expression like His Ta'ala's saying:

{ فَلَا تَقُلْ لَهُمَا أُفٍّ }

"...say not to them (ugh) a word of disrespect ..."[161],

the denotation of the expression is that you don't say ugh to them and this is the *manṭūq*, but the denoted meaning of the expression which is the forbiddance of saying ugh to them can be understood from it don't hit them, so the *mafhūm* of His Ta'ala's saying:

{ فَلَا تَقُلْ لَهُمَا أُفٍّ }

"...say not to them (ugh) ..."

is don't hit them. So the forbiddance of hitting the parents which is understood from the *Āyah* is denoted by the denoted meaning of the *Āyah*. So the address of it denoted the verdict by the connotation denotation, and this is called the meaning denotation, and the binding denotation, that is because the expression with regard to the denotative is divided into three divisions, they are: the corresponding denotation, the inclusion denotation and the necessitated

[161] Surah al-Isrā':23

denotation. The correspondence is the denotation of the expression upon its meaning completely, and the inclusion is the denotation of the expression upon a part of its meaning, and both of them are decisive denotation from the expression directly without any possibility, therefore they are from the *manṭūq*. But the binding denotation is denotation of the expression upon the necessitation of its meaning, so its reality is that it is the denotation of the meaning and not the direct denotation of the expression, and the expression denoted it indirectly through its denotation upon the meaning, not through its utterance, that means the meaning is comprehended from the expression by other than the place of its utterance, that means it is comprehended from the meaning of the expression, and accordingly the *mafhūm* is the binding denotation, and since the denotations of the expression with regard to the denotative only are limited to the three denotations, and since the corresponding and the inclusion denotations are the literal denotation (al *manṭūq*), so nothing is left to be of the *mafhūm* except the binding denotation, so all denotations are limited to be either of the *manṭūq* or of the *mafhūm*. Accordingly the requirement denotation (دلالَـةُ الاقْتِضَاء), the simulation and the gesture denotation (دلالَةُ التَّنبِيهِ والإيمَاء), and the indication denotation (دَلالَـةُ الإِشَـارَة) are of the connotation denotation (al *mafhūm*). Also the connotation of compatibility (مفهُومُ الموافَقَة) and the connotation of incompatibility (مَفهومُ المُخَالَفَة) are of the connotation denotation. However the necessitated denotation is the *mafhūm* and it is what is called the denotation of meaning. And by scrutinizing the necessitated denotation it becomes clear that its requirement could be necessitated by the mind, or by the Sharī'ah for the necessity of the talker's truthfulness, or for

the necessity of the occurrence of the expressed matter, and that is the requirement denotation, or that the requirement is necessitated by the expression circumstantially, not that the expression denotes it by its composition, and that is the warning and gesture denotation, and the requirement could be necessitated for a talk that been carried on are to clarify a verdict, or it denoted a verdict and that requirement was not meant, but what was meant is the verdict, but the talk gives that meaning even though it is not meant by the talk, and that is the indication denotation, and the requirement could be benefited from the structure of the sentence and necessary for the structure of the talk, and that is the connotation. If it befits the literal meaning positively and negatively then it is the compatibility connotation (مَفْهُومُ المُوَافَقَة), and it is called the significance of the address, i.e. its meaning, and it is also called the warning of the address, and if the comprehension is different to the literal denotation then it is the incompatibility connotation (مَفْهُومُ المُخَالَفَة), and it is called the denotation of the address, and it is also called (*lahn al-khidtaab*) (لَحْنُ الخِطَاب) what needs intelligence of the address.

دِلالة الاقتضاء

The Required Indication *(dilālah al-Iqtiḍa')*

The required indication (*dilālah al-Iqtiḍa'*) is that which the required matter in it is denoted from the meanings of the expressions by being a condition for the denoted meaning correspondently. And the required matter could be necessitated by the mind or by the Sharī'ah, either for the

necessity of the truthfulness of the talker, or for the true occurrence of the expressed matter, an example for that is the saying of Allah Ta'ala:

{قَاتِلُوا الَّذِينَ يَلُونَكُمْ}

"...do fight those who are close to you of the disbelievers ..."[162],

so His saying (do fight) requires the order to obtain what is needed for the fight of weapons, equipment and training ... etc. so this is what the mind, and it is a condition for the correctness of the occurrence of the expressed matter which is: {قَاتِلُوا} (do fight). And like your saying to someone: "do free your slave from me for a thousand *dirham*", the necessary comprehension of the denotation of the expression: "do free" is offering him the ownership of the slave by sale or as a gift, and this comprehension is what the achievement of the Sharī'ah denoted matter depends on it, since the person cannot free what he doesn't own, as if it is said: buy or have this slave from me, then be my agent in freeing him, and this is what the Sharī'ah requires, and it is a condition for the correctness of the occurrence of the expressed matter which is: (do free). And this is the saying of the Prophet ﷺ: " إِنَّ اللهَ وَضَعَ عَنْ أُمَّتِي الخَطَأ, والنِسْيَانَ, ومَا اسْتُكْرِهُوا عَلَيْهِ" **"Allah had put off of my Ummah the mistake, the forgetfulness, and that which they are forced to do"** compiled by Ibn Mājah, that means He Ta'ala had put off the punishment of the mistake, the forgetfulness and that which they are forced to do, since it is incorrect that He put off the requested things because it is decisive that they are true, so this is of the Sharī'ah requirement for the

[162] Surah al-Tawbah:123

necessity of truthfulness of the talker. And similar to this is his ﷺ saying: "لا صِيَامَ لِمَنْ لَمْ يَفْرِضْـهُ مِنَ اللَّيْلِ" **"No fasting for he who doesn't intend it at night"** compiled by Ibn Mājah. And his ﷺ saying: "لا صَلاةَ إلاَّ بِفَاتِحَـةِ الكِتَـابِ" **"No prayer except with the Faatihah of the book (Surah al Faatihah)"** compiled by Abū 'Awaanah. So the lift up of the fasting and the prayer is banned for there are affirmed, so it inevitable that the negated by the verdict can be negated, like the negation of the correctness in the *ḥadīth* of the fasting, and the negation of the correctness or the completion in the *ḥadīth* of the prayer. Also similar to that is His Ta'ala's saying:

{ وَلَنْ يَجْعَلَ اللهُ لِلْكَافِرِينَ عَلَى الْمُؤمِنِينَ سَبِيلاً }

"... Allah will never make a way (an authority) for the disbelievers over the believers"[163],

the existence of the authority of the disbelievers over the believers had surely happened, it happened in Makkah while the Messenger was in it, since the Muslims were under the authority of the *kuffār*, and it existed after the Messenger ﷺ like in the Andalusia where Muslims were under the authority of *kuffār*, and it also exists nowadays, so the negation of an authority of the disbelievers over the believers that came in the particle "لَنْ" "never" which denotes the eternality is impossible because it certainly happened, so it is inevitable that it is a negation of a verdict that can be negated, and that is the negation of the permissibility, which means it is forbidden that the disbelieves have an authority over the believers. And this is

[163] Surah al-Nisā':141

of what the Sharī'ah requires because of the truthfulness of the report.

دِلالة التَّنبِيه والإيمَاء

The Warning and Gesture Indication *(dilālah al-Tanbīh wa'l-Īmā')*

The warning and gesture indication *(dilālah al-Tanbīh wa'l-Īmā')* is what indicates the reasoning (العِلِّيَّة), and that is when the reasoning is necessitated by the denotation of the expression as from the composition of it, not that the expression denotes the reasoning by its situation, meaning that the expression doesn't denote the reasoning by its situation, because if it denotes, it wouldn't be of the warning and gesture denotation, but according to the composition of language, the denoted meaning of the expression necessitates another meaning different to that which the expression denotes, so the denotation of the other meaning necessitated by the denoted meaning of the expression in accordance with the composition of the language is the warning and gesture denotation. An example for that is the saying of Allah Ta'ala:

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا }

"And as for the male thief, and the female thief, then cut off their hands ..."[164],

[164] Surah al-Mā'idah:38

it denotes that the theft is the cause of cutting the hand, and this denotation is necessitated by the composition, for the meaning of the particle (فَ) faa' which means: then, and that which the verdict is the consequence of is by the particle faa', it is the cause of the verdict, because the particle faa' in the language is apparent that it is for the consequence, and that necessitates the causation, because there is no meaning for that the quality is a cause except that which the verdict is issued for it sequentially, so the meaning that the particle faa' had been composed for it necessitates another meaning that is being whatever comes before it is the cause of what comes after it, and this necessity is according to the language composition, not according to the mind, nor is it according to the Sharī'ah. An example for that also is the saying of the Prophet ﷺ: " لا يَقْضِي القَاضِي بَيْنَ إِثْنَيْنِ وهُوَ غَضْبَانُ" **"The judge must not issue a judgment between two people while he is angry"** compiled by Aḥmad and Ibn Mājah, it indicates that the anger is a reason (عِلَّة) for banning the judgment, because the anger is an appropriate quality that has been mentioned with the verdict, so being an appropriate quality, and what it was composed for it in the language is, it necessitates that it is the reason (*'illah*) if it is mentioned with the verdict. This necessity is according to the language composition, because if it is not a quality but a defective expression, or an inappropriate quality, according to the language composition it doesn't necessitate to be a reason if it is coupled with the verdict, so being an appropriate quality according to the language composition made for it a prerequisite meaning according to the language composition, that it is a reason if it is coupled with the verdict. And similar to that is his ﷺ saying: "لا يَرِثُ القَاتِلُ شَيْئًا" **"The killer does not inherit anything"** compiled by Abū

Dāwud. And his ﷺ saying: "لا يَرِثُ الكَافِرُ المُسْلِمَ, ولا المُسْلِمُ الكَافِرَ" **"The *kāfir* does not inherit the Muslim, nor does the Muslim inherit the *kāfir*"** compiled by Aḥmad. This is an appropriate quality coupled with a verdict, so it indicates that it is a reason, since being an appropriate quality necessitates that it is a reason (*'illah*) if it is coupled with a verdict, and this necessity is in accordance with the language composition.

دِلالَةُ الإِشَارَة

The Alluded Indication *(dalālah al-Ishārah)*

The Alluded Indication (*dalālah al-Ishārah*) is when the saying is carried on to clarify or denote a verdict, but another verdict would be comprehended from it, that is other than the verdict that the saying has been carried on clarify it, or comes to denote it, despite that the other verdict was not meant by the saying, so the denotation of the saying upon the verdict that it wasn't carried on for it and it doesn't directly denote it, but it can be comprehended from it, is the indication denotation (دلالَةُ الإِشَارَة), an example for that is the denotation of the sum of His Ta'ala's sayings:

{وَحَمْلُهُ وَفِصَالُهُ ثَلاثُونَ شَهْرًا}

"...and his bearing and his weaning is thirty months ..."[165],

together with His Ta'ala's saying:

[165] Surah al-Ahqāf:15

{وفِصَالُهُ فِى عَامَيْنِ}

"...and his weaning is in two years..."[166],

they denote that the minimum period of pregnancy is six months, even if that is not intended by the expression. Also His Ta'ala's saying:

{فَالْآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ وَكُلُوا وَاشْرَبُوا حَتَّىٰ يَتَبَيَّنَ لَكُمُ الْخَيْطُ الْأَبْيَضُ مِنَ الْخَيْطِ الْأَسْوَدِ مِنَ الْفَجْرِ}

"...so now associate with them, and seek what Allah had ordained for you, and eat and drink until the white thread of dawn appears to you distinct from its black thread..."[167],

allowed the association until the fajr time, despite that the clarification of this is what's intended; it necessitates that whoever intercourses in the night of *Ramaḍān* and turns upon the morning in a state of major ritual impurity (*junob*); his fast is not corrupted, because if he intercourses at the end of the night it is inevitable to delay his ritual wash until the day, so if that is of what corrupt the fast; it wouldn't be allowed to intercourse until the end of the night. In spite of that it is not intended in the saying, and thus every saying from which a verdict can be understood without being structured for it, nor is it to directly denote it; the denotation of such saying upon the verdict is not of the literal denotation even if it is understood literally from the expression, but it is of the necessitated denotation, because although it is understood from the saying; it hasn't been structured for it, nor did it come to directly denote it,

[166] Surah Luqmān:14
[167] Surah al-Baqarah:187

so it is necessitated by the meaning of what the saying is structured for or came to clarify, and therefore it is of the necessitated denotation, and it's called the indication denotation.

مَفهُومُ المُوَافَقَة

The Agreed Meaning (*mafhūm al-Muwāfaqah*)

The Agreed Meaning (*mafhūm al-Muwāfaqah*) is that when the denotation of the silence place of the expression is compatible with the denotation of utterance place of the expression. That means the meanings and the verdicts that are comprehended from the denotation of the expression are compatible with what is comprehended from the expression itself. So if the necessitated meaning of the denotation of the expression is compatible with that denotation, then it is the compatibility connotation, and it is called: (فَحْوَى الخِطَاب) the significance of the address, (تَنْبِيهُ الخِطَاب) the stimulation of the address, and that means the meaning of the address. An example for that is His Ta'ala's saying:

{فَلَا تَقُلْ لَهُمَا أُفٍّ}

"...say not to them (ugh) a word of disrespect ..."[168],

it denotes the forbiddance of swearing at the father and the mother and hitting them, because the forbiddance of uttering the word ugh to them is for the harm of it, so

[168] Surah al-Isrā':23

forbiddance of it necessitates the forbiddance of what is harmer like swearing and hitting, so we benefited the forbiddance of hitting them from the structure, because the forbiddance of uttering the word ugh only doesn't denote directly the forbiddance of the hitting, so the necessitated meaning is benefited from the structure of the sentence which shows that the forbiddance of uttering the word ugh is because the harm of it, so that necessitated the forbiddance of what has more harm, the swearing and the hitting. And here the verdict comprehended in the place of silence is compatible with the verdict in the place of utterance, and therefore it is the connotation of compatibility (مَفهُومُ المُوَافَقَة). And like His Ta'ala' saying:

{إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا}

"Those who unjustly eat up the property of orphans..."[169],

it denotes the forbiddance of damaging their properties, because eating it up is taking away their properties from their ownership and depraving them from their properties, so that necessitates the forbiddance of anything that takes away the properties of the orphan, whether it is more severe than the eating up, or equal to it. So from the structure we benefited the forbiddance of damaging the properties of the orphan, because the forbiddance of eating up the properties doesn't denote the forbiddance of the damaging, but the structure of the sentence here and that the forbiddance is directed to eating it up unjustly not eating it up only, so the necessitated meaning is benefited from this structure, and that is the forbiddance of damaging

[169] Surah al-Nisā':10

the properties of the orphan. And similar to that is the saying of Allah Ta'ala:

{فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ}

"Then anyone who does an atom's weight of good, shall see it!. And anyone who does an atom's weight of evil, shall see it".[170],

it denotes that whoever does good deed more than the weight of an atom, and whoever does evil deed more than the weight of an atom, will see it by greater reason, even though its denotation is comprehended from what is more than the atom; it came from the structure of the sentence, the denotation could be of what is more or what is less or of what is equal to what is mentioned. Accordingly the denotation upon the meaning doesn't come from the increase or the decrease or from the equality, but only from the structure of the sentence. Similar to that is the saying of Allah Ta'ala:

{وَمِنْ أَهْلِ الْكِتَابِ مَنْ إِنْ تَأْمَنْهُ بِقِنْطَارٍ يُؤَدِّهِ إِلَيْكَ وَمِنْهُمْ مَنْ إِنْ تَأْمَنْهُ بِدِينَارٍ لَا يُؤَدِّهِ إِلَيْكَ}

"And among the People of the Book are some who, if you entrust him with a hoard of gold, will pay it back to you; others, who, if you entrust him with a dīnār (gold coin), will not repay to you..."[171],

for the denotation of paying back what is less than the hoard, and not paying back what is more than the dīnār. And similar to it is the saying of the Messenger ﷺ: " وَإِذَا أَخَذَ

[170] Surah al-Zalzalah:7-8
[171] Surah Āli Imrān:75

"أَحَدُكُمْ عَصَا أَخِيهِ فَلْيَرْدُدْهَا عَلَيْهِ" **"And if one of you hired the stick of his brother, he must return it to him"** compiled by Aḥmad, it denotes that whoever tacks what exceeds the value of the stick; he must return it, and thus what is less in value than the stick he must return it, and so what equals the stick he must return it, so the necessitated meaning which is the compatibility connotation is verily benefited from the structure, not from the increase or decrease. And similar to it is that saying of the Messenger ﷺ: " مَنِ اقْتَطَعَ شِبْرًا مِنَ الأَرْضِ بِغَيْرِ حَقِّهِ طَوَّقَهُ يَوْمَ القِيَامَةِ إِلَى سَبْعِ أَرَضِينَ" **"Whoever seizes a hand span of the earth without the right to do so, he will be surrounded by it in the day of judgment to seven earths"** compiled by Aḥmad, it denotes the forbiddance of seizing what is more than the hand span by the greater reason, and also what is less than the hand span. Mentioning the hand span is an indication of the equality of the little and the many with regard to the threatening. And similar to it is his saying ﷺ: " مَنْ أَخَذَ مِنْ طَرِيقِ المُسْلِمِينَ شِبْرًا طَوَّقَهُ اللهُ يَوْمَ القِيَامَةِ مِنْ سَبْعِ أَرَضِينَ" **"Whoever seizes a hand span of the way of the Muslims Allah will surround him in the day of judgment from seven earths"** compiled by al-Tabaraany, it verily denotes by a greater reason the forbiddance of taking more than a hand span, and so is taking less than a hand span, and the denotation here is not from the increase nor is it from the decrease, but from the structure of the sentence. al-Aamidy said in the discussion of the connotation of compatibility: "The denotation in all these divisions is nothing but a kind of alerting by what is lower for what is higher, and by what is higher for what is lower" and this saying is wrong from two ways:

One of them: they could be of the kind of stimulating by the lower for the higher like the forbiddance of swearing at

and hitting (the parents) that is comprehended from the forbiddance of uttering the word ugh. And it could be of the kind of stimulating by the higher for the lower like the saying of Allah Ta'ala:

{وَمِنْهُمْ مَنْ إِنْ تَأْمَنْهُ بِدِينَارٍ لَا يُؤَدِّهِ إِلَيْكَ}

"...and others who, if you entrust him with a dīnār (gold coin), will not repay it to you..."[172].

And it could also be a kind of the equal like the saying of Him Ta'ala:

{إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا}

"Those who unjustly eat up the properties of the orphans..."[173],

it denotes the forbiddance of damaging them and that is equal to eating them up. And it could be neither higher or lower or equal, but another matter that could be comprehended from the structure of the sentence for it is necessitated by the literal denotation (al *manṭūq*) like the saying of the Messenger ﷺ: " مَنْ وَجَدَ لُقَطَةً فَلْيُشْهِدْ ذَوَيْ عَدْلٍ وَلْيَحْفَظْ عِفَاصَهَا وَوِكَاءَهَا..." **"Whoever finds a find he must call two just persons to witness, and he must preserve its ('ifaas) sake, case or pakage and its (wikaa') ribbon"** compiled by Aḥmad, it denotes the preservation of the found dinaars (money), and this is not of the kind of stimulating by the lower for the higher, nor is it of the kind of stimulating by the higher for the lower, and all that shows that the connotation of compatibility (*mafhūm al-muafaqah*) is not limited to the kind of stimulating by the lower for the

[172] Surah Āli Imrān:75
[173] Surah al-Nisā':10

higher or by the higher for the lower, but it could be in other than them.

The second reason: the connotation of compatibility is not taken from the increase or decrease, but it is taken from the structure of the sentence, so stimulating by the lower for the higher or by the higher for the lower has nothing do with the origin of understanding the meaning (categorized) in the connotation of compatibility, but it must be originally benefited from the structure of the sentence, provided that it is not a condition (*sharṭ*) for the compatible meaning but a subsequent for it. each kind of the stimulation by the lower for the higher and by the higher for the lower is one of its examples, not an origin of its denotation, and therefore setting the greater reason principle as a condition for the connotation of compatibility is meaningless because that makes it limited in the stimulating by the lower for the higher, and by the higher for the lower, despite that it came in other than them, and that makes the greater reason principle as the basis for its denotation, despite that its proper basis is that it is benefited from the structure of the sentence not from the greater reason principle. However the connotation of compatibility is from the necessitated denotation and the necessitated denotation is not the denotation of the lower upon the higher, nor is it the denotation of the higher upon the lower, but it is the denotation of the expression upon what is necessitated by it, and what is necessitated is benefited from the structure of the sentence, therefore the greater reason principle is not a condition for it, and it didn't come as a kind of stimulating by the lower for the higher and by the higher for the lower so that they say that the denotation is exclusive to them, but the condition of it

is that the meaning is necessitated by the denoted meaning and subsequent of it, and only benefited from the structure.

And the connotation denotation is what is comprehended from the expression in the place of silence, so that which the denotation of the expression is in the place of silence is compatible with its denotation in the place of utterance is the connotation of compatibility, so it is comprehended from the expression, but in the place of the silence, not in the place of the utterance, i.e. it is the unmentioned (silenced) meaning which is necessitated by the mentioned (uttered) meaning, it is a comprehension from the expression not an analogy of its denotation, therefore it is from the expression's denotation, not of the analogical denotation, so the reference of the verdict in the place of silence is what is signified by the denotation of the utterance not the analogical denotation. The evidence for this is two matters:

One of them is: the connotation of compatibility is of the necessitated denotation, and what is considered of necessities in the necessitated denotation is the mental necessity which the mind shifts to it when the expression is heard, like the denotation of the lion upon the bravery, so it is being an expressional denotation, because the mind shifts to it as soon as the expression is heard, so what denotes it is the expression, so if a man says to his servant: "don't give Zaid a grain, don't say ugh to him, don't be unjust to him by an atom, and don't frown in his face" verily what comes first to the mind right when these sentences are heard is the abstention of giving more than a grain, the abstention of swearing at him and hitting him, the abstention of treating him unjustly by an atom and over, and the abstention of harming by other than

frowning like forsaking talking to him or other than that, therefore what is comprehended from the saying of the Prophet ﷺ: "... وَلْيَحْفَظْ عِفَاصَهَا وَوِكَاءَهَا..." **"... and he must preserve its ('ifaas) sake, case or pakage and its (wikaa') ribbon"** is preserving what he finds of dinaars, and comprehended from his saying ﷺ: "...أَدُّوا الخَيْطَ وَالمَخِيطَ..." **"...Do give the thread and the cloth..."** compiled by Ibn Mājah, is that the saddles, the money and the others (of the booties) must be given. So the reference of the verdict in the place of the silence is the significance of the expressional denotation, and not the analogy.

The second matter: verily the Arabs had composed these expressions for the purpose of exaggerating of the confirmation of the verdict in the place of silence, therefore if they meant to exaggerate that one of the horses is faster than the other, they say: "This horse doesn't reach the dust of this horse" so the connotation is from the composition of the Arabs, and this means that it is from the denotation of the expression in accordance with its composition, so it is not from the denotation of the analogy.

That is due to the fact that the denotation of analogy doesn't exist but there is analogy, and that is joining a branch with its origin, and here in the connotation there is no origin and branch, but there is a meaning which the expression denotes it, and a matter necessitated by the meaning which the expression denotes, therefore there is no room for the analogy here.

مَفْهُومُ المُخَالَفَةِ

The Divergent Meaning (*mafhūm al-Mukhālafah*)

The *mafhūm al-Mukhālafah* is that the denotation of the expression in the place of silence is incompatible with its denotation in the place of utterance; it means that the meanings and the verdicts comprehended from the denotation of the expression are incompatible with what's comprehended from the expression itself. If the necessitated meaning of the denotation of the expression is contrary to that denotation then it is the connotation of incompatibility. And it is called the denotation of the address, and the *lahn* of the address (that which is contrary to the rules and its comprehension needs intelligence), and that is the quality connotation (مَفْهُومُ الصِّفَةِ), the condition connotation (مَفْهُومُ الشَّرْطِ), the objective connotation (مَفْهُومُ الغَايَةِ), and the numeral connotation (مَفْهُومُ العَدَدِ).

مَفْهُومُ الصِّفَةِ

Indication of the Attribute (*mafhūm al-Ṣifah*)

The *mafhūm al-Ṣifah* (Indication of the Attribute) is making the verdict dependent on one of the self qualities of a matter, it denotes the absence of the verdict of that matter at the absence of that quality, and its condition is that the quality must be an indicative quality, i.e. it indicates the reasoning, so if it is not an indicative quality then it has no connotation, so the condition of the *mafhūm al-Ṣifah* (مَفْهُومُ الصِّفَةِ) is that the quality must be an indicative quality, like the Prophet ﷺ saying: "...وفِي صَدَقَةِ الغَنَمِ فِي سَائِمَتِهَا..." **"...and the *zakāh* of the sheep and goats is in their saa'imah (the**

animals that graze in the forest and do not get fed by people)..." compiled by al-Bukhārī, the sheep is a generic noun, and they have two qualities: al saum (grazing in the forest), and al 'alaf (being fed by people), and the obligation is dependent on the quality of being sa'imah which indicates the non obligation in the fed (by people) sheep, so the expression al saa'imah is an indicative quality, therefore it has a connotation. Where as if the quality is not an indicative like saying: the white become full if he eats, it not an indicative quality, since the black also becomes full if he eats. And therefore the saying of Umar: " ...وَلَيْسَ لِمُحْتَجِرٍ حَقٌّ بَعْدَ ثَلاث" ...whoever surrounds a land has no right in it after three (after three years if he doesn't do any (istislaah) reclamation)" narrated by Abū Yusuf in *kitab al-Kharaaj*, it is not of the connotation, for although it is a quality, it is not an indicative, so it has no connotation, therefore they said: it is a condition that the quality is a proper (indicative) to have a connotation, so if the quality has no relation: it has no connotation.

The proofs that the *mafhūm al-Ṣifah* is evidence are two matters:

One of them is: making the verdict dependant on the quality indicates reasoning (العِلِّيَّة), i.e. the quality becomes a reason (عِلَّة) for that verdict, for example the saum is *'illah* for the obligation of the *zakāh* of the sheep, then the verdict gets banished for the banishment of that quality, because the reasoned verdict banishes for the banishment of its reason (*'illah*), and the abidance is applicable in it, so if the obligation of the *zakāh* is mentioned in the *saa'imah* of the sheep, the question is about the *ma'loof* (fed by people) of them what is the verdict about it? It is practically of what the Sharī'ah kept silent about them, so the affirmation

of the obligation of the *zakāh* in the saa'imah that grazes in the forest and keeping silent about the ma'loof (fed by people) denotes that it is not an obligation in the ma'loof, and it is a part of the abidance denotation, therefore it is an evidence.

The second matter is: when acting in accordance with the incompatibility connotation is affirmed by texts, from that is what the Messenger ﷺ said: "لَيُّ الوَاجِدِ يُحِلُّ عِرْضَهُ وَعُقُوبَتَهُ" **"Delaying (to pay back) the debt payment by al waajid (he who is able to pay); allows his honour and his penalty"** compiled by Abū Dāwud, *al-waajid* is the rich, his procrastination (لَيّ) is his delay, allowing his honor is requesting him to pay, and his penalty is imprisoning him, so the connotation of incompatibility in it is that these thing are not allowed to do to other than the rich. So the Messenger ﷺ meant by this *ḥadīth* that the honor and the penalty of other than the rich are not allowed. And of this kind is his ﷺ saying: "...مَطْلُ الغَنِيِّ ظُلْمٌ" **"The procrastination of the rich is oppression..."** compiled by al-Bukhārī, it denotes that procrastination of other than the rich is not oppression, and since that is affirmed by the convention, i.e. by the use of the people of the language, it is affirmed also in the language, because the original principle is the non transference, especially that Abū 'Ubaidah explicitly stated it in this *ḥadīth*, and he is one of the authorities of the language that are referred to.

مَفْهُومُ الشَّرْطِ

Indication of the Condition (*mafhūm al-Sharṭ*)

The *mafhūm al-sharṭ* (indication of the condition) is making the rule of something conditional on something else by the particle (إِنْ) (if) or another condition particle of the language, it indicates the negation of the rule the condition doesn't occur, like the *ḥadīth* of the Messenger ﷺ narrated by Sulayman Ibn Buraydah from his father: " ثُمَّ ادْعُهُمْ إِلَى... التَّحَوُّلِ مِنْ دَارِهِمْ إِلَى دَارِ المُهَاجِرِينَ, وَأَخْبِرْهُمْ أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلمُهَاجِرِينَ وَعَلَيْهِمْ مَا عَلى المُهَاجِرِينَ... "**"...Then call them to divert to Daar al-Muhajireen, and inform them that if they do that, they have the rights and responsibilities of the Muhajireen..."** narrated by Muslim, it denotes that if they don't divert to Daar al Muhagireen, they don't have the rights and responsibilities of the Muhajireen, so he made the rule dependent on the condition, like His ta'ala's saying:

{وَإِنْ كُنَّ أُولَاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ}

"...And if they are pregnant then spend on them..."[174],

it denotes that spending on them (the divorced women) is not an obligation if they are not pregnant, so He Ta'ala made the verdict dependent on the condition.

The evidence that the Divergent Meaning (مَفْهُومُ المُخَالَفَة) is valid in the verdict that is dependent on a condition is of two matters: One of them is: there is no dispute about the affirmation of the conditioned matter when the linguistic condition is affirmed, and there is no dispute about the denotation of the particle (إِنْ) on this affirmation, and there

[174] Surah al-Ṭalāq:6

is no dispute about the absence of the conditioned matter at the absence of the linguistic condition, and this alone is sufficient to prove the validity of the action in accordance with the condition connotation, so the affirmation of the conditioned matter is necessitated by the existence of the condition, and the denotation of the particle (إِنْ) (if) on it is sufficient to indicate that the verdict is dependent on the existence of the condition, because that means if the condition is not affirmed; the conditioned matter is not affirmed, how then if in addition to it is that the absence of the conditioned matter is certain at the absence of the condition, so that explicitly assures this meaning. As for the denotation of the particle (إِنْ) (if) on the absence (of the conditioned matter at the absence of the condition); it truly denotes it, and the proof is that the grammarians dictated that it is for the condition and that absence of the condition necessitates the absence of the conditioned matter. It is incorrect to say that naming the particle (إِنْ) (if) as a condition particle is a grammarian convention like their convention on the nominative (case) (الرَّفْعُ) and the accusative (case) (النَّصْبُ) and others while these are not linguistic meanings; it is not correct to say that because al raf' (الرَّفْع) and al nasb (النَّصْب) are two conventions of the grammarians, they transferred the meanings of the words al raf' (الرَّفْع) and al nasb (النَّصْب) to other than their linguistic meanings then they became conventions, in contrast with naming the particle (إِنْ) as a condition particle, it wasn't by transferring the word to other than its linguistic meaning, but it is naming it by the name which the Arabs used it for. The Arabs used (إِنْ) for the condition, so it was named as condition particle, so it is used for that which the Arabs used it for it and it is not transferred. And now we infer to using it as a condition particle for this is what it is in the

language, since if it is not as such; it would had been transferred from its meaning, and the principle originally is the non transference, accordingly the affirmation of the conditioned matter at the existence of the condition, and the denotation of the particle (إِنْ) on it, and the absence of the conditioned matter at the absence of the condition and the denotation of the particle (إِنْ) on it prove that the connotation of condition is valid (in use). If it is a condition of existence; the nonexistence is considered, and if it is a nonexistence condition; the existence is considered, accordingly the incompatibility connotation in the verdict dependent on the condition is considered (in use).

The second matter: The *Ṣaḥābah* understood that whatever the particle (إِنْ) (if) is adjoined to it, it is a condition for the verdict, and that if it is a condition; its absence necessitates the absence of the conditioned matter, from that is what is narrated that Ya'la Ibn Umayyah said to Umar ﷺ: "What is the matter with us we shorten the prayer while we are secured, and Allah Ta'ala said:

{فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَقْصُرُوا مِنَ الصَّلَاةِ إِنْ خِفْتُمْ}

"...there is no blame on you if you shorten the prayer, if you fear that the disbelievers may attack you..."[175],

the point of proof in it, is that from the specification of shortening the prayer for the fear status, he understood not to shorten when there is no fear. And Umar didn't disapprove it of him, but he approved it and said to him: I had wondered from that which you wondered from it then I asked the Prophet ﷺ about that he said: " صَدَقَةٌ تَصَدَّقَ اللهُ بِهَا

[175] Surah al-Nisā':101

عَلَيْكُمْ, فَاقْبَلُوا صَدَقَتَهُ" **"A favor Allah bestowed it upon you, do accept His favor"** compiled by Muslim. Ya'la Ibn Umayyah and Umar are from the eloquent of the Arabs, they understood that and the Prophet ﷺ approved their understanding, so it is an apparent proof for the non-existence (of the conditioned matter) at the non-existence (of the condition). And of that kind is what the *Ṣaḥābah* understood that the hawl (elapse of a year) is a condition for the obligation of the *zakāh*, and they decided the nonexistence of the *zakāh* obligation at the nonexistence of the hawl, and had this not been the necessity of the condition; the *zakāh* obligation wouldn't be like this. From all that it is apparent that the connotation of condition is in use.

مَفْهُومُ الغَايَة

Implication of the Extent (*mafhūm al-Ghāyah*)

Implication of the Extent (*mafhūm al-Ghāyah*) is relating the verdict to an objective, and if verdict is restricted by an objective; it indicates the banishment of the verdict after the objective is reached like the saying of Allah Ta'ala:

{ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ}

"...then complete your fast till the night..."[176],

He restriced the fast by an objective that is the night, it denotes the banishment of the fast after the night comes.

[176] Surah al-Baqarah:187

The proof that the *mafhūm al-Ghāyah* is in use is that the verdicts which came restricted by an objective by the particles (حَتَّى) (till) and (إِلَى) (to) were affirmed before the objective, banished after it. So His Ta'ala saying:

{ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ}

"...then complete your fast till the night..."

means no fasting after the night comes, and this is supported by the saying of the Messenger ﷺ: " لا يَزَالُ النَّاسُ بِخَيرٍ مَا عَجَّلُوا الفِطْرَ" **"People are still being well so long as they break the fasting quickly"** compiled by Muslim, and by his forbidding to join the night to the day in fasting. And the saying of Allah Ta'ala:

{فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ}

"...wash your faces, and your hands (and arms) to the elbows..."[177],

that means it is not obligatory to wash what is after the elbows. And His Ta'ala saying:

{وَلَا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ}

"...and do not approach them until they are clean..."[178],

means the permissibility to approach them after the purity. And His Ta'ala saying:

{فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ}

[177] Surah al-Mā'idah:6
[178] Surah al-Baqarah:222

"So if the husband divorces his wife (irrevocably), after that she is not allowed for him to remarry her until after she marries another husband..."[179],

it means if she marries another husband she becomes allowed for him. And His Ta'ala saying:

{حَتَّىٰ يُعْطُوا الْجِزْيَةَ}

"...until they pay the jizyah..."[180],

it means if they pay the *jizyah* it is not allowed to fight them. And so is in all texts that came restricted to an objective by the particles (حَتَّى) (till) and (إِلَى) (to) the verdict came as for after the objective different to before it, and this shows that the connotation of incompatibility with regard to the objective is in use, and that is confirmed by restricting the verdict to the objective, since if it hasn't got a connotation of incompatibility, then restricting the verdict to the objective wouldn't banish the verdict after it, and there wouldn't be any benefit from mentioning it, and contrary to the reality, and contrary to the structure of the Qur'ān. Since the reality is that the verdict is banished after the objective, and its banishment is the result of the connotation of the incompatibility with regard to the objective. And the structure of the Qur'ān is that every particle and every word mentioned in it is for a denotation, and it hasn't got anything additional at all, and not acting in accordance with the connotation of incompatibility makes the mentioning of the objective useless and this is not permitted, therefore the objective connotation is in use.

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[179] Surah al-Baqarah:230
[180] Surah al-Tawbah:29

مَفْهُومُ العَدَد

Implication of the Stated Number (*mafhūm al-ʻadad)*

Implication of the Stated Number (*mafhūm al-ʻadad)* is relating the verdict to a number, so restricting the verdict by a specific number indicates that anything other that number has a different verdict, like the saying of Allah Ta'ala:

{الزَّانِيَةُ وَالزَّانِى فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ}

"The woman and the man guilty of adultery, flog each of them with a hundred stripes..."[181],

He restricted the flogging by a specific number which is one hundred, which indicates the prohibition of what exceeds the hundred. If the verdict is joined with a number it indicates the incompatibility connotation (مَفْهُومُ المُخَالَفَة), the evidence for this is what is narrated that Qataadah said: "When the saying of Allah Ta'ala came down:

{اسْتَغْفِرْ لَهُمْ أَوْ لَا تَسْتَغْفِرْ لَهُمْ إِنْ تَسْتَغْفِرْ لَهُمْ سَبْعِينَ مَرَّةً فَلَنْ يَغْفِرَ اللَّهُ لَهُمْ}

"Whether you ask forgiveness for them (the hypocrites) or not (their sin is unforgivable), if you ask seventy times for their forgiveness, Allah will not forgive them..."[182],

[181] Surah al-Nūr:2
[182] Surah al-Tawbah:80

the Prophet ﷺ said: "قَدْ خَيَّرَنِي رَبِّي, فَوَاللهِ لَأَزِيدَنَّ عَلَى السَّبْعِينَ" **"My Lord gave me the option, by Allah I shall do (ask forgiveness for them) more than seventy"** compiled by al-Dtabary, it is rationally understood that what is more than seventy is different to it, so it is an evidence that the incompatibility connotation with regard to the number is valid. Also the texts in which numbers are mentioned have the verdicts incompatible with the number different to the verdicts compatible with the number, from that is the saying of Allah Ta'ala:

{ فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ}

"...flog each of them with a hundred stripes...",

{ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً}

"...then flog them (those who accuse chaste women and do not produce four witnesses to support their allegations) with eighty stripes..."[183],

so flogging the adulterer less than a hundred or more than a hundred is not permissible, and flogging the accuser less than eighty or more than eighty is not permissible. And his ﷺ saying: "إِذَا بَلَغَ المَاءُ قُلَّتَيْنِ لَمْ يَحْمِلِ الخَبَثَ" **"If the water (quantity) is two (*qullah*) barrels (approximately 216 liters), it doesn't hold impurity"** compiled by al-Dāraqutnī, its connotation is that if it doesn't reach two *qullah* it may hold impurity, and thus are all texts. But it must be known here that the connotation of incompatibility with regard to the number is valid in one situation only and that is when the verdict is restricted to a specific number, and the

[183] Surah al-Nūr:4

context indicates the affirmation of that verdict in the specified number, and its banishment in other numbers, or it indicates the banishment of the verdict in the specified number, and its affirmation in other numbers, just like the way it is in the significance of the address (فَحْوَى الخِطَاب), i.e. if it gets known from the context that the verdict is restricted by the specified number, that is what the necessitation denotation is applicable in it, that is when the mind shifts to that meaning when the words are heard, that means it is of the mental necessitation, but if it isn't like that, i.e. it isn't of the mental necessitation, then it is not considered to be a connotation of the number, because the connotation of the number is of the necessitation denotation, and the necessitation that is considered is the mental necessitation. So the connotation of the number is valid (in use) in every verdict restricted by a specific number and its denotation is the affirmation of that verdict in a specific number and its banishment in other numbers, or its denotation is the banishment of that verdict in a specific number, and its affirmation in other numbers, is taken from the context, that is when the mind shifts to that meaning when the expression is heard, so in this situation the connotation of the number is valid. And that is like the saying of the Prophet ﷺ: "إِذَا كُنْتُمْ ثَلاثَةً فِي سَفَرٍ فَأَمِّرُوا عَلَيْكُمْ أَحَدَكُمْ" **"If you are three in a travel, do appoint one of you as an emir on yourselves"** compiled by al-Bazzar, the verdict here is appointing an emir is restricted by a number which is one, and the context denotes that appointing one emir is what is meant not appointing two, and its connotation is that the leadership of more than one emir is not permissible, so the context denoted that the verdict is restricted by this number, so the incompatibility connotation is in use. And therefore the Messenger ﷺ said

about the leadership of the believers: " إِذَا بُوِيعَ لِخَلِفَتَيْنِ فَاقْتُلُوا الآخَرَ مِنْهُمَا" **"If the pledge of allegiance is given to two khalifahs then kill the latter of them"** compiled by Muslim. If the context doesn't denote that, like if one tells someone who owes him some money: "Give me the two pennies you owe me" this hasn't got any connotation of incompatibility since he didn't mean by "two pennies" to restrict the verdict by a number, but it is just the use of any ultimate number, and the debt that he is owed could be hundreds of dinars, this means that the connotation of incompatibility in the number is valid if it fulfils two conditions: one of them is restricting the verdict by a number, the second is that the context denotes the banishment of the verdict in other than the specified number.

مَا لَمْ يُعْمَلْ بِهِ مِنْ مَفْهُومِ الْمُخَالَفَةِ

What is Invalid (not in use) from the Divergent Meaning (*mafhūm al-Mukhālafah*)

These four kinds: the quality (الصِّفَة), the condition (الشَّرْط), the objective (الغَايَة), and the number (العَدَد), are what is valid in the Divergent Meaning (*mafhūm al-Mukhālafah*), and anything other than them is not valid, so the connotation of noun is not valid at all, whether it is a proper noun (اسمُ عَلَمٍ) like "Zaid is standing up", or a generic noun (اسمُ جِنْسٍ) like saying: "there is *Zakāh* in the sheep", for it doesn't denote the banishment of the verdict related to this noun from other than its denotation. The example "Zaid is standing up" doesn't denote the banishment of the standing up of other than Zaid, and the example "there is *Zakāh* in

the sheep" doesn't denote the banishment of the *Zakāh* in other than the sheep. So relating the verdict to the noun and what has its meaning like the nickname and the surname, doesn't denote the banishment of it in other than this noun, like the dictating on each kind of the six things to forbid the *riba* in it (the gold, the silver, the wheat, the barley, the dates, and the salt), it doesn't denote the permissibility of the *riba* in other than these kinds, and like the dictating on each kind of the ten things that the *Zakāh* in it is obligatory, it doesn't denote the banishment of the *Zakāh* in other kinds, and like saying: Zaid stood up, it denotes that the standing up was performed by Zaid and doesen't denote that it wasn't performed by the others. In this example the verdict is related to proper noun. So the connotation of the noun is not in use at all.

Also the Divergent Meaning (*mafhūm al-Mukhālafah*) of the un-indicative quality is not in use, like the saying of Umar ﷺ: "وَلَيْسَ لِمُحتَجِرٍ حَقٌّ بَعْدَ ثَلاثٍ" **"...whoever surrounds a land has no right in it after three (after three years if he doesn't do any (*istislaah*) reclamation)"** narrated by Abū Yūsuf in *al-Kharāj* book, it doesn't denote that he who possesses a land not by the means of surrounding it but by allocating it to him, (it doesn't denote that he has the right to keep the land if he keeps it without work for three years. And like the saying of the Messenger ﷺ: "لِلسَّائِلِ حَقٌّ وإِنْ جَاءَ عَلَى فَرَسٍ" **"The beggar (the needy who asks) has a right (of the *Zakāh*) even if he comes (riding) on a horse"** compiled by Aḥmad from the way of al-Hussain Ibn Ali ﷺ, it doesn't denote that the needy who doesn't ask hasn't got a right in the *Zakāh*, but it must be given to the needy who asks and to the needy who doesn't ask. So the un-indicative quality, i.e. the improper, its Divergent Meaning (*mafhūm al-*

Mukhālafah) is invalid and not considered as a proof, because the mind doesn't shift to it when the expression is heard, and it doesn't benefit reasoning.

Also the Divergent Meaning (*mafhūm al-Mukhālafah*) of the particle (إِنَّمَا) which translates to: but, it is but, verily, truly, however, etc, is not in use, like in the *ḥadīth*: " إِنَّمَا جَعَلَ النَّبِيُّ ﷺ الشُّفْعَةَ فِي كُلِّ مَا لَمْ يُقْسَمْ" **"Verily the Prophet ﷺ made the (shuf'ah) right of preemption (the right of priority of buying properties) in that which is not divided (among the partners)"** compiled by al-Bukhārī, and the *ḥadīth*: " إِنَّمَا الأَعْمَالُ بِالنِّيَّاتِ" **"Verily the actions are by the intentions"** compiled by al-Bukhārī and Muslim, and the *ḥadīth*: " إِنَّمَا الوَلاءُ لِمَنْ أَعْتَقَ" **"Verily the loyalty belongs to the freer (of the slave)"** compiled by Muslim, and the *ḥadīth*: " إِنَّمَا الرِّبَا فِي النَّسِيئَةِ" **"Verily the *riba* is in the (nasee'ah) delaying of the payment"** compiled by Muslim, the particle (إِنَّمَا) in these *aḥādīth* does not denote the limitation, and its connotation of incompatibility is not in use, because إِنَّمَا does not decisively denote the limitation in the language so that its connotation of incompatibility can be considered, but it may come with the meaning of limitation, and it may come without limitation, like the saying of Allah Ta'ala:

{ إِنَّمَا أَنَا بَشَرٌ مِّثْلُكُمْ}

"...I am but a man like yourselves..."[184],

and His saying:

{إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ}

"Alms (al-Zakāh) are but for the poor..."[185],

[184] Surah al-Kahf:110

the particle إِنَّمَا in these two verses means the limitation, but in the Messenger's ﷺ saying: "إِنَّمَا الرِّبَا فِي النَّسِيئَةِ" **"Verily the *riba* is in the (nasee'ah) delaying of the payment"** compiled by Muslim, it doesn't mean the limitation, since the *riba* is not limited to the delaying of the payment (al-nasee'ah), for the consensus of the *Ṣaḥābah* ﷺ about the forbiddance of *riba al-Fadl*, for non of the *Ṣaḥābah* had different opinion about its forbiddance except Ibn Abbas ﷺ, but afterwards he changed his mind about it. And also in the *ḥadīth*: " إِنَّمَا جَعَلَ النَّبِيُّ الشُّفْعَةَ فِي كُلِّ مَا لَمْ يُقْسَمْ" **"Verily the Prophet ﷺ made the (shuf'ah) right of preemption (the right of priority of buying properties) in that which is not divided (among the partners)"** compiled by al-Bukhārī, it doesn't mean the limitation, because the shuf'ah is not limited to the partner, but it is confirmed for the neighbour too, for his ﷺ saying: "جَارُ الدَّارِ أَحَقُّ بِالدَّارِ مِنْ غَيْرِهِ" **"The neighbour of the house has priority in (buying) the house over others"** compiled by Aḥmad, and for his saying: "الجَارُ أَحَقُّ بِسَقَبِهِ" **"The neighbour is more deserving for his nearness"** compiled by al-Bukhārī, and for his ﷺ saying: " الجَارُ أَحَقُّ بِشُفْعَةِ جَارِهِ, يَنْتَظِرُ بِهَا وَإِن كَانَ غَائِبًا, إِذَا كَانَ طَرِيقُهُمَا وَاحِدًا" **"The neighbour has more right to be given the shuf'ah (priority to buy the house of his neighbour), his neighbour should wait for him if he is away for this entitlement, if their way (in) is one"** compiled by Aḥmad. And since the particle إِنَّمَا doesn't decisively denote the limitation, but it could be for limitation or for other things; its Divergent Meaning (*mafhūm al-Mukhālafah*) is not in use.

And also there is no connotation (of reasoning) for every address that specifically mentions the place of utterance

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[185] Surah al-Tawbah:60

because it is more common in most cases, and that is like the saying of Allah Ta'ala:

{وَرَبَائِبُكُمُ اللَّاتِى فِى حُجُورِكُمْ مِنْ نِسَائِكُمُ اللَّاتِى دَخَلْتُمْ بِهِنَّ}

"...and your step-daughters under your guardianship, born of your wives in whom you have gone..."[186],

and His Ta'ala saying:

{وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا}

"If you fear a breach between them twain (the man and his wife), appoint (two) arbiters, one from his family, and the other from her family..."[187],

and the saying of the Messenger ﷺ: " أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا, فَنِكَاحُهَا بَاطِلٌ" **"Any woman marries without the permission of her guardian, her marriage is null"** compiled by al-Tirmidhī, and his ﷺ saying: " إِذَا ذَهَبَ أَحَدُكُمْ لِحَاجَةٍ فَلْيَسْتَطِبْ بِثَلَاثَةِ أَحْجَارٍ, فَإِنَّهَا تُجْزِئُهُ" **"If one of you goes to relieve himself he should purify himself with three stones, they are sufficient for him"** compiled by Aḥmad. So specifying the place of utterance in all these figures is because they are common in most cases. Since the step daughter mostly lives in the house, and the (الخُلْعُ) (*al-khul'u*) mutual divorce occurs only when there is breach between the married couple, and woman doesn't marry without a guardian unless the guardian doesn't permit her, and refusing her marriage, and the (الاسْتِنْجَاء) (*al-istinjaa'*) purification from relieving oneself doesn't happen without stones, therefore

[186] Surah al-Nisā':23
[187] Surah al-Nisā':35

there is no connotation of the address in all these example and the likes.

Also the Divergent Meaning (*mafhūm al-Mukhālafah*) is not in use if a text from the Qur'ān or the Sunnah cancels it, then it will be cancelled because the text came contrary to it, like the saying of Allah Ta'ala:

{يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً}

"O ye who believe! devour not Usury, doubled and multiplied..."[188],

and His saying:

{وَلَا تُكْرِهُوا فَتَيَاتِكُمْ عَلَى الْبِغَاءِ إِنْ أَرَدْنَ تَحَصُّنًا}

"...And force not your maids to prostitution if they are willing chastity..."[189],

so it is not correct to say that the *riba* is allowed if it is not doubled and multiplied, standing on the connotation of incompatibility of the *Āyah* as an evidence, because there is another text which cancelled this connotation, and that is the saying of Allah Ta'ala:

{وَإِنْ تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ}

"...and if you repent, you shall have your capital sums..."[190],

so all the *riba* is forbidden, and the connotation of His saying: {أَضْعَافًا مُضَاعَفَةً} (doubled and multiplied) is not in use. Thus it is not correct to say that if they are not willing

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[188] Surah Āli Imrān:130
[189] Surah al-Nūr:33
[190] Surah al-Baqarah:279

chastity then you can force them to prostitution, for the proof of the connotation of incompatibility of the *Āyah*, since there is another text which cancels this connotation, and that is the saying of Allah Ta'ala:

{وَلَا تَقْرَبُوا الزِّنَا إِنَّهُ كَانَ فَاحِشَةً}

"and don't come near to zina (unlawful sex): for it is a (faahishah) great sin..."[191],

so forcing them to prostitution is forbidden, whether they are willing chastity or they are not willing it.

Accordingly, the connotation of incompatibility is limited to the four kinds only which are: The connotation of the quality (مَفْهُومُ الصِّفَة), the connotation of the condition (مَفْهُومُ الشَّرْطِ), the connotation of the objective (مَفْهُومُ الغَايَة), and the connotation of the number (مَفْهُومُ العَدَد), and nothing other than these four has a connotation (of reasoning), nor that its connotation of incompatibility is in use at all.

[191] Surah al-Isrā':32

أَقْسَامُ الكِتَابِ وَالسُّنَّةِ

The Divisions of the *Kitāb* and the *Sunnah*

After the discussion of the language is finished, and the knowledge of it and its divisions is acquired, it is inevitable to know the divisions of the *Kitāb* and the Sunnah to complete what the inferring from the *Kitāb* and the Sunnah depends on, that is because the knowledge in the Arabic language and its divisions is not enough for the inference of the Sharī'ah verdicts from the *Kitāb* and the Sunnah, because the expressions of the *Kitāb* and the Sunnah are legislative texts in which there is the request to act and abstain, and in them are: the general and the specific texts, the absolute and the restricted texts, the summed up that needs clarification, the clarification and that which is clarified, and in them is that which has the verdict been abrogated and that which is not abrogated. It is inevitable to know all these things for the inference from the *Kitāb* and the Sunnah upon the shar'i verdict, so knowing the language and its divisions without knowing the divisions of the *Kitāb* and the Sunnah is not enough for the inference upon the verdict, therefore it is inevitable to know the divisions of the *Kitāb* and the Sunnah along with knowing the Arabic language and its divisions. After studying the *Kitāb* and the Sunnah it became clear that their divisions are limited to five divisions: The first is the commands (الأَوامر) and the prohibitions (النَّواهي), the second is the general (العامّ) and the specific (الخاصّ), the third is the absolute (المُطلَق) and the restricted (المُقَيَّد), the fourth is the summed up (المُجْمَل), the clarification (البيان) and what is clarified (المُبَيَّن), and the fifth is the abrogator (النَّاسِخ) and

what is abrogated (المَنسُوخ). Any classification other than these five is not considered to be a specific division but it is classified under one of them, or under the language, or it is meaningless seeking of classification, as an example they said: among the divisions of the *Kitāb* and the Sunnah are the literal meaning (الظَّاهِر) and the interpreted meaning (المُؤَوَّل), and they defined the literal meaning that it is what denotes a meaning by its original composition or by its convention with an outweighed possibility of another meaning, and they defined the interpreted that it is carrying the expression out on other than its literal meaning when it is possible with the support of an evidence, and accordingly they treated the texts with abusiveness and interpretations. And the reality is that the expression with regard to its denotation upon the meaning should be referred to the language, and it denotes it either by the composition, by the convention or by the shar'i denotation, and these things don't have literal and interpreted meanings, and if they exist; they would be among the language divisions not divisions of the *Kitāb* and the Sunnah. And they said that among the divisions of the *Kitāb* and the Sunnah is what they called "the text" (النَّص), and they defined it by what has additional clearness over the apparent for a significance in the mind of the speaker not in the tense itself, like the saying of Allah Ta'ala:

{فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ}

"...then marry what is pleasant to you of (the allowed) women, two, or three, or four...",

the beginning of the *Āyah* is:

{وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا}

"And if you fear that you shall not be able to deal justly with the orphan girls then marry..."[192],

it means if you fear that you may not deal justly with the orphan girls, for their lust deficiency, and a shortage in their desire in you, then marry other than them from what is lawful for you of women, they said: the *Āyah* is clear in permitting marrying what is pleasant of women, because it is understood just from hearing the tense, and it is also a clarification text for the number, because the permissibility of marrying was known from other texts and from the action of the Messenger ﷺ before the arrival of this *Āyah*, but the number wasn't clarified until this *Āyah* clarified it, so understanding that the *Āyah* is for legislating the number of wives by four is considered as an understanding of the text (النَّصّ), and understanding the marrying of other than the orphan girls is an understanding of the literal meaning (الظَّـاهِر), this is what they said. The truth is that understanding the number came from the literal denotation (*al-manṭūq*) (المَنْطُوق) of His Ta'ala saying in the *Āyah*:

{مَثْنَى وَثُلَاثَ وَرُبَاعَ}

"two, or three, or four",

and understanding the marriage of other than the orphan girls came from the literal denotation of His Ta'ala saying in the *Āyah*:

{فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ}

"then marry what is pleasant to you of (the allowed) women",

[192] Surah al-Nisā':3

and there is no difference between them from the perspective that both understandings are from the *manṭūq*, and there is no room for this differentiation that this understanding came from the text and this understanding came from the literal meaning.

And they said that among the divisions of the *Kitāb* and the Sunnah is the phrasing of the text (عِبارَةُ النَّصّ), they said: the inference by the phrasing of the text is acting according to what the words are carried on for it, and the text is the phrase of the Qur'ān and the *ḥadīth*, and it is more general than being a text with extra clarification (نَصّ), a literal meaning (ظَاهِر), an interpreted meaning (مُفَسَّر), or a special خَاصّ). That is the shift of the mind from the phrasing of the Qur'ān to the verdict is the extraction of the *mujtahid* from what the words are carried on for it. Like in the saying Allah Ta'ala:

{ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ}

"...But he whom the baby is born for him shall bear the cost of their (the mothers) food and clothing on equitable terms..."[193],

so what is affirmed by the phrasing of the text which is (But he (the father) shall bear the cost of their (the mothers) food) is that the alimony (النَّفَقَة) is an obligation upon the father, so the words are carried on for this purpose. This division is also meaningless, because the verdict is taken from the literal denotation of the *Āyah*, so it is of the *manṭūq*.

And they said: among the divisions of the *Kitāb* and the Sunnah is the text indication (إِشَارَةُ النَّص), and they defined

[193] Surah al-Baqarah:233

it by considering that which its linguistic composition is affirmed, but it is not meant nor is the text carried on for it, and it is not apparent in every direction, like in the saying of Him Ta'ala:

{ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ}

"...But he whom the baby is born for him shall bear the cost of their (the mothers) food and clothing on equitable terms...",

what is affirmed by the indication of this text is kinship of the child to the father, because it ascribed the child to the one he was born for him with the particle (ل) which necessitates the specialty. Also there is an indication in the text that the alimony is a duty upon the relatives other than the father in accordance with their portions of the inheritance, even the expenditure of the infant is a must upon the mother and the grandfather as thirds, because the inheritor (الوارِث) is derived noun from the inheritance (الإرث), so the verdict must be based on its meaning. And like that is the saying of Allah Ta'ala:

{ وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا}

"...And the carrying of the (child) to his weaning is (a period of) thirty months...",

what is affirmed in the text is the favor of the mother upon the child, because the *Āyah* is:

{وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ إِحْسَانًا حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا
وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا}

"We have enjoined on man kindness to his parents; his mother did bear him in pain, and she gave him birth in pain. And the

carrying of the (child) to his weaning is (a period of) thirty months..."[194]

and there is an indication in it that the minimum period of pregnancy is six months. Abd al-Razzaaq narrated in his compilation and al-Baihaqy narrated from Mālik Ibn Anas: that a man married a woman then she gave birth in six months, and Othmaan was about to stone her, the nIbn Abbaas said: verily if she litigates you; she wins the case against you, Allah Ta'ala said:

{وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا}

"And the carrying of the (child) to his weaning is (a period of) thirty months"

and He said:

{ وَفِصَالُهُ فِى عَامَيْنِ}

"...and his weaning is in two years..."[195],

so if the weaning is in two years; the remaining period for the is six months, then Othmaan cancelled her punishment. It is also meaningless to make this a division of the *Kitāb* and the Sunnah, because it is a division of the connotation denotation, it is the indication denotation, and it is of the linguistic discussions not of the *Kitāb* and the Sunnah discussions.

And they said: among the divisions of the *Kitāb* and the Sunnah is the denotation of the text, and they defined it that it is what is affirmed by the meaning of the text

[194] Surah al-Ahqāf:15
[195] Surah Luqmān:14

linguistically not by diligence (*ijtihād*), like forbiddance of saying ugh (أُفّ), it is shown without *ijtihād*, so what is affirmed by denotation of the text is that what is affirmed by the language composition, and it means an apparent meaning that can be known by hearing the expression without scrutiny. The truth is this division is apparent that it is of the literal denotation (al-*manṭūq*), so it is of the language discussions.

And they said: among the divisions of the *Kitāb* and the Sunnah is the necessity of the text, and that is what the text doesn't function unless it is conditionally preceded by it, so it is a matter the text necessitates for the validity of what it deals with, so it becomes an additional matter to the text by necessity, an example for it is the saying of Allah Ta'ala:

{ فَتَحْرِيرُ رَقَبَةٍ}

"...it is ordained that he should free a believing slave..."[196],

it necessitates possessing the slave, but it is not mentioned, as if it said: freeing a slave owned by you, because freeing the free person or the slave of the others is invalid, so freeing a slave necessitate that he is owned by you, and this is of the necessity of the text. And this division also is not correct to make it a division of the *Kitāb* and the Sunnah, since it is one of the language discussions, it is a kind of the necessity denotation, it is denoted from the meanings of the singular expressions, that it is a condition for the denoted meaning by the compatibility, and it is either the mind necessitates it, like one's saying to someone: shoot, it necessitates the order to have the bow and arrow and the

[196] Surah al-Nasā'ī:92

goal, because the necessitates them for the shooting, or it is necessitated by the Sharī'ah like his saying: do free your slave on my behalf, it necessitates that he requests to own the slaves, so if he had freed him, it becomes clear that the slave got into his ownership (before freeing him), because the freeing according to the Sharī'ah is invalid except in what is owned, and like that is the *Āyah*: {فَتَحْرِيرُ رَقَبَةٍ} (it is ordained that he should free a believing slave), it necessitates the ownership of the slave, so it is of the necessitation denotation (دلالة الالتزام), a division of the connotation, and it is of the language discussions not of the discussions of the *Kitāb* and the Sunnah.

And they said: among the divisions of the *Kitāb* and the Sunnah is the hidden (الخَفِيّ), and it is that which has a meaning got hidden by a matter external from the text, and it cannot be possessed except by seeking it, like His Ta'ala saying:

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا}

"As to the thief, male or female, cut off his or her hands..."[197],

it is apparent concerning the obligation of cutting the hand of every thief, and at the same time it is hidden concerning the (dtarraar) snatcher (who snatches the money after cutting its pouch) and the nabbaash (gravedigger), because in the convention of the people of the language they have different names other than thief, so we scrutinized it and found that specializing the snatcher by another name is because of an additional meaning in the theft, since the theft is secretly taken an honoured property from the

[197] Surah al-Mā'idah:38

sanctuary of its similar, and the thief steals from someone who is watchful and intending to protect the property, at a kind of inattention and unconsciousness befalls him, and for specializing the gravedigger by another name for the lessens of the stealing meaning in it, because he steals from the dead who is not intending the protection, and all this is hidden. This division is considered as meaningless tamahhul (تمحُّل) (claiming a place for the placeless). Verily the theft has a linguistic meaning that doesn't befit the dtarraar and the nabbaash, in addition, cutting the hand has conditions provided by the Sunnah. And the verdict of the thief is known, it is different to the verdict of the dtarraar and the nabbaash and different to the verdict of the plunderer (المُنتَهِب) and the embezzler (المُختَلِس), so calling this by the hidden and making it one of the divisions of the *Kitāb* and the Sunnah is claiming a place for the placeless and it is meaningless.

And they said: among the divisions of the *Kitāb* and the Sunnah is the ambiguous (al-mushkal) (المُشْكَل), which is deep in its ambiguity, i.e. the words which are ambiguous in their similarities, so it has additional hiddenness over the hidden, it is opposite to what they called "the text" (النَّصّ) as a division, which has additional clearness over the apparent, therefore it needs scrutiny between the demand and the contemplation, and the example for that is the saying of Allah Ta'ala:

{فَأْتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ}

"...so approach your tilth (arable) how you will..."[198],

[198] Surah al-Baqarah:223

so the word (أَنَّـى) (anna) is ambiguous, sometimes it means whence (from where), like in His Ta'ala's saying:

{أَنَّى لَكِ هَذَا}

"...O Maryam, whence (comes) this to you?..."[199],

means from where do you get this provision that comes to you every day, and sometimes it means how, as in His Ta'ala's saying:

{أَنَّى يَكُونُ لِى غُلَامٌ}

"...how can I have a son..."[200],

so its meaning is ambiguous, does it mean from where or how. So if we scrutinize the expression (الحَرْث) tilth, we know that (أَنَّـى) anna here means how, not from where, because the rear part is not a place of tilth (الحَرْث) but a place of filth (excrement) (الفَرْث), accordingly, approaching the woman from her back part is forbidden. So had the word harth not been there, the expression anna (أَنَّـى) would be ambiguous, because sodomy (اللِّـوَاطْ) is decisively forbidden, and anna would possibly be explained by from where, and leads to allow sodomy with the woman, but the existence of the word {حَـرْثُكُمْ} your harth removed its ambiguity. Also this is not a division of the *Kitāb* and the Sunnah, but it is of the language discussions, because the expression (أَنَّـى) anna is one of the common expressions, which is a division of the expression with regard to the denotative and the denoted (الدالُّ والمَدلول) like the expression (العَيْن) al-'ayn for the eye that sees and for the water spring,

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[199] Surah Āli Imrān:37
[200] Surah Maryam:8

so the expression anna is of the common expressions, and the indication determines the meaning of the common expressions, hence the word (حَـرْثُكُمْ} your tilth is an indication denoting that the meaning of anna is how. So there isn't any ambiguity, and therefore the so called ambiguous (المُشْكَل) is not considered to be a division of the *Kitāb* and the Sunnah.

And they said: among the divisions of the *Kitāb* and the Sunnah is the explained (المُفَسَّر), and that is what has more clarification than the text (النَّص) -which they considered it as a division, which is clearer than the apparent- so that there isn't any possibility of interpretation (تَأْوِيل) or specification (تَخْصِيص) like the saying of Allah Ta'ala:

{فَسَجَدَ الْمَلَائِكَةُ كُلُّهُمْ أَجْمَعُونَ}

"So the Angels prostrated themselves, all of them together"[201],

the name Angels is a common apparent name that has the possibility of specification, but this possibility is ceased with the explanation of His Ta'ala's saying: {كُلُّهُمْ} (all of them), but the possibility of prostrating together or separate remained, then the interpretation possibility of being separate got ceased by His saying: {أَجْمَعُونَ} (together) this so called division is a kind of the meaningless tamahhul (claiming a place for the placeless), because using the confirmation in the speech doesn't make it a division of it, nor does it make it a special division of the *Kitāb* and the Sunnah. And there is no room for it to be discussed when deriving the Sharī'ah verdicts.

[201] Surah al-Hijr:30

And thus all the matters that they mentioned as divisions of the *Kitāb* and the Sunnah are not divisions of them, but they are of the language discussions, or of the meaningless tamahhul, and the studying clarified that the divisions of the Qur'ān are limited to five divisions, they are:

The command (الأَمر) and the prohibition (النَّهي), the general (العامّ) and the specific (الخاصّ), the absolute (المُطلَق) and the restricted (المُقَيَّد), the summed up المُجْمَل) and what is clarified (المُبَيَّن), and the abrogator (النَّاسِخ) and what is abrogated (المَنسُوخ), and there is no divisions other than that.

الأمر والنَّهي

The Command and the Prohibition *(al-Amr wa'l-Nahī)*

The command is requesting in a superiority manner to do an action. And the prohibition is requesting in a superiority manner to leave an action. The command and the prohibition mean the request, so the command is a request to perform the action, and the prohibition is a request to leave the action. But the *shar'i* commands and prohibitions are not all of one type, but the commands and the prohibitions differ in accordance with the differences of the indications and the situations.

The command could be for the obligation (الوُجُوب) like the saying of Allah Ta'ala:

{أَقِمِ الصَّلَاةَ}

"Perform the prayer..."[202],

And it could be for the preference (النَّدْب) like His Ta'ala's saying about the emancipation (freedom) writing for the slaves:

{فَكَاتِبُوهُم}

"...then do write for them..."[203]

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[202] Surah al-Isrā':78

[203] Surah al-Nūr:33

And it could be for the permissibility like His Ta'ala's saying:

{ وَإِذَا حَلَلْتُمْ فَاصْطَادُوا}

"...But when you end your ihraam (of hajj and 'Umah) do hunt"[204].

أنواع الأوامر والنَّواهي

The Types of Commands and Prohibitions

The commands and the prohibitions are of two kinds: explicit and inexplicit.

The explicit is of two kinds: one of them has the command expression and the prohibition expression like the saying of Allah Ta'ala:

{إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَى أَهْلِهَا}

"Allah commands you to render back the Trusts to whom they belong..."[205],

and like His Ta'ala's saying:

{إِنَّمَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ قَاتَلُوكُمْ فِي الدِّينِ وَأَخْرَجُوكُمْ مِنْ دِيَارِكُمْ وَظَاهَرُوا عَلَى إِخْرَاجِكُمْ أَنْ تَوَلَّوْهُمْ}

[204] Surah al-Mā'idah:2

[205] Surah al-Nisā':58

"Only those who fight you for the religion, and drove you out of your homes, and supported (others) in driving you out, Allah forbids you to befriend them..."[206]

The second is that the expression composed linguistically for the command and the prohibition denotes the command and the prohibition like:

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا}

"As to the thief, male or female, cut off his or her hands..."[207],

and like

{وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ}

"...and let a party of the Believers witness their punishment"[208],

and like

{لَا تَقْرَبُوا الصَّلَاةَ وَأَنْتُمْ سُكَارَى}

"...approach not prayers when you are in a drunken state..."[209],

and like

{لَا تَخُونُوا اللهَ وَالرَّسُولَ}

"...betray not the trust of Allah and the Messenger..."[210],

so in these texts, the expression linguistically composed for the command denoted the command, and the expression

[206] Surah al-Mumtahanah:9
[207] Surah al-Mā'idah:38
[208] Surah al-Nur:2
[209] Surah al-Nisā':43
[210] Surah al-Anfāl:27

linguistically composed for the prohibition denoted the prohibition.

The inexplicit: the command or the forbidden expression is not what denotes the command or the forbidden, but the sentence of the text includes the meaning of the command or the prohibition, i.e. the denotation upon the command or the prohibition comes from what the sentence of the text includes of command or prohibition meaning, not from the command expression or the prohibition expression, like

{كُتِبَ عَلَيْكُمُ الصِّيَامُ}

"...Fasting is prescribed upon you..."[211],

{إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ}

"...verily Allah loves not the wasters"[212],

and as such.

The inexplicit comes in numerous situations:

Some of them came as a report determining a verdict, like His Ta'ala's saying:

{كُتِبَ عَلَيْكُمُ الصِّيَامُ}

"...Fasting is prescribed upon you..."

{وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ}

"The mothers shall give suck to their children..."[213],

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[211] Surah al-Baqarah:183

[212] Surah al-A'rāf:31

{وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا}

"...And never will Allah grant to the disbelievers a way (authority) over the Believers"[214],

{فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ}

"...its expiation is feeding ten (miskeen) indigent persons..."[215],

and like that is what has the meaning of the command or the prohibition. And of this category are the expressions *al-farḍ* (الفَرْض), *al-wājib* (الوَاجِب), and *al-halaal* (الحَلال) which came explicitly in the command like His Ta'ala's saying in the *Āyah* of the sadaqaat (*al-zakāh*):

{إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ}

"Alms are for the poor and the needy..." up to His saying:

{فَرِيضَةً مِنَ اللَّهِ}

"...it is obliged by Allah..."[216],

and like what is narrated that the Messenger ﷺ said in a sermon: "أَيُّهَا النَّاسُ, إِنَّ اللهَ عَزَّ وَجَلَّ قَدْ فَرَضَ عَلَيْكُمُ الحَجَّ" "O people, Allah the Great and Almighty had obliged the Hajj upon you" compiled by Aḥmad and al-Nasa'i, and like what is narrated from Ibn 'Umar: "فَرَضَ رَسُولُ اللهِ (ص) صَدَقَةَ الفِطْرِ" "The Messenger of Allah ﷺ had obliged the sadaqah of al-fidtr (the fast breaking)" compiled by Ibn Mājah, and like his ﷺ saying: "الجِهَادُ وَاجِبٌ عَلَيْكُمْ مَعَ كُلِّ أَمِيرٍ" "The *jihād* is

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[213] Surah al-Baqarah:233
[214] Surah al-Nisā':141
[215] Surah al-Mā'idah:89
[216] Surah al-Tawbah:60

obligatory upon you with every Emir (Commander)" compiled by Abū Dāwud, and like His Ta'ala's saying:

{ أُحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَىٰ نِسَائِكُمْ}

(It is made lawful for you to approach to your wives on the night of the fasts, ...) 187 Surah al-Baqarah,

and like His Ta'ala's saying:

{ وَأَحَلَّ اللَّهُ الْبَيْعَ}

(...Allah has allowed trade...) 275 Surah al-Baqarah,

and also what came of the prohibition expressions like His Ta'ala's saying:

{قُلْ إِنَّمَا حَرَّمَ رَبِّيَ الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ}

(Say: The things that my Lord has indeed prohibited are the shameful deeds, whether open or secret...) 33 Surah al-A'raaf,

and His Ta'ala's saying:

{وَحَرَّمَ الرِّبَا}

(...and forbidden usury),

and His saying:

{حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ...}

(prohibited for you (of food) are: dead meat...) 3 Surah al-Mā'idah,

all these are of the inexplicit, although they are clear in the denotation upon the shar'i verdict, they are inexplicit in the command or the prohibition, so the expression "فَرَضَ" "He

obliged" explicitly shows the shar'i verdict but it is inexplicit in the command, and the expression "حَرَّمَ" "He prohibited" explicitly shows the shar'i verdict but it is inexplicit in the prohibition, therefore they are considered to be of the inexplicit.

Among the situations of the inexplicit is what came to praise the action or praise its doer in the command, or what came to dispraise the action or dispraise its doer in the prohibition, like His Ta'ala's saying:

{وَالَّذِينَ آمَنُوا بِاللَّهِ وَرُسُلِهِ أُولَٰئِكَ هُمُ الصِّدِّيقُونَ}

(And those who believe in Allah and His Messengers, they are the Sincere (lovers of truth)...) 19 Surah al-Hadeed,

and His Ta'ala's saying:

{ بَلْ أَنْتُمْ قَوْمٌ مُسْرِفُونَ}

(...but you are indeed a people transgressing beyond bounds (committing great sins)) 81 Surah al-A'raaf, and as such.

And among them is what came making the reward a consequence for the action in the commands, and what came making the punishment a consequence for doing the prohibited in the prohibitions, like His Ta'al's saying:

{ وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ}

(...and whoever obeys Allah and His Messenger He admits him to Gardens with rivers flowing beneath...) 13 Surah al-Nisā',

and like His Ta'ala's saying:

{وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا}

(And whoever disobeys Allah and His Messenger and transgress His limits, He admits him to a fire, to abide therein...) 14 Surah al-Nisā', and what is similar to that.

And among them is what came reporting Allah's love in the commands, and His hatred and dislike in the prohibitions, like His Ta'ala's saying: {... وَاللَّهُ يُحِبُّ الْمُحْسِنِينَ} (...Allah loves those who do good) 134 Surah Aali Imraan, and His saying: {... إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ} (...verily Allah loves not the wasters) 141 Surah al-An'aam, and His Ta'ala's saying: {... وَلَا يَرْضَى لِعِبَادِهِ الْكُفْرَ...} (...and He likes not disbelief for His servants...), {... وَإِنْ تَشْكُرُوا يَرْضَهُ لَكُمْ...} (...and if you are grateful, He is pleased therewith for you...) 7 Surah al-Zumar, and what is similar to that.

And among them is the report which denotes the verdict like the saying of the Messenger ﷺ: "الخَراجُ بِالضَّمَانِ" what translates to "The Kharaaj (the yield) is by the guaranty" compiled by Aḥmad, (it means if an item is sold but it is subject to be returned for a defect in it, its benefits are for the buyer, since he owns it from the time he bought it until he returns it, and he is in charge for it, and he guarantees to return it in the state he bought it), and his ﷺ saying: " مَن بَاعَ نَخْلاً قَدْ أُبِّرَتْ فَثَمَرَتُهَا لِلبَائِعِ, إِلاَّ أَن يَشْتَرِطَ المُبْتَاعُ" "Whoever sells pollinated palm trees, their fruits are for the seller, unless the buyer stipulates (to have them)" compiled by al-Bukhārī, and His ﷻ saying: {...وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ...} (...if one kills a Believer by mistake, it is ordained that he should free a believing slave, and pay compensation to the deceased's family...) 92 Surah al-Nisā', and {...وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ...} (...pilgrimage to the house (al-Masjid al-*ḥarām*) is a duty menkind owe to Allah...) 97 Surah Aali Imraan, and what is similar to that.

So these matters denote requests to act, or requests to leave, but their denotations over the command and the prohibition are not from the (imperative) tense of command and prohibition, but the sentences in which they came, include the meanings of command and prohibition.

صِيغَةُ الأَمر

The Tense of Command (the imperative) [*ṣīghah al-amr*]

The tense of command linguistically composed is "إِفْعَلْ" "do" or what acts in accordance with it, like the verbal nouns: "هَاتِ" give me, "تَعَال" come, and the verb in present tense combined with the command particle "لام الأمر" like: {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ...} *(Let the man of means spend according to his means...)* 7 Surah al-Ṭalaaq, {...وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} *(...and let a party of the Believers witness their punishment)* 2 Surah al-Nur, so these are the tenses composed in the language for the command, and there is no tense other than them, and the legislator didn't set any Shar'i convention for the tense of command, but the shariah considered what is linguistically composed.

The tense of command comes in sixteen meanings:

The first: "الإيجاب" the obligation, like His ﷻ saying: {وَأَقِيمُوا الصَّلَاةَ...} *(And establish the prayer...)* 43 Surah al-Baqarah.

The second: "النَّدْب" the preference, like His ﷻ saying: {...فَكَاتِبُوهُم إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا, وءَاتُوهُمْ مِنْ مَالِ اللهِ الَّذِي ْ ءَاتَاكُمْ...} *(...and give them the writing (of emancipation) if you find in them goodness and honesty, and give them something of the wealth of Allah which He had bestowed upon you...)* 33 Surah al-Nur,

so the emancipation writing and giving them money is preferable, because it necessitates the reward, with no punishment for not performing them. And of the preference is the disciplining like the saying of the Prophet ﷺ to Ibn Abbas: "كُلْ مِمَّا يَلِيكَ" "Eat from what is near to you" compiled by al-Bukhārī.

The third: "الإرْشَـاد" the guidance, like His ﷻ saying: {...وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ...} *(...And get two witnesses, out of your own men...)* 282 Surah al-Baqarah, so He Ta'ala had guided the servants to get witnesses when they contract a loan.

The forth: "الإِباحَـة" the permissibility, like His ﷻ saying: {...وَكُلُوا وَاشْرَبُوا...} *(...and eat and drink...)* 187 Surah al-Baqarah, eating and drinking are of the permissible, for the evidence that their permissibility is a legislation for us, but if they were obligatory, they would be a duty upon us.

The fifth: "التَّهْدِيد" the threatening, i.e. the frightening, like His ﷻ saying: {...اعْمَلُوا مَا شِئْتُمْ...} *(...Do what you will...)* 40 Surah Fussilat, because it is apparent that what is meant is not the permission to act as they will, and with the support of the indications that what is meant is the frightening. And close to the threatening is the warning, which is notification with frightening, like His ﷻ saying: {...قُلْ تَمَتَّعُوا فَإِنَّ مَصِيرَكُمْ إِلَى النَّارِ} *(...Say: Enjoy (your brief power) But verily your destiny is Hell fire)* 30 Surah Ibrāhīm, His saying: "say" is a command to notify.

The sixth: "الإمتِنَـان" showing the favor, like His Ta'ala's saying: {...كُلُوا مِمَّا رَزَقَكُمُ اللَّهُ...} *(...eat from what Allah has provided for you...)* 142 Surah al-An'aam, His saying: "from what He provided for you is an indication for showing the favor.

The seventh: "الإِكْرامُ بالمَأْمور" honouring the commanded one, like His ﷻ saying: {ادْخُلُوهَا بِسَلَامٍ آمِنِينَ} *(Do Enter paradise with Peace and Security)* 46 Surah al-Hijr, His saying: (with Peace and Security) is an indication for willing to honour them.

The eighth: "(التَّسخِير the subjugation, like His Ta'ala's saying: {... كُونُوا قِرَدَةً خَاسِئِينَ} *(...We said to them: "Be apes, despised and rejected)* 65 Surah al-Baqarah, means do become, because Allah Ta'ala addressed them on the occasion of humiliating them, i.e. do become apes, then they became as He willed.

The ninth: "التعجيز" the challenge (showing the disability), such as His ﷻ saying: {... فَأْتُوا بِسُورَةٍ مِنْ مِثْلِهِ...} *(...then produce a sura of its like thereof...)* 23 Surah al-Baqarah, so He made them failed to bring forward a Surah of its like thereof by requesting an opposition to it.

The tenth: "الإهانة" the insult, such as His Ta'ala's saying: {ذُقْ إِنَّكَ أَنْتَ الْعَزِيزُ الْكَرِيمُ} *(Taste (this)! you truly was the mighty, full of honour)* 49 Surah al-Dukhaan, it is an insult, for the situation indication, and describing the kaafir by the mighty, full of honour is out of mockery, and from the insult is His Ta'ala's saying: {قُلْ كُونُوا حِجَارَةً أَوْ حَدِيدًا} *(Say: "(Nay!) be you stones or iron)* 50 Surah al-Isrā', He meant the carelessness about them whether they are mighty or lowly, and He doesn't mean their becoming stones or iron.

The eleventh: "التَّسوِيَة" the similarity, like His Ta'ala's saying: {فَاصْبِرُوا أَوْ لَا تَصْبِرُوا...} (...whether you bear it with patience or not, it is the same to you ...) 16 Surah al-Dtur, that means patience and non patience are similarly useless.

The twelfth: "الدُعاء" the supplication, like His Ta'ala's saying: {رَبَّنَا وَآتِنَا مَا وَعَدْتَنَا عَلَى رُسُلِكَ...} (Our Lord, and grant us

what you had promised us through your Messengers...) 194 Surah Aali Imraan.

The thirteenth: "التمنِّـي" the wish, like the poet's saying: " أَلا أَيُّهَا اللَّيْلُ الطَّوِيلُ أَلا انْجَلِ" "O you long night, do clear up", it is a wishing notification of the departure of the night and the disclosure of the morning.

The fourteenth: "الاحتِقار" the contempt, like His Ta'ala's saying telling what Musa said to the magicians: {... أَلْقُوا مَا أَنْتُمْ مُلْقُونَ} (...Musa said to them: "You throw what you are willing to throw) 80 Surah Yunus, to contempt their magic in confronting the miracle.

The fifteenth: "التَّكْوين" the creation, like His Ta'ala's saying: {...كُنْ فَيَكُونُ} (...when He decrees a matter, He says to it: "be" then it becomes) 117 Surah al-Baqarah, what is meant is not the reality of the address and existing the things, but His swift of creating or the creating itself, and the difference between the creation and the subjugation is that in the creation it means the formation of the nonexistent, and in the subjugation is its being transformable from a form or a quality to another.

The sixteenth: "الخَبَر" is the report, and that is the tense comes in its meaning, like saying of the Messenger ﷺ: " إِذَا لَم تَسْتَحِ فاصْنَعْ مَا شِئْتَ" "If you don't be ashamed, then do whatever you will" compiled by al-Bukhārī. that means you have done. The tense came as a command, but the meant is the report. And contrary to it is when the report comes in the meaning of a request like His Ta'ala's saying: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ...} (The mothers shall give suck to their children for two whole years...) 233 Surah al-Baqarah, and this is previously mentioned in the inexplicit command.

The tense of command in these texts is what benefits these meanings, which shows that it is useful for several meanings. Now the question that comes along is: did the tense of command denote all these meanings linguistically by participation between them, so that it is a common expression which denotes several meanings, and the meant meaning can be understood by an indication, or does it denote one meaning as real meaning and the remainder as metaphor? The answer to that is, the tense of command is linguistically composed to denote a request, it is not composed specifically for the obligation, nor is it for the preference, the permissibility, the challenge or any of the mentioned meanings, but it is composed for the request only. But as for its denotation upon every one of the mentioned meanings, this is by its denotation upon the request with an indication to clarify what is meant by the request, i.e. the original denotation of the tense in all these sentences according to the linguistic composition is only the request. But the expression request is general, it includes every request, then the indication came and clarified the kind of request meant by the tense of command. So in all these sentences the tense of command denoted the request, i.e. it denoted the meaning it had been composed for it in the language, and beside the request an indication came and denoted what is meant by the request in the sentence, that is the kind of request: is it a decisive request, or an indecisive request, or an optional request, or a challenging request, or an insulting request, or others. Accordingly the mentioned meanings are the meanings meant by the request, i.e. the kind of request, and they are not meanings for the tense of command. The tense of command came for the request in the language composition, and got joined with an indication that denoted what is meant by the

request, so the sum of the tense of command plus the indication is what denotes the obligation, the preference, the permissibility, the challenge or the insult...etc. and as for the tense alone without the indication; it only denotes the request, so without an indication the tense of command doesn't denote anything at all other than just a request.

It is incorrect to say that the tense of command has a real meaning in the obligation and metaphor in the remainder, because the real meaning is the expression used for what it was composed for in the addressing convention, and the metaphor is the expression used in other than the meaning it was composed for it, for an indication that prevents (to mean) the original meaning. The addressing convention here is the Arabic language, and the tense of command wasn't composed in the language for the obligation, but it was composed for the request only, hence it is not a real meaning in the obligation linguistically, and thus it is not a real meaning in the preference, nor is it in the permissibility, the challenge, the insult, nor is it a real meaning in any of the meanings mentioned in the previous sentences, because it is not composed for any of these meanings linguistically, so it is not a real meaning in it. Thus the tense of command is not metaphor in the permissible, it is not similar to the saying: "I saw a Lion in the bath", because the tense of command is used in other than what it was composed for it for an indication that prevents using the original meaning, but it is used for what it was linguistically composed for it in all the previous sentences and that is the request. So the preference and the permissibility are requests like the obligation, and the challenge, and the insult are requests like the obligation, and using the tense of command in all of them is equally

like using it in the obligation without any differences between them. And used in the other meanings, but an indication came beside the request denoted the other meanings. So the other meanings are not the denotation of the commanding tense only, but the denotation of the sum of the tense of command plus the indication, so His Ta'ala's saying: {فَكُلُوا مِمَّا رَزَقَكُمُ اللَّهُ...} (So eat of the sustenance which Allah has provided for you...) 114 Surah al-Nahl, benefits the meaning of bestowing the favor, and this meaning is not taken from the commanding tense {كُلُوا} (eat), nor is it taken from the sentence {مِمَّا رَزَقَكُمُ اللَّهُ} (of the sustenance which Allah has provided for you), but it is taken from the combination of the word {كُلُوا} (eat) and {مِمَّا رَزَقَكُمُ اللَّهُ}, so His Ta'ala's saying: (of the sustenance which Allah has provided for you) is an indication denotes that what is meant is not commanding them to eat, but showing His favor of provision upon them. And His Ta'ala's saying: {أُدْخُلُوهَا بِسَلَامٍ آمِنِينَ} (Do enter paradise with peace and be secure) 46 Surah al-Hijr, benefits the meaning of honouring, and it benefits that by the indication {بِسَلَامٍ آمِنِينَ} (with peace and be secure) beside His saying: {أُدْخُلُوهَا} (Do enter it) means the Paradise. And thus are all the meanings, they are not of the commanding tense, but they are of the tense and the indication together. On the other hand, unlike the word (in the bath) of the saying: "I saw a lion in the bath" the indication doesn't prevent (to mean) the original meaning which is the request, but it clarifies the kind of request i.e. what is meant by it, therefore it is not a metaphor, because in the metaphor the indication prevents (to mean) the original meaning like: "رَأَيْتُ بَحرًا في المَسجِدِ" "I saw an ocean in the Masjid", accordingly the commanding tense is not metaphor in those meanings.

Also it is not a common expression for all those meanings, because the common is the expression composed for every one of the two meanings or more, like the word (العَيْن) (al-'ayn), it means: the fountain, the eye that sees, and the currency. But the tense of command wasn't composed linguistically for every one of these meanings, and it wasn't composed for any one of them, but it was composed for the request. And these meanings are clarifiers for the kind of request, i.e. a clarifier that His Ta'ala's saying: {... فَأْتُوا بِسُورَةٍ مِنْ مِثْلِهِ...} (...then produce a sura of its like thereof...) 23 Surah al-Baqarah, that it is a request for the challenge, and His saying: {ذُقْ إِنَّكَ أَنْتَ الْعَزِيزُ الْكَرِيمُ} (Taste (this)! you truly are the mighty, full of honour) 49 Surah al-Dukhaan, is a request for the insult, and as such, and therefore the tense of command is not a common expression.

It is incorrect to say that the tense of command has real meanings in the obligation and metaphorical in the others according to the Sharī'ah, i.e. according to the Sharī'ah composition, because the legislator did not compose a specific meaning for the tense of command, neither for the expression (إِفْعَلْ) (do), or what functions like it of the verbal noun like (هَاتِ) (give me), or the present tense which is combined with the command particle (اللام) lam which means let, like His Ta'ala's saying: {...لِيُنْفِقْ} (Let the man... spend), but the Shar' used it in accordance with the linguistic composition, and it hasn't got any Shar'i meaning. And as for the expressions: (الفَرض) (الوَاجِب) the obligation, (المَنـدوب) the preferable, and (المُبَـاح) the permissible, they are Shar'i conventions for the kind of the commands of Allah Ta'ala, not for the tense of command, i.e. the command of Allah can be obligation, preferable, and permissible, that is His decisive to perform command,

His indecisive to perform command and His optional command, and all of them are commands from Allah Ta'ala. And the command of Allah is His request to perform the action whether its performance is decisive, indecisive or it is optional. And we understood this command from the texts, and it could be in the tense of command or in other than the tense of command. So the conventions are for the kinds of commands not for the tense of command. As for the tense of command, it is the tense composed in the Arabic language for the request and that is: (إِفْعَلْ) do, and what acts similar to it like the verbal noun, and the present tense combined with the command particle (لام). The legislator didn't compose a Shar'i meaning for this tense, but left it to its linguistic meaning. And the aim is to understand this tense and its denotation in the speech of Allah Ta'ala and the speech of His Messenger ﷺ, and when we want to understand this tense; it must be understood linguistically in accordance with the language denotation, and its linguistic meaning is what it means, and from it we understand what Allah means in this text. Accordingly wherever the tense of command comes, in whichever text; it means the request, because it is linguistically composed for it, and to understand what is meant by this request, it is inevitable to have an indication to clarify it.

As for the ambiguity (شُبْهَة) that made people say that the command is for the obligation, it is because they haven't distinguished between the command as a command and the tense of command, and they haven't distinguished between the order to adhere to the Sharī'ah and the tense of command, therefore they fell in the mistake. As regarding their non distinction between the command of Allah Ta'ala

and the tense of command; they inferred that the tense of command's real meaning is the obligation from ten ways:

The first: Allah ﷻ had dispraised iblees for breaching His saying: {اسْجُدُوا} (do bow down) then He ﷻ said: {قَالَ مَا مَنَعَكَ أَلَّا تَسْجُدَ إِذْ أَمَرْتُكَ...} ((Allah) said: "What prevented you from bowing down when I commanded you? ...) 12 Surah al-A'raaf, this inquiry is for scolding and dispraising; He dispraised him for leaving a commanded matter, accordingly the command is means the obligation.

The second: His ﷻ saying: {وَإِذَا قِيلَ لَهُمُ ارْكَعُوا لَا يَرْكَعُونَ} (And when it is said to them, "Prostrate yourselves, they do not so) 48 Surah al-Mursalaat, so He dispraised them for the breach, i.e. for leaving the command, and it is an evidence that the command is the obligation.

The third: His ﷻ saying: {...فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} (...then let those beware who breach the Messenger's command, lest some trial befall them, or a painful Penalty be inflicted on them) 63 Surah al-Nur, so He dispraises for breaching the command, and this confirms that the command means the obligation.

The forth: His ﷻ saying: {...أَفَعَصَيْتَ أَمْرِي} (...Did you then disobey my command?) 93 Surah Dtaaha, and His saying: {...لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ...} (...they disobey not Allah in what He commands them...) 6 Surah al-Tahreem, and His saying: {...وَلَا أَعْصِي لَكَ أَمْرًا} (...and I shell not disobey your command) 69 Surah al-kahf, so He described breaching the command as disobedience which is a dispraising noun, and that would not be as such for other than the obligation. In these verses He named whoever leaves the command disobedient, and the disobedient deserves hellfire for His ﷻ saying: {...وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَإِنَّ لَهُ نَارَ جَهَنَّمَ خَالِدِينَ فِيهَا أَبَدًا} (...and

whoever disobeys Allah and His Messenger, for him is hellfire; they shall dwell therein forever...) 72 Surah al-Jinn, which denotes that command means obligation.

The fifth: His ﷻ saying: {وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ...} (It is not fitting for a Believer, man or woman, when a matter has been decided by Allah and His Messenger, to have any option of their own decision...) 36 Surah al-Aḥzāb, and His saying: {قَضَى} (decided) means obliged, and His saying {أَمْرًا} (a matter) means a commanded matter, and that which is not optional of the commands is obligatory, so it denotes that the command is the obligation, since Allah ﷻ had clarified that what He commanded is not optional, and the preference is optional, and thus is the permissible, and that denotes that the command denotes the obligation, because Allah had cancelled the option in every command that comes from His Prophet.

The sixth: His ﷻ saying: {قُلْ أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ...} (Say: obey Allah, and obey the Messenger...) then He threatened by saying: {فَإِنْ تَوَلَّوْا فَإِنَّمَا عَلَيْهِ مَا حُمِّلَ وَعَلَيْكُمْ مَا حُمِّلْتُمْ...} (but if you turn away, he (the Messenger) is only responsible for the duty placed on him and you for that placed on you...) 54 Surah al-Nur, and the threat for the breach is an evidence that it is an obligation.

The seventh: the *ḥadīth* of Burairah as she got freed while she was the wife of a slave (Mugheeth) whom she hated, then she asked the Prophet ﷺ after he ﷺ said to her: " لَوْ رَاجَعْتِهِ يَعْنِي النَّبِيُّ (صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ) زَوْجَهَا (مُغِيثًا), فَقَالَتْ: أَتَأْمُرُنِي يَا رَسُولَ اللهِ؟ قَالَ: لا, إِنَّمَا أَنَا أَشْفَعُ" "If you return to him (to her husband Mugheeth), she said: do you command me O Messenger of Allah? He said: no, I am only interceding" compiled by al-Bukhārī, so as you see, he ﷺ differentiated

between his command and his intercession, which confirms that his intercession doesn't oblige any one to act in accordance with it, and his command is different to that, and it only means the obligation. And Burairah understood that if it was a command; it would be obligatory, and the Prophet approved her understanding.

The eighth: the saying of the Messenger ﷺ: " لَوْلاَ أَنْ أَشُقَّ عَلَى أُمَّتِي, لَأَ مَرْتُهُمْ بِالسِّوَاكِ عِنْدَ كُلِّ صَلاةٍ" "Had it not been for that I don't want to make it difficult for my nation; I would command them to use the (siwaak) tooth cleaning stick at every prayer" compiled by Muslim, and this is an evidence that the command is the obligation, where as if the command is for the preference, using the siwaak is preferable (*mandūb*).

The ninth: the Messenger of Allah ﷺ delivered a sermon and said: " أَيُّهَا النَّاسُ, إِنَّ اللهَ عَزَّ وَجَلَّ قَدْ فَرَضَ عَلَيْكُمُ الحَجَّ فَحُجُّوا, فَقَالَ رَجُلٌ: أَكُلَّ عَامٍ يَا رَسُولَ اللهِ؟ فَسَكَتَ, حَتَّى قَالَهَا ثَلاثًا. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: لَوْ قُلْتُ نَعَمْ لَوَجَبَتْ, وَلَمَا اسْتَطَعْتُمْ. ثُمَّ قَالَ: ذَرُونِي مَا تَرَكْتُكُمْ, فَإِنَّمَا هَلَكَ مَنْ كَانَ قَبْلَكُمْ بِكَثْرَةِ سُؤَالِهِمْ, وَاخْتِلاَفِهِمْ عَلَى أَنْبِيَائِهِمْ, فَإِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا استَطَعْتُمْ, وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَدَعُوهُ" "O people, Allah the Great and Almighty had obliged the hajj upon you so do perform the hajj, then a man said: every year O Messenger of Allah? He ﷺ kept silent until the man said it three times. Then the Messenger ﷺ said: if I say yes it becomes obligatory, and you wouldn't be able to do it. Then he said: leave me as long as I left you, verily those who were before you got destroyed by the numerousness of their questions, and their disagreement with their Prophets, so if I give you a command do it to the best of your ability, and if I forbid something for you leave it" compiled by Aḥmad. He ﷺ had clarified in this *ḥadīth* without ambiguity that everything he commanded is obligatory even if someone could not do

it. And this is the meaning of His Ta'ala's saying: {...وَلَوْ شَاءَ اللَّهُ لَأَعْنَتَكُمْ...} (...And if Allah had willed, He could have put you into difficulties...) 220 Surah al-Baqarah, but He ﷻ have removed of us the blame and have mercy upon us, and He commaned on the tongue of His Prophet ﷺ as you can hear, that whatever he ﷺ had commanded, it is obligatory to perform it to the end of the ability, and that which he ﷺ had forbidden, it is obligatory to avoid it.

The tenth: the threat is joined with all commands, except that which a text or a certain consensus transferred from the Prophet ﷺ (stating) that no threat on it for it is not obligatory, and non of the speech of Allah Ta'ala is put off except that which another revelation from Allah Ta'ala had put it off. Abū Hurairah ssaid: the Messenger of Allah ﷺ said: " كُلُّ أُمَّتِي يَدْخُلُونَ الجَنَّةَ إِلاَّ مَنْ أَبَى, قَالُوا: يَا رَسُولَ اللهِ, وَمَنْ يَأْبَى؟ قَالَ: "مَنْ أَطَاعَنِي دَخَلَ الجَنَّةَ, وَمَنْ عَصَانِي فَقَدْ أَبَى" All my nation will enter paradise except he who refuses, they said: O Messenger of Allah, who would refuse (to enter it)? He said: whoever obeys me will enter paradise, and whoever disobeys me refuses" compiled by al-Bukhārī. And the sin is that the commanded (person) not performing what the commander have commanded to perform, so whoever allows himself to leave what Allah Ta'ala or His Messenger ﷺ have commanded him to do, he verily has disobeyed Allah and His Messenger, and whoever disobeys goes far astray, and there is no greater disobedience than when Allah Ta'ala and His Messenger ﷺ say: do -commanding- something, then the commanded (person) says: I won't do unless I will, and it is permissible for me to leave what you both commanded me to do, and no one knows any disobedience other than this, so it denotes that the command is for the obligation.

So all these evidences are explicit that the command is for the obligation, and thus it is a reality in it and a metaphor in others. And the answer is that these evidences are related to the obedience and disobedience of the command, not to the tense of command. And the command of Allah must be obeyed and disobeying Him is forbidden. And obeying the command is by not mutinying against it, so if Allah commands a matter it is forbidden to mutiny against it and it is obligatory to Him, but obeying Him should be according to His command, hence if He ﷻ commands a decisive command, His obedience is obligatory in accordance with His command, and the action must be performed, and he who doesn't perform it is a disobedient, and this is the obligatory (*farḍ* and *wājib*), and if He Ta'ala commands a non decisive command, it is obligatory to obey Him the way He commands non decisively, so if he (the servant) performs the action he will be rewarded, and if he consents to the command but doesn't perform the commanded action, there is nothing on him, nor had he sinned, so he is not a disobedient, and this is the preferable (*mandūb*). Not performing the *mandūb* isn't a disobedience to Allah nor is it a violation of His command, because His command is not decisive, so the obedience here is by consenting to the command and by not rejecting it, not by performing the action, for he consented to it the way that performing the commanded action is not decisive, if performs it gets rewarded, and if he doesn't perform it, he doesn't commit a sin, and by not doing it he is not violating His ﷻ command. Allah Ta'ala said: {إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ...} (Allah commands (al'Adl) justice and (al-Ihsaan) the supererogatory deeds...) 90 Surah al-Nahl, so He ﷻ commanded al'Adl and al-Ihsaan, yet the command of al'Adl is for the obligation, and the command of al-Ihsaan is

for the preference, and they both came in one command, and obeying them is obligatory, that is the compliance with the command (the way it comes) and the consent to it and not rejecting it. As for the performance of the action, it is obligatory in the 'Adl, and not performing it is disobedience. And the Ihsaan is a *mandūb*, and not performing it is not considered as disobedience, and there is nothing against he who doesn't perform it, and in this situation the non performance of it is not considered as violation of the command nor is it a non compliance with it. Thus if Allah ﷻ or His Messenger ﷺ issue an optional command with the choice between performing the action and not performing it then it is obligatory to obey the command the way it is commanded, i.e. in a way of choosing between performing and not performing the action, not in a way of choosing between obeying and disobeying the command. In this situation if he performs the action he is right, and if he doesn't perform it he is right, and in both cases he is an obedient to the command, so the obedience to the command here is by consenting to it, whether he performs the action or doesn't perform it, if does it he is right, and if he doesn't do it he is right, and he is not considered to be violating the command came as such. Accordingly obeying and disobeying the optional command doesn't denote the performance or the non performance of the commanded action, but it denotes the consent to the command and complying with it the way it is commanded with regard to the necessity of performing the action or non necessity or the option in it. And this discussion has no place in the discussion of the commanding tense, and it doesn't give a specific denotation for the commanding tense, but it is about obedience and disobedience, where as in the discussion of the

commanding tense it should be referred to the denotation of the Arabic language, accordingly the ten evidences are irrelevant with regard to their texts that have the command expression not the command tense, and they are refused (in this discussion) because their subject is the obedience and the disobedience not the tense of command. As for what came of them including -in addition to that their text is in the command expression- what denotes that the command in it is for the obligation, they are three *aḥādīth*: the *ḥadīth* of Burairah, the *ḥadīth* of the tooth cleaning stick (siwaak), and the *ḥadīth* of the Hajj. The *ḥadīth* of Burairah is not a proof that the command is for the *wujūb*, because she only asked seeking the reward of obeying him, and the reward is for doing the *Wājib* and the *Mandūb*. And her saying: "أَتَأْمُرُنِي" "do you command me" does not denote that she understood that the command is for the obligation, and being the Messenger made a distinction between the command and the intersession, it is to make her understand that this is not of which must be obeyed, not to make her understand that it is not of which must be performed. However the comprehension of Burairah that the Messenger's saying: "لَوْ رَاجَعْتِهِ" "If you return to him" that it is a commanding request is not a proper proof that the command means the obligation, because it is just a human comprehension that could be wrong or right, and it cannot be an evidence that the request means the obligation, and in addition to that, the Messenger ﷺ had clarified to her this misunderstanding that he didn't mean the command but intersession. As for the *ḥadīth* of the siwaak, it has got what denotes that he meant by the command the obligation command due to the evidence that he adjoined the hardship with it, and the hardship only occurs with the obligation for it is inevitable, contrary to the *mandūb* which is

optional between performing and quitting, and for all that this ambiguity voids after the clarification of the difference between the command and the tense of command. As for the *ḥadīth* of the Hajj that his ﷺ saying: "نَعَمْ" "yes" is an evidence that his commands are for the obligation, this is not a command to become an obligation, but because it is a clarification for His Ta'ala's saying: {...وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ...} (...pilgrimage to the house (al-Masjid al-*ḥarām*) is a duty mankind owe to Allah...) 97 Surah Aali Imraan, that necessitates the obligation, and the clarification follows the clarified matter (it takes its verdict).

As for the non distinction between the request to the compliance with the Sharī'ah and the tense of command they inferred from His ﷻ saying: {فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ...} (But no, by your Lord, they believe not, until they make you judge in all disputes between them, and find in their souls no resistance against the judgment you issue ...) 65 Surah al-Nisā' that it means you command, and had the command not been for the obligation it wouldn't be like that. The answer to this is; the meaning of His saying: {قَضَيْتَ} is your judgment not your command, i.e. what you judge with of the obligation, the preference, the permissibility, the forbiddance, the dislike ness, the invalidity, and the likes, and nothing in it denotes that everything he judges with is obligatory.

There are some texts which thought to denote that the command is for the obligation. Among them is that the Prophet ﷺ called Abū Sa'īd Ibn al-Mu'alla while he is in the prayer, so he didn't answer him, then the Prophet said: " مَا مَنَعَكَ أَنْ تُجِيبَنِي حِينَ دَعَوْتُكَ, أَمَا سَمِعْتَ اللهَ يَقُولُ: { يَا أَيُّهَا الَّذِينَ آمَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ إِذَا دَعَاكُمْ لِمَا يُحْيِيكُمْ...} "What prevented you

from answering me when I called you, have you not hear Allah saying: (O you who believe, respond to Allah and His Messenger, when He calls you to that which give you life...)" compiled by al-Bayhaqī, then the Messenger scolded him and dispraised him for not answering his command, so it denotes that the command is for the obligation.

Also among that is what Muslim narrated from Abū al-Zubair al-Makky, that Abū al-Dtufail Aamir Ibn Waathila told him that Mu'ādh Ibn Jabal told him: " خَرَجْنا مَعَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيهِ وَسَلَّمَ عَامَ غَزْوَةِ تَبوكَ ... ثُمَّ قَالَ: إِنَّكُم سَتَأْتُونَ غَدًا إِنْ شَاءَ اللهُ عَينَ تَبوكَ, وَإِنَّكُم لَنْ تَأْتُوهَا حَتَّى يُضْحِيَ النَّهَارُ فَمَن جَاءَهَا مِنكُم فَلاَ يَمَسَّ مِن مَائِهَا شَيْئًا حَتَّى آتِيَ فَجِئْنَاهَا وَقَدْ سَبَقَنَا إِلَيْهَا رَجُلاَنِ, وَالعَينُ مِثْلُ الشِّرَاكِ (أَيْ سيرُ النَّعْلِ) تَبِضُّ بِشَيْءٍ مِنْ مَاءٍ (أي تَسِيلُ قَلِيلاً) قَالَ: فَسَأَلَهُمَا رَسولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: هَلْ مَسَسْتُمَا مِنْ مَائِهَا شَيْئًا؟ قَالاَ: نَعَم, فَسَبَّهُمَا النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَقَالَ لَهُمَا مَا شَاءَ اللهُ أَنْ يَقُولَ..." "We went with the Messenger of Allah ﷺ the year of Tabouk incursion...then he said: tomorrow by the will of Allah you will reach tabouk's spring, but you won't reach it until forenoon, and whoever arrives at it of you let him not touch any of its water until I come, so we arrived at but two men preceded us to it, and the spring was like a shoelace, a little bit of water runs of it, he said: then the Messenger ﷺ asked them: have you touched any of its water? They said: yes, then the Messenger ﷺ swore at them and said to them what Allah willed for him to say...". So those two men deserved the swearing from the Prophet ﷺ for violating his prohibition of touching the water, and there was no previous threat (for it) which proves that all his commands are obligations except what is specified by a text, and had they not left an obligation; they wouldn't deserve the swearing of the Messenger of Allah ﷺ. The answer is these two *aḥādīth* do not denote that the command is for the obligation. As for the first Haddeth, which is the *ḥadīth* of Ibn al-Mu'alla,

there is an indication that denotes the obligation of performing it, and that is being Abū Sa'īd in the Prayer when the Messenger ﷺ called him, and he ﷺ knew when he called him that he is praying, despite that he called him to answer him and leave the Prayer, which denotes that that command is for the obligation. Also His ﷻ saying: {يَا أَيُّهَا الَّذِينَ آمَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ إِذَا دَعَاكُمْ لِمَا يُحْيِيكُمْ...} " (O you who believe, respond to Allah and His Messenger, when He calls you to that which give you life...) 24 Surah al-Anfāl, is carried on the obligation of responding to the call for glorifying Allah Ta'ala and His Messenger by responding his call, and banishing the insult and the contempt of him by turning away from responding to his call, for what in such action of belittling him in the souls which leads to breach the aim of the mission, and directing the command to the obligation is not prevented when indication exists, so the *ḥadīth* denoted the obligation for the indication not for the command only. So the Messenger didn't scold him for he didn't do the action, but for not doing the action that he decisively commanded him to do. And what denotes this is that the Messenger ﷺ had commanded some commands and clarified that performing the action that he commanded is not obligatory. It is in Abū Dāwud's Sunnah book that Ibn Mas'ūd came (to the Masjid) on Friday while Prophet ﷺ was delivering the sermon then he heard him saying (to the people): "اِجْلِسُوا" "Sit down" so he sat at the door of the Masjid, then the Prophet ﷺ saw him and said to him: " تَعَالَ يَا عَبدَ اللهِ" "O Abd Allah come" which denotes that performing the action he commanded wasn't obligatory, and this denotes that the command is not for the obligation, and Abd Allah Ibn Rawaaha was in the street when he heard the Messenger ﷺ saying: "اجْلِسُوا" "Sit down" then he sat down in the street, then the Messenger ﷺ passed by him

while he was sitting in the street and said: "مَا شَأْنُكَ" "what is the matter with you" he said I heard you saying: sit down, the Messenger said: "زَادَكَ اللهُ طَاعَةً" "May Allah increase your obedience" so the Messenger found strange that he is sitting there, which denotes that that command of the Messenger wasn't decisive. And as for the *ḥadīth* of the two men, there is an indication which denotes the sin of the violator, which is being the water very little in Tabouk spring, and this is denoted from the expression in the *ḥadīth*: "the spring was like a shoelace" and his saying: "A little bit of water runs of it" that means it runs very slowly like "oozing the water", this indicates that the command of the Messenger was decisive, so that they deserved to sworn at for violating it. And also drinking water is permissible, and being the Messenger had prohibited the drink of water from that spring at that time means a prohibition of a permissible, and it is an indication that the request is decisive, because it is a prohibition from a permissible. However this *ḥadīth* not a command (to do) but it is a prohibition, so it doesn't denote the obligation, but the forbiddance because of the indication along with the request to leave.

It becomes clear from all this that the ambiguity that came from the obligation of obeying the command of the Messenger, and got understood that the obligation of obeying him means that the tens of command is for the obligation is a fallen ambiguity, because obeying the command is different to the tense of command, so the command of Allah is obligatory to be obeyed, but He Ta'ala expressed this command by expressions that have linguistic denotation, so the kind of command should be understood from the denotation of these expressions, then

it will be performed in accordance with the command, and the denotation of the expressions should be taken from the language. So the issue is to understand the tense of command, not obeying and disobeying the command. Also the ambiguity that the Legislator commanded us to adhere to the Sharī'ah and forbade violating it is a fallen ambiguity, because the adherence to the Sharī'ah is different to understanding the tense of command from the Sharī'ah texts. And thus is the ambiguity that came from the two Haadeeths of al-Mu'alla and the spring of Tabouk, they denote that the command is for the obligation is a fallen claim, because the fact that the command in them is for the obligation didn't come from the tense, but by the indication which denoted it. And since these ambiguities are fallen there is no remaining proof to whoever says that the command in reality is for the obligation.

صِيغَةُ النَّهيِ

The Tense of Prohibition [*ṣīghah al-nahī*]

The tense that was linguistically composed for the prohibition is the tense of: "لا تَفْعَلْ" "don't do" and "لا يَفْعَلْ" "let him not do", that is the prohibition particle "لا" followed by a verb in the present tense (al-Mudhaari'). Like his ﷺ saying: "إِذَا كَانَ أَحَدُكُمْ فِي المَسْجِدِ فَلا يُشْبِكَنَّ" **"If one of you is in the Masjid let him not interlock (his fingers)"** compiled by Aḥmad. This is the tense which is composed for the prohibition, and there is no other than this tense, and the Legislator didn't put any Shar'i convention for the prohibition tense, but what was linguistically composed is considered the Sharī'ah. As for the prohibitions that came

in other than this tense, like what is narrated from ‘Umar Ibn al-Khaṭṭāb that: “ أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الصَّلاةِ بَعْدَ الفَجْرِ حَتَّى تَطْلُعَ الشَّمْسُ” **“The Prophet ﷺ prohibited the prayer after praying the Fajr until the sun rises”** compiled by Muslim, and like that which is narrated from Abū Sa’īd that the Prophet ﷺ said: “ لا صَلاةَ بَعْدَ صَلاةِ العَصْرِ حَتَّى تَغْرُبَ الشَّمْسُ” **“There is no prayer after praying the ‘Asr until the sun sets”** compiled by Muslim, and like what is narrated that Anas said: The Messenger of Allah ﷺ said to me: “ يَا بُنَيَّ, إِيَّاكَ وَالالْتِفَاتَ فِي الصَّلاةِ” “O son beware of turning/ looking around in the prayer” compiled by al-Tirmidhī, and like what is narrated from ‘Aa’isha: “ سَأَلتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ التَّلَفُّتِ فِي الصَّلاةِ, فَقَالَ: اخْتِلاسٌ يَخْتَلِسُهُ الشَّيْطَانُ مِنْ صَلاةِ العَبْدِ” “I’d asked the Messenger of Allah ﷺ about turning/ looking around in the prayer, he said: it is a peculation which the shaidtaan peculates from the servant’s prayer” compiled by Aḥmad, and like what is narrated that Abū Dtharr said: “ لا يَزَالُ اللهُ عَزَّ وَجَلَّ مُقْبِلاً عَلَى العَبْدِ فِي صَلاَتِهِ مَا لَمْ يَلتَفِتْ” “Almighty Allah remains with the servant in his prayer as long as he doesn’t look around” compiled by Aḥmad. All these figures benefit prohibitions, but the benefited prohibitions didn’t come from the tense, but they came from the sentence, so they are of the prohibitions which are taken from other than the tense, either from a prohibition expression same like the expression command in the command issue, or from the sentence, so they are of the inexplicit prohibitions. But the prohibition tense which is linguistically composed for it, that is only the present tense adjoined with the prohibition particle “لا” (La al-Naahiyah).

The prohibition tense comes for nine meanings:

The first: (التَّحريم) the forbiddance, like His ﷻ saying: {... لَا تَأْكُلُوا الرِّبَا...} (...devour not Usury...) 130 Surah Aali ‘Imraan.

The second: (الكَراهَة) the dislikeness, like his ﷺ saying: " إِذَا تَوَضَّأَ أَحَدُكُم, ثُمَّ خَرَجَ عَامِدًا إِلَى الصَّلاةِ, فَلا يُشْبِكْ بَيْنَ يَدَيْهِ" "If one of you takes his ablution, then he goes out aiming the prayer, let him not interlock his hands" compiled by Aḥmad.

The third: (التَّحقِير) the degradation, like His Ta'ala's saying: {لَا تَمُدَّنَّ عَيْنَيْكَ إِلَى مَا مَتَّعْنَا بِهِ أَزْوَاجًا مِنْهُمْ...} (Strech not your eyes, (ambitiously) at what We have bestowed on certain classes of them...) 88 Surah al-Hijr.

The forth: (بَيَانُ العَاقِبَة) clarifying the consequence, like His Ta'ala's saying: {وَلَا تَحْسَبَنَّ اللَّهَ غَافِلًا عَمَّا يَعْمَلُ الظَّالِمُونَ...} (Think not that Allah is unaware of the deeds of the wrongdoers...) 42 Surah Ibrāhīm.

The fifth: (الدُّعَاء) the supplication, like His Ta'ala's saying: {... رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إِصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا...} (...Our Lord, condemn us not if we forget or fall into error; our Lord, lay not on us a burden like that which You did lay on those before us...) 286 Surah al-Baqarah.

The sixth: (اليَأس) the despair, like His Ta'ala's saying: {... لَا تَعْتَذِرُوا الْيَوْمَ...} (...O you disbelievers, Make no excuses this Day...) 7 Surah al-Tahreem.

The seventh: (الإرْشَاد) the guidance, like His Ta'ala's saying: {... لَا تَسْأَلُوا عَنْ أَشْيَاءَ...} (...ask not questions about things...) 101 Surah al-Mā'idah.

The eighth: (التَّسْلِيَة) the amusement, like His Ta'ala's saying: {... وَلَا تَحْزَنْ عَلَيْهِمْ...} (...and grieve not over them...) 88 Surah al-Hijr.

The ninth: (الشَّفَقَة) the compassion, like his ﷺ saying: " لا تَتَّخِذُوا الدَّوَابَّ كَرَاسِيْ" "Do not use the animals as chairs" compiled by Aḥmad.

These meanings are benefited by the tense of prohibition from these texts, which denotes that it is used for several meanings. And since the prohibition is opposite to the command, all what is said in the command the same was said in the prohibition, and what is clarified of that in the command issue are clarifications for the prohibition. The prohibition is reality in the leaving request, not in the forbiddance, or in the dislikeness, or in the degradation, or in the clarification of the consequence, but these meanings are taken from the tense of prohibition in addition to the indication. And every prohibition came in any Shar'i text denotes only a request to leave (the action), and the indication is what determines the kind of request. And what they mentioned of *aḥādīth* in which the prohibition denotes the forbiddance, like the *ḥadīth* of Tabouk spring and the swear of the Messenger at the two men who violated his prohibition, its denotation came from the indication together with the tense of prohibition, not from the tense of prohibition alone. And as for His Ta'ala's saying: {... وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا...} (...So take what the Messenger assigned to you, and abstain from that which he prohibited for you...) 7 Surah al-Hashr, it doesn't denote that the prohibition is a reality in the forbiddance, but it denotes the abstention as he prohibited, so if he prohibited decisively it denotes the forbiddance, and if he prohibited indecisively it denotes the dislikeness. The ambiguity of those who say that the prohibition is for the forbiddance came from the non distinction between obeying the Legislator in what He prohibited and the tense of prohibition, despite that the subject is what the tense of prohibition denotes, not the non obedience of what the Legislator had prohibited, and if the difference is noticed the ambiguity vanishes.

الأَمرُ بالشَّيءِ لَيسَ نَهْيًا عن ضِدِّهِ والنَّهْيُ عن الشَّيْءِ لَيسَ أَمرًا بضِدِّهِ

The Command of Something is Not a Prohibition of its Opposite and the Prohibition of Something is Not a Command of its Opposite

The command is the Legislator's address that denotes the verdict, and thus the prohibition is the Legislator's address that denotes the verdict, and their denotation upon the verdict is a literal denotation (دِلالة منطوق), not a connotation denotation (دلالـة مَفهوم), because the verdict is decisively understood from the denotation of the expression in the place of the utterance, so their denotation is of the corresponding denotation (دلالـة المُطابَقـة) or the inclusion denotation (دلالة التَّضَمُّن), not of the binding denotation (دلالة الالتِزام), as they have no relation with it. His Ta'ala's saying: {وَأَقِيمُـوا الـصَّلَاةَ...} (And do establish the Prayer...) is a command to pray, and it has no (specifying) connotation at all, and His Ta'ala's saying: {وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ...} (and give not the foolish (authority over) your properties ...) a Surah al-Nisā', is a prohibition of giving the properties to the foolish, and it has no (specifying) connotation at all. So the command or the prohibition is an address which denotes the verdict but it has no connotation with regard to its denotation upon (the kind of) the verdict whether it is: the obligation, the forbiddance, the preferable, the dislikeness, or the permissibility, even if it has a quality connotation (مَفهوم الصِّفَة). An example for that is his ﷺ saying: " ...فِي صَدَقَةِ الغَنَمِ فِي سَائِمَتِهَا..." "... the *zakāh* of the sheep and goats is in their saa'imah (the animals that graze in the forest and do not get fed by people)..." compiled by al-Bukhārī and

Aḥmad, has no connotation with regard to the denotation of the address upon the verdict, which is the obligation of the *Żakāh* in the cheep, so the obligation of the *Żakāh* which is understood from the *ḥadīth* has no connotation with regard to the obligation, but the connotation here is regarding the quality, i.e.: "الغَنَمُ السَّائِمَة" "the sheep that graze", not with regard to the denotation of the address, which is the obligation of the *Żakāh*. And His Ta'ala's saying: {...فَلَا تَقُلْ لَهُمَا أُفٍّ...} (...say not to them ugh (a word of disrespect)...) 23 Surah al-Israa', has no connotation at all with regard to the denotation of the address upon the verdict, which is the forbiddance of saying the word ugh to the parents, so the forbiddance of saying the word ugh which is understood from the *Āyah* has no connotation with regard to the forbiddance, but the connotation here is regarding the quality, not with regard to the denotation of the address which is the forbiddance. Accordingly the command of something is not a prohibition of its opposite nor is the prohibition of something a command of its opposite, because if it is made as such then the address denotation would be (taken) of the connotation denotation not of the literal denotation, and it would be of the binding denotation, and this is contrary to the reality, because the address denotation is (taken) of the literal denotation not of the connotation denotation, and it is of the corresponding or the inclusion denotation not of the binding denotation, therefore the command denotation is what the command expression means, i.e. it is what is understood from the expression in the place of utterance. And thus is the prohibition denotation, it is what the prohibition expression means, i.e. it is what is understood from the expression in the place of utterance, hence the command of something doesn't mean prohibition of its opposite, and

the prohibition of something doesn't mean commanding its opposite. As for that Allah Ta'ala had made leaving the obligation and committing the forbidden a sin and He didn't make leaving the preferable and committing the dislike a sin, this came from a different evidence which is violating what He Ta'ala had requested, whether it is a request to do or a request to leave, decisively or indecisively. So making it a sin to leave the obligation didn't come from (the idea) that the command of something is a prohibition of its opposite, but it came from violating what Allah had commanded, and thus making it a sin to commit the forbidden didn't come from (the idea) that the prohibition of something is a command of its opposite, but it came from violating what Allah Ta'ala had prohibited. So the sin had came from the way that there is a request from Allah to perform an action but the servant violates it by leaving the obligation, and from the way that there is a request from Allah Ta'ala to leave but the servant violates it by doing the forbidden, therefore it is incorrect to say that leaving the obligation is forbidden, but it is a sin, as we say that committing the forbidden is a sin. Also it is incorrect to say that leaving the forbidden is an obligation, and performing the obligation is an obligation, because the obligation is not the leaving but the performance, and the forbiddance is not the non performance but it is committing the forbidden action, because each one of them is a command, so the verdict is the request, so if it is a request to perform then the verdict is to perform the action has it been an obligation or preferable, and not to leave, and if it is a request to leave then the verdict is leaving the action, and not to act.

The reality of the address denotation is that the Legislator's address is either a request or an option, and the request is either a request to act or a request to leave. So the denotation of requesting an action is the obligation if the request is decisive, and it is the preferable if it is an indecisive request, and the denotation of the leaving request is the forbiddance if the request is decisive, and it is the dislike if it is an indecisive request. So in the request to act there is no denotation upon the forbiddance or the dislikeness, and in the request to leave there is no denotation upon the obligation or the preferable, and this denotes that leaving the forbidden is not called an obligation, and leaving the obligation is not called forbidden, i.e. the command of something doesn't mean the forbiddance of its opposite Sharī'ah wise, i.e. it doesn't mean that its opposite is forbidden, because the forbidden has a special denotation from the address of the Legislator, and so is the prohibition of something doesn't mean the command of its opposite Sharī'ah wise, i.e. it doesn't mean that its opposite is an obligation, because the obligation has a special denotation from the Legislator's address. And as it is incorrect to say that leaving the obligation is forbidden and leaving the forbidden is an obligation, thus it is incorrect to say that leaving the preferable is disliked, and leaving the dislike is a preferable, for the reason which is clarified in the obligation and the forbiddance, since they are all classified under the request, and the only difference between them is the decisiveness and the indecisiveness in the request.

And what is must to be aware of, is that the denotation of the words and structures of the legislative expressions should be referred only to the Arabic language and to the

Sharī'ah texts, neither to the mind, nor to the logical propositions (theorem), because the issue is to understand a legislation not to compose a legislation, even if it is a composition of a legislation, the legislative reality is what should be considered, not the logical propositions, and there is nothing more dangerous for the legislation than the logic, i.e. the logical propositions, because the legislation discusses a reality which has tangible and various and different items that could not be measured on unless they have a legislation reason (*'illah*) in one of the items which is correspondent with another item, otherwise the measurement will be dangerous and not allowed, unlike the logical propositions which are assumptions the mind supposed the existence of their reality, and their principles have the comprehensiveness and generalization ability, therefore they are dangerous for the legislation. And the issue (in hand) is, is the command of something a prohibition of its opposite or not, and is the prohibition of something a command of its opposite or not is a legislation issue pertaining the principles of the derivation, it is not a mental issue pertaining the theology. So what is wanted to be understood is the denotation of the command expressions and the prohibition expressions words and structures, i.e. the denotation of the request expressions: the request to act and the request to leave, what they denote linguistically and shar'illy, the intention of Allah Ta'ala from the command and the prohibition isn't what is meant to understand, so there is no place for the mental denotation here, neither for the logical propositions, therefore it shouldn't be said that the command is the request which exists in oneself so that we discuss is the command of a specific thing a prohibition of its opposites, and is the request to do a specific action a request to abstain

from its opposites, meaning that it necessitates the prohibition of its opposites, because the commander Himself is the prohibitor, that shouldn't be said because the discussion is about the tenses which came in the *Kitāb* and the Sunnah for the request, i.e. for the commands and the prohibitions of all their differences, could it be understood from them that requesting something is a different request of others or not? So it is a legislative discussion in the denotation of the words and the structures and what could be derived from them and in determining the forbidden and the obligation derived from the Sharī'ah texts, i.e. the discussion is in the command and the prohibition themselves not in the commander and prohibitor. Also it shouldn't be said that what is required by the prohibition, i.e. what the prohibition is related to is an action opposite to that which is prohibited, like if he says: don't move, means be still, it shouldn't be said so, because the discussion is the command and the prohibition themselves and their denotation, not the thing which the prohibition is related to it, so the discussion is not about the commander and prohibitor, nor is it about the thing related to the command and the prohibition, but it is about the command and the prohibition themselves, therefore the mental discussion and the logical propositions are irrelevant, because there is no place for them here to discuss or to consider as an issue, for it is not permissible to understand the legislative expressions both words and structures according to the mind or the logical propositions, but their understanding should be limited to the denotation of the language and the denotation of the Sharī'ah in understanding the text and deriving the verdict from it. and the language had determined that the denotation is for the expressions not for the expresser and not for the thing

denoted by the expression, i.e. it determined that the denotation of the command and the prohibition is of the expression of command and the expression of prohibition, not of the commander and prohibitor, and not of the commanded or prohibited thing. And thus the language determined that the kinds of denotations are the correspondence, the inclusion, and the binding. Hence the meaning denoted by the expression is of the correspondence or the inclusion denotation, and the meaning denoted by the denotation of the expression is of the binding denotation, and the language determined that the meaning of the commands and prohibitions i.e. the meaning of the request is understood from the expression not from the denotation of the expression. In addition to all this, the language made the necessitation which is considered in the binding denotation, which the connotation of contrariety is a kind of it, that is the mental necessitation which makes the mind shifts to the meaning when hearing the expression according to the Arabs composition not according to the mind, and it doesn't consider the external necessitation alone even if it exists unless it is necessitated by the mind according to the language composition. All this denotes that the command of something is not a prohibition of its opposite even if the external (practical) reality is leaving its opposite, because there is no mental necessitation for it according to the Arabs' composition, it also denotes that the prohibition of something is not a command of its opposite even if the external reality is performing its opposite, because there is no mental necessitation for it according to the Arabs' composition.

However, the denotation of the language is that the verdict is understood from the denotation of the address which is the request, and this is of the literal meaning (al-*manṭūq*) not of the connotation (al-*mafhūm*), but the connotation has no interference in it, and that the place of the verdict can possibly have a connotation, and since the command and the prohibition are both request, and the request is the verdict and not the place of the verdict, therefore the connotation doesn't interfere in it. It means since the obligation, the forbidden, the preferable, the dislikeness, and the permissibility are themselves the verdict, not the place of the verdict, the connotation doesn't interfere in them at all, so they don't have a connotation of contrariety (*mafhūm* al-mukhalafah), therefore the request of something is not a non request of something else, so the command of something is not a prohibition of its opposite, nor is the prohibition of something a command of its opposite, accordingly leaving the obligation doesn't mean committing the forbidden, nor does committing the forbidden mean leaving the obligation, nor does leaving the preferable mean doing the dislike, and not the vice versa, but every one of them means what its expression denotes only, without having any unmentioned meaning in it.

النَّهْيُ عنِ التَّصَرُّفات والعُقود

The Prohibition of Dispositions and Contracts

The prohibition of dispositions and contracts which benefit their verdicts like the sale, the marriage and the likes returns to either the contract itself or to something else. If it returns to other than the disposition and the contract,

like the prohibition of the sale at the call time of the Jumu'ah prayer; it doesn't invalidate or corrupt the contract or the disposition. But if the prohibition returns to the disposition itself or to the contract itself then it does affect them and make them either invalid or corrupted. The evidence that the prohibition affects the dispositions and makes them invalid or corrupted is the saying of the Messenger ﷺ: "مَنْ عَمِلَ عَمَلاً لَيْسَ عَلَيْهِ أَمرُنا فَهُوَ رَدٌّ" **"whoever does an action different to our matter it must be rejected"** compiled by Muslim, it means it is invalid and not accepted, and it is undoubtedly that the prohibited matter is not a commanded matter nor is it of the *Dīn*, so it is rejected, and there is no meaning for it being rejected except the invalidity and the corruption. Also the *Ṣaḥābah* may Allah be pleased with them inferred the corruption and the invalidity of contracts from the prohibition, from that is Ibn 'Umar's proof of the invalidity of marrying the polytheist women by the saying of Allah Ta'ala: {وَلَا تَنْكِحُوا الْمُشْرِكَاتِ...} (Do not marry polytheist women...) 221 Surah al-Baqarah, and no one disapproved this of him so it is a consensus, and from that is the Companion's proof of corruption of the *riba* contracts, i.e. their invalidity, by His ﷻ saying: {...وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا...} (...and give up what remains (due to you) from *riba* (usury)...) 278 Surah al-Baqarah, and by the saying of the Messenger ﷺ: " لا تَبيعُوا الذَّهَبَ بِالذَّهَبِ وَلا الوَرِقَ بِالوَرِقِ" **"Do not sell gold by gold and do not sell silver by silver"** compiled by Muslim. al-these are evidences that the prohibition affects the dispositions and make them invalid or corrupted. This is if the prohibition is a decisive request for abstention and denotes forbiddance, but if the prohibition does not denote forbiddance but denotes dislikeness; it doesn't affect the dispositions and the contracts, because the effect comes from the forbiddance, so

the forbiddance of the disposition and the contract makes it invalid or corrupted.

As for when does the forbiddance invalidate the disposition and the contract, and when does it make it corrupted, it depends on the direction to which the forbiddance returns. If the forbiddance returns to the contract itself or to one of its pillars; it denotes the invalidity, like the prohibition of selling the pebble, which is making the score by the pebble a sale standing in the place of the tense, and like the sale of (*al-malāqīh*) what is in the mothers' wombs, the prohibition of selling the pebble returns to the contract itself, and in selling the malaaqeeh the prohibition returns to the sold item, and the sold item is one of the contract's pillars which are three: the contractor, the contract object, and the tense, so the prohibition of such thing denotes the invalidity, so the sale is not considered as (finalized) contracted in it at all. And like that are the dispositions and the contracts which came from systems other than Islam, like the stock companies; they are invalid dispositions and contracts, because the prohibition in them is directed to the contract itself, same like the prohibition of selling the pebble. The legislator prohibited it itself, and prohibited those by a general prohibition which includes every one of them by the saying of Allah Ta'ala: {...يُرِيدُونَ أَنْ يَتَحَاكَمُوا إِلَى الطَّاغُوتِ وَقَدْ أُمِرُوا أَنْ يَكْفُرُوا بِهِ...} (... they want to go for judgment (for their disputes) to the (*dtaghut*) evil, while they have been commanded to reject it...) 60 Surah al-Nisā', and by His Ta'ala's saying: {فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ...} (But no, by your Lord, they can have no (real) Faith, until they make you judge in all disputes between them,,,) 65 Surah al-Nisā', and by His Ta'ala's saying: {...وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا...} (...So take whatsoever

the Messenger assigns to you, and whatsoever he forbids for you abstain from...) 7 Surah al-Hashr, and by the saying of the Messenger ﷺ: "مَنْ عَمِلَ عَمَلاً لَيْسَ عَلَيْهِ أَمرُنا فَهُوَ رَدٌّ" "whoever does an action different to our matter it must be rejected" compiled by Muslim, all these texts prohibit the dispositions and contracts brought by other than Islam, so they enter under this general prohibition, however the stock companies are invalid for another reason, that is because they lack the other partner, but their disposition is from one direction like the (waqf) entailment, so they are invalid from this direction too, for the lack of one of the company's pillars.

If the prohibition is not directed to the contract, nor is it directed to one of its pillars, but it is directed to an accompanied quality to it, it denotes the corruption, like gathering two sisters (in marriage), it is forbidden by the saying of Allah Ta'ala: {...وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ...} (Forbidden for you (to marry)... and gathering two sisters (in wedlock at one and the same time) 23 Surah al-Nisā', but the prohibition is not directed to the contract itself, and not to one of its pillars, but it is directed to an external matter, to an accompanied quality that is one of the wives is a sister to the other, since originally marrying either one of the sisters is permitted by the Shri'ah, but it is prohibited to gather them, so the contract is corrupted not invalid, i.e. the marriage contract is finalized and he must break up with one of them. And it is like if a person loans another one some money, and he puts a condition that he spends it in the agriculture, not in manufacturing, and that he doesn't establish a factory that produces machines, such contract is corrupted, i.e. the contract is valid but the condition is invalid. Or that he sells wheat to him on the condition that

he uses it for seeding, not for eating, and that he doesn't sell it to someone else, such a contract is corrupted, i.e. the contract is valid and the condition is invalid. Or that a marriage contract goes between a man and a woman on the condition that he divorces his other wife, such a contract is corrupted, i.e. the contract is valid and the condition is invalid, for the saying of the Messenger ﷺ: " لا يَحِلُّ أَنْ يَنْكِحَ المَرأَةَ بِطَلاقِ أُخْرَى" **"It is not permissible to marry a woman by (on the condition of) divorcing another one"** compiled by Aḥmad. This contract is forbidden. But the prohibition is not directed to the contract itself, and not to one of its pillars, but to an external matter, to a quality outside the contract itself, even though it accompanies the contract by putting it as a condition, therefore the contract doesn't become invalid, but corrupted. And like that is the legitimizing marriage (nikaah al-muhallil), as if a woman marries herself to a man so that she will be allowed to return to her previous husband who divorced her three times, this contract is corrupted, i.e. the contract is valid and the condition is invalid for what is narrated from Ibn Mas'ūd that he said: " لَعَنَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ المُحِلَّ وَالمُحَلَّلَ لَهُ" **"The Messenger of Allah ﷺ had cursed the one who gets married to legitimize a divorced woman and the one to whom he legitimizes her"** compiled by al-Tirmidhī, so it is prohibited but the prohibition does not return to the contract itself nor to one of its pillars, but to a matter other than them, it returns to a prerequisite quality of it, that is being the contract in the legitimizing marriage has the legitimizing condition, and it is forbidden. If the prohibition returns to a prerequisite quality of the disposition, or of the contract, and doesn't return to the contract itself, or to one of its pillars, the contract becomes corrupted. This is if that quality is from the contract, i.e.

the prohibition of the prerequisite quality returns to the disposition or to the contract, and it is a prohibition for the contract itself, i.e. for the disposition and for the contract, like the corrupted condition returns to the contract itself. If the prohibition returns to a matter other than the contract and other than every prerequisite quality of it, whether it is prerequisite for the kind of the contract like the legitimizing marriage, or it is prerequisite according to the agreement of the two parties of the contract like the corrupted condition, if the prohibition returns to a matter other than all these, then it doesn't affect the contract even if it is forbidden, like the sale at the call of the Jumu'ah prayer, it is valid despite that it is forbidden, and like the prayer in the usurped land, it is valid despite that it is forbidden.

العُموم والخُصوص

The General and the Specific (Expressions)
(al-ʻUmūm wa'l-Khuṣūṣ)

The general (expression) is an expression denotes two meanings and more, and the special (expression) is uttered with regard to two considerations: the first is an expression whose denotation is not suitable to be shared by many, like the proper nouns as Zaid and ʻAmru and the likes. The second is an expression who's specialty is with regard to what is more general than it, and its limit is that it is the expression that its denotation and other than its denotation share another expression from one direction, like the expression (*al-insaan*) the human, it is a special expression, and its denotation (the real human) and other than its denotation like the horse and the animals are called animal from one direction.

The general divides into: A general that there is no more general than it, like the expression (المَذكُور) (the mentioned), it includes the existent, the nonexistent, the known and the unknown. And a general with regard to a relation, like the expression animal which is general with regard to what goes underneath it of human and horse. And the special divides into a special that there is no more special than it, like the proper nouns. And a special with regard to what goes over it like the expression essence and body.

العُموم

The General

The general is an expression which engages all its suitable denotations in one expression, like (*al-qawm*) the people and (*al-rijaal*) the men, and there are special tenses in the language which denote the generality (*al-'umūm*), the people of the language had composed some general expressions so it is correct to prove by them that they mean the generality, hence what the general expression denotes is general.

From among them are the followings:

The expression (أَيٌّ) (any), it is general for the sane and the insane, collectively and individually, in the reward and the inquiry.

The definite collective nouns other than the noun that is specified and defined by (ال العهد) (al al-'ahd) (which is excluded from being general, like your saying to someone: "the judge came, and the judge is specified and known to you and to whom you said so"), whether the definite collective noun is an unbroken plural (jama' saalim) like (الرِّجال) (al-rijaal) the men, or it is a broken plural (jama' takseer) like (المسلمين) (al-Muslimeen) the Muslims (in (al-nasb) the accusative or in (al-jar) the genitive form.

The indefinite collective nouns (اسماءُ الجموعِ المُنكَرَةِ), like (رِجال) men and (مُسلِمين) Muslims and their intensive nouns like (كُل وجَميع) all.

The generic noun that has a definite article (ال) (the), which does not specify, (غير العهديَّة), like (الرَّجُل) the man, and (الدِّرهَم) the *dirham*.

The negated indefinite (النَّكِرَة المَنْفِيَّة) noun like your saying: "لا رجُلَ في الدَّارِ" "there is no man in the house" and "ما في الدَّارِ مِن رَجُلٍ" "there is not even a man in the house".

The definite by a governing word (al-idhaafah) like the saying of Allah Ta'ala: {يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ...} (Allah directs you regarding your children's (inheritance)...) 11 Surah al-Nisā', and thus is your saying: "ضَرَبتُ عَبيدي" "I had beaten my slaves", and "أَنفَقْتُ دَرَاهِمِي" "I spent my money".

The particle (مَن) (who and whoever) for the sane, in the inquiry and the recompense like your saying: "مَن عِندَكَ؟" "Who do you have?" and "مَن جاءَ أُكرِمْهُ" "whoever comes I honour him".

The particle (مَا) (what) for the recompense and the inquiry, it is general for the sane and the insane and not special for any kind, like the saying of the Messenger ﷺ: "على اليَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ" "Whatever the hand took is a debt on it until it discharges it" compiled by Aḥmad, this is for the recompense, and as for the inquiry, it is like your saying: "مَاذَا صَنَعتَ؟" "What have you done?"

The particle (مَتَى) (when) for the time in both the recompense and the inquiry, you say: "مَتَى جِئْتَنِي أَكْرَمتُك" "When you come to me I will honour you", and "مَتَى جَاءَ القَوم؟" "When did the people come?"

The particle (أَيْنَ) (where) and (حَيْثُ) (wherever) for the place in the recompense and the inquiry, you say: "أَينَما كُنتَ أَكْرَمتُكَ" "Wherever you are I will honour you" and you say: "أَين كُنتَ؟" "Where have you been?"

The evidence that there are some expressions composed by the people of the language for the generality is that the Arabs distinguished between the confirmation of generality

and speciality in the origin of the composition, they said in confirming the speciality: "رَأَيتُ زَيدًا عَينَهُ نفسَهُ" "I've seen Zaid himself personally" but they don't say: "رَأَيْتُ زَيدًا كُلُّهُمْ أَجْمَعِين" "I've seen Zaid all of them together", and they said in confirming the generality: "رَأَيْتُ الرِّجَالَ كُلُّهُم أَجْمَعِينَ" "I've seen the men all of them together", but they don't say: " رَأَيتُ الرِّجَالَ عَينَهُ نَفْسَهُ" "I've seen the men himself personally", and the difference in the confirmation is a difference in the confirmed matter, because the confirmation corresponds the confirmed matter.

Also the Sharī'ah texts have used these expressions for the generality, from that is what al-Ṭabarānī narrated in (his book) *al-Kabīr* that when Allah Ta'ala sent down His saying: {إِنَّكُمْ وَمَا تَعْبُدُونَ مِنْ دُونِ اللَّهِ حَصَبُ جَهَنَّمَ...} *"Verily you, (disbelievers), and whatever you worship without Allah, are (but) fuel for Hell..."* 98 Surah al-Anbiya', Ibn al-Zab'ary said (to the polytheists): I can defeat Muhammad for you saying: O Muhammad, isn't this from among what Allah sent down to you {إِنَّكُمْ وَمَا تَعْبُدُونَ مِنْ دُونِ اللَّهِ حَصَبُ جَهَنَّمَ أَنْتُمْ لَهَا وَارِدُونَ...} (Verily you, (disbelievers), and whatever you worship other than Allah, are (but) fuel for Hell, (surely) you will enter it)? He ﷺ said: yes, he said: "then here are the Christians, they worship 'Isa, and the Jews worship 'Uzair, and Banou Tameem worship the Angles, will those go to hell"? He inferred the generality from the particle (ما) (what, whatever...) and the Prophet ﷺ didn't deny that of him, but there came down the saying of Allah Ta'ala not denying his saying, but specifying it by His Ta'ala's saying: {إِنَّ الَّذِينَ سَبَقَتْ لَهُمْ مِنَّا الْحُسْنَى أُولَئِكَ عَنْهَا مُبْعَدُونَ} (Those for whom the Good (promise) from Us has gone before, will be removed far from it (hell)) 101 Surah al-Anbiya'. And from among that is His Ta'ala's saying: {وَلَمَّا جَاءَتْ رُسُلُنَا إِبْرَاهِيمَ

بِالْبُشْرَى قَالُوا إِنَّا مُهْلِكُوا أَهْلِ هَذِهِ الْقَرْيَةِ إِنَّ أَهْلَهَا كَانُوا ظَالِمِينَ} {قَالَ إِنَّ فِيهَا لُوطًا قَالُوا نَحْنُ أَعْلَمُ بِمَنْ فِيهَا لَنُنَجِّيَنَّهُ وَأَهْلَهُ إِلَّا امْرَأَتَهُ كَانَتْ مِنَ الْغَابِرِينَ} (When Our Messengers came to Ibrahim with the good news, they said: "We are indeed going to destroy the people of this town; truly its people are wrongdoers". He said: "But there is Lut in it" They said: "We know better who is in it; we will certainly save him and his family except his wife: she is of those who remain behind") 31-32 Surah al-'Ankaboot, the proof in this is that Ibrāhīm understood from "the people of this town" the generality so he mentioned Lut, and the Angles approved his understanding, but specified Lut and his family by the exception, and they excluded his wife from the saved people, and all this denotes the generality.

Also the *Ṣaḥābah* consensus is convened on using these expressions for the generality, from that is 'Umar's argument with Abū Bakr in fighting those who refrained from paying the *Zakāh*, he said to him: "how do you fight them and the Prophet ﷺ said: " أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَن لاَ إِلَـهَ إِلاَّ اللهُ وَيُؤمِنُـوا بِـي وَبِمَـا جِئْـتُ بِـهِ فَـإِذَا فَعَلُـوا ذَلِكَ عَصَمُوا مِنِّـي دِمَـاءَهُمْ وَأَمْوَالَهُمْ إِلاَّ بِحَقِّهَا وَحِسَابُهُمْ عَلَـى اللهِ" "I am commanded to fight the people until they testify that there is no lord except Allah, and believe in me and in what I brought, if they do that; they shield their bloods and properties from me except in their right, and their reckoning is on Allah" compiled by Muslim, and none of the *Ṣaḥābah* denied his reference to that proof, then Abū Bakr mentioned the exception in the *ḥadīth* which is his ﷺ saying: "إِلاَّ بِحَقِّهَا" "except in their right", so it showed that the known plural expression is for the generality (*al-'umūm*). And from that is when 'Uthmān ibn Madth'oon heard the poet saying:

أَلاَ كُلُّ شَيْءٍ مَا خَلا اللهَ بَاطِلُ وَكُلُّ نَعِيمٍ لاَمَحَالَةَ زَائِلُ

"Verily everything except Allah is false

And every bounty will inevitably vanish"

He said to him: "you've lied, the bounty of paradise doesn't vanish, and none of the attendants disapproved with him (linguistically), and had the noun (كُلُّ) (every) not been for the generality it wouldn't be like that. And from that is the proof of Abū Bakr to the *Anṣār* which is in the saying of the Messenger ﷺ: "الأَئِمَّةُ مِنْ قُرَيْشٍ" **"The imams are from Quraish"** compiled by Aḥmad, and they all agreed with him on this poof without any disapproving, and if the expression (الأَئِمَّة) the imams is not general his proving wouldn't be correct. And from that is the consensus of the *Ṣaḥābah* to carry out His Ta'ala's sayings:

{الزَّانِيَةُ وَالزَّانِى}

"The woman and the man guilty of fornication..." 2 Surah al-Nūr,

{وَالسَّارِقُ وَالسَّارِقَةُ}

"The thief, male or female, cut off their hands..." 38 Surah al-Mā'idah,

{وَمَنْ قُتِلَ مَظْلُومًا}

(...And if anyone is slain wrongfully...) 33 Surah al-Israa',

{ وَذَرُوا مَا بَقِىَ مِنَ الرِّبَا}

(...and give up what remains of (*riba*) usury...) 278 Surah al-Baqarah,

{ وَلَا تَقْتُلُوا أَنْفُسَكُمْ}

(...and kill not yourselves...) 29 Surah al-Nisā',

{ لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ}

(...kill not the game (the hunt) while you are in the state of Ihraam (for Hajj or 'Umrah)...) 95 Surah al-Mā'idah,

and his ﷺ sayings: "لاَ وَصِيَّةَ لِوَارِثٍ" **"No will is required for an inheritor"** compiled by Aḥmad, " لاَ تُنْكَحُ المَرْأَةُ عَلَى عَمَّتِهَا وَلاَ عَلَى خَالَتِهَا" **"The woman mustn't be married over (to the husband of) her paternal aunt nor over her maternal aunt"** compiled by Muslim, "مَن أَلقَى السِّلاَحَ فَهُوَ ءَامِنٌ" "Whoever putdown the weapon will be secured" compiled by Muslim, and the like of the generality, which affirms that these expressions were composed by the people of the language for the generality (*al-'umūm*).

طُرُقُ ثُبوتِ العُمومِ للَّفْظِ

Ways to Affirm the Generality of the Expression

The generality that is affirmed in the expression can be affirmed either linguistically which is benefited from the language composition, or conventionally, i.e. from the usage of the people of the language not from their composition, or mentally which is benefited by derivation not from the mind. In other words, the generality of the expression is affirmed to us either through the transference that the Arabs had composed this expression for the generality, or used it for the generality, or it can be affirmed to us by inferring from the transference, i.e. like knowing that the exception (الاستِثْناء) can enter the definite plural (الجَمع المُعَرَّف), from what had been transferred to us

that the exception is taking out some of what the expression includes. Although this is an inference, it is a mental knowledge, since it had been transferred to us that the exception is taking out some of what the expression includes, so we understood that the definite plural is for the generality. Accordingly the generality that is affirmed in the expression can be affirmed through two ways: the transference, and the inference, and both of them are from the composition of the Arabs, so all the generality that is affirmed in the expression is affirmed by the composition of the Arabs.

The generality affirmed by the transference is either benefited from the language composition, or it is benefited from the use of the people of the language. The generality benefited from the composition of the language has two situations: one of them is where the expression is general by itself without a need for any indication (*qarīnah*), the second is where its generality is benefited from the composition of the language but by an indication. As for what is general by itself, some of them are general in everything, and some are general for the sane i.e. people of understanding and some are for the insane, and some are general in places specifically, and some are general in the ambiguous time. So what is general in everything sane and others like the interrogative particle (أَيّ) (any, anyone, whoever, whichever, whatever, etc.), like your saying: "أيُّ رَجُلٍ جاءَ" "which man came", "أيَّ ثَوْبٍ لَبِسْتَه" "what dress have you put on". And thus is the nouns: (كُلّ) (every), (جَمِيع) (all), and the relative pronoun (الاسم المَوْصول): (الَّذِينَ) (these who, those who, etc.), (اللاَّتِي) (these who, those who, for female etc.) and the likes, also (سَائِر) (all of, the whole of) if it is taken from the infinitive (سُور) (fence), like the fence

around the town, not that which is taken from the word (سُؤر) means (remainder). The condition of (أيّ) is that it should be an interrogative or a conditional particle, if (أَيّ) is a relative pronoun like your saying: "مَرَرتُ بِـأَيِّهِمُ قَامَ" means (بِالَّذِي) "I passed by whoever stood up of them", or it is a substantive (مَوصُوف) (a noun followed by an adjective) like your saying: "مَرَرْتُ بِرَجُلٍ أَيِّ رَجُلٍ" "I've passed by a man what a man" means he is sound, or it is a circumstantial expression (حَال) like your saying: "مَرَرْتُ بِزَيْدٍ أَيَّ رَجُلٍ" with a fat-ha on أَيَّ "I've passed by Zaid, what a man" it also means he is sound, or if (أَيّ) is a vocative noun like calling someone: "يَا أَيُّهَا الرَّجُلُ" "O man" in all these cases it doesn't prevail. As for what is general for the sane i.e. people of understanding, it is like (مَنْ) (who, whoever, etc.) it is truly general for males and females, frees and slaves, and its condition is that it should be a conditional or an interrogative particle. If the particle (مَن) is an indefinite substantive (followed by an adjective) like your saying: "مَرَرْتُ بِمَنْ مُعْجِبٍ لَكَ" the word (مُعْجِبٍ) is in genitive form (majroor) "I've passed by who is appealing to you", or if the particle (مَن) is a relative pronoun which means (الَّذي) (who) like your saying: "مَرَرْتُ بِمَنْ قَامَ" "I've passed by he who stood up" then it doesn't prevail. As for what is general in the insane i.e. other than the people of understanding, it is like the particle (مَا) (what, whatever, how, etc.), like your saying: "اشْتَرِ مَا رَأَيْتَ" "Buy whatever you saw", it doesn't include male or female slaves, and if the particle (مَا) is an indefinite substantive (نَكِرَة مَوصُوفَة) like your saying: "مَرَرَتُ بِمَا مُعجِبٍ لَكَ" "I've passed by what is pleasant to you" it means by a thing, or if it is a substantive like: "مَا أَحسَنَ زَيْدًا" "how nice is Zaid" then it doesn't prevail. And what is general specifically in place is (أَيْنَ) (where) and (حَيْثُ) (wherever), like: "أَيْنَ تَجْلِسُ أَجْلِسْ" " "wherever you sit I

sit" and "حَيثُ تَجْلِسُ أجْلِسْ" "Wherever you sit I sit". And what is general in the ambiguous time is (مَتَى) (when) like: " مَتَى تَجْلِسُ أَجْلِسْ" "When you sit I sit". All these benefit the generality by themselves according to the language composition.

As for the generality which is benefited from the indication, the indication could be for the affirmation or for the negation of the generality. The indications of affirmation are: the definite particle (أل) (the) and the genitive construction (الإضافة) that they enter the collective noun like: "العَبِيد" "The servants" and "عَبِيدِي" "My servants" and they enter the generic noun like His Ta'ala's saying:

{وَلَا تَقْرَبُوا الزِّنَى}

(Nor come near the adultery...) 32 Surah al-Israa',

and His saying:

{فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ}

(...then let those beware who withstand the Messenger's order...) 63 Surah al-Nūr.

If the definite particle and the genitive construction enter the individual generic nouns (اسم الجنس المُفرَد) they prevail the individuals, and if they enter the collective nouns they prevail the collectives, because the definite particle (أل) and the genitive construction prevail the individual and the collective nouns which they enter. As for the indication that negates the generality, it is the indefinite in the negation context, because the indefinite in the negation context prevails whether the negation is directed to it like: "مَا أَحَدٌ قَائِمٌ" "No one is standing" or it is directed to its action like: "مَا قَامَ أَحَدٌ" "stood not any one" and whether the

negation particles are: (مَا) (no, not), (لَم) (not), (لَن) (never, nevermore), or the defective verb (لَيْسَ) (not) or others. And likewise is the negated transitive verb (الفعل المُتَعَدِّي المَنفيِّ), it prevails all its objects like your saying: "واللهِ لا ءَاكُل" "By Allah I don't eat", you break your oath if you eat anything unless you specify something, because the verb (أَكَلَ) (eat) is transitive, and it is negated here so it includes every eatable unless you specify a kind of food.

As for the generality which is benefited conventionally from the use of the people of the language, it is like the saying of Allah Ta'ala:

{حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ}

(Forbidden to you (for marriage) are: your mothers...) 23 Surah al-Nisā',

the convention people have transferred this complex of the forbiddance of the thing and all its enjoyments, because this is what is meant of the mentioned women except the employment, and like that is His Ta'ala's saying:

{حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ}

(Forbidden to you: dead meat...) 3 Surah al-Mā'idah,

it is carried out conventionally on eating, and this is of the conventional reality.

As for the generality which is affirmed by the inference, the guideline of it is relating the verdict to the quality by the succession and causation particle (فاء) like His ﷻ saying:

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا}

(As to the thief, male or female, cut off his or her hands...) 38 Surah al-Mā'idah,

and like: the intoxicant got forbidden for the drunkenness, etc.

العُموم والخُصوص

The General and the Specific (Expressions)
(al-ʻUmūm wa'l-Khuṣūṣ)

The general (expression) is an expression denotes two meanings and more, and the special (expression) is uttered with regard to two considerations: the first is an expression whose denotation is not suitable to be shared by many, like the proper nouns as Zaid and ʻAmru and the likes. The second is an expression who's specialty is with regard to what is more general than it, and its limit is that it is the expression that its denotation and other than its denotation share another expression from one direction, like the expression (al-insaan) the human, it is a special expression, and its denotation (the real human) and other than its denotation like the horse and the animals are called animal from one direction.

The general divides into: A general that there is no more general than it, like the expression (المَذكُور) (the mentioned), it includes the existent, the nonexistent, the known and the unknown. And a general with regard to a relation, like the expression animal which is general with regard to what goes underneath it of human and horse. And the special divides into a special that there is no more special than it, like the proper nouns. And a special with regard to what goes over it like the expression essence and body.

العُموم

The General *(al-ʻumūm)*

The general is an expression which engages all its suitable denotations in one expression, like (*al-qawm*) the people and (*al-rijaal*) the men, and there are special tenses in the language which denote the generality (*al-ʻumūm*), the people of the language had composed some general expressions so it is correct to prove by them that they mean the generality, hence what the general expression denotes is general.

From among them are the followings:

The expression (أَيُّ) (any), it is general for the sane and the insane, collectively and individually, in the reward and the inquiry.

The definite collective nouns other than the noun that is specified and defined by (ال العهد) (al al-ʻahd) (which is excluded from being general, like your saying to someone: "the judge came, and the judge is specified and known to you and to whom you said so"), whether the definite collective noun is an unbroken plural (jama' saalim) like (الرِّجال) (al-rijaal) the men, or it is a broken plural (jama' takseer) like (المسلمين) (al-Muslimeen) the Muslims (in (al-nasb) the accusative or in (al-jar) the genitive form.

The indefinite collective nouns (اسماءُ الجموعِ المُنكَرَةِ), like (رِجال) men and (مُسلِمين) Muslims and their intensive nouns like (كُل وجَميع) all.

The generic noun with the definite article (ال) (the) without specification (al-ʻahd), like (الرَّجُل) the man and (الدِّرهَم) the *dirham*.

The negated indefinite (النَّكِرَة المَنْفِيَّة) noun like your saying: "لا رجُلَ في الدَّارِ" "there is no man in the house" and "ما في الدَّارِ مِن رَجُلٍ" "there is not even a man in the house".

The definite by a governing word (*al-iḍāfah*) like the saying of Allah Ta'ala:

{يُوصِيكُمُ اللَّهُ فِى أَوْلَادِكُمْ}

"Allah directs you regarding your children's (inheritance)..."[217],

and thus is your saying: "ضَرَبتُ عَبيدي" "I had beaten my slaves", and "أَنفَقْتُ دَرَاهِمِي" "I spent my money".

The relative pronoun (مَن) (who and whoever) for the sane, in the inquiry and the recompense like your saying: "مَن عِندَكَ؟" "Who do you have?" and "مَن جاءَ أُكرِمْهُ" "whoever comes I honour him".

The relative pronoun (مَا) (what) for the recompense and the inquiry, it is general for the sane and the insane and not special for any kind, like the saying of the Messenger ﷺ: "على اليَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ" "Whatever the hand took is a debt on it until it discharges it" compiled by Aḥmad, this is for the recompense, and as for the inquiry, it is like your saying: "مَاذَا صَنَعتَ؟" "What have you done?"

The particle (مَتَى) (when) for the time in both the recompense and the inquiry, you say: "مَتَى جِئْتَنِي أَكْرَمتُك" "When you come to me I will honour you", and "مَتَى جَاءَ القَوم؟" "When did the people come?"

The particle (أَيْنَ) (where) and (حَيْثُ) (wherever) for the place in the recompense and the inquiry, you say: "أَينَما كُنتَ

[217] Surah al-Nisā':11

أَكْرَمتُكَ" "Wherever you are I will honour you" and you say: "أَين كُنتَ؟" "Where have you been?"

The evidence that there are some expressions composed by the people of the language for the generality is that the Arabs distinguished between the confirmation of generality and speciality in the origin of the composition, they said in confirming the speciality: "رَأَيتُ زَيدًا عَينَهُ نفسَهُ" "I've seen Zaid himself personally" but they don't say: "رَأَيْتُ زَيدًا كُلُّهُمْ أَجْمَعِين" "I've seen Zaid all of them together", and they said in confirming the generality: "رَأَيْتُ الرِّجَالَ كُلُّهُم أَجْمَعِينَ" "I've seen the men all of them together", but they don't say: " رَأَيتُ الرِّجَالَ عَينَهُ نَفْسَهُ" "I've seen the men himself personally", and the difference in the confirmation is a difference in the confirmed matter, because the confirmation corresponds the confirmed matter.

Also the Sharī'ah texts have used these expressions for the generality, from that is what al-Ṭabarānī narrated in (his book) *al-Kabīr* that when Allah Ta'ala sent down His saying:

{إِنَّكُمْ وَمَا تَعْبُدُونَ مِنْ دُونِ اللَّهِ حَصَبُ جَهَنَّمَ}

"Verily you, (disbelievers), and whatever you worship without Allah, are (but) fuel for Hell..."[218]

Ibn al-Zab'ary said (to the polytheists): I can defeat Muhammad for you saying: O Muhammad, isn't this from among what Allah sent down to you

{إِنَّكُمْ وَمَا تَعْبُدُونَ مِنْ دُونِ اللَّهِ حَصَبُ جَهَنَّمَ أَنْتُمْ لَهَا وَارِدُونَ}

[218] Surah al-Anbiya':98

"Verily you, (disbelievers), and whatever you worship other than Allah, are (but) fuel for Hell, (surely) you will enter it)?" He ﷺ said: yes, he said: "then here are the Christians, they worship 'Isa, and the Jews worship 'Uzair, and Banou Tameem worship the Angles, will those go to hell"? He inferred the generality from the particle (ما) (what, whatever...) and the Prophet ﷺ didn't deny that of him, but there came down the saying of Allah Ta'ala not denying his saying, but specifying it by His Ta'ala's saying:

{إِنَّ الَّذِينَ سَبَقَتْ لَهُمْ مِنَّا الْحُسْنَى أُولَئِكَ عَنْهَا مُبْعَدُونَ}

"Those for whom the Good (promise) from Us has gone before, will be removed far from it (hell)".[219]

And from among that is His Ta'ala's saying:

{وَلَمَّا جَاءَتْ رُسُلُنَا إِبْرَاهِيمَ بِالْبُشْرَى قَالُوا إِنَّا مُهْلِكُوا أَهْلِ هَذِهِ الْقَرْيَةِ إِنَّ أَهْلَهَا كَانُوا ظَالِمِينَ} {قَالَ إِنَّ فِيهَا لُوطًا قَالُوا نَحْنُ أَعْلَمُ بِمَنْ فِيهَا لَنُنَجِّيَنَّهُ وَأَهْلَهُ إِلَّا امْرَأَتَهُ كَانَتْ مِنَ الْغَابِرِينَ}

"When Our Messengers came to Ibrahim with the good news, they said: "We are indeed going to destroy the people of this town; truly its people are wrongdoers". He said: "But there is Lut in it" They said: 'We know better who is in it; we will certainly save him and his family except his wife: she is of those who remain behind'." [220]

the proof in this is that Ibrāhīm understood from "the people of this town" the generality so he mentioned Lut, and the Angles approved his understanding, but specified

[219] Surah al-Anbiya':101
[220] Surah al-'Ankabūt:31-32

Lut and his family by the exception, and they excluded his wife from the saved people, and all this denotes the generality.

Also the *Ṣaḥābah* consensus is convened on using these expressions for the generality, from that is 'Umar's argument with Abū Bakr in fighting those who refrained from paying the *Zakāh*, he said to him: "how do you fight them and the Prophet ﷺ said: " أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَن لاَ إِلَـهَ إِلاَّ اللهُ وَيُؤمِنُـوا بِـي وَبِمَـا جِئْـتُ بِـهِ فَـإِذَا فَعَلُـوا ذَلِكَ عَـصَمُوا مِنِّـي دِمَـاءَهُمْ وَأَمْوَالَهُمْ إِلاَّ بِحَقِّهَا وَحِسَابُهُمْ عَلَـى اللهِ" **"I am commanded to fight the people until they testify that there is no lord except Allah, and believe in me and in what I brought, if they do that; they shield their bloods and properties from me except in their right, and their reckoning is on Allah"** compiled by Muslim, and none of the *Ṣaḥābah* denied his reference to that proof, then Abū Bakr mentioned the exception in the *ḥadīth* which is his ﷺ saying: "إِلاَّ بِحَقِّهَا" "except in their right", so it showed that the known plural expression is for the generality (*al-'umūm*). And from that is when 'Uthmān ibn Madth'oon heard the poet saying:

أَلاَ كُلُّ شَيْءٍ مَا خَلا اللهَ بَاطِلُ وَكُلُّ نَعِيمٍ لاَمَحَالَةَ زَائِلُ

"Verily everything except Allah is false

And every bounty will inevitably vanish"

He said to him: "you've lied, the bounty of paradise doesn't vanish, and none of the attendants disapproved with him (linguistically), and had the noun (كُلُّ) (every) not been for the generality it wouldn't be like that. And from that is the proof of Abū Bakr to the *Anṣār* which is in the saying of the Messenger ﷺ: "الأَئِمَّـةُ مِنْ قُرَيْشٍ" **"The imams are from Quraish"** compiled by Aḥmad, and they all agreed with him on this poof without any disapproving, and if the

expression (الأَئِمَّـة) the imams is not general his proving wouldn't be correct. And from that is the consensus of the *Ṣaḥābah* to carry out His Ta'ala's sayings:

{الزَّانِيَةُ وَالزَّانِى}

"The woman and the man guilty of fornication..."[221],

{وَالسَّارِقُ وَالسَّارِقَةُ}

"The thief, male or female, cut off their hands..."[222],

{وَمَنْ قُتِلَ مَظْلُومًا}

"...And if anyone is slain wrongfully..."[223],

{ وَذَرُوا مَا بَقِىَ مِنَ الرِّبَا}

"...and give up what remains of (riba) usury..."[224],

{ وَلَا تَقْتُلُوا أَنْفُسَكُمْ}

"...and kill not yourselves..."[225],

{ لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ}

"...kill not the game (the hunt) while you are in the state of Ihraam (for Hajj or 'Umrah)..."[226],

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[221] Surah al-Nūr:2
[222] Surah al-Mā'idah:38
[223] Surah al-Isrā':33
[224] Surah al-Baqarah:278
[225] Surah al-Nisā':29
[226] Surah al-Mā'idah:95

and his ﷺ sayings: "لاَ وَصِيَّةَ لِوَارِثٍ" **"No will is required for an inheritor"** compiled by Aḥmad, " لاَ تُنْكَحُ المَرْأَةُ عَلَى عَمَّتِهَا وَلاَ عَلَى خَالَتِهَا" **"The woman mustn't be married over (to the husband of) her paternal aunt nor over her maternal aunt"** compiled by Muslim, "مَن أَلقَى السِّلاَحَ فَهُوَ ءَامِنٌ" **"Whoever putdown the weapon will be secured"** compiled by Muslim, and the like of the generality, which affirms that these expressions were composed by the people of the language for the generality (*al-'umūm*).

طُرُقُ ثُبوتِ العُمومِ لِلَّفْظِ

Ways to Affirm the Generality of the Expression

The generality that is affirmed in the expression can be affirmed either linguistically which is benefited from the language composition, or conventionally, i.e. from the usage of the people of the language not from their composition, or mentally which is benefited by derivation not from the mind. In other words, the generality of the expression is affirmed to us either through the transference that the Arabs had composed this expression for the generality, or used it for the generality, or it can be affirmed to us by inferring from the transference, i.e. like knowing that the exception (الاستِثْناء) can enter the definite plural (الجَمع المُعَرَّف), from what had been transferred to us that the exception is taking out some of what the expression includes. Although this is an inference, it is a mental knowledge, since it had been transferred to us that the exception is taking out some of what the expression includes, so we understood that the definite plural is for the generality. Accordingly the generality that is affirmed in

the expression can be affirmed through two ways: the transference, and the inference, and both of them are from the composition of the Arabs, so all the generality that is affirmed in the expression is affirmed by the composition of the Arabs.

The generality affirmed by the transference is either benefited from the language composition, or it is benefited from the use of the people of the language. The generality benefited from the composition of the language has two situations: one of them is where the expression is general by itself without a need for any indication (*qarīnah*), the second is where its generality is benefited from the composition of the language but by an indication. As for what is general by itself, some of them are general in everything, and some are general for the sane i.e. people of understanding and some are for the insane, and some are general in places specifically, and some are general in the ambiguous time. So what is general in everything sane and others like the interrogative particle (أَيّ) (any, anyone, whoever, whichever, whatever, etc.), like your saying: "أيُّ رَجُلٍ جاءَ" "which man came", "أيَّ ثَوْبٍ لَبِسْتَه" "what dress have you put on". And thus is the nouns: (كُلّ) (every), (جَمِيع) (all), and the relative pronoun (الاسم المَوْصول): (الّذِينَ) (these who, those who, etc.), (اللاَّتِي) (these who, those who, for female etc.) and the likes, also (سَائِر) (all of, the whole of) if it is taken from the infinitive (سُور) (fence), like the fence around the town, not that which is taken from the word (سُؤر) means (remainder).The condition of (أيّ) is that it should be an interrogative or a conditional particle, if (أَيّ) is a relative pronoun like your saying: "مَرَرتُ بِأَيِّهِمُ قَامَ" means (بِالَّذِي) "I've passed by whoever stood up of them", or it is a substantive (مَوصُوف) (a noun followed by an adjective) like

your saying: "مَرَرْتُ بِرَجُلٍ أَيِّ رَجُلٍ" "I've passed by a man what a man" means he is sound, or it is a circumstantial expression (حَال) like your saying: "مَرَرْتُ بِزَيْدٍ أَيَّ رَجُلٍ" with a fat-ha on أَيَّ "I've passed by Zaid, what a man" it also means he is sound, or if (أَيِّ) is a vocative noun like calling someone: "يَا أَيُّهَا الرَّجُلُ" "O man" in all these cases it doesn't prevail.

As for what is general for the sane i.e. people of understanding, it is like the relative pronoun (مَنْ) (who, whoever, etc.) it is truly general for males and females, frees and slaves, and its condition is that it should be a conditional or an interrogative particle. If (مَن) is an indefinite substantive (followed by an adjective) like your saying: "مَرَرْتُ بِمَنْ مُعْجِبٍ لَكَ" the word (مُعْجِبٍ) is in genitive form (majroor) "I've passed by who is appealing to you", or if (مَن) is a relative pronoun which means (الَّذي) (who) like your saying: "مَرَرْتُ بِمَنْ قَامَ" "I've passed by he who stood up" then it doesn't prevail.

As for what is general in the insane i.e. other than the people of understanding, it is like the particle (مَا) (what, whatever, how, etc.), like your saying: "اشْتَرِ مَا رَأَيْتَ" "Buy whatever you saw", it doesn't include male or female slaves, and if the particle (مَا) is an indefinite substantive (نَكِرَة مَوصُوفَة) like your saying: "مَرَرْتُ بِمَا مُعجِبٍ لَكَ" "I've passed by what is pleasant to you" it means by a thing, or if it is a substantive like: "مَا أَحسَنَ زَيْدًا" "how nice is Zaid" then it doesn't prevail. And what is general specifically in place is (أَيْنَ) (where) and (حَيْثُ) (wherever), like: "أَيْنَ تَجْلِسُ أَجْلِسْ" " "wherever you sit I sit" and "حَيثُ تَجْلِسُ أجْلِسْ" "Wherever you sit I sit". And what is general in the ambiguous time is (مَتَى) (when) like: "مَتَى تَجْلِسُ أَجْلِسْ" "When you sit I sit". All these

benefit the generality by themselves according to the language composition.

As for the generality which is benefited from the indication, the indication could be for the affirmation or for the negation of the generality. The indications of affirmation are: the definite particle (أل) (the) and the genitive construction (الإضافة) that they enter the collective noun like: "العَبِيد" "The servants" and "عَبِيدِي" "My servants" and they enter the generic noun like His Ta'ala's saying:

{وَلَا تَقْرَبُوا الزِّنَى}

"Nor come near the adultery..."[227],

and His saying:

{فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ}

"...then let those beware who withstand the Messenger's order..."[228].

If the definite particle and the genitive construction enter the individual generic nouns (اسم الجنس المُفرَد) they prevail the individuals, and if they enter the collective nouns they prevail the collectives, because the definite particle (أل) and the genitive construction prevail the individual and the collective nouns which they enter. As for the indication that negates the generality, it is the indefinite in the negation context, because the indefinite in the negation context prevails whether the negation is directed to it like: "مَا أَحَدٌ قَائِمٌ" "No one is standing" or it is directed to its action

[227] Surah al Isrā':32
[228] Surah al-Nūr:63

like: "مَا قَامَ أَحَدٌ" "stood not any one" and whether the negation particles are: (مَا) (no, not), (لَم) (not), (لَن) (never, nevermore), or the defective verb (لَيْسَ) (not) or others. And likewise is the negated transitive verb (الفعل المُتَعَدِّي المَنفيّ), it prevails all its objects like your saying: "واللهِ لا ءَاكُل" "By Allah I don't eat", you break your oath if you eat anything unless you specify something, because the verb (أَكَلَ) (eat) is transitive, and it is negated here so it includes every eatable unless you specify a kind of food.

As for the generality which is benefited conventionally from the use of the people of the language, it is like the saying of Allah Ta'ala:

{حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ}

"Forbidden to you (for marriage) are: your mothers..."[229],

the convention people have transferred this complex of the forbiddance of the thing and all its enjoyments, because this is what is meant of the mentioned women except the employment, and like that is His Ta'ala's saying:

{حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ}

"Forbidden to you: dead meat..."[230],

it is carried out conventionally on eating, and this is of the conventional reality.

As for the generality which is affirmed by the inference, the guideline of it is relating the verdict to the quality by the succession and causation particle (فاء) like His ﷻ saying:

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[229] Surah al-Nisā':23

[230] Surah al-Mā'idah:3

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا}

"As to the thief, male or female, cut off his or her hands..."[231],

and like: the intoxicant got forbidden for the drunkenness, etc.

العِبرَةُ بعُمومِ اللَّفظِ لا بخُصُوصِ السَّبَب

The Consideration is in the Generality of the Expression Not in the Speciality of the Cause (of Revelation)

If the address came on a specific cause, like if it came in an incident or it came to answer a question, then the address is general and not special for that incident, nor is it special for the questioner alone, as for the arrival of the address in an incident, that is when an incident occurs and the text comes to clarify its verdict in one of the general tenses, so the verdict is general and not special for that incident. An example for that is the saying of the Messenger of Allah ﷺ when he passed by the dead female sheep of Maymunah: "أَيُّمَا إِهَابٍ دُبِغَ فَقَد طَهُرَ" **"Any skin gets tanned becomes pure"** compiled by Muslim and Aḥmad. This is not special for the she sheep of Maymunah, but it is general, so every skin becomes pure by tanning it because the address is general. And likewise is the *Āyah* of theft (السَّرِقَة), it came down in the theft of the shield, or in the dress of Safwaan ibn Umayah, and the *Āyah* of *al-ẓihār* (الظِّهار) (making the wives unlawful by saying to them: 'you are like my mother's

[231] Surah al-Mā'idah:38

back") which came down regarding Salamah ibn Sakhr, and the *Āyah* of *al-li'ān* (اللِّعَان) which came down regarding Hilaal ibn Umayah, and others. In all these and their likes there is no consideration in the speciality of the incident, therefore the address is general even though the cause (of the coming down) is special. The evidence for this is that the *Ṣaḥābah* may Allah be pleased with them, had generalized the verdicts of these Verses without any disagreement, which proves that the special cause doesn't exclude the generality.

As for the arrival of the address as an answer to a question, it is that if the question is general, the answer is general, like what is narrated that the Prophet ﷺ got asked about selling ripe dates (الرُّطَب) by dried dates (التَّمْر), he said: " يَنقُصُ إِذَا يَبِسَ؟ قالُوا: نَعَمْ, قَالَ: فَلاَ إِذَنْ" **"Doest it diminish if it dries? They dais: yes, he said: then no"** compiled by Aḥmad. It is also narrated that the Prophet ﷺ was asked saying to him: " إِنَّا نَركَبُ البَحْرَ وَنَحْمِلُ مَعَنَا القَلِيلَ مِنَ المَاءِ, فَإِنْ تَوَضَّأْنَا بِهِ عَطِشْنَا, أَفَنَتَوَضَّأُ مِنْ مَاءِ البَحْرِ؟ فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: هُوَ الطَّهُورُ مَاؤُهُ, الحِلُّ مَيْتَتُهُ" **"We ride the sea and carry a little of water with us, if we make ablution with it we get thirsty, shell we make ablution with the sea water? The Prophet ﷺ said: it is that whose water is pure, and its dead (animals) are allowed"** compiled by Aḥmad. And Abū Hurairah said: " سَأَلَ رَجُلٌ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: يَا رَسُولَ اللهِ, إِنَّا نَركَبُ البَحْرَ وَنَحْمِلُ مَعَنَا القَلِيلَ مِنَ المَاءِ, فَإِنْ تَوَضَّأْنَا بِهِ عَطِشْنَا, أَفَنَتَوَضَّأُ بِمَاءِ البَحْرِ؟ فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: هُوَ الطَّهُورُ مَاؤُهُ" **"A man asked the Prophet ﷺ saying: we ride the sea and carry a little of water with us, if we make ablution with it we get thirsty, shall we take ablution with the sea water? The Prophet ﷺ said: it is that whose water is pure"** compiled by Abū Dāwud. In these two examples the Messenger was asked about selling the ripe dates (*al-rudtab*) not about a specific kind of *rudtab*, and he

was asked about the sea water not about the water of a specific sea, so the question is general and the answer is general, and there is no argument about the generality of the address. If the answer is more general than the question and independent by itself without the question, the answer is also general, it is narrated that Abū Sa'īd al-Khudrī said: "قِيلَ يَا رَسُولَ اللهِ, أَنَتَوَضَّأُ مِنْ بِئْرِ بُضَاعَةَ, وَهِيَ بِئْرٌ يُلْقَى فِيهَا الحَيْضُ وَلُحُومُ الكِلاَبِ وَالنَّتَنُ؟ فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: إِنَّ المَاءَ طَهُورٌ لا يُنَجِّسُهُ شَيْءٌ" **"It had been said O Messenger of Allah, shall we take ablution from Buḍā'ah well, it is a well in which menstruation blood, dogs meats, and rotten things? Then the Messenger of Allah ﷺ said: the water is pure and nothing makes it impure"** compiled by al-Tirmidhī. The question here was special about a specific well, and the answer was general about the water, so the address is general, and there is no consideration in speciality of the question.

As for the correspondence or non correspondence of the answer to the question, this has nothing to do with the discussion of the generality, because the answer may corresponds the question and doesn't extend over it, and it may not correspond the question so that he extends the answer over the (limit of) question, so it is not a principle that the answer corresponds the question, but it may corresponds and it may not, and what denotes this is when the Messenger ﷺ was asked about the *wuḍū'* from the sea water, he said: "هُوَ الطَّهُورُ مَاؤُهُ, الحِلُّ مَيْتَتُهُ" **"it is that whose water is pure, and its dead (animals) are allowed"** compiled by Aḥmad, he mentioned the allowance of the dead animal (of the sea) while he wasn't asked about it. So the extend of the answer over the question is legitimate and it exists in the Sharī'ah texts. And limiting the answer to the question

is not necessary, and not of the principle, and it is not relevant in the discussion of the generality. Al-Bukhārī made a chapter under the name: Whoever answers the questioner with more than his question, and he mentioned the *ḥadīth* of Ibn ‘Umar: “ أَنَّ رَجُلًا سَأَلَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مَا يَلْبَسُ الْمُحْرِمُ؟ فَقَالَ لَا يَلْبَسُ الْقَمِيصَ, وَلَا الْعِمَامَةَ, وَلَا السَّرَاوِيلَ, وَلَا الْبُرْنُسَ, وَلَا ثَوْبًا مَسَّهُ الْوَرْسُ أَوِ الزَّعْفَرَانُ, فَإِنْ لَمْ يَجِدِ النَّعْلَيْنِ فَلْيَلْبَسِ الْخُفَّيْنِ, وَلْيَقْطَعْهُمَا حَتَّى يَكُونَا تَحْتَ الْكَعْبَيْنِ” **“A man asked the Prophet ﷺ what should the muhrim (the man who is in consecration for Hajj or ‘Umrah) wear? He ﷺ said: he must not wear the shirt, or the turban (*‘imāmah*), or the trousers, or the hooded cloak (*al-burnus*), nor a dress touched by either al-wars (a yellow plant that has a beautiful smell) or saffron, and if he doesn’t have sandals let him put on two mules (*al-khuffain*) and he must cut them to be underneath the ankles”**. It is as if he asked about the preference situation, then he answered him for it and for the necessary situation, and this is not irrelevant to the question, because voyaging situation necessitates that. So the generality in answering the question doesn’t necessitate that the answer corresponds the question, and the discussion of the correspondence of the answer to the question is not of the generality discussions, and it shouldn’t come in this chapter.

عُمومُ اللَّفظِ في خُصُوصِ السَّبَبِ

هُوَ عُمومٌ في مَوْضُوعِ الحَادِثَةِ وَالسُّؤالِ. وَلَيْسَ عامًّا في كُلِّ شَيْءٍ

The Generality of the Expression in the Speciality of the Cause is Only in the Subjet of the Incident

and the Question, it is Not a Generality in Everything

The generality of the address in an incident and in the answer to a question is only in the subject of that incident or that question, and not in everything, i.e. the address is general in the subject of that incident or that question and in other than them (of the same subject). In the incident of the she sheep of Maymunah, the answer was about the skin of the dead animals, so it includes the sheep of Maymunah and the others, but in the subject of the incident which is the skin of dead animals. And in the incident of the shield or the dress of Safwaan, it includes the theft of the shield and the others, and it includes the dress of Safwaan and other than Safwaan's dress but in the subject of the incident which is the theft. And in the incident of Salamah ibn Sakhr, the general address includes Salamah and the others, but in the subject of the incident which is the *ẓihār*. So the generality is but in the subject of the incident and doesn't include other subjects. And likewise is the answer to the question, in the incident of the well of Budha'ah, the Messenger got asked about the purification with the water of Budha'ah, then the answer came about the purification with the water, so that includes the well of Budha'ah and others, but in the subject of the incident which is the purification, because the subject of the question is the purification, because although they asked about the ablution, it wasn't meant to ask about the ablution as the subject of the ablution, but the question was about the purification for the ablution, so the subject of the question is the purification not the ablution, so the answer came general for all the water, but in the subject of purification,

and not general in everything, therefore it doesn't denote the verdict of drinking from it, and like that is the question about the sea water, it is a question about purification, because even though they asked about the ablution, it wasn't meant from asking about it as ablution, but they asked about the purification for the ablution, so the subject of the question is the purification not the ablution, so the answer came general about the purification, and not general in everything, so it doesn't include the drinking, and accordingly the generality is only in the subject of the incident and the question, so it is special in it and it doesn't include other (subjects), so a (different) subject could not enter in the principle *"The consideration is in the generality of the expression, not in the speciality of the cause (of revelation)"* because it is other than the cause, i.e. it is other than the incident and other than the question, and because the talk is about it so it is special for it, because the expression of the Messenger is related to the subject of the question and to the subject of the incident, so the verdict is related to that subject. So the text which is said in a specific incident, and the text which is an answer to a question must be specialized in the subject of the question or the incident, and it is wrong to generalize it in everything, because the question is repeated in the answer, and the talk is about a specific subject, so the verdict must be limited to that subject, because the expression of the Messenger by which he clarified the verdict of the question or the incident is related to that question alone and to that incident alone, and not related to other subjects at all, so the verdict is related to the subject of the question and to the subject of the incident, i.e. it is related to the matter which it was asked about or that which the talk is about it,

and it is not related to other subjects, so it doesn't include other subjects , but it is special in it.

It is incorrect to say if the question is repeated in the answer the verdict would be special for the question otherwise it is inevitable to be general, it is incorrect to say that because what is repeated in the answer is the subject of the question, that is the purification in the *ḥadīth* of the well of *Buḍa'ah*, not the well of *Buḍā'ah*, because the question about the purification, not about the well of *Buḍa'ah*, and what was repeated in the answer is the subject of the question, that is what the question was about, so the verdict must be limited to it and special for it, and it includes that incident or other incidents i.e. the well of Budha'ah and others, because the incident wasn't repeated in the answer so it is not related to it.

And it is incorrect to say that it is very often that the legislator's answer about a specific subject includes many subjects irrelevant to the question, like the question to him about taking the ablution with the sea water and his answer was: "هُوَ الطَّهُورُ مَاؤُهُ, الحِلُّ مَيْتَتُهُ" **"it is that whose water is pure, and its dead (animals) are allowed"** compiled by Aḥmad, so he ﷺ clarified the subject of the question and other thing; it is incorrect to say that because what is special in the subject of the question or the incident is not the (whole) answer of the Messenger, but the verdict which he gave for the subject of the question or the incident. Because the Messenger ﷺ could be asked about a verdict and he gives answers about several verdicts. So the correspondence between the question and the answer is not necessary, the Messenger was asked about the sea water i.e. the purification by the sea water, then he answered that its water is pure i.e. the purification with it is allowed, and he answered that its

dead animal is allowed, that means he answered with two verdicts, one of them is the verdict he was asked about it which is the purification, and this verdict is special in the subject of the question so it doesn't include other verdicts, like drinking from the sea water for example, so the speciality in the subject of the question is only in the verdict which the Messenger gave in his answer, not in the (whole) answer of the Messenger, accordingly the text which came about a specific incident or as an answer to a question, this text is general, it includes the one whom the incident occurred by him and other people, and (in the question) it includes the questioner and other people, but it is special in the subject of the incident or the question, so it doesn't include other subjects. The verses of *al-ẓihār*, *al-li'ān* (اللِّعَان), and *hadd al-qadhf* (حَدُّ القَذْف), and others came down at the occurrence of incidents for known people, and they are not special for them, their verdicts are general but they are special for the subjects at which they came down, that is any one of *al-ẓihār*, *al-li'ān*, and *hadd al-qadhf* or other than that, and it doesn't include other subjects, and accordingly the principle *"The consideration is in the generality of the expression, not in the speciality of the cause (of revelation)"* does not include other than the subject of the incident or the question, since the generality of the expression is in the speciality of the subject of the incident or the question, it is not a generality in everything. An example for that is what is narrated that the Messenger ﷺ got asked about the *riba* in the different kinds of commodities, and then he said: "لاَ رِبًا إِلاَّ فِي النَّسِيئَةِ" **"There is no *riba* except in the nasee'ah transaction"** compiled by al-Bukhārī, it is special in the subject he was asked about it which is the *riba* in (exchanging) different commodities, it is not general for every *riba*, because the *riba* may occur in

the same kind, in the immediate and in the nasee'ah transactions. And like that is what is narrated from Abū Bakrah: " لَمَّا بَلَغَ رَسُلَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّ أَهْلَ فَارِسَ مَلَّكُوا عَلَيْهِمْ بِنْتَ كِسْرَى قَالَ: لَنْ يُفلِحَ قَوْمٌ وَلَّوْا أَمْرَهُمُ امْرَأَةً "**When the news reached the Messenger ﷺ that the Persians appointed the daughter of kisra as a queen over themselves, he said: a people who give their authority to a woman will never be successful"** compiled by al-Bukhārī, it is special in the subject which the talk was about it, that is the people of Persia appointed a woman as a queen over themselves, i.e. it is special in the subject of authority i.e. the head of the state, or it is special in the government issue and not general in every authority, because the authority could be in the government, in the guardianship over the boy, in the guardianship over the child, and it could be the performance of the judicial authority. So the authority occurs in the governing and in the guardianship over the child, but the *ḥadīth* is not general, but it is special in the governing authority, therefore it is permissible for the woman to be a guardian over the child, and 'Umar ibn al-Khaṭṭāb had appointed al-Shifā' (a woman of his people) in the judiciary of the market place. So the generality of the expression in the speciality of the cause (of revelation) is not a generality in everything, but it is a generality in the subject which the talk or the question is about.

خِطَابُ الرَّسُولِ خِطَابٌ لِأُمَّتِهِ

The Address to the Messenger is an Address to his Nation

Although the address to the Messenger ﷺ is directed to him and he is included in it, the address is directed to him as a Messenger not only for him personally, so it is an address to the Messenger of the nation, therefore it is an address to the nation, and it is from the general, like the address directed to the head of the state, it is directed to the whole state, and like the address directed to the province governor it is directed to the province. So the quality of the addressed person makes the address from the general expression not special. It is different to if the address is directed to a specific person then it is special for that person, and therefore the address to the Messenger sometimes came in the plural tense, Allah ﷻ said:

{يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ}

"O Prophet, if you (people) do divorce women..."[232],

He ﷻ didn't say if you divorce in the singular tense. And there is what shows that the address directed to him is verily aimed to the Ummah, Allah ﷻ said:

{فَلَمَّا قَضَى زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا لِكَيْلَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ}

"...Then when Zaid had dissolved (his marriage) with her, We joined her in marriage to you in order that there may be no

[232] Surah al-Ṭalāq:1

embarrassment for the Believers in (the matter of) marriage with the wives of their adopted sons..."[233]

Also the evidence that the address to the Messenger is an address to his Ummah is that the address which is special for the Messenger is clarified that it is specially for him ﷺ, Allah ﷻ said:

{وَامْرَأَةً مُؤْمِنَةً إِنْ وَهَبَتْ نَفْسَهَا لِلنَّبِيِّ}

"...and a believing woman who dedicates her soul to the Prophet if the Prophet wishes to wed her..."

to His saying:

{خَالِصَةً لَكَ مِنْ دُونِ الْمُؤْمِنِينَ}

"this only for thee, and not for the Believers..."[234],

and like His Ta'ala's saying:

{وَمِنَ اللَّيْلِ فَتَهَجَّدْ بِهِ نَافِلَةً لَكَ

"And in some parts of the night do offer prayer with it (i.e. recite the Qur'ān in the prayer) as an additional prayer (naafilah) for you..."[235],

if the address directed to him is specially for him and not an address to his nation, there wouldn't be a need to clarify the specialization for him here.

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[233] Surah al-Aḥzāb:37
[234] Surah al-Aḥzāb:50
[235] Surah al-Isrā':79

خِطَابُ النَّبِيِّ لِأَحَدٍ مِنْ أُمَّتِهِ خِطَابٌ لِأُمَّتِهِ

The Address of the Prophet to one of his Nation is an Address to his Nation

Every address the Messenger issued to one of his nation is an address to his entire nation, so it is general unless there is what denotes its specialization for that person. The evidence for this is the saying of Allah Ta'ala:

{وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِلنَّاسِ}

"And We have not sent you but as a universal (Messenger) to mankind..."[236],

and his ﷺ saying: "...وبُعِثْتُ إِلى النَّاسِ كَافَّةً" **"...And I am sent to all mankind"** compiled by al-Nasā'ī from Jaabir, and his ﷺ saying: "...وَبُعِثْتُ إِلَى الأَحْمَرِ وَالأَسْوَدِ" **"...And I am sent to the red and the black"** compiled by Aḥmad from Abū Dtharr. The *Ṣaḥābah* had referred to the verdicts issued by the Messenger ﷺ to individual people of the Ummah. From that is their reference in the punishment of adultery to the verdict that he ﷺ issued against Maa'iz (which was stoning), and their reference in the issue of al mufawwedhah to the story of Burou' Bint Waashiq (a woman got married by (*nikāh al-tafweedh*) a marriage agreement without naming the dowry, then her hasband died before wedding with her, then the Prophet ﷺ commanded that she is entitled to a dowry of the similar woman, she performs the 'iddah, and she inherits from her hasband). And their reference in imposing the *jizyah* upon the (magous) magi to his ﷺ

[236] Surah Saba':28

imposing of the *jizyah* upon the magi of Hajar. And the Messenger ﷺ had clarified that the address which is special for a specific person of his nation that it is especially for that person, from that is his ﷺ saying to Abū Burdah in sacrificing a (Jadth'ah) baby goat: "ضَحِّ بِهَا وَلاَ تَصْلُحُ لِغَيْرِكَ" **"Do sacrifice it but it is not good for other than you"** narrated by Muslim. And his saying to Abū Bakrah when he ran and prostrated himself before reaching the prayer line (for not missing the *ruku'* with the Prophet) then he walked to it: "زَادَكَ اللهُ حِرصًا وَلاَ تَعُدْ" **"may Allah increase your devotion but don't do it again"** compiled by al-Bukhārī, and he specialized Khuzaymah (Ibn Thaabit al-Ansaary) in accepting his testimony alone (where it requires two witnesses) عن عمارة بن خزيمة أن عمه حدثه وكان من أصحاب النبي صلى الله عليه وآله وسلم: "أنَّه ابتاع فرسًا من أعرابي فاستتبعه النَّبيُّ صَلَّى الله عليه وآله وسلم ليقضِيَه ثمن فرسه فأسرع النبي صلى الله عليه وآله وسلم المشي وأبطأ الأعرابي فطفق رجال يعترضون الأعرابي فيساومونه بالفرس لا يشعرون أن النبي صلى الله عليه وآله وسلم ابتاعه فنادى الأعرابيَّ النبيَّ صلى الله عليه وآله وسلم فقال إن كنت مبتاعا هذا الفرس فابتعه وإلا بعته فقال النبي صلى الله عليه وآله وسلم حين سمع نداء الأعرابي أوليس قد ابتعته منك قال الأعرابي لا والله ما بعتك فقال النبي صلى الله عليه وآله وسلم بلى قد بعته فطفق الأعرابي يقول هلم شهيدا قال خزيمة أنا أشهد أنك قد ابتعته فأقبل النبي صلى الله عليه وآله وسلم علىخزيمة فقال بم تشهدد فقال بتصديقك يا رسول الله فجعل شهادة خزيمة شهادة رجلين). Abū Dāwud, Aḥmad and al-Nasā'ī narrated from 'Umarah ibn Khuzaymah: **"That he ﷺ had bought a horse from a Bedouin and asked him to follow him to pay him the price of his horse, then the Prophet ﷺ walked fast and the Bedouin slowed down, some men started offering the Bedouin price for the horse, they didn't know that the Prophet ﷺ had bought it, then the Bedouin called the Prophet ﷺ saying to him: if you want to buy this horse then do buy it otherwise I will sell it! The Prophet ﷺ said when he heard him: haven't I bought it of you? The Bedouin said: no by Allah I didn't sell it to you, the**

Prophet ﷺ said: yes you did sell it, then the Bedouin started saying: give me a witness, Khuzaymah said: I certify that you bought it, the Prophet came to Khuzaymah and said: what do you certify, he said: that you are truthful O Messenger of Allah, so he made the testimony of Khuzaymah equal to the testimony of two men", and if the issuance of the verdict for the individual is not directed to the whole Ummah; there would be no need for the specialization literally by the text.

الخِطَابُ الوَارِدُ على لِسَانِ الرَّسُولِ يَدْخُلُ الرَّسُولُ في عُمُومِهِ

The Messenger is Included in the Address that He Stated

The Messenger ﷺ is included in the generality of the address stated by Him, like in the saying of Allah Ta'ala:

{يَا أَيُّهَا الَّذِينَ ءَامَنُوا}

"O you, who believed...",

{يَا أَيُّهَا النَّاسُ}

"O you, mankind...",

{يَا عِبَادِى فَاتَّقُونِ}

"Then fear Me O My servants"

And the Messenger is included in every common address in which he ﷺ wasn't commanded in the beginning of it to command the Ummah like these verses, because these tenses are general for every human, every believer and

every servant, and the Messenger ﷺ is the master of mankind, the believers and the servants, and the Prophet hood doesn't exclude him from having these names, so it doesn't exclude him these generalities, also when the Messenger used to command the *Ṣaḥābah* to do something, and didn't do it himself; they used to ask him: what is the matter with you that you didn't do it? and had they not understood his inclusion in what he commanded them to do; they wouldn't have asked him about it, and that is like what is narrated that he ﷺ had commanded the *Ṣaḥābah* to separate the Hajj and to perform 'Umrah, and he didn't separate his hajj, they said: "أَمَرتَنَـا بِالفَسْخِ وَلَـم تَفْسِخ" "You commanded us to separate and you didn't do so" and he didn't disapprove their understanding that he is included in the command, but he left that and expressed his excuse by his saying: "إِنِّـي قَلَّدتُ هَدْيًا" "I've presented a sacrifice", al-Āmidī mentioned it in his book *al-Ihkām*. And it is narrated that he ﷺ said: " لَـوِ اسْتَقْبَلْتُ مِنْ أَمْرِي مَـا اسْتَدْبَرْتُ, لَمْ أَسُـقِ الهَدْيَ, ولَجَعَلْتُهَـا عُمْرَةً" **"If I had thought about it before; I wouldn't have brought the hadi, and I would have make it a Umrah"** compiled by Aḥmad.

Although the Messenger ﷺ was distinguished with verdicts that are not shared with him by the Ummah, like the obligation of the two rak'ah before *al-Fajr* prayer, *al-Dhuha* prayer, *al-Adhaa* prayer, the forbiddance of *al-Zakāh* to him, the permissibility of *nikāh* for him without guardian (*wali*), dowry, and witnesses, and as such of the specialties; this doesn't indicate his isolation from the Ummah in the assignment verdicts, and it doesn't necessitate his exclusion from the generalities of the address. Can you see that the menstruating woman, the sick person, the traveler and the woman, every one of them is specialized with verdicts that

are not shared by others, despite that they are not excluded from the generalities of the address, accordingly, specializing the Messenger with some verdicts does not exclude him from the generalities of the address.

الخُصُوص

The Specific *(al-khuṣūṣ)*

The words *khuṣūṣ* and *takhṣiṣ* have one meaning that is specification; it is excluding some of what the (general) expression includes, it occurs in the address that is supposed to have an inclusion meaning, i.e. in the generality, therefore it is called the specification of the generality, and it doesn't occur in any address that is not supposed to have a meaning of inclusion. So the specification cannot be imagined in his ﷺ saying to Abū Burdah: " ضَحِّ بِهَا وَلاَ تَصْلُحُ لِغَيْرِكَ" **"Do sacrifice it but it is not good for other than you"** narrated by Muslim, because the specialization is directing the expression from the direction of generality to the direction of speciality, and what has no generality is not imagined to be directed as such. The evidence on the permissibility of specialization is the occurrence of it in the general commands like His Ta'ala's saying:

{فَاقْتُلُوا الْمُشْرِكِينَ}

"...then fight and slay the Pagans..."[237],

Ahl al-dhimmah are excluded from that. And His ﷻ saying:

[237] Surah al-Tawbah:5

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا}

"As to the thief, male or female, cut off his or her hands..."[238],

excluded from this is whoever steals less than the *Nisāb*, or whoever steals from outside the (hirz) protection place of the stolen thing ... etc. and His Ta'ala's saying:

{الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِئَةَ جَلْدَةٍ}

"The woman and the man guilty of adultery, whip each of them with a hundred stripes..."[239],

excluded from that is the married fornicator; he must be stoned. And His Ta'ala's saying:

{يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ}

"Allah commands you as regards your children's (inheritance): to the male, a portion equal to that of two females..."[240],

and excluded from that is the kāfir and the killer. And as such many texts came as general and got specialized, and this is a proof that the specialization is permissible and it exists in the *Kitāb* and the Sunnah.

أدِلَّةُ تَخْصِيصِ العُمُوم

[238] Surah al-Mā'idah:38
[239] Surah al-Nūr:2
[240] Surah al-Nisā':11

The Evidences that Specify the General (*adillah takhṣiṣ al-ʻumūm*)

The evidence that denotes the specification can be attached, and it can be detached. The attached one is that which does not stand alone, but it is linked to the expression in which the generality is mentioned. As for the detached evidence; it is opposite to it, that is what can stand alone. That means the evidence of specification is one of the specification particles linked to the general (verdict) which is being specified, like the exception, and this is the attached specification. And the detached specification is a different text detached from the general text, like specifing the flogging for the unmarried adulterer by another text and that is when the Messenger ﷺ stoned the married fornicator. The attached specification is of four kinds: the exception (*al-istithnā'*), the condition (*al-sharṭ*), the quality (*al-ṣifah*) and the objective (*al-ghayah*).

التَّخْصِيصُ بِالاسْتِثْنَاءِ

The Specification by the Exception *(al-takhṣiṣ bi'l-istithnā')*

The specialization by the exception is excluding what comes after the exception particle "إِلاَّ" which means "except" or after one of its sisters, from what comes before it, and the exception particles are: "إِلاَّ" except, "غَيْرُ" other, "سِوَى, خَلا, مَا خَلا, مَا عَدَا other than, " عَدَا, حَاشَا with the exception of, with the exclusion of, excluding, save, but, without, " "لَيْسَnot, "لا يَكُونُ" is not, and the likes. The

mother of these tenses is the exception particle "إِلاَّ" except. It is conditional for the validity of the exception to be really attached to what it is exempted from (the general term) without a separator between them, or to be virtually attached, that is when the speaker is not considered conventionally that he uttered it (the exempted matter) after he finished his first speech, even if there is a separator between them because of breathlessness. But if there is a separator between them the exception is not considered. And as for what is narrated that Ibn 'Abbas said the validity of the separated exception even if the separation takes a month long, like if someone took an oath on something, then after one month he said: by the will of Allah, he doesn't (commit hinth حِنْث) break his oath (if he doesn't fulfill his oath), this is revoked by the *ḥadīth* of the Prophet ﷺ: " مَنْ حَلَفَ عَلَى يَمِينٍ, فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا, فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ, وَلْيُكَفِّرْ عَنْ يَمِينِهِ" **"Whoever takes an oath (on something), then he finds something else better than it, let him do the better one and expiates (do kaffarah) for (breaking) his oath"** compiled by Aḥmad, and it is narrated as: " ... فَلْيُكَفِّرْ عَنْ يَمِينِهِ, وَلْيَأْتِ الَّذِي هُوَ خَيْرٌ" **"... let him expiates (do kaffarah) for his oath, and do the better one"** compiled by al-Nasā'ī, if the exception is correct the Prophet ﷺ would have guided to it, because it shows when scrutinizing the report, that it is a rescue for the oath taker in fulfilling and not breaking the oath, because the Prophet ﷺ aims to ease and facilitate, and the exception is easier and more facile than the expiation, and since he didn't guide to it; it denotes the invalidity of such exception. And as for what is narrated that the Prophet ﷺ said: " ...وَاللهِ لأَغزُوَنَّ قُرَيْشًا, ثُمَّ سَكَتَ, ثُمَّ قَالَ: إِنْ شَاءَ اللَّهُ" **"...by Allah, I shell invade Quraish, then he kept silent, then he said: by the will of Allah"** compiled by Abū Dāwud, his silence here is possibly of the silence that

doesn't disturb the linkage (of the speech), since it is not narrated that he disconnected the speech, or got busy with a different issue, or left the meeting then said by the will of Allah, which denotes that it is of the silence that doesn't disconnect the linkage.

التَّخْصِيصُ بِالشَّرْط

The Specification by the Condition *(al-takhṣiṣ bi'l-sharṭ)*

The principle (*'usūlī*) meaning of the condition is: that whose banishment necessitates the banishment of a matter in a way that it is not a cause for its existence nor is it included in the cause, in other words, the condition is that whose banishment necessitates the banishment and its existence doesn't necessitates the existence, like the wudhou', it is a condition for the validity of the prayer, so its non existence necessitates the non existence of the prayer, but its existence does not necessitate the existence of the prayer, it is not a cause for its existence nor is it included in the cause.

If one of the linguistic conditional tenses comes in the speech, it excludes from it something wouldn't be excluded without it, like when you say: I shall honour the fighters if they open the castle. If the conditional particle "إِنْ" "if" doesn't exist; the honour would be general for all fighters, but the entry of it to the speech excludes from the speech those who do not open the castle. And it can exclude them all if they don't open the castle. The conditional tenses are many, they are: "إِنْ" and "إِذمَا" they mean if, and they are to

make something pending on something else, "إِذَا" means if (for what is inevitable to happen), "مَنْ" means whoever, "مَهْمَا" means whatever, "حَيْثُمَا" and "أَيْنَمَا" mean wherever. The mother of all these tenses is the conditional particle "إِنْ", and the other condition tenses are nouns, and the particle is the basis in denoting the meanings of the condition nouns, and because the particle "إِنْ" is useable in all the condition tenses unlike the conditional nouns. The validity condition for these conditional tenses is that the condition must be really attached to the conditioned matter without separation between them, but it is correct if the condition come before the conditioned matter or after it as long as they are attached.

التَّخْصِيصُ بِالصِّفَةِ

The Specification by the Quality *(al-takhṣiṣ bi'l-ṣifah)*

If the general expression is joined a quality, it gets specialized by it, and the quality takes out of the general what is other than itself, like the saying of the Messenger ﷺ: "فِي كُلِّ إِبِلٍ سَائِمَةٍ, فِي كُلِّ أَرْبَعِينَ ابْنَةُ لَبُونٍ" **"There is *Zakāh* in all grazing camels, one bint laboon must be given in every forty camels, (that is two to three years old daughter of a pregnant camel that is due to give birth and become milky, if the number of camels reach a hundred and twenty one and over)"** compiled by Aḥmad. His saying: "سَائِمَة" "grazing" is a quality joined with the general expression "camels" which includes all camels, but joining it with the quality "grazing" excluded from them the non grazing

camels; the stall-fed ones. It denotes that there is no *Zakāh* in the stall-fed camels. So the general got specialized by the quality. The condition of correctness to specialize the general by the quality is that the quality should be joined with the qualified matter, or in the effect of the joined.

التَّخْصِيصُ بِالغَايَة

The Specification by the Objective *(al-takhṣiṣ bi'l-ghāyah)*

The objective tenses are: "إِلَى" and "حَتَّى" "to, until, till, as far as, up to, toward" if any of them joins the general speech it excludes what comes after it from the speech, so the verdict of what is after it becomes inevitably different to what is before it, like the saying of Allah ﷻ:

{ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ}

"...then complete the fast till the night..."[241],

so the verdict of the night that is after "إلى" is different to what is before it, and His ﷻ saying:

{فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ}

"...do wash your faces, and your hands (and arms) to the elbows..."[242],

[241] Surah al-Baqarah:187
[242] Surah al-Mā'idah:6

the verdict of the elbows that is after "إِلى" is different to what is before it ... and as such. So it made the verdict special for what is before "إِلَى" "to" and excluded from it what is after it.

التَّخْصِيصُ بِالأَدِلَّةِ المُنْفَصِلَةِ

The Specification by the Detached Evidences *(al-takhṣiṣ bi'l-adillah al-munfaṣilah)*

The specialization by the detached evidences is valid only by the auditory evidences (*al-adillah al-sam'iyah*), because the general that is being specialized is an expression brought by the auditory evidence, so nothing specializes it except an auditory evidence. And the auditory evidences are: the Qur'ān, the Sunnah, the consensus of the *Ṣaḥābah*, and the Analogy whose reasoning is taken from the Qur'ān and the Sunnah. Anything other than these four is not considered of the specializing evidences. And it is not permissible to specialize by the mental evidence, and the evidences on that are:

Firstly: the specialization is excluding some of what the expression includes from it, and the denotation of the expression has what the speaker meant of linguistic and Shar'i meaning, i.e. the linguistic and the Shar'i meaning denoted by the expression, and the mind has no interference in that. So if the mind excepts from the meaning denoted by the expression another meaning, that means the mind would take meanings of the expression out of their linguistic denotation, and this is incorrect, because the denotation of the expression over its meaning is due to

the language not to the mind, so it is improper for the mind to specialize.

Secondly: the specialization is clarification so it is legislation, and the Shar'i text is brought by the revelation, and nothing clarifies it except what the revelation brought, and if the mind is allowed to clarify what the revelation brought away from the denotation of the language then the mind would legislate, and this is not allowed, because the legislation is for Allah Ta'ala, therefore it is inevitable that the clarification is brought by the revelation, and it is incorrect to clarify mentally what the revelation brought, and it is incorrect to specialize by the mind.

Thirdly: the specialization is like the abrogation of a part of the general, because it is turning the verdict away from the general; it cancels it in parts of it, and replaces it with a different verdict, like the saying of Allah Ta'ala:

{الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِئَةَ جَلْدَةٍ}

"The woman and the man guilty of adultery, whip each of them with a hundred stripes..."[243],

it is a verdict for the married and the single, then the specialization cancelled it in the married and made another verdict for him, that is the stoning. The abrogation is not allowed for the mind, otherwise every mind would cancel any Shar'i verdict, and so is the specialization, it is not allowed to be made by the mind.

As for the saying that Allah Ta'ala said:

[243] Surah al-Nūr:2

{وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا}

"...pilgrimage to al-Masjid al-ḥarām is a duty mankind owe to Allah, those who can afford the journey..."[244],

and since the immature and the insane are from mankind and they are not considered from the general, and the mind proved the impossibility of burdening them, so the mind specialized the generality of the Verse. This is not a valid proof that it is permissible for the mind to be a specializing evidence, because the legislator's address doesn't refrain from the immature and the insane, so their assignment is not prevented for the evidence that they are included in the address in: "الأَرْش" "al-arsh" the compensation for the fracture and wound, the values of damaged things, and the obligation of *Zakāh* in their money. And the generality of the *Āyah* is not specialized by the mind but it is specialized by the *ḥadīth*: " رُفِعَ القَلَمُ عَنْ ثَلاَثَةٍ, عَنِ الصَّبِيِّ حَتَّى يَبْلُغَ, وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ,وَعَنِ المَعْتُوهِ حَتَّى يَبْرَأَ" **"The pen (responsibility) is lifted up from three, from the immature until he becomes mature, from the sleeping person until he wakes up, and from the demented until he recovers"** compiled by Abū Dāwud, and this specializing is not by the mind.

As for the verses that some used as a proof that the mind does specialize, and that is His Ta'ala's saying:

{اللَّهُ خَالِقُ كُلِّ شَيْءٍ}

"Allah is the Creator of all things..."[245],

and His saying:

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[244] Surah Āli 'Imrān:97

[245] Surah al-Zumar:62

{وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ}

"...and it is He Who has power over all things"[246],

that He ﷻ is included linguistically in His general expression "كُلِّ شَيْءٍ" "all things" although Himself and His qualities are real things, He didn't create them, nor are they of His ability, for the impossibility for the Eternal self-subsistent to be created by Himself, and this impossibility is necessitated by the mind, so Himself and His Qualities are excluded from the generality of the expression by the evidence of the mind's necessitation, and thus the mind did specialize the generality of the verses. Proving by this kind of verses is irrelevant, because these verses are concerning the belief not the Sharī'ah verdicts, and the belief can be proven by the mind and by the Sharī'ah, and believing in the Sharī'ah is initially based on mental evidence, therefore it is proper to make the mind an evidence in the belief and to make it an evidence in understanding the verses, and it is proper to make it specialize in the belief. But the Sharī'ah verdicts are the address of the Legislator concerning the actions of the servants, so there is no valid evidence for them except the auditory evidence, because Sharī'ah verdicts are the address of the Legislator, so it is inevitable that their evidence comes from the Legislator, i.e. what is brought by the revelation, and also what specializes them, because it is also a Shar'i verdict, that means it is also a legislator's address, so it is inevitable to come from the Legislator, therefore it is incorrect that the mind specializes the Shar'i verdict, because its specialization is not from the Legislator and it is not brought by the revelation,

[246] Surah al-Mā'idah:120

accordingly these verses are not relevant for the Sharī'ah verdicts, because they are special for the belief.

تَخْصِيصُ الكِتَابِ بِالكِتَاب

Specification of the *Kitāb* by the *Kitāb (takhṣiṣ al-kitāb bi'l- kitāb)*

It is allowed to specialize the *Kitāb* by the *Kitāb*, because all the verses are brought by the revelation as expression and meaning, so it is allowed that one of them specializes the other, and because specializing the Qur'ān by the Qur'ān practically happened, from that kind is His ﷻ saying:

{ وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ}

"...and those who carry (lives in their wombs), their period is until they deliver their burdens.."[247],

this *Āyah* specializes the His Ta'ala's saying:

{وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا}

"And those of you die and leave wives behind, they (the wives) shall wait (concerning their marriage) four months and ten days..."[248],

and from that kind is His Ta'ala's saying:

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[247] Surah al-Ṭalāq:4

[248] Surah al-Baqarah:234

{ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ}

"...and the chaste women among the People of the Book revealed before your time..."[249],

this *Āyah* came and specialized His Ta'ala's saying:

{ وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ}

"Do not marry polytheists women until they believe..."[250]

Since specializing the *Kitāb* by the *Kitāb* had practically happened, it is evidence on the permissibility to specialize the *Kitāb* by the *Kitāb*. And as for the saying of Allah Ta'ala addressing the Messenger ﷺ:

{وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ}

"...and We have sent down unto you the Message; that you may explain clearly to menkind what is sent down to them..."[251],

there is no prevention in it for the Messenger ﷺ to clarify the *Kitāb* by the *Kitāb*, since both (the Qur'ān and the Sunnah) came on his tongue. So his mentioning of the specializing *Āyah* is a clarification of him, and his attribute as a clear explainer should be carried on that the clarification came on his tongue, whether it is from the *Kitāb* or from the Sunnah, because that corresponds His ﷻ saying:

{ وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِكُلِّ شَيْءٍ}

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[249] Surah al-Mā'idah:5
[250] Surah al-Baqarah:221
[251] Surah al-Nahl:44

"...and We have sent down to you the Book as an exposition for all things..."[252],

this necessitates that the *Kitāb* clarifies all that it is from the *Kitāb*, because they are things.

تَخْصِيصُ الكِتَابِ بِالسُّنَّةِ

Specification of the *Kitāb* by the Sunnah

It is allowed to specialize the *Kitāb* by the Sunnah whether it is *mutawātir* or individual report, because both came by the revelation, so what came by the revelation specializes what came by the revelation. So it is valid that one of them specializes the other, and because specializing the Qur'ān by the Sunnah had practically happened, from that kind is His ﷻ saying:

{يُوصِيكُمُ اللَّهُ فِى أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ}

"Allah (thus) directs you as regards your children's (inheritance), for the male, a portion equal to that of two females..."[253],

it is specialized by his ﷺ saying: "القَاتِلُ لاَ يَرِثُ" **"The killer doesn't inherit"** compiled by Ibn Mājah. And His Ta'ala's saying:

{الزَّانِيَةُ وَالزَّانِى فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِيَةَ جَلْدَةٍ}

[252] Surah al-Nahl:89
[253] Surah al-Nisā':11

"The woman and the man guilty of adultery, flog each of them with a hundred stripes..."[254],

it's been specialized by him ﷺ stoning Maa'iz ﷺ. Also the *Ṣaḥābah* ﷺ had consented on the allowance to specialize the *Kitāb* by the Sunnah, they had specialized His Ta'ala's saying:

{وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ}

"...except for those, all others are lawful for you..."[255],

they specialized it by what Abū Hurairah narrated from the Prophet ﷺ: "لاَ تُنْكَحُ المَرْأَةُ عَلَى عَمَّتِهَا وَلاَ عَلَى خَالَتِهَا" **"It is not allowed to marry the woman (in polygamy) over her paternal or maternal aunt"** compiled by Muslim. And they had specialized the *Āyah*:

{يُوصِيكُمُ اللَّهُ فِى أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ}

"Allah (thus) directs you as regards your children's (inheritance), for the male, a portion equal to that of two females..."

by the saying of the Prophet ﷺ: "لاَ يَرِثُ القَاتِلُ شَيْئًا" **"The killer doesn't inherit anything"** compiled by Abū Dāwud, and by his saying: "لاَ يَرِثُ الكَافِرُ المُسْلِمَ ولاَالمُسْلِمُ الكَافِرَ" **"The disbeliever doesn't inherit the Muslim, nor does the Muslim inherit the disbeliever"** compiled by Aḥmad, and by what Abū Bakr ﷺ narrated from the Prophet ﷺ: "...لاَ نُورَثُ, مَا تَرَكْنَاهُ صَدَقَةٌ" **"...we won't get inherited, whatever we leave is**

[254] Surah al-Nūr:2
[255] Surah al-Nisā':24

donation" compiled by al-Bukhārī and Muslim, and they had specialized His Ta'ala's saying:

{وَأَحَلَّ اللَّهُ الْبَيْعَ}

"... and Allah has permitted trade..."[256]

by what was narrated from the Prophet ﷺ that he forbade selling one *Dirham* by two Dirhams, and they specialized His ﷻ saying:

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا}

"As to the thief, male or female, cut off his or her hands..."[257],

by his ﷺ saying: "لاَ قَطْعَ إِلاَّ فِي رُبْعِ دِينَارٍ فَصَعِدًا" **"There is no (hand) cut except in a quarter of a Dīnār and over"** compiled by Ibn Hibbān and al-Ṭabarānī, and they specialized His Ta'ala's saying:

{فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ}

"...then fight and slay the pagans wherever you find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war)..."[258],

by what is narrated from the Prophet ﷺ about the pagans of Hajar: "سُنُّوا بِهِمْ سُنَّةَ أَهْلِ الكِتَابِ" **"Do treat them the way you treat the people of the Book"** compiled by Mālik, and many other various figures, and no one of them disapproved this so it is consensus, and accordingly

[256] Surah al-Baqarah:275
[257] Surah al-Mā'idah:38
[258] Surah al-Tawbah:5

specializing the Qur'ān by the Sunnah is allowed by the Sharī'ah.

تَخْصِيصُ الكِتَابِ بِإِجْمَاعِ الصَّحَابَة

Specification of the Book by the Consensus of the *Ṣaḥābah*

The *Ṣaḥābah*'s consensus discloses a Shar'i evidence, so if they had consented that a certain verdict is a Shar'i verdict, that means they have an evidence on that, so they narrated the verdict without the evidence, so it is like if they had narrated the evidence, therefore their consensus is a discloser that there is a Shar'i evidence, that means they heard the Messenger of Allah said it, or they saw him did it, or kept silent at it (approved it), so it is a kind of the Sunnah, therefore it must be treated like the Sunnah and taken by narration. Hence it is allowed to specialize the *Kitāb* by the consensus of the *Ṣaḥābah*. Specializing the Qur'ān by the consensus of the *Ṣaḥābah* had practically happened, from that is His Ta'ala's saying concerning the penalty of those who commit false defamation(against chaste women):

{فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً}

"And those who launch a charge against chaste women, and produce not four witnesses, (to support their allegations), flog them with eighty stripes..."[259],

[259] Surah al-Nūr:4

It had been specialized by the consensus of the *Ṣaḥābah* to specialize it for the free people, and to half the penalty of defamation for the slave. And the occurrence is an evidence of the allowance, so it denotes that specializing the *Kitāb* by the consensus of the *Ṣaḥābah* is allowed by the Sharī'ah.

تَخْصِيصُ الكِتَابِ بِالقِيَاسِ

Specification of the *Kitāb* by the (*Shar'i*) Analogy

The considered analogy is the analogy whose (*'illah*) reasoning is brought by the Sharī'ah, that is the analogy whose *'illah* is taken from the Qur'ān, the Sunnah, and from the *Ṣaḥābah*'s consensus, and unless the reasoning of it is taken from the Sharī'ah, it is not considered as Shar'i evidence. And since the *'illah* of the analogy is brought by the *Kitāb* or by the Sunnah or by the *Ṣaḥābah*'s consensus, and specializing by the *Kitāb*, by the Sunnah, and by the consensus of the *Ṣaḥābah* is allowed, hence it is allowed to specialize the *Kitāb* by the analogy whose reasoning is brought by the *Kitāb*, the Sunnah, and by the consensus of the *Ṣaḥābah* for the previous evidences of the permissibility of specializing the *Kitāb* by the *Kitāb* and the Sunnah and the *Ijmā'* of the *Ṣaḥābah*. Accordingly it is allowed to specialize the *Kitāb* by the analogy whose *'illah* is brought by the Sharī'ah.

تَخْصِيصُ السُّنَّةِ بِالكِتَابِ

Specification of the Sunnah by the *Kitāb*

It is allowed to specialize the generality of the Sunnah by the speciality of the Qur'ān, because both of them are brought by the revelation, accordingly what the *wahi* had brought would be specialized by that which the *wahi* had brought, so it is sound that one of them specializes the other. Although the Qur'ān is brought by the wahi as expression and meaning, and the Sunnah is brought by the wahi as meaning only, specializing is related to the meaning not to the expression, so even though the expression of the Sunnah is from the Messenger, it doesn't effect the specializing, because meaning of it is revelation from Allah, so it is sound that the *Kitāb* specializes it. And also Allah Ta'ala said:

{وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِكُلِّ شَيْءٍ}

"...and We have sent down to you the Kitāb as an exposition for all things..."[260],

and certainly the Sunnah of the Messenger ﷺ is from the things and included under this generality, so the Qur'ān is a clarifier of the Sunnah, and what specializes is a clarifier, so it is allowed to specialize the Sunnah by the Qur'ān. It may be said that Allah Ta'ala says:

{وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ}

"...and We have sent down unto you the Message; that you may explain clearly to mankind what is sent to them..."[261],

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[260] Surah al-Nahl:89
[261] Surah al-Nahl:44

so He made the Prophet ﷺ the clarifier of the sent down *Kitāb*, and that clarification is meant to be by the Sunnah, and this denotes that that specialization is from the Messenger not from Allah, i.e. by the Sunnah not by the Qur'ān. The answer to that is: the attribute of the Prophet ﷺ that he is the clarifier of what is sent down to him does not prevent him to clarify the Sunnah by what came on his tongue of the Qur'ān, because the Sunnah is sent down from Allah Ta'ala, and the Qur'ān is sent down from Allah Ta'ala, so it is allowed to that he clarifies what is sent down to him of the Sunnah by what is sent down to him of the Qur'ān, accordingly, it is allowed to specialize the Sunnah by the Qur'ān.

It was mentioned in al-Hudabiyah treaty: "...أَنَّـهُ لاَ يَأْتِيكَ مِنَّـا أَحَـدٌ, وإِنْ كَـانَ عَلَـى دِينِـكَ, إِلاَّ رَدَدْتَـهُ إِلَيْنَـا..." **"...no one from our people goes to you, even if he is on your religion, but you return him back to us..."** compiled by al-Bukhārī. The expression "one" is general for men and women, that means the Sunnah had obliged the return of whoever came to the Muslims from Quraysh, whether it is a man or a woman, then Allah Ta'ala sent down in His *Kitāb*:

{يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ}

"O you who have Believed, When there come to you believing women refugees, do examine them (their faith), Allah knows best as to their Faith, if you ascertain that they are Believers, then send them not back to the disbelievers..."[262],

[262] Surah al-Mumtahanah:10

so the *Kitāb* had specialized the Sunnah by returning the men only not the women.

تَخْصِيصُ السُّنَّةِ بِالسُّنَّةِ

Specification of the Sunnah by the Sunnah

It is allowed to specialize the Sunnah by the Sunnah whether it is *mutawātir* or individual report, because both of them are brought in meaning by the revelation, so it is allowed that one of them specializes the other, and because specializing the Sunnah by the Sunnah had happened practically, from that is what the Messenger ﷺ said: " فِيمَا سَقَتِ السَّمَاءُ فَفِيهِ الْعُشْرُ" **"There is one tenth (as *Zakāh*) in what the sky irrigates"** compiled by Aḥmad, it had been specialized by his ﷺ: "لَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسَاقٍ صَدَقَةٌ" **"There is no *Zakāh* in less than five *Awsaq*"** compiled by Aḥmad, (*Awsaq* is plural of *wasaq*, the *wasaq* of wheat weights 130.56 Kg, so the five *awsaq* of wheat weight 652Kg). And from that is his ﷺ saying: "لاَ تَحِلُّ الصَّدَقَةُ لِغَنِيٍّ, وَلاَ لِذِي مِرَّةٍ سَوِيٍّ" **"The *Zakāh* is not allowed for rich nor is it allowed for the healthy who has strength"** compiled by Aḥmad, it had been specialized by his ﷺ saying: " لاَ تَحِلُّ الصَّدَقَةُ لِغَنِيٍّ إِلاَّ لِخَمْسَةٍ: لِعَامِلٍ عَلَيْهَا, أَوْ رَجُلٍ اشْتَرَاهَا بِمَالِهِ, أَوْ غَارِمٍ, أَوْ غَازٍ فِي سَبِيلِ اللهِ, أَوْ مِسْكِينٍ تُصُدِّقَ عَلَيْهِ مِنْهَا فَأَهْدَى مِنْهَا لِغَنِيٍّ" **"The *Zakāh* is not allowed for a rich except for five: a person who works on it (Who collects it and/or distributes it), or a man who bought it by his money, or the Ghaarim (one in debt, one who takes up on himself to pay someone's debt for peacemaking, or who pays for blood money, or bankrupted), or an invader in the cause of Allah, or it is given to a needy then he gives from it as gift to a rich person"** compiled by Aḥmad.

تَخْصِيصُ السُّنَّةِ بِإِجْمَاعِ الصَّحَابَةِ وَبِالقِيَاسِ

Specification of the Sunnah by the Consensus of the *Ṣaḥābah* and by the (*Shar'i*) Analogy

As for specializing the Sunnah by the consensus of the *Ṣaḥābah*; it is allowed for what is preceded of the allowance of specializing the Qur'ān by the consensus of the *Ṣaḥābah*, so it is allowed to specialize the Sunnah too, because what is allowed to specialize the Qur'ān is allowed to specialize the Sunnah, and because the consensus of the *Ṣaḥābah* discloses a Shar'i evidence, so it is of that which the revelation brought, so it is valid to specialize what the revelation brought. As for the allowance of specializing the Sunnah by the analogy; it is because the reasoning (*'illah*) of it came in the Qur'ān or in the Sunnah, so it would be specializing the Sunnah by the Qur'ān if its *'illah* came in the Qur'ān, and this is allowed. And it would be specializing the Sunnah by the Sunnah if the *'illah* of the analogy came in the Sunnah, and this is also allowed, hence it is allowed to specialize the Sunnah by the analogy.

تَخْصِيصُ المَنْطُوقِ بِالمَفْهُومِ

Specification of the Literal Meaning (*al-Manṭūq*) by the Implicit (*al-Mafhūm*)

It is allowed to specialize the literal meaning (*al-manṭūq*) by the Implicit (*al-mafhūm*), whether it is a connotation of correspondence or a connotation of contrariety, because

the connotation is a proof as preceded, and the general is a proof, so if they conflict, then the general must be specialized by it, and the first *dalīl* should not be neglected. The example for this is his ﷺ saying: " المَاءُ لاَ يُنَجِّسُهُ شَيْءٌ إِلاَّ مَا غَلَبَ عَلَى رِيحِهِ أَوْ طَعْمِهِ" **"Nothing makes the water impure except what dominates the smell or the taste of it"** narrated by al-Ṭabarānī in his book *al-Kabīr*, it denotes by its literal meaning that nothing makes the water impure if it is not changed, whether it reaches two qullah or not, for the literal meaning of the *ḥadīth* includes the much and the little, the flowing and the stagnant, and his ﷺ saying: " إِذَا بَلَغَ المَاءُ قُلَّتَيْنِ لَمْ يَحْمِلِ الخَبَثَ" **"If the water (quantity) is two (*qullah*) barrels[263], it doesn't hold impurity"** compiled by al-Dāraqutnī, its connotation denotes that the little quantity of water may become impure even if it doesn't change, so the connotation of the second *ḥadīth* specializes the literal meaning of the first *ḥadīth*. And similar to it is his ﷺ saying: "وَفِي الغَنَمِ مِن أَربَعِينَ شَاةٌ إِلَى عِشْرِينَ وَمِئَةٍ" **"There is one sheep (as *Zakāh*) if the sheep are forty up to one hundred and twenty"** compiled by Aḥmad, the literal meaning of it denotes the obligation of *Zakāh* in all sheep because it is general, and his ﷺ saying: "...فِي صَدَقَةِ الغَنَمِ فِي سَائِمَتِهَا..." **"...The *Zakāh* of the sheep is in the grazing ones of them..."** compiled by al-Bukhārī, it denotes by the connotation of it that there is no *Zakāh* in the stal-fed sheep, so the second *ḥadīth* specializes the generality of the literal meaning of the of the first *ḥadīth* by its connotation, that is by taking out the stal-fed sheep from the obligation of the *Zakāh*.

[263] approximately 216 liters

المُطْلَقُ وَالمُقَيَّدُ

The Unrestricted (*al-Muṭlaq*) and the Restricted (*al-Muqayyad*)

The absolute is an expression denotes a meaning widely known in its kind, and the restricted is what denotes a specific meaning like Zaid and ‘Amru. The restricted is also called up on the expression that denotes the quality of its absolute meaning by an additional quality like “دِينَـارٌ عِرَاقِـيٌّ”, “جُنَيْـهٌ مِـصْرِيٌّ” Iraqi dīnār and Egyptian pound, so the expression Iraqi dīnār is absolute in its kind; it includes every Iraqi dīnār, but in comparison with any absolute dīnār without an additional clarification whether it is Iraqi or Jordanian, it is restricted, so it is absolute from one direction and restricted from the other. And like that is the expression “رَقَبَـةٌ مُؤمِنَـةٌ” “a believing slave”, it is widely known among the believing slaves, it is absolute, but in comparison with the absolute slaves it is restricted, so the expression “believing slave” is absolute from one direction and restricted from the other. I.e. this second kind of the restricted is what is taken out from a widely known of it kind by a reason, like taking out the absolute expression “dīnār” by the additional quality “Iraqi”, and like taking out the absolute expression “slave” by the additional quality “believing”.

If there is an absolute text like the saying of Allah Ta’ala:

{وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَّا}

"But those who divorce their wives by ẓihār, then wish to go back on the words they uttered, (it is ordained that such a one) should free a slave before they touch each other..."[264],

and the same text came restricted in another *Āyah* like the saying of Allah Ta'ala:

{وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ}

"...and if one kills a Believer by mistake, it is ordained that he should free a believing slave..."[265]

then it should be scrutinized, if their verdicts are different, the absolute should not be carried on the restricted, because they are different from each other, but if their verdicts are not different, then we see, if their cause is one, the absolute should be carried on the restricted, for example if He said in the *ẓihār*: "do free a slave", then He said: "do free a Muslim slave" then the slave in the first text should be carried according to the second text that it must be Muslim, so the absolute is carried on the restricted here, because whoever acts according to the restricted; he fulfils the denotation of the absolute, but whoever acts according to the absolute; he neglects the denotation of the restricted, so the combination (of the evidences) is obligatory and more proper. And if their causes are different, the absolute should not be carried on the restricted, like the saying of Allah Ta'ala in the expiation (*kaffarah*) of the *ẓihār*:

{وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَّا}

[264] Surah al-Mujādilah:3
[265] Surah al-Nisā':92

"But those who divorce their wives by ẓihār, then wish to go back on the words they uttered, (it is ordained that such a one) should free a slave before they touch each other...",

and His Ta'ala's saying in the accidental killing:

{وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ}

"...and if one kills a Believer by mistake, it is ordained that he should free a believing slave...",

freeing the slave in the expiation of the *ẓihār* came absolute, and freeing the slave in the expiation of the accidental killing came restricted by a believing slave, and each one of them has a different cause of freeing than the other, therefore the absolute should not be carried on the restricted here, because the difference in the issue of the cause of the freeing is like the difference in the verdict, so just as the absolute is not carried on the restricted when the verdict is different, it is also not carried if the issue of the cause is different, thus the "slave" in the command of Allah Ta'ala in the issue of the *ẓihār* to free a slave came absolute, so it remains absolute as it is, and the "slave" in the command of Allah Ta'ala in the issue of the accidental killing came restricted, so it remains restricted in that issue without exceeding to other issues, so it doesn't include all expiations. The evidence that if the cause is different the absolute shouldn't be carried on the restricted is what came in the Fasting as oath expiation; it came absolute, Allah Ta'ala said:

{فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ}

"...If that is beyond your means, then fast for three days, that is the expiation for you oaths...",

it came absolute here without mentioning if Fasting the three days should be in sequence or separated, and the Fasting in sequence came as expiation for the *ẓihār*, Allah Ta'ala said:

{فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسَّا}

"And if that is beyond your means, then fast for two months consecutively before they touch each other..."[266],

if the absolute is carried on the restricted -when the cause is different- then the Fasting as oath expiation would be carried on the Fasting as *ẓihār* expiation and no one said that; therefore, those who advocated the sequence in the Fasting as oath expiation did not carried it on the *ẓihār* expiation, but they based it on the recitation of Ubai Ibn Ka'b and Ibn Mas'ūd which is: (ثَلاَثَةُ أَيَّامٍ مُتَتَابِعَاتٍ) (three days consecutively) taking into consideration that the recitation of the individuals (*Āhād*) is like the individual report valid to restrict the absolute, and to specialize the general, despite that this is also wrong; because, the individual report is from the Sunnah, and the Sunnah does specialize the general and restrict the absolute, however, the individual recitation is not from the Qur'ān; because nothing is considered to be from the Qur'ān except the *mutawātir*; therefore, this recitation is not valid to restrict the absolute of the *Kitāb* or to specialize its general. This shows that the difference of the cause is like the difference of the verdict, the absolute in it is not carried on the restricted, just as the Fasting of the oath expiation is not carried on the Fasting of the *ẓihār* expiation, as such, freeing the slave as expiation

[266] Surah al-Mujādilah:4

of the dhihaar should not be carried on the freeing of the killing expiation, hence if the cause is different, the absolute is not carried on the restricted, and what applies between the general and the special does apply between the absolute and the restricted because they are of the same category, since the general is opposite to the special and the specialization occurs to it. And the absolute is opposite to the restricted and the restriction occurs to it. Accordingly, the *Kitāb* can be restricted by the *Kitāb*, by the Sunnah, by the consensus of the *Ṣaḥābah*, and by the Shar'i Analogy. And the Sunnah can be restricted by the *Kitāb*, by the Sunnah, by the Consensus of the *Ṣaḥābah*, and by the Shar'i Analogy. And whatever happens in the general and the special does happen in the absolute and the restricted.

المُجْمَل

The Concise (*al-Mujmal*)

The Concise (*al-mujmal*) is an expression when it is uttered no specific thing can be understood from it, but more than one matter and without an advantage of one of them over the other, i.e. it is that whose denotation isn't clear, that means it is that which has an unclear denotation.

And the concise could be in a singular common expression for either two different things like the expression "al-'ayn" for the gold and the sun, literally it means the eye, and the expression "المُخْتَار" "al-mukhtār" for the subject or the object, it means the one who choose or the one who is chosen.

And it could be in two opposites things like "القُرُء" "al-quru'" the monthly period of purity or menses.

And it could be in a compound expression like the saying of Allah Ta'ala:

{أَوْ يَعْفُوَ الَّذِى بِيَدِهِ عُقْدَةُ النِّكَاحِ}

"...or remits him in whose hand is the marriage tie..."[267]

this is wavering between the husband and the guardian.

And the summing up could be because of the wavering of the pronoun (الضَّمِير) between two things when it returns to what preceded it, like your saying: "All that the scholar had

[267] Surah al-Baqarah:237

learnt; he is/ it is as he learnt it", the return of the pronoun in it is wavering between the scholar and his knowledge.

And it could be because of excluding the expression by the Shar'i convention from what it had been composed for it linguistically according to those who support this opinion, before it had been clarified to us, like the saying of Allah Ta'ala:

{وَأَقِيمُوا الصَّلَاةَ}

"Do establish the prayer",

{وَءَاتُوا الزَّكَاةَ}

"And do pay the Zakāh"[268], and

{وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا}

"...pilgrimage to al-Masjid al-ḥarām is a duty mankind owe to Allah, those who can afford the journey to it..."[269]

it is summed up because the expression doesn't notify the request of the specific actions, and because it is summed up with regard to the obligation.

What is meant by ambiguity of the expression's denotation is its unclearness according to the denotation of the language over it either through the composition, the Sharī'ah, or the convention. So the expression that no specific thing could be understood from it when it is uttered, but more than one matter could be understood from it, without an advantage of a matter over the other,

[268] Surah al-Nūr:54
[269] Surah Āli 'Imrān:97

the denotation of the Arabic language over it is only by the composition, by the Sharī'ah, or by the convention. And that which a specific thing could be understood from it by its composition or by the Sharī'ah or by the convention is not considered from the summed up, accordingly, the lawfulness and the forbiddance added to the things like in the saying of Allah Ta'ala:

{حُرِّمَتۡ عَلَيۡكُمۡ أُمَّهَٰتُكُمۡ}

"Forbidden to you (for marriage) are: your mothers..."[270]

{حُرِّمَتۡ عَلَيۡكُمُ ٱلۡمَيۡتَةُ}

"Forbidden to you (for food) are: dead meat..."[271]

there is no summing up in them, nothing comes to the mind of anyone that knew the convention of the linguists and practiced the expressions of the Arabs, when he hears the saying: I forbid to you the food and the drink, and I forbid to you the women, nothing comes to his mind except the forbiddance of eating and drinking, and the forbiddance of sexual relation with women. Originally everything comes to the understanding (when the expression is uttered) is a reality, either by the composition or by the conventional usage, and what counts is the understanding of the one who knows the language and practiced the expressions of the Arabs, accordingly, the meaning of "Forbidden to you" here is very clear, it denotes a specific meaning. Also the saying of Allah Ta'ala:

[270] Surah al-Nisā':23
[271] Surah al-Mā'idah:3

{وَامْسَحُوا بِرُءُوسِكُمْ}

"...rub your heads (with water)..."[272]

there is no summing up in it, because the letter "ب" in it is an attachment particle, and it doesn't necessitate the obligation of rubbing the whole head, and your saying about someone: "he has leprosy or illness" doesn't necessitate that leprosy and illness are throughout the whole body. Also saying: rub your head doesn't necessitate rubbing the whole head. Also the use of the Arabs happened to necessitate the attachment of the rub only regardless of the whole or the some; therefore, if someone says: rub your hand by the handkerchief, none of the linguists understands that the hand must be attached to the whole handkerchief, but by the handkerchief, by the whole of it or by some of it. Also there is no summing up in the saying of the Messenger ﷺ: "إِنَّ اللهَ وَضَعَ عَنْ أُمَّتِي الخَطَأَ وَ النِّسْيَانَ" **"Allah had put down of my Ummah (the blame of) the mistake and the forgetfulness"** compiled by Ibn Mājah, and his saying: "لاَ صَلاَةَ إِلاَّ بِوُضُوءٍ" **"There is no prayer without ablution"** compile by al-Dāraquṭnī, and his ﷺ saying: " لاَ صَلاَةَ إِلاَّ بِفَاتِحَةِ الكِتَابِ" **"There is no prayer without the Fātihah of the *Kitāb*"** compiled by Abū 'Awānah, and his ﷺ saying: "لاَ صِيَامَ لِمَنْ لَمْ يَفْرِضْهُ مِنَ اللَّيْلِ" **"There is no Fasting for he who doesn't intend it from the night"** compiled by Ibn Mājah, and his ﷺ saying: "لاَ نِكَاحَ إِلاَّ بِوَلِيٍّ وَشَاهِدَيْ عَدْلٍ" **"There is no marriage without a (*wali*) guardian and two just witnesses"** compile by al-Dāraquṭnī, that is because all these are from the denotation of necessitation, which is clear in accordance with the language composition, since the necessitation

[272] Surah al-Mā'idah:6

denotation is from the expressions' denotation by the language composition. So it is not from the summed up.

In conclusion, everything becomes of the manifest meaning by the one of the language denotation, by the composition, by the convention, or by the Sharī'ah, it is not considered to be from the summed up, so it is carried out on the metaphor, or it could be understood by the indication, or it could be taken from the denotation of the expression, or from the denotations of the meaning, or from other things, and any expression that has this possibility it is not from the summed up, and the summed up is limited to the expression that has a denotation but not clear like

{وَءَاتُوا الزَّكَاةَ}

"And do pay the Zakāh",

it is summed up and needs clarification.

البَيانُ وَالمُبَيَّن

The Clarification and the Clarified (*al-Bayān wa al-Mubayyan*)

The clarification (*al-Bayān*) is taking something out of the ambiguity field to the manifest field, or it is the certainty or the most probability produced by the *dalīl*, and therefore some defined it that it is the *dalīl*. The saying of Allah ﷻ:

{وَأَقِيمُوا الصَّلَاةَ}

"Do establish the Prayer"

is a summed up (Mujmal), and what is narrated that the Messenger ﷺ had defined the Prayer by his action when he said: "صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي" "Do pray as you see me praying" compiled by al-Bukhārī, it is a clarification for that summed up. The saying of Allah ﷻ:

{وَءَاتُوا الزَّكَاةَ}

"Do pay the Zakāh"[273],

is a summed up, and what came in the *aḥādīth* of the Messenger of Allah ﷺ about kind of commodities in which the *Zakāh* is payable is a clarification for that mujmal, the Messenger of Allah ﷺ said: " مَا مِنْ صَاحِبِ ذَهَبٍ وَلا فِضَّةٍ لا يُؤَدِّي مِنْهَا حَقَّهَا إِلاَّ إِذَا كَانَ يَوْمُ القِيَامَةِ صُفِّحَتْ لَهُ صَفَائِحُ مِنْ نَارٍ" "No owner of gold or silver who doesn't pay of them their right (al-*Zakāh*), but they will be made for him as sheets of fire in

[273] Surah al-Baqarah:43

the day of judgment" compiled by Muslim, and the letter that Abū Bakr ﷺ wrote to Anas ﷺ when he sent him to Bahrain: " هَذِهِ فَرِيضَةُ الصَّدَقَةِ الَّتِي فَرَضَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَى المُسْلِمِينَ وَالَّتِي أَمَرَ اللهُ بِهَا رَسُولَهُ..." "This is the *Zakāh* obligation that the Messenger of Allah ﷺ had obliged upon the Muslims as Allah had commanded His Messenger..." then he clarified the *Zakāh* of the camels, compiled by al-Bukhārī, and that which came in the *ḥadīth* of Masrouq: " أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بَعَثَ مُعَاذًا إِلَى اليَمَنِ وَأَمَرَهُ أَنْ يَأْخُذَ مِنَ البَقَرِ مِنْ كُلِّ ثَلاثِينَ تَبِيعًا أَوْ تَبِيعَةً وَمِنْ كُلِّ أَرْبَعِينَ مُسِنَّةً" **"That the Prophet ﷺ had sent Mu'ādh to Yemen and commanded him to take from the cows (for the *Zakāh*), from every thirty cows one male or female tabee' (the cow that completed one year old and entered in the second year and able to follow his mother), and from every forty cows one musinnah (the cow that completed two years old and entered in the third)"** compiled by Abū Dāwud and it is *Ṣaḥīḥ* according to al-Hākim, and what came in the *ḥadīth* of Burdah from Abū Mussa and Mu'ādh ﷺ: " أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بَعَثَهُمَا إِلَى اليَمَنِ يُعَلِّمَانِ النَّاسَ أَمْرَ دِينِهِمْ فَأَمَرَهُم أَنْ لا يَأْخُذُوا الصَّدَقَةَ إِلاَّ مِنْ هَذِهِ الأَرْبَعَةِ: الحِنْطَةِ وَالشَّعِيرِ وَالتَّمْرِ وَالزَّبِيبِ" **"That the Messenger of Allah ﷺ had sent them to Yemen to teach people Islam and commanded them not to take *Zakāh* except from these four: the wheat, the barley, the dates, and the raisins"** compiled and authorized as *Ṣaḥīḥ* by al-Hākim. All that is clarification for the summed up, and accordingly the clarification is the *dalīl* that clarified the summed up.

As for the clarified (*al-mubayyan*), it is the (*khiṭāb*) address that is initially clear independently by itself, and it is also called for that which needed clarification and been clarified (by a *dalīl*), like the summed up expression if what is meant by it is clarified, and the general after it is specialized, and absolute after it is restricted, and it is also called for the

action if it is coupled with the *dalīl* that shows the kind of it, etc.

The clarification (*Bayān*) could be a saying of Allah ﷻ and the Messenger ﷺ, and it could be an action of the Messenger. The example for the clarification from Allah ﷻ is His saying:

{صَفْرَاءُ فَاقِعٌ لَوْنُهَا}

"...it is a yellow cow, bright in its colour..."[274],

to the end of the verses in the context, it is a clarification of His ﷻ saying:

{إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً}

"...Allah commands you to slaughter a cow..."[275]

And the example of the clarification by the saying of the Messenger ﷺ is what al-Bayhaqī compiled: " لَمْ يَفرِضْ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ الصَّدَقَةَ إِلاَّ فِي عَشْرَةِ أَشْيَاءَ: الإِبِلِ وَالبَقَرِ وَالغَنَمِ وَالذَّهَبِ وَالفِضَّةِ وَالحِنْطَةِ وَالشَّعِيرِ وَالتَّمْرِ وَالزَّبِيبِ وَالسُّلْتِ" **"The Messenger of Allah ﷺ did not oblige the *Zakāh* except in ten things: the camels, the cows, the sheep, the gold, the silver, the wheat, the barley, the dates, the raisins, and the *sult*"** the *sult* is a kind of barley. This is a clarification for the verses that oblige the *Zakāh*.

And the example of the clarification by the action of the Messenger is that which is narrated from him that he clarified the Prayer and the Hajj by his action saying: " صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي" **"Do pray as you see me praying"**

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[274] Surah al-Baqarah:69

[275] Surah al-Baqarah:67

compiled by al-Bukhārī, and "أَلاَ فَخُذُوا عَنِّي مَنَاسِكَكُمْ" **"Do your best to take from me your rites of pilgrimage"** compile by Aḥmad, his action in the Prayer is a clarification for the saying of Allah ﷻ:

{وَأَقِيمُوا الصَّلاَةَ}

"Do establish the Prayer",

and his action in the Hajj is a clarification for the saying of Allah ﷻ:

{وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا}

"...pilgrimage to al-Masjid al-ḥarām is a duty mankind owe to Allah, those who can afford the journey to it..."[276]

If the saying of the Messenger ﷺ and his action collaborate in the clarification then we see, if they correspond in the denotation on one verdict then the precedent one is the clarification, whether it is a saying or an action, and the second one is a confirmation. And if they differ in the denotation over the verdict as it is narrated that the Messenger ﷺ said after the *Āyah* of the Hajj: " مَنْ قَرَنَ حَجًّا إِلَى عُمْرَةٍ فَلْيَطُفْ طَوَافًا وَاحِدًا" **"Whoever joins the Hajj to the 'Umrah let him perform one *ṭawāf*"**, and it is narrated that he ﷺ had joined that Hajj to the 'Umrah and performed two *ṭawāf* and two sa'ie, in this case we see, if it is unknown whether his saying or his action is the precedent, the saying should be taken; because the saying denotes by itself that it is a clarification for the summed up, in contrast with the action of the Messenger that doesn't denote by itself that it is a clarification but by means; because it can be

[276] Surah Āli 'Imrān:97

known that the action is a clarification for the summed up by three matters:

One of them: if it is known from his intention by necessity (that his action is a clarification for a summed up), i.e. his action is not considered as a clarification for a summed up unless it is joined with the necessary knowledge that his intention of the action is clarifying a summed up.

The second: if the Messenger ﷺ said that this action is a clarification for a summed up.

The third: if he ﷺ mentioned the summed up when there is a need to act up on it, then he performs an action suitable to be a clarification for it, and he doesn't do anything else, so it becomes known that this action is a clarification for it. So the action is not a clarification by itself, but the saying is a clarification by itself; therefore the saying should be taken supposedly that it is the precedent, and the second *ṭawāf* in the action will be considered as *mandūb*.

If it is known that one of them is precedent to the other, then we see, if the saying is precedent, the second *ṭawāf* is not obligatory, and the action of the Prophet must be carried that it is *mandūb*, and if the action is precedent, then the saying abrogates the second dtawwaf that the action shows, or the action of the Messenger will be carried on the clarification that the second *ṭawāf* is obligatory for him not for his Ummah.

النَّاسِخُ وَالمَنْسُوخُ

The Abrogator and the Abrogated (*al-Nāsikh* and *al-Mansūkh*)

The abrogation is the abolishment of a verdict benefited from a previous text by a subsequent text, the Messenger of Allah ﷺ said: "كُنْتُ قَدْ نَهَيْتُكُمْ عَنْ زِيَارَةِ القُبُورِ, أَلاَ فَزُورُوهَا" **"I had prohibited you from visiting the graves, do visit them"** compiled by al-Hākim. Or it is the legislator's address that prevents the continuation of the Shar'i verdict that had been confirmed by a previous Shar'i address, it is inevitable that the abrogated verdict is Shar'i, and the evidence that denotes the elimination is Shar'i and loosened from the address whose verdict is abrogated, and that the address whose verdict is eliminated is not restricted by a specific time. If the verdict meets these conditions it can be abrogated. So the abrogation is replacing the previous verdict by a new verdict, since the replacement linguistically is the abrogation. Allah ﷻ said:

{وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ}

"And when we change a verse (of the Qur'ān) in place of another..."[277]

the explainers of the Qur'ān explained the change as abrogation so the abrogation is called changing, it means something is removed and succeeded by another thing, i.e. the previous verdict is terminated and succeeded by a

[277] Surah al-Nahl:101

subsequent verdict. This is the meaning of abrogation, and as for the abrogator (*al-nāsikh*); it may be referred to Allah ﷻ like saying He had abrogated so He is the Abrogator, and from that is His ﷻ saying:

{مَا نَنسَخْ مِنْ آيَةٍ}

"Whatever a verse (of the revelation) do We abrogate or...",

and His ﷻ saying:

{وَمَا أَرْسَلْنَا مِنْ قَبْلِكَ مِنْ رَسُولٍ وَلَا نَبِيٍّ إِلَّا إِذَا تَمَنَّى أَلْقَى الشَّيْطَانُ فِي أُمْنِيَّتِهِ فَيَنسَخُ اللَّهُ مَا يُلْقِي الشَّيْطَانُ ثُمَّ يُحْكِمُ اللَّهُ آيَاتِهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ}

"Never did We send a Messenger or a Prophet before you, but, when he recites the revelation or speaks, Shaitaan (Satan) throws (some falshood) in it; but Allah abrogates that which Shaitaan throws in. Then Allah confirms (and establishes) His verses; for Allah is all-knower and all-wise"[278].

And the abrogator may be called for the verse that abrogates like the saying: the verse of the sword is an abrogator; because it had abrogated so. And it may be called for every way by which the abrogation of the verdict is known, like the report of the Messenger, his action, and his approval. And it may be called for the verdict as they say: the obligation of fasting the month of Ramadhan abrogated the obligation of fasting 'Aashouraa' so it is an abrogator. And it may be called for he who advocates the abrogation of verdicts, they say: so and so abrogates the Qur'ān by the Sunnah, it means he advocates that.

[278] Surah al-Hajj:52

The abrogated (*al-Mansūkh*) is the erased verdict, i.e. the obsolete and terminated verdict, like the verdict of offering a charity before the private consultation with the Prophet ﷺ, and like the verdict of the will for the parents and the inheritors of the close relatives, and the verdict of awaiting one whole year for the widow whose husband dies, etc.

The evidence of the possibility of the abrogation is the *Kitāb*, the consensus of the *Ṣaḥābah*, and the actual occurrence of abrogation.

As for the evidence from the *Kitāb*, Allah ﷻ said:

{مَا نَنسَخْ مِنْ آيَةٍ أَوْ نُنسِهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا أَلَمْ تَعْلَمْ أَنَّ اللَّهَ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ}

"Whatever a verse (of the revelation) do We abrogate or cause to be forgotten, We bring a better one or similar to it, do you not know that Allah has power over all things?"[279],

and He ﷻ said:

{وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ وَاللَّهُ أَعْلَمُ بِمَا يُنَزِّلُ قَالُوا إِنَّمَا أَنتَ مُفْتَرٍ بَلْ أَكْثَرُهُمْ لَا يَعْلَمُونَ ۝ قُلْ نَزَّلَهُ رُوحُ الْقُدُسِ مِنْ رَبِّكَ بِالْحَقِّ لِيُثَبِّتَ الَّذِينَ آمَنُوا وَهُدًى وَبُشْرَىٰ لِلْمُسْلِمِينَ}

"And when We substitute one verse for another, and Allah knows best what He sends down, they (the disbelievers) say: "you are but a forger"; but most of them know not. Say: the Holy Spirit has brought the revelation from you Lord in truth,

[279] Surah al-Baqarah:106

in order to strengthen those who believed, and as a Guide and glad tidings to Muslims"[280],

al-Qurṭubī said explaining the saying of Allah Ta'ala:

{ مَا نَنْسَخْ مِنْ آيَةٍ}

"Whatever a verse do We abrogate...":

"The descending reason of this *Āyah* is when the Jews envied the Muslims for facing the Ka'bah -in their Prayers- and defamed Islam for that, and they said that Muhammad commands his companions something then he prohibits it for them, so this Qur'ān is but from himself; therefore it contradicts itself, then Allah ﷻ sent down:

{وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ}

"And when We substitute one verse for another..."

and He Ta'ala sent down: *"Whatever a verse do We abrogate..."* the verses. al-Zamakhshary said in his book "al-Kashّaaf" explaining the saying of Allah Ta'ala: *"And when We substitute one verse for another..."*: "the substitution of the *Āyah* for another one is the abrogation, and Allah Ta'ala abrogates Shar'i verdicts by other Shar'i verdicts because they are commonweals (*Maṣāliḥ*), and Allah is the knower of the commonweals and the evils, so He confirms whatever He wills and abrogates whatever He wills by His wisdom, and this is the meaning of His saying:

{وَاللَّهُ أَعْلَمُ بِمَا يُنَزِّلُ قَالُوا إِنَّمَا أَنْتَ مُفْتَرٍ}

[280] Surah al-Nahl:101-102

"...and Allah knows best what He sends down, they (the disbelievers) say: "you are but a forger..."

The scholars of *tafsīr* have two directions in explaining the *Āyah*:

{ مَا نَنْسَخْ مِنْ آيَةٍ}

"Whatever a verse do We abrogate...":

One of them: the abrogation here means the substitution, and this is supported by the verse in Surah al-Nahl:

{وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ}

"And when We substitute one verse for another...",

it means when We make one *Āyah* an exchange for another, We make this substitute better than that which it is substituted with or similar to it, and this is a weak direction; because it makes the benevolence directed to the verse, and the verses have no benevolence over each other, but the benevolence is for us with respect to the verdicts of the verses that are lifted up from us and those which are put on us, because some of them are easier the others with respect to carrying the hardship, or because some of them have more reward than the others. The verdict of the steadfastness of the Muslim (in the battle) against two disbelievers is easier than his steadfastness against ten[281], hence the abrogator verdict which is the steadfastness against two is easier than the abrogated verdict which is the steadfastness against ten, and the verdict of fasting the month of *Ramaḍān* is harder than the verdict of fasting the

[281] With reference to verses 65- 66 of Surah al-Anfāl.

day of 'Aashouraa' but it has more reward. So the more benevolence is not between the verses themselves, but in the verdicts they brought, and it could be a benevolence of easiness or a benevolence of more reward.

Secondly: what is meant is the abrogation of the verdict of the '*Āyah* not the abrogation of its (text) recitation, and this is the selected opinion by the majority of scholars and on it is the reliance, and what supports this is that all the verses of the Qur'ān are confirmed by the decisive evidence, and if the verse is not confirmed by the decisive evidence, it is not considered to be from the Qur'ān, and there is no decisive confirmation that the recitation of any verse of the Qur'ān is abrogated, and what came as indecisive evidence of the abrogation of the recitation has no value and no consideration in the abrogation; because the decisive could not be abrogated by the indecisive, and nothing abrogates it except a decisive similar to it or stronger than it, and there is no decisive evidence on the abrogation of the recitation, and this supports that the abrogation is for the verdict not for the recitation.

As for the evidence from the consensus of the *Ṣaḥābah*; they had consented that the Sharī'ah of Muhammad ﷺ had abrogated all previous Sharī'ah (religions), and they had consented on the abrogation of the obligation to pray towards al-Masjid al-Aqsa by the command to face al-Ka'bah, and they consented on the abrogation of the verdict of the will for the parents and the close relatives (180 Surah al-Baqarah) by the verses of inheritance (11, 12, and 176 of Surah al-Nisā'), and they had consented on the abrogation of fasting the day of 'Aashouraa' by fasting the month of *Ramaḍān*, on the abrogation of the obligation of offering a charity before the private consultation with the

Prophet ﷺ, on the abrogation of the obligation of awaiting one whole year for the widow whose husband dies, and they consented on the abrogation of the obligation of the steadfastness of every one Muslim against ten (in the battle), and so on. The *Ṣaḥābah* had consented on the abrogation of all these verdicts, so the consensus of the *Ṣaḥābah* is Shar'i evidence on the abrogation (*naskh*).

As for the actual occurrence of the abrogation, the incidents in which the *Ṣaḥābah* had consensus on the occurrence of the abrogation are evidences of its occurrence. In respect of the abrogation of the Qiblah, Allah ﷻ said:

{قَدْ نَرَى تَقَلُّبَ وَجْهِكَ فِي السَّمَاءِ فَلَنُوَلِّيَنَّكَ قِبْلَةً تَرْضَاهَا فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ}

"Verily We have seen the turning of your face towards the heaven. Surely We shall turn you to a Qiblah that shall please you. Turn then your face in the direction of al-Masjid al-ḥarām..."[282],

al-Bukhārī and Muslim narrated that the Messenger ﷺ had prayed towards al-Masjid al-Aqsa for sixteen months, and then he started yearning to direct the Qiblah to the Ka'bah then came down the *Āyah*: {قَدْ نَرَى...} *"Verily We have seen..."*, so the verdict of facing the Qiblah of al-Masjid al-Aqsa is abrogated and exchanged by facing the Qiblah of al-Ka'bah. And in respect of the will for the parents and the close relatives, Allah ﷻ said:

[282] Surah al-Baqarah:144

{كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ}

"It is prescribed, when death approaches any of you, if he leaves wealth, that he makes a bequest to parents and next of kin, according to reasonable manners; this is a duty upon the God-fearing people"[283],

that means it is obligated upon you Oh believers that if the signs of death come to anyone who has wealth of you, he must make a will that a portion of his wealth is for the parents and the close relatives. This was a Shar'i verdict, and this *Āyah* got abrogated by the *Āyah* of the inheritance which came down after it as agreed, and clarified Shar'i verdict in the portion of the parents and the close relatives from the wealth of the one who dies, so the verdict that is obliged in the inheritance verses had abrogated the previous verdict; therefore it became not permissible to make a will for the parents and the inheritors of the close relatives, and thus are all the verdicts that the *Ṣaḥābah* consented on the their abrogation.

There are other verdicts in which the abrogation had occurred; from among them is the saying of the Prophet ﷺ: "كُنْتُ قَدْ نَهَيْتُكُمْ عَنْ زِيَارَةِ القُبُورِ, أَلا فَزُورُوهَا" **"I had forbade for you visiting the graves, do visit them"** compiled by al-Hākim. And from that is what is narrated that he ﷺ said about the intoxicant drinker:" "إِذَا شَرِبَ فِي الرَّابِعَةِ فَاقْتُلُوهُ **"If he drinks for the forth time then kill him"** compiled by Aḥmad, this had been abrogated by what is narrated that a man who drank it for the forth time got carried to the Messenger ﷺ and he

[283] Surah al-Baqarah:180

didn't kill him. And from that is that in the beginning of Islam Allah Ta'ala had obliged the house arrest and the scolding as a punishment for the Zina, Allah Ta'ala said:

{وَاللَّاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا} {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا فَإِنْ تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا}

"And those of your women who commit unlawful sexual intercourse, take the evidence of four witnesses from amongst you against them; and if they testify, confine them to houses until death comes to them, or Allah ordains for them some (other) way) (And if two men among you commit sexual intercourse, hurt them both. If they repent and amend, leave them alone; for Allah is Oft-Returning, Most Merciful"[284],

then this got abrogated by flogging and expelling from the country for the virgin, and by stoning for the married, Allah Ta'ala said:

{الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ}

"The fornicatress and the fornicator flog each of them with a hundred stripes..."[285],

and the Messenger ﷺ told the Bedouin who requested him to judge for him by the Book of Allah Ta'ala: " وَعَلَى ابْنِكَ جَلْدُ مِئَةٍ, وَتَغْرِيبُ عَامٍ" **"The charge on your son is one hundred stripes and to be exiled for one year"** compiled by al-

[284] Surah al-Nisā':15-16
[285] Surah al-Nūr:2

Bukhārī, and ‘Ubaadah Ibn al-Saamit said: The Messenger of Allah ﷺsaid: " خُذوا عَنِّي, خُذوا عَنِّي, قَدْ جَعَلَ اللهُ لَهُنَّ سَبِيلاً, البِكْرُ بِالبِكْرِ جَلْدُ مِئَةٍ وَنَفْيُ سَنَةٍ" **“Do learn from me, do learn from me, Allah had made a way for them, the virgin by the virgin one hundred stripes and to be expelled for one year”** compiled by Muslim,and Jaabir Ibn Abd Allah said: " رَجَمَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَجُلاً مِنْ أَسْلَمَ, وَرَجُلاً مِنَ اليَهُودِ وَامْرَأَتَهُ" **“The Prophet ﷺ had stoned a man from Aslam, and a Jewish man and his wife”** compiled by Muslim, and there are other verdicts that were practically abrogated, and this is a proof of the existence of the abrogation, since the practical occurrence is evidence for the possibility and for the existence, so it is evidence of the abrogation and no further comments.

The abrogation occurs in the Qur’ān and in the Sunnah, and they are the place of abrogation. As for the abrogation of the verdicts of (the verses of) the Qur’ān, it is legitimate and practically occurred, and its evidence is what’s mentioned previously of the *Kitāb*, the consensus of the *Ṣaḥābah*, and the actual abrogation.

The abrogation of the Qur’ān as recitation is impossible and illegitimate, and there is no decisive proof that it had occurred, and the evidence for its illegitimacy is that the verse by which the abrogation is proven says:

{نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا}

“...We bring a better one or similar to it...”

and the whole Qur’ān is good without differences between its verses, so the benevolence quality would not be real if the meaning of the abrogation is removing the verse itself from *“al-Lawh al-Mahfoudth”* and righting another one

instead of it, hence what is meant by the abrogation is not the verse itself but the verdict of it. Also the descent, the memorization, and the writing of the Qur'ān are proven by tawaatur authenticity, and the belief in it as such is a creed, and it mustn't be taken except from the decisive evidence in its authenticity and denotation, and it didn't happen that a decisive evidence came to denote legitimacy of abrogating the Qur'ān as recitation, hence it is not possible to abrogate its verses as recitation. As for the evidence that abrogating verses of the Qur'ān as recitation didn't occure, that is because no decisive evidence came to prove that any of the decisive verses of it got abrogated, and as for what Zaid Ibn Thaabit said: I heard the Messenger of Allah ﷺ saying: " الشَّيْخُ وَالشَّيْخَةُ إِذا زَنَيا فَارْجُمُوهُمَا البَتَّةَ. فَقَالَ عُمَرُ: لَمَّا أُنْزِلَتْ هَذِهِ أَتَيْتُ رَسُولَ اللهِ صَلَى اللهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ أَكْتِبْنِيهَا" **"If the old man and the old woman commit Zina definitely stone them. 'Umar said: when this came down, I went to the Messenger of Allah ﷺ and said: let me write it"** compiled by Aḥmad, and 'Ā'ishah narrated: " كَانَ فِيمَا أُنْزِلَ مِنَ القُرْءَانِ عَشْرُ رَضَعَاتٍ مَعْلُومَاتٍ يُحَرِّمْنَ, ثُمَّ نُسِخْنَ بِخَمْسٍ مَعْلُومَاتٍ" **"Among what is revealed of the Qur'ān there was ten known suckles make the person muhram, then they were abrogated by five known suckles"** compiled by Muslim. Also what was narrated from Ubai Ibn Ka'b and Ibn Mas'ūd that they recited as: "فَصِيَامُ ثَلاَثَةَ أَيَّامٍ مُتَتَابِعَاتٍ" *"then one should fast three days in sequence"*[286] and what was narrated that Surah al-Aḥzāb used to equal Surah al-Baqarah, and so on, they are all individual reports, and there is no sufficient evidence in them to abrogate the decisive, because they are indecisive reports, and the decisive could not be abrogated by the indecisive, and

[286] Referring to 196 Surah al-Baqarah and 89 Surah al-Mā'idah

nothing abrogates it except the decisive, so it is inevitable to prove by a decisive evidence that the *Āyah* had came down to believe that it is from the Qur'ān, then it should be proven by a decisive evidence that it had been abrogated, and this never happened, accordingly the abrogation of the (text) recitation of the Qur'ān is not realistic.

As for the Sunnah, we do not worship by reciting it, so the issue of abrogating the recitation of it is not relevant, because its recitation as recitation of it only doesn't exist, so the abrogation of its recitation is unthinkable, but the abrogation of some verdicts of it is possible and practical, and the evidence for that is the saying of the Messenger ﷺ: "كُنْتُ قَدْ نَهَيْتُكُمْ عَنْ زِيَارَةِ القُبُورِ, أَلا فَزُورُوهَا" **"I had forbade for you visiting the graves, do visit them"**, and fasting the day of 'Aashouraa' was obligatory by the Sunnah, then it got abrogated by fasting the month of *Ramaḍān* in the saying of Allah Ta'ala:

{فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ}

"...so whoever is present at the month (of Ramaḍān) must fast it..."[287],

and the obligation of praying towards al-Masjid al-Aqsa was confirmed by the *mutawātir* Sunnah, then it got abrogated by facing al-Ka'bah in the saying of Allah Ta'ala:

{ فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ}

"...Turn then your face in the direction of al-Masjid al-ḥarām..."

[287] Surah al-Baqarah:185

this denotes that the abrogation in the Sunnah had occurred, and the occurrence is evidence for the possibility, so it is possible.

The verdict of the address (of the legislator) is possible to be abrogated to an alternative or without an alternative. The abrogation to an alternative is many, like the abrogation of the obligation to pray towards al-Masjid al-Aqsa by praying towards al-Ka'bah, the abrogation of fasting for a fixed number of days by fasting the month of Rmadhaan, etc. and as for the abrogation without an alternative, Allah Ta'ala had abrogated the verdict of offering a donation before the private consultation with the Prophet ﷺ without an alternative, and He had abrogated the obligation of the abstention (al-Imsaak) after breaking the fast (al-Ifdtaar) in the night without an alternative, etc. The occurrence of abrogating without requesting an alternative is evidence that it is possible.

نَسْخُ القُرْءَان

The Abrogation of the Qur'ān

The abrogation of the Qur'ān by the Qur'ān is possible; because they are equal in necessitating the knowledge of certainty, and in the obligation of acting according to it, and both the abrogator and the abrogated came by the revelation as expression and meaning, so it is possible to abrogate the Qur'ān by the Qur'ān. From that is the abrogation of waiting for one year Iddah (period in which the widow should not remarry) (referring to verse 240 Surah al-Baqarah) by waiting for four months and ten days

(referring to verse 234 Surah al-Baqarah), and the abrogation of the verdict of offering a donation before the private consultation with the Prophet ﷺ by His ﷻ saying:

{ءَأَشْفَقْتُمْ أَنْ تُقَدِّمُوا بَيْنَ يَدَيْ نَجْوَاكُمْ صَدَقَاتٍ فَإِذْ لَمْ تَفْعَلُوا وَتَابَ اللَّهُ عَلَيْكُمْ فَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَأَطِيعُوا اللَّهَ وَرَسُولَهُ وَاللَّهُ خَبِيرٌ بِمَا تَعْمَلُونَ}

"Is it that you are afraid of spending sums in charity before your private consultation (with the Messenger)? If, then, you do not so, and Allah forgives you, then (at least) establish regular prayer; practice regular charity; and obey Allah and His Messenger. And Allah is well-acquainted with all that you do"[288]

and the abrogation of the steadfastness of one against ten by the steadfastness of one against two by that saying of Allah Ta'ala:

{الآنَ خَفَّفَ اللَّهُ عَنْكُمْ}

"Now Allah has lightened your (task), for He knows that there is a weakness in you: but (even so), if there are a hundred of you, patient and persevering, they will overcome two hundred, and if a thousand, they will overcome two thousand, with the leave of Allah: for Allah is with the patients"[289],

and this is an evidence of the occurrence of the abrogation in the Qur'ān. And the occurrence (of something) in the Sharī'ah is the strongest evidence for the Shar'i possibility.

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[288] Surah al-Mujādilah:13

[289] Surah al-Anfāl:66

It is not right to say that the abrogation is canceling the falsehood of the Qur'ān, and this is not allowed to say for the Qur'ān because Allah ﷻ said:

{لَا يَأْتِيهِ الْبَاطِلُ مِنْ بَيْنِ يَدَيْهِ وَلَا مِنْ خَلْفِهِ تَنْزِيلٌ مِنْ حَكِيمٍ حَمِيدٍ}

"No falsehood can approach it from before or behind it: it is sent down from The One Full of Wisdom, Worthy of all Praise"[290],

so if some of it got abrogated that means it will be admitted to falsehood, it is not right to say that because it is impossible to cancel the whole Qur'ān, so it is not allowed to abrogate the whole Qur'ān, but it is possible for some of its rules. That means this *Kitāb* is not preceded by Books that may cancel it, nor will it be approached by anything that may cancel it, for it could not be abrogated as a whole, but some of its rules could be abrogated, plus it is not permitted to cancel the verses by abrogating their recitation, whereas the cancellation of some of their rules by eliminating them is permitted as it is proven that it practically occurred. Moreover, the *Āyah* doesn't say that it is not admitted to cancellation (ibdtaal), but it says that it will not be approached by falsehood (baadtil). And there is difference between the (ibdtaal) cancellation and the (baadtil) falsehood, the ibdtaal is abrogating the verdict, whereas the baadtil is opposite to the (Haqq) truth. Hence the Qur'ān could be abrogated by the Qur'ān undoubtedly.

As for the abrogation of the Qur'ān by the Sunnah, it is not permissible and it never happened. It is not permissible because Allah Ta'ala said:

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[290] Surah Fussilat:42

{ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ}

"...and We have sent down unto you the Message; that you may explain clearly to mankind what is sent for them..."[291],

so He described the Prophet that he is a clarifier, and the abrogator is an eraser not a clarifier, and the erasing is different to the clarification. And Allah Ta'ala said:

{مَا نَنسَخْ مِنْ آيَةٍ أَوْ نُنسِهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا}

"Whatever a verse (of the revelation) We abrogate or cause to be forgotten, We bring a better one or similar to it...",

it denotes that who brings the better one or the similar one is Allah ﷻ for the return of the subject pronoun (al-dhameer) to Him, and cannot be as such unless the abrogator of the verse is the Qur'ān; therefore He said afterwards:

{أَلَمْ تَعْلَمْ أَنَّ اللَّهَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ}

"...do you not know that Allah has power over all things?"[292],

so this indicates that who brings the better or the similar one is the One specialized in entire might, so the abrogation cannot be by the Sunnah; because the Messenger is who brought it. Even though the Sunnah is the result of the revelation like the Qur'ān, for the saying of Allah Ta'ala:

{وَمَا يَنطِقُ عَنِ الْهَوَى} {إِنْ هُوَ إِلَّا وَحْيٌ يُوحَى}

[291] Surah al-Nahl:44
[292] Surah al-Baqarah:106

"And he speaks not of (his own) Desire. It is not less than inspiration sent down to him"[293],

but its meaning is resulted by the revelation, and it is not recited, and we do not worship by reciting it, and the Qur'ān is resulted as expression and meaning and we do worship by reciting it, and Allah Ta'ala said:

{وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ}

"And when We substitute one verse for another...",

so He told that He substitutes the verse by another verse not by the Sunnah, and He ﷻ said:

{قَالَ الَّذِينَ لَا يَرْجُونَ لِقَاءَنَا ائْتِ بِقُرْآنٍ غَيْرِ هَذَا أَوْ بَدِّلْهُ قُلْ مَا يَكُونُ لِي أَنْ أُبَدِّلَهُ مِنْ تِلْقَاءِ نَفْسِي إِنْ أَتَّبِعُ إِلَّا مَا يُوحَى إِلَيَّ}

"But when Our Clear Verses are recited to them, those who rest not their hope on their meeting with Us, say: "Bring us a Reading other than this, or change this," say: "It is not for me, of my own accord, to change it: I follow naught but what is revealed unto me..."[294],

this is an evidence that the Qur'ān could not be abrogated by other than the Qur'ān. And what denotes this is when the *Āyah* used to replace another *Āyah*, the polytheists used to say as Allah ﷻ told:

{وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ وَاللَّهُ أَعْلَمُ بِمَا يُنَزِّلُ قَالُوا إِنَّمَا أَنْتَ مُفْتَرٍ

[293] Surah al-Najm:3-4
[294] Surah Yūnus:15

"And when We substitute one verse for another, and Allah knows best what He sends down, they (the disbelievers) say: "you are but a forger" ..."[295],

then Allah ﷻ removed their delusion by saying:

{قُلْ نَزَّلَهُ رُوحُ الْقُدُسِ مِنْ رَبِّكَ بِالْحَقِّ}

"...Say: the trustworthy Rūḥ (al-Rūḥ al-Ameen) has brought the revelation from you Lord in truth...",

it denotes that the exchange doesn't occur except by that which the Holy Spirit brought down, that is the Qur'ān:

{نَزَلَ بِهِ الرُّوحُ الْأَمِينُ}

"With it (the Qur'ān) came down the trustworthy Rūḥ [Jibreel]"[296],

Although both the Qur'ān and the Sunnah are brought by the revelation, the Sunnah is attributed to the Messenger not to Allah, we say: the Messenger of Allah said not Allah said except in the *ḥadīth* al-Qudsy. And the Sunnah came as meaning from Allah, and the Qur'ān came as expression and meaning from Allah. The recitation of the Sunnah is not a requested worship, but the recitation of the Qur'ān is a requested worship. All that makes the Sunnah unable to be abrogate Qur'ān. Also the texts of the two verses of abrogation denote that the abrogator of the verse is another verse, the first one says:

{مَا نَنسَخْ مِنْ آيَةٍ أَوْ نُنسِهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا}

[295] Surah al-Nahl:101
[296] Surah al-Shu'araa':193

"Whatever a verse (of the revelation) We abrogate or cause to be forgotten, We bring a better one or similar to it...",

we understand from it that the abrogator is a verse; because the similar cannot be in other than the verses, it cannot be in the *aḥādīth*, and the second verse says:

{وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ}

"And when We substitute one verse for another..."

this is a text saying that the substitution occurs by replacing a verse in place of the other, this means it is inevitable that the abrogator is a verse, so nothing abrogates the Qur'ān except the Qur'ān. So all this is evidence that the Qur'ān could not be abrogated by the Sunnah, whether it is *mutawātir* or individual report.

As for the non occurrence of the abrogation of the Qur'ān by the Sunnah, that is because none of the Sunnah's verdicts abrogated any verdict of the Qur'ān, and the verdicts of the Qur'ān which they claimed to be abrogated by the Sunnah, some of them are abrogated by the Qur'ān, and some are specialized not abrogated, they said: the bequest (al wasiyah) to parents and next of kin that came in the saying of Allah ﷻ:

{كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ}

"It is prescribed for you, when death approaches any of you, if he leaves any goods, that he makes a bequest to parents and

next of kin, according to reasonable manners; this is duty upon the pious"[297],

they said that it is abrogated by the *ḥadīth* of the Messenger ﷺ: "لا وَصِيَّةَ لِوَارِثٍ" **"There is no bequest to an inheritor"** compiled by Aḥmad. The answer is it is abrogated by the Verse of inheritance:

{يُوصِيكُمُ اللَّهُ فِى أَوْلَادِكُمْ

"Allah directs you as regards your children's (inheritance): ..."[298] to the end of the Verses. And flogging the adulterer that came in the saying of Allah Ta'ala:

{الزَّانِيَةُ وَالزَّانِى فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ}

"The woman and the man guilty of adultery or fornication flog each of them with a hundred stripes..."[299],

they said that it is abrogated by confirmed stoning in the Sunnah. The answer is, the flogging is not abrogated but it is remaining, and what came in the Sunnah is specializing the stoning to other than the married person, so this is specialization not abrogation, and specializing the Qur'ān by the Sunnah is permitted; because it is applicable to it that it is a clarification, so it comes under His ﷻ saying:

{لِتُبَيِّنَ}

"...that you clarify to mankind...",

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[297] Surah al-Baqarah:180
[298] Surah al-Nisā':11
[299]Surah al-Nūr:2

contrary to the abrogation which is erasing not clarification. Also these two *aḥādīth*: "لا وَصِيَّةَ لِوَارِثٍ" **"There is no bequest to an inheritor"** and the *ḥadīth* of stoning are individual reports, and if we just suppose that the Qur'ān can be abrogated by the Sunnah, it is not permitted to be abrogated by the individual report; because the Qur'ān's confirmation is dicisive, but the individual report's confirmation is indecisive, and the decisive couldn't be abrogated by the indecisive; because the abrogation is invalidation, and a decisively confirmed verdict cannot be removed by a verdict confirmed indecisively. And this also supports that the examples they brought to prove the occurrence of abrogating the Qur'ān by the Sunnah is incorrect. Since abrogating the Qur'ān by te Sunnah never occurred, and the nonoccurrence only is sufficient to evidence that it is not permitted; because what is wanted is not the mental permissibility but Shar'i permissibility. Also the Qur'ān could not be abrogated by consensus of the *Ṣaḥābah* and neither by Shar'i analogy; because both of them occurred after the time of the Messenger ﷺ, and the *Ṣaḥābah* had consented without any dissident that the abrogation is not permitted after the Messenger.

نَسخُ السُّنَّةِ

The Abrogation of the Sunnah

It is permitted to abrogate the Sunnah by the Qur'ān; for their equality in the obligation to act according to them, and because the Sunnah is brought by the revelation as meaning and the Qur'ān is brought by the revelation as expression and meaning, from that is facing Baitul-Maqdis

(in the prayer) it is proven by the *Mutawātir* Sunnah, and there is no evidence for it in the Qur'ān, then it got abrogated by the saying of Allah ﷻ: {...فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ...} {...Turn then your face in the direction of al-Masjid al-*ḥarām*...} 144 Surah al-Baqarah, and the sexual intercourse at night was forbidden for the one who fasts by the Sunnah, and it got abrogated by the saying of Him ﷻ: {... فَالْآنَ بَاشِرُوهُنَّ...} {... so now do intercourse with them...} 187 Surah al-Baqarah, and from that is fasting the day of Aa'shouraa' that was obliged by the Sunnah, then it got abrogated by fasting the month of *Ramaḍān* in His ﷻ saying: {...فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ...} {...so whoever is present at the month (of *Ramaḍān*) must fast it...} 185 Surah al-Baqarah, and from that is delaying the prayer (in the battle) until the fight is over that was permitted in the Sunnah, and on the day of the trench battle (al-Khandaq) the Prophet ﷺ said: "حَشَا اللهُ أَجْوافَهُمْ وَقُبُورَهُمْ نَارًا" "May Allah fill up their interior and their graves with fire" for holding him from the Prayer, compiled by Muslim, and this permission was abrogated by the Prayer of fear that came in the Qur'ān: {وَإِذَا ضَرَبْتُمْ فِي الأَرْضِ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَقْصُرُوا مِنَ الصَّلاةِ إِنْ خِفْتُمْ أَنْ يَفْتِنَكُمُ الَّذِينَ كَفَرُوا إِنَّ الْكَافِرِينَ كَانُوا لَكُمْ عَدُوًّا مُبِينًا} {وَإِذَا كُنْتَ فِيهِمْ فَأَقَمْتَ لَهُمُ الصَّلاةَ فَلْتَقُمْ طَائِفَةٌ مِنْهُمْ مَعَكَ وَلْيَأْخُذُوا أَسْلِحَتَهُمْ فَإِذَا سَجَدُوا فَلْيَكُونُوا مِنْ وَرَائِكُمْ وَلْتَأْتِ طَائِفَةٌ أُخْرَى لَمْ يُصَلُّوا فَلْيُصَلُّوا مَعَكَ وَلْيَأْخُذُوا حِذْرَهُمْ وَأَسْلِحَتَهُمْ وَدَّ الَّذِينَ كَفَرُوا لَوْ تَغْفُلُونَ عَنْ أَسْلِحَتِكُمْ وَأَمْتِعَتِكُمْ فَيَمِيلُونَ عَلَيْكُمْ مَيْلَةً وَاحِدَةً. وَلا جُنَاحَ عَلَيْكُمْ إِنْ كَانَ بِكُمْ أَذًى مِنْ مَطَرٍ أَوْ كُنْتُمْ مَرْضَى أَنْ تَضَعُوا أَسْلِحَتَكُمْ وَخُذُوا حِذْرَكُمْ...} {And when you (Muslims) travel in the land, there is no sin on you if you shorten the prayer if you fear that the disbelievers may put you in trial (attack you etc.), verily, the disbelievers are ever unto you open enemies} {And when you (O Messenger ﷺ) are among them, and lead them in the prayer, let one party of them stand up in prayer with you taking their arms with them;

when they finish their prostrations, let them take their positions in the rear and let the other party come up which have not yet prayed, and let them pray with you taking all the precautions and bearing arms. Those who disbelieve wish, if you were negligent of your arms and your baggage, to attack you in a single rush, but there is no sin on you if you put away your arms because of the inconvenience of rain or because you are ill, but take every precaution for yourselves...} 101 to 102 of Surah al-Nisā'), so all these prove that abrogating the Sunnah by the Qur'ān had practically occurred, and the occurrence is an evidence for the permissibility, hence it is permissible to abrogate the Sunnah by the Qur'ān.

It is also permitted to abrogate the Sunnah by the Sunnah, so it is permitted to abrogate the individual report by an individual report and by the *mutawātir*, but it is not permitted to abrogate the *mutawātir* except by a *mutawātir*, so the *mutawātir* cannot be abrogated by an individual report. As for the permissibility of abrogating the Sunnah by the Sunnah, that is because both are equals in the obligation to act according to them, and because the abrogator and the abrogated one are brought by the revelation as meaning, and that practically occurred, and the occurrence is an evidence of the permissibility, from that is his ﷺ saying:"كُنْتُ قَدْ نَهَيْتُكُمْ عَنْ زِيَارَةِ الْقُبُورِ, أَلا فَزُورُوهَا" "I had forbade for you visiting the graves, do visit them", compiled by al-Hākim. And from that is what is narrated that the Prophet ﷺ said about who drinks intoxicant: " إِذَا شَرِبَ فِي الرَّابِعَةِ فَاقْتُلُوهُ" "If he drinks for the fourth time then kill him", compiled by Aḥmad, and this was abrogated by what is narrated that a drunk man who drank it for the fourth time got carried to him and he didn't kill him. This

is an evidence that abrogating the Sunnah by the Sunnah is permitted, for it really occurred.

As for abrogating the *mutawātir* by the individual report, it is not permitted and it never occurred. It is not permitted because the *mutawātir* is decisive, and whoever denies it is a kaafir if its denotation is decisive. But the individual report is indecisive and its denier is not a kaafir, and the decisive cannot be abrogated by the indecisive. Also it never happened that a *mutawātir* got abrogated by an individual report, and since it never happened it is an evidence that it is not permitted by the Sharī'ah; because what is considered is not the mental legitimacy but the Shar'i permission, and what is sought after is the knowing what had been abrogated, and since it didn't happen then advocating it is a kind of the theoretical assumption that has no value in the legislations.

As for what some had adduced that the saying of Allah ﷻ: {قُل لاَّ أَجِدُ فِي مَآ أُوْحِيَ إِلَيَّ مُحَرَّماً عَلَىٰ طَاعِمٍ يَطْعَمُهُ إِلاَّ أَن يَكُونَ مَيْتَـةً أَوْ دَماً مَّسْفُوحاً أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقاً أُهِلَّ لِغَيْرِ ٱللَّهِ بِهِ فَمَنِ ٱضْطُرَّ غَيْرَ بَـاغٍ وَلاَ عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَّحِيمٌ} Say (O Muhammad ﷺ: I find not in that which has been revealed to me anything forbidden to be eaten by one who wishes to eat it, unless it be Maitah (a dead animal) or blood poured forth (by slaughtering or the like), or the flesh of swine (pork); for that surely is impure or impious (unlawful) meat (of an animal) which is slaughtered as a sacrifice for other than Allah (or has been slaughtered for idols, or on which Allah's Name has not been mentioned while slaughtering). But whosoever is forced by necessity without willful disobedience, nor transgressing due limits; (for him) certainly, your Lord is Oft-Forgiving, Most Merciful} 145 Surah al-An'aam, they said that this Verse limits the

forbidden of foods to what is mentioned in it, and this limitation got abrogated by an individual (*Āhād*) narration that the Prophet ﷺ:" نَهَى عَنْ كُلِّ ذِي نَابٍ مِنَ السِّبَاعِ, وَعَنْ كُلِّ ذِي مِخْلَبٍ مِنَ الطَّيْرِ" "Had forbidden (eating) every predator with canine tooth, and every bird with nail" compiled by Muslim, they said: if the abrogation of the *Kitāb* by the *Āhād* is proven, then the abrogation of the *mutawātir* Sunnah by *Āhād* report is with greater reason. The answer to this is: it's been proven that the Qur'ān cannot be abrogated by the Sunnah, so this Verse should not be mentioned here; because a Verse can be abrogated only by a Verse for the saying of Allah Ta'ala: {وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ...} {And when we change a verse (of the Qur'ān) in place of another...} 101 Surah al-Nahl, and also there is no abrogation here; because the *Āyah* says: {لاَّ أَجِدُ} {I find not} that means I find not in what had been revealed other then mentioned things that are forbidden, and that doesn't prevent the descent of an afterward revelation to forbid other things, so the forbiddance that came in the revelation after this Verse is not to abrogate, but it just came after the Verse; because {لاَّ أَجِدُ} {I find not} is for the present, it doesn't mean he will not find in the future. Accordingly, this Verse shouldn't be mentioned here; because there is no abrogation in it.

Abrogating the Sunnah by the consensus (*Ijmā'*) of the *Ṣaḥābah* and by the Shar'i analogy (al-*Qiyās*) is not permitted; because both the *Ijmā'* and the *Qiyās* had happened after the time of the Messenger ﷺ, and the *Ṣaḥābah* had consented on the prevention of the abrogation after the Messenger ﷺ and no one disputed that at all.

لا يَجُوزُ نَسْخُ الحُكْمِ الثَّابِتِ بِالإِجْمَاعِ

It is Not Permitted to Abrogate a Verdict Evidenced by the *Ijmā'*

The verdict evidenced by the *Ijmā'* of the *Ṣaḥābah* is not permitted to be abrogated; because the *Ijmā'* had happened after the Messenger ﷺ, and the abrogation of it can only be by the *Kitāb*, the Sunnah, the *Ijmā'* or the *Qiyās*, and all of them are not capable to abrogate it. As for the text (*Kitāb* and Sunnah), that is because it is precedent to the *Ijmā'*, since all the texts are received from the Prophet ﷺ and the *Ijmā'* of the *Ṣaḥābah* did not occur during the time of the Prophet ﷺ; because if he didn't agree with them, their *Ijmā'* doesn't count, and if he agreed with them, then his saying is the proof for it is proven that the text is preferred to the *Ijmā'*, hence it is impossible to abrogate it. And as for the *Ijmā'*, that is because it is impossible to occur in contrast with another *Ijmā'*; because if it had occurred that means one of them is wrong; because if the first one is not based on evidence then it is wrong; because the *Ijmā'* of the *Ṣaḥābah* discloses an evidence, and if it is based on evidence the second *Ijmā'* is wrong and not considered; because it came in contrast with the evidence. As for the *Qiyās*, that is because it is invalid if it comes in contrast with the *Ijmā'*; because the *Qiyās* (Analogy) is a branch of an origin, so if an evidence came from the *Kitāb*, the Sunnah or the *Ijmā'* in contrast with the *Qiyās*, the *Qiyās* will be left, and since the *Qiyās* is invalid if it is contrary to the *Ijmā'* of the *Ṣaḥābah*, it is not permitted to abrogate the *Ijmā'* by the *Qiyās*.

لا يَجُوزُ نَسْخُ حُكْمِ القِيَاسِ

It is Not Permitted to Abrogate a Verdict Derived by Shar'i Analogy (*Qiyās*)

The verdict derived by the *Qiyās* is not permitted to be abrogated; because if the *Qiyās* is derived from an origin, it remains for the remaining of the origin, and if the origin is removed and abrogated then there is no valid *Qiyās*; therefore the abrogation doesn't occur in the verdeicts derived by *Qiyās* at all, since erasing the verdict derived by *Qiyās* with the remaining of its origin cannot be imagined. Because the considered analogy is the one its reasoning (*'illah*) came in the text of the *Kitāb* and the Sunnah or in the *Ijmā'* of the *Ṣaḥābah*, so the *'illah* of the origin is proven by one of these three, and if the abrogation occurs, it occurs in the branch not in the origin, so if it occurs in the branch and the origin remains, the abrogation doesn't occur in the *Qiyās* as long as the origin is remaining, and if it occurs in the origin that means initially the *Qiyās* didn't exist as long as the origin is abrogated, so the *Qiyās* didn't exist to say it had been abrogated, moreover the abrogation of the origin is not an abrogation of the verdict derived by the *Qiyās*, but it is an abrogation of a verdict proven by the *Kitāb*, the Sunnah or by the *Ijmā'* of the *Ṣaḥābah* and these are not from the *Qiyās*, accordingly, the abrogation doesn't occur in the *Qiyās* at all.

طَرِيقُ مَعْرِفَةِ النَّاسِخِ وَالمَنْسُوخِ

The Way of Knowing the Abrogator and What has been Abrogated

It is inevitable for the abrogating evidence to have a Shar'i proof that it is an abrogator, otherwise it is not considered an abrogator, and it is not once the conflict between two evidences just appears means that one of them abrogates the other, since it is possible to gather between them so there will not be any conflict. The abrogation is abolishing the verdict and disabling the text, and gathering between the two evidences is worthier than the abrogation and the disablement, because the disablement and the abrogation are contrary to the principle, and what is contrary to the principle it is inevitable to have evidence to prove it, and if there is no proof for it, there is no consideration for it. Accordingly, the annulment of the previous verdict depends on the existence of a proof to prove that it is abrogated either by a subsequent text to tell literally or by denotation that it abrogates the previous verdict, or by having a conflict between two texts that are impossible to conciliate between them. As for the subsequent text that tells that it abrogates a previous verdict, there came some verdicts of this kind; from them is the saying of the Messenger ﷺ: "كُنْتُ قَدْ نَهَيْتُكُمْ عَنْ زِيَارَةِ القُبُورِ, أَلا فَزُورُوهَا" "I had forbade for you visiting the graves, do visit them" compiled by al-Hākim. The text here clarifies that it had abrogated the forbiddance of visiting the graves, and from them is what is narrated that Abū Hurairah said: the Messenger of Allah ﷺ said: " إِنْ سَكِرَ فَاجْلِدُوهُ, ثُمَّ إِنْ سَكِرَ فَاجْلِدُوهُ, فَإِنْ عَادَ فِي الرَّابِعَةِ فَاضْرِبُوا عُنُقَهُ" "If he gets drunk do flog him, then if he gets drunk do flog him, then if he gets drunk for the fourth time do strike his neck" compiled by Aḥmad, this denotes

that if the intoxicant drinker drinks for the fourth time he gets killed, but this got abrogated by what is narrated from al-Zuhry from Qabeesah Ibn Zthu'aib that the Prophet ﷺ said: " مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ, فَإِنْ عَادَ فَاجْلِدُوهُ, فَإِنْ عَادَ فِي الثَّالِثَةِ أَوِ الرَّابِعَةِ فَاقْتُلُوهُ, فَأُتِيَ بِرَجُلٍ قَدْ شَرِبَ فَجَلَدَهُ, ثُمَّ أُتِيَ بِهِ فَجَلَدَهُ, ثُمَّ أُتِيَ بِهِ فَجَلَدَهُ, ثُمَّ أُتِيَ بِهِ فَجَلَدَهُ وَرَفَعَ الْقَتْلَ, وَكَانَتْ رُخْصَةً" "Whoever drinks the intoxicant do flog him, and if he repeats it do flog him, then if he repeats it for the third or the fourth time do kill him, then they brought to him a man who drank it, so he flogged him, and they brought him again and he flogged him, then they brought him again and he flogged him, and they brought him again and he flogged him, and he abolished the killing, and it was a concession" compiled by Abū Dāwud, al-Shafi'ie said: the killing is abrogated by this *ḥadīth* and others, he meant the *ḥadīth* of Qabeesah Ibn Zthu'aib. al-Bazzaar had compile from the way of Jaabir with the expression: " ...فَأُتِيَ بِالنُّعَيْمَانِ قَدْ شَرِبَ فِي الرَّابِعَةِ وَلَمْ يَقْتُلْهُ, فَكَانَ ذَلِكَ نَاسِخًا لِلْقَتْلِ" "...then they brought to him al-Nu'aimaan after he drank for the fourth time, and he didn't kill him, and this had abrogated the killing" and in the previous *ḥadīth* of al-Zuhry the text says that killing the fourth time intoxicant drinker was abrogated, his saying:"وَرَفَعَ الْقَتْلَ" "and he lifted up the killing" is from the text of the *ḥadīth*, not from the saying of the Companion (*Ṣaḥābī*), as in another narration from Jaabir that the Prophet ﷺ said: " إِنْ شَرِبَ الخَمْرَ فَاجْلِدُوهُ, فَإِنْ عَادِ فِي الرَّابِعَةِ فَاقْتُلُوهُ, قَالَ ثُمَّ أُتِيَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بَعْدَ ذَلِكَ بِرَجُلٍ قَدْ شَرِبَ الخَمرَ فِي الرَّابِعَةِ, فَضَرَبَهُ وَلَمْ يَقْتُلْهُ" "If he drinks the intoxicant flog him, and if he returns for the fourth time kill him, later on they brought to the Prophet ﷺ a man who drank it for the fourth time then he beat him and didn't kill him" compiled by al-Tirmidhī, and the word: "وَلَمْ يَقْتُلْهُ" "and didn't kill him" is from the *ḥadīth*, also the word: "وَرَفَعَ الْقَتْلَ" "and he

(lifted up) abolished the killing" is from the *ḥadīth*. The narration that says: "وَلَمْ يَقْتُلْهُ" "and didn't kill him" doesn't literally say that the killing had been abrogated, but it contradicts the saying of the Messenger in the narration of Aḥmad: "...إِذَا شَرِبَ فِي الرَّابِعَةِ فَاقْتُلُوهُ" "...if he drinks it for the fourth time then kill him", but in the narration: "وَرَفَعَ الْقَتْلَ" "and he lifted up (abolished) the killing" it literally abrogates the killing after the fourth time, since the word "رَفَعَ" "lifted up" means abrogated. And among the verdicts of which the later text dictates that it abrogates the former by denotation is His ﷻ saying: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَاجَيْتُمُ الرَّسُولَ فَقَدِّمُوا بَيْنَ يَدَيْ نَجْوَاكُمْ صَدَقَةً ذَلِكَ خَيْرٌ لَكُمْ وَأَطْهَرُ فَإِنْ لَمْ تَجِدُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} {O you who believe if you (want to) consult the Messenger in private, spend something in charity before your private consultation. That will be better and purer for you. But if you find not (the means for it), then verily, Allâh is Oft-Forgiving, Most Merciful} 12 Surah al-Mujadilah, this *Āyah* denotes the necessity of paying a charity if one is able to pay, but that was abrogated by His ﷻ saying: {ءَأَشْفَقْتُمْ أَنْ تُقَدِّمُوا بَيْنَ يَدَيْ نَجْوَاكُمْ صَدَقَاتٍ فَإِذْ لَمْ تَفْعَلُوا وَتَابَ اللَّهُ عَلَيْكُمْ فَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَأَطِيعُوا اللَّهَ وَرَسُولَهُ وَاللَّهُ خَبِيرٌ بِمَا تَعْمَلُونَ} (Is it that you are afraid of spending sums in charity before your private consultation (with the Messenger)? If, then, you do not so, and Allah forgives you, then establish regular prayer, practice regular charity, and obey Allah and His Messenger. And Allah is well-acquainted with all that you do) 13 Surah al-Mujādilah, in this *Āyah* there is what denotes that the necessity of offering a charity if possible at the private consultation is lifted up (cancelled) without explicit declaration.

It must be known that dictating the abrogation is inevitable to be in the text itself or understood from the text; therefore it is not of the correct ways of knowing the

abrogation that a Sahabi says: the verdict was so, then it was abrogated or lifted up, or that was before, or the like which denotes the abrogation, this has no value; because perhaps he says that after *ijtihād*, for example al-Bukhārī narrated on his authority from Ibn 'Umar ﷺ that he said to a Bedouin who asked him about the *Āyah*: {...وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلا يُنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ}...And those who hoard up gold and silver (al-Kanz: the money, of which the *Zakāh* has not been paid) and spend them not in the Way of Allah, announce unto them a painful torment} 34 Surah al-Tawbah: "Woe to whoever hoards it without paying its *Zakāh*, this was only before the *Āyah* of *Zakāh* got descended, then when it came down Allah ﷻ made it a purification for the wealth" this report has no value in the issue of abrogation, and it is not a considered evidence for the abrogation, and the *Āyah* of the *Zakāh* is not considered in it as an abrogator of the hoarding *Āyah*; because it is an *ijtihād* of the *Ṣaḥābī*, so it is not evidence for the abrogation. Also it is not of the correct ways of knowing the abrogation that the narrator of the *ḥadīth* says: the verdict was so then it got abrogated, for example Aḥmad Ibn Hanbal, al-Tirmidhī, al-Nasā'ī, Abū Dāwud, and Ibn Mājah, the five of them narrated from Mu'aawiyah that the Messenger ﷺ said:" إِذَا شَرِبُوا الخَمرَةَ فَاجْلِدُهُمْ ثُمَّ إِذَا شَرِبُوا فَاجْلِدُهُمْ ثُمَّ إِذَا شَرِبُوا الرَابِعَةَ فَاقْتُلُوهُمْ" "If they drink the intoxicant flog them, then they drink (again) flog them, then if they drink for the fourth time kill them". al-Tirmidhī said: this was in the beginning, and then it got abrogated afterwards. This is not an evidence for the abrogation. Also it is not correct that the *Ṣaḥābī* states that one of the two *mutawātir ḥadīth* is precedent to the other; because it includes the abrogation of the *mutawātir* by the saying of an individual. So the denotation over the abrogation is inevitable to be a text

from the *Kitāb* or the Sunnah that dictates explicitly or by denotation, and anything except that is not considered a proof for the abrogation.

As for the conflict between two texts that it is impossible to conciliate between them, we scrutinize them, if one of them is certain and the other is uncertain, i.e. one of them is decisive in its transmission and denotation, and the other is indecisive in its transmission and denotation, it is decisive in its transmission indecisive in its denotation, or the opposite, acting according to the decisive is a must, whether it preceded or it came later or it is unknown which one came first, but if it is belated from the uncertain, it abrogates it, otherwise the action must be according to it but it doesn't abrogate. And if they are both certain or uncertain, and it is known that one of them is belated to the other then it is an abrogator and the precedent is the abrogated one, and that can be known by the date, or by the attribution of the narrator of one of the texts to a precedent thing like saying: this was in the so and so year, and this is in the so and so year, or by other than that of which determines the precedence and the belatedness. And if their date is unknown and it is unknown which one is earlier than the other then there is no abrogation; because none of them is worthier than the other to abrogate. And whoever claims that a verdict has been abrogated without knowing the date, his claim should be rejected for not knowing the date, and in this situation it is incumbent to: either stop acting according to one of them, choosing between them if possible.

If the two conflicting texts are known to be coupled but impossible to gather between them, this is not imagined to happen, and it never happens, hence it becomes clear that

when two texts conflict each other in every direction with the impossibility to conciliate between them, the abrogation is not imaginable in them except in two situations: one of them is: if both of them are certain or uncertain (decisive or indecisive), and it is known that one of them is belated from the other, then the belated one is an abrogator and the preceded is the abrogated one. The second situation is: if one of them is certain and the other is uncertain, and the certain is belated from the uncertain. Except in these two situations the abrogation doesn't exist at all.

This is if the two conflicting texts are incompatible in every direction and it is impossible to conciliate between them. But if the two conflicting texts are incompatible in every direction but it is possible to conciliate between them, or they are incompatible in direction without the other, then there is no abrogation at all, since it is possible to conciliate between them and direct one of them into the direction in which it doesn't conflict the other, for example, Waa'il al-Hadhramy narrated that: "أَنَّ طَارِقَ بْنَ سُوَيْدٍ الجُعْفِيَّ سَأَلَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الخَمْرِ, فَنَهَاهُ, أَوْ كَرِهَ أَنْ يَصْنَعَهَا. فَقَالَ: إِنَّمَا أَصْنَعُهَا لِلدَّوَاءِ. فَقَالَ: إِنَّـهُ لَيْسَ بِدَوَاءٍ وَلَكِنَّـهُ دَاءٌ" "Ṭāriq Ibn Suwaid al-Ju'fy asked the Prophet ﷺ about the intoxicant, so he prohibited him, or he hated that he makes it. Then he said: I make it only for medication. He ﷺ said: it is not a medication but a disease" compiled by Muslim, and Abū al-Dardaa' said: the Messenger of Allah ﷺ said:" إِنَّ اللهَ أَنْزَلَ الدَّاءَ وَالدَّوَاءَ, وَجَعَلَ لِكُلِّ دَاءٍ دَوَاءً, فَتَدَاوَوْا, وَلاَ تَدَاوَوْا بِحَرَامٍ" "Allah had sent down the disease and the medication, and He made a medication for every disease, so do medicate your selves, but don't medicate your selves with something forbidden" compiled by Abū Dāwud. These two *Ḥadīths* denote the forbiddance of

medicating with forbidden things, and Qataadah narrated from Anas: " أَنَّ أُنَاسًا مِنْ عُكْلٍ وعُرَيْنَةَ قَدِموا المَدِينَةَ عَلَى النَّبِيِ صَلَى اللهُ عَلَيهِ وسَلَّمَ وتَكَلَّمُوا بِالإِسلامِ,... واسْتَوخَمُوا المَدِينَةَ, فَأَمَرَ لَهُمْ رَسولُ اللهِ بِذَوْدٍ ورَاعٍ, وأَمَرَهُمْ أَنْ يَخْرُجوا فِيهِ فَيَشْرَبوا مِنْ أَلبَانِهَا وأَبْوَالِهَا" "That people from 'Ukal and 'Urainah came to the Madīnah to the Prophet ﷺ and talk about Islam,... and they detested to stay in the Madīnah for a disease they caught, then the Messenger of Allah ﷺ ordered a dthawd (three to nine camels) and a shepherd, and commanded them to go out riding them and to drink from their milk and urine" compiled by al-Bukhārī. And from Anas that the Prophet ﷺ: " رَخَّصَ لِعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ والزُّبَيْرِ بْنِ العَوَّامِ فِي لُبْسِ الحَرِيرِ؛ لِحَكَّةٍ بِهِمَا" "allowed Abd al-Rahmān ibn Awf and al- Zubair Ibn al-Awwam to wear silk for an itch they had" compiled by Muslim. In the narration of al-Tirmidhī: " أَنَّ عَبْدَ الرَّحمَنِ بْنَ عَوْفٍ وَالزُّبَيْرَ بْنَ العَوَّامِ شَكَيَا القَمْلَ إِلَى النَّبِيِّ صَلَى اللهُ عَلَيْهِ وَسَلَّمَ فِي غَزَاةٍ لَهُمَا, فرخَّصَ لَهُمَا فِي قُمُصِ الحَرِيرِ. قَالَ: وَرَأَيْتُهُ عَلَيْهِمَا" "That Abd al-Rahmān Ibn Awf and al-Zubair Ibn al-Awwam complaint the lice to the Prophet ﷺ during an incursion they were in, so he allowed silk shirts for them. These two Haadeeths permit to cure by forbidden things. This contradiction between the texts can be conciliated by considering the prohibition in the two first *Ḥadīths* as *makrūh*. Another example, Ali ﷺ said: " أَهْدَى كِسْرَى لِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَبِلَ مِنْهُ, وَأَهْدَى لَهُ قَيْصَرُ فَقَبِلَ مِنْهُ, وَأَهْدَتْ لَهُ المُلُوكُ فَقَبِلَ مِنْهُمْ" "Kisra (the king of Persia) have sent a gift to the Messenger of Allah ﷺ and he accepted form him, and Caesar have sent a gift to him and he accepted from him, and the kings have sent to him and he accepted from them" compiled by Aḥmad. And 'Aamir Ibn Abdullah Ibn al-Zubair narrated that his father said: " قَدِمَتْ قُتَيْلَةُ ابْنَةُ عَبْدِ الْعُزَّى بْنِ عَبْدِ أَسْعَدَ مِنْ بَنِي مَالِكِ بْنِ حَسَلٍ عَلَى ابْنَتِهَا أَسْمَاءَ ابْنَةِ أَبِي بَكْرٍ بِهَدَايَا: ضِبَابٍ وَأَقِطٍ وَسَمْنٍ وَهِيَ مُشْرِكَةٌ فَأَبَتْ أَسْمَاءُ أَنْ تَقْبَلَ هَدِيَّتَهَا وَتُدْخِلَهَا بَيْتَهَا فَسَأَلَتْ عَائِشَةُ النَّبِيَّ صَلَّى اللَّهم عَلَيْهِ وَسَلَّمَ فَأَنْزَلَ

اللَّهُ عَزَّ وَجَلَّ {لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ...} إِلَى آخِرِ الْآيَةِ, فَأَمَرَهَا أَنْ تَقْبَلَ هَدِيَّتَهَا, وَأَنْ تُدْخِلَهَا بَيْتَهَا" "Qutailah the daughter of Abd al-'uzzah came to her daughter Asmaa' the daughter of Abū Bakr with gifts: lizards, dried yogurt, and ghee. She was polytheist (mushrikah), and Asmaa' refused to accept her gift and to allow her into her house, so 'Ā'ishah asked the Prophet ﷺ, then Allah the Great and Mighty sent down: {Allah does not forbid you to deal justly and kindly with those who fought not against you on account of the religion...} to the end of the verse 8 of Surah al-Mumtahanah, so he commanded her to accept her gift and to allow her into her house" compiled by Aḥmad. These two *Ḥadīths* denote the permissibility to accept the gift, and on the authority of Abd al-Raḥmān Ibn Ka'b Ibn Mālik:" أَنَّ عَامِرَ بْنَ مَالِكٍ الَّذِي يُدْعَى مُلاعِبُ الأَسِنَّةِ قَدِمَ عَلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَهُوَ مُشْرِكٌ, فَأَهْدَى لَهُ. فَقَالَ: إِنِّي لاَ أَقْبَلُ هَدِيَّةَ مُشْرِكٍ" "That 'Aamir Ibn Mālik who used to be called the spearhead player came to the Messenger of Allah ﷺ when he was polytheist (mushrik) and offered him a gift. He ﷺ said: I do not accept the gift of a mushrik" compiled by al-Ṭabarānī. And this *ḥadīth* denotes the forbiddance of accepting the mushrik's gift; in this conflict conciliation between the texts can be made, by considering that the acceptance of the gift was for the situation of endearment and devotion, or that accepting the gift is permissible, so he is allowed to accept it or to refuse it. And thus all texts that are conflicted in all directions conciliation between them can be made by directing one of them to a meaning and the other to a different meaning, and the conflict will be removed. As for the texts in which the conflict is in one direction without the other, it is clear that every one of them should be directed to the meaning which is meant by the text, an example for that is the saying of the Messenger

ﷺ: "مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ" **"Whoever changes his religion (apostates) do kill him"** compiled by al-Bukhārī, it is special ofr the one that changes his religion and it is general for women and men, and what Aḥmad had compiled from the narration of Ibn Abbaas that the Messenger of Allah ﷺ: " نَهَى عَنْ قَتْلِ النِّسَاءِ" **"Had prohibited killing the women"** it is general in all women, and special in the woman originally disbeliever if she is not fighting, and it is not general in all incidents; for his saying in some other ways of the *ḥadīth* of the prohibition of killing the women when he saw a killed woman:"مَا كَانَتْ هَذِهِ لِتُقَاتِلُ, ثُمَّ نَهَى عَنْ قَتْلِ النِّسَاءِ وَالصِّبْيَانِ" **"This woman wasn't a fighter, then he prohibited killing the women and the boys"** compiled by Aḥmad; therefore the one who apostates must be killed whether he is a man or a woman, and thus there is no conflict between the two Haadeeths. So the *ḥadīth* of killing the apostate is special for the case of apostasy, and general in everything; therefore men and women must be killed, and the *ḥadīth* of the prohibition of killing women is special for the case of war, so the woman should not be killed in that case. Another example for that is his ﷺ saying:" إِذَا دَخَلَ أَحَدَكُمُ المَجْلِسَ فَلا يَجْلِسْ فِيهِ حَتَى يَرْكَعَ رَكْعَتَيْنِ" "If one of you enters the Masjid he should not sit until he performs two rak'ahs" compiled by Ibn Hibbān, this is general for all times, cases, and masjids, and 'Uqbah Bnu 'Aamir had narrated: " ثَلاثُ سَاعَاتٍ كَانَ رَسُولُ اللهِ صَلَى اللهُ عَلَيْهِ وَسَلَّمَ يَنْهَانَا أَنْ نُصَلِّيَ فِيهِنَّ, أَوْ أَنْ نَقْبِرَ فِيهِنَّ مَوْتَانَا: حِينَ تَطْلُعُ الشَّمْسُ بَازِغَةً حَتَّى تَرْتَفِعَ, وَحِينَ يَقُومُ قَائِمُ الظَّهِيرَةِ حَتَّى تَمِيلَ الشَّمْسُ, وَحِينَ تُضَيَّفُ الشَّمْسُ لِلغُرُوبِ حَتَّى تَغْرُبَ" **"The Messenger of Allah ﷺ used to prohibit us to pray or to bury our dead ones in three times: when the sun rises until it goes up, in the midday until the sun moves from the middle of the sky, and when the sun goes to set until it sets"** compiled by Muslim, this is special for specific times. And 'Umar Ibn al-

Khadtaab narrated: " أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الصَّلاةِ بَعْدَ الصُّبْحِ حَتَّى تَشْرُقَ الشَّمْسُ, وَبَعْدَ العَصْرِ حَتَّى تَغْرُبَ" "That the Messenger of Allah ﷺ prohibited the prayer after praying al-Fajr prayer until the sun rises, and after praying al-'Asr prayer until it sets" compiled by al-Bukhārī, this is special in specific cases, and when the special is in conflict with the general, the general should be carried according to the special, so the *ḥadīth* of the Masjid greeting prayer (tahiyat al-Masjid) should be carried in accordance with other than the five times in which prayer is disliked, so there is no conflict between the two texts, and thus is in all the texts that are conflicted in one direction without the other, they should be carried in accordance with the issue which they came for it, so the conflict between the texts vanishes.

Hence it is clear that the appearance of conflict between the texts doesn't mean that one of them abrogates the other, but it is possible to re-conciliate between the texts that seem to be contradicted. And by scrutinizing the Sharī'ah texts and examining what seems to be contradicted, it becomes clear that conflict between the texts doesn't exist. So the claim that there is contradiction between the two texts has no established evidence to prove it. And what some scholars have mentioned that some texts give the impression of the existence of conflict between them, verily these same texts are explicit that contradiction between them doesn't exist and the reconciliation between them is possible, and they don't have any denotation of abrogation, an example of the Verses which they alleged that they are abrogated is the saying of Allah ﷻ:

{وَإِنْ جَنَحُوا لِلسَّلْمِ فَاجْنَحْ لَهَا}

"But if they incline to peace, then you incline to it..."[300],

they said it had been abrogated by the Verse of the sword, that is His ﷻ saying:

{قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ}

"Fight against those who believe not in Allah, nor in the Last Day, nor forbid that which has been forbidden by Allah and His Messenger (Muhammad) and those who acknowledge not the religion of truth (Islam) among the people of the Scripture (Jews and Christians), until they pay the Jizyah with submission" 29 Surah al-Tawbah,

it is clear in the texts of the first and the second Verse that there is no conflict between them, the first one is concerning the peacemaking state if the Da'wah necessitates that, as it happened in al-Hudaibiyah peace treaty, and the second necessitates the *Jihād* if the Da'wah necessitates that, and both states the *Jihād* and the peacemaking are remaining and their verdicts are remaining and none of them is abrogated. And His ﷻ saying:

{وَالَّذِينَ آمَنُوا وَلَمْ يُهَاجِرُوا مَا لَكُمْ مِنْ وَلايَتِهِمْ مِنْ شَيْءٍ حَتَّى يُهَاجِرُوا}

"...And as to those who have believed but did not emigrate (to you O Muhammad), you owe no duty of protection to them until they emigrate..."[301],

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[300] Surah al-Anfāl:61
[301] Surah al-Anfāl:72

they said it is abrogated by His ﷻ saying:

{ وَأُولُو الأَرْحَامِ بَعْضُهُمْ أَوْلَى بِبَعْضٍ فِى كِتَابِ اللَّهِ إِنَّ اللَّهَ بِكُلِّ شَىْءٍ عَلِيمٌ}

"...But kindred by blood are nearer to one another (regarding inheritance) in the decree ordained by Allah. Verily Allah is the All-Knower of everything"[302],

the first Verse denotes the (wilaayah) protection, and the second Verse denotes the priority in the inheritance, and the (wilaayah) protection is other than the (awlawiyah) priority in the inheritance. And His ﷻ saying:

{قُلْ لِلَّذِينَ كَفَرُوا إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ}

"Say to those who have disbelieved, if they cease (from disbelief), their past will be forgiven..."[303],

they said that it is abrogated by His ﷻ saying:

{وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ}

"And fight them until there is no more Fitnah (disbelief and polytheism, i.e. worshipping others besides Allah) and the religion (worship) will all be for Allah alone (in the whole world)..."[304],

apparently there is no contradiction between the two Verses, since the first one is concerning the repentance of the disbeliever, if he believes, his previous sins will be forgiven and it has nothing to do with the fight, and the

[302] Surah al-Anfāl:75
[303] Surah al-Anfāl:38
[304] Surah al-Anfāl:39

second is concerning fighting the disbelievers until there is no (*fitnah*) domination of disbelief and polytheism that may turn the Muslims away from their religion, and the fight until there is no *fitnah* is different to the forgiveness of sins. And thus all the texts they had mentioned and alleged contradiction between them, the scrutinizing shows that there is no contradiction between them; accordingly the allegation that there is contradiction between the two texts has no evidence, and all the texts that appear to be in conflict can be re-conciliated, and the nature of the legislative texts is that some contradiction appears in them to the seer, that is because the situations of the world are different and the abstraction and the generalization are wrong in them, but every situation, every incident, and every matter should be handled separately, and a text should be given to it alone, and nothing of the world situation should be measured by another one (given its verdict) for the suspicion only; because they are basically different to each other, so the text comes to treat the situation, the incident, or the matter, and another text comes for a situation or an incident or a matter different to the first one, but there is little resemblance between them, so the seer would see a contradiction between the two texts, despite that they came for two different matters, so he suspects that contradiction exists, especially that generalizing and abstraction are of the nature of mankind, so because of this generalization and abstraction he falls into mistakes and suspicion that one of the texts contradicts the other, but experts in the situations of the world and their differences, and those knowledgeable in the principles of the legislation and in the (different) incidents perceive the reality of the texts, and they carry every text by its meaning, then it becomes clear that there is no

contradiction. Therefore it is incorrect to allege that this verdict has been abrogated, this text is an abrogator just for the appearance of the contradiction between two texts. Verily there is no contradiction between them, and the allegation of the abrogation is not acceptable without a Shar'i proof that this text is an abrogator, i.e. it is inevitable that the Sharī'ah denotes that this text is the abrogator of that, and there is no abrogation unless there is a Shar'i proof.

الدَّلِيلُ الثَّالِث الإِجْمَاع

The Third Evidence - The Consensus *(al-Ijmā')*

The consensus *(al-Ijmā')* is called in the language with two considerations (meanings): one of them is the determination and the intentness for something, from that is the saying: so and so had determined (*Ajma'a*) on a matter if he intended for it, to this meaning cites the saying of Allah ﷻ:

{فَأَجْمِعُوا أَمْرَكُمْ}

"...So be determined on your plot..."[305],

it means do intend, and in the *ḥadīth* that is mawqouf to Ibn 'Umar: "مَنْ لَم يُجْمِع الصِّيَامَ قَبْلَ الفَجْرِ فَلا صِيَامَ لَـهُ" "He who doesn't intend (yujmi': present and future tense of root *Ijmā'*) the fasting before the Fajr, his fasting is invalid" compiled by al-Tirmidhī, and it is the meaning of the *ḥadīth* of the Messenger ﷺ which is compiled by Ibn Mājah: "لا صِيَامَ لِمَنْ لَم يَفْرِضْـهُ مِنَ اللَّيْلِ" **"No fasting for he who doesn't oblige himself to it from the night"** it means who doesn't intend to perform it from the night. The second meaning is the agreement, and from this is the saying: the people have agreed unanimously (Ajma'a) on a matter, accordingly the unanimous agreement of every people on a matter is called consensus (*Ijmā'*) regardless what matter it is.

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[305] Surah Yūnus:71

The consensus (*Ijmā'*) in the terminology of the scholars of the Fiqh Principles (*al-Uṣūl*) is the unanimous agreement that the verdict of an incident is a Shar'i verdict, but there is disagreement on who are the people whose agreement is considered to be a Shar'i evidence. Some people said: the consensus of the Ummah is a Shar'i evidence; accordingly they defined it to be the agreement of the Ummah of Muhammad ﷺ specifically on a religion matter. And some people said: the *Ijmā'* of the influential people (*Ahlu al-Halli wa al-'Aqdi*) is a Shar'i evidence; accordingly they said: the consensus is the agreement of the influential people of the 'Ummah of Muhammad ﷺ in an era on a verdict of an incident. And some people said: the *Ijmā'* of the scholars (*mujtahideen*) is a Shar'i evidence, they said: the consensus is the agreement of the scholars in an era on a religion matter derived by scholarly analogy (*Ijtihād*). And some people said: the consensus of the scholars of the Madīnah is a Shar'i evidence. And some people said: the consensus of the ('Itrah) family of the Messenger is a Shar'i evidence. And some people said: the consensus of the Khulafā' al-Rāshidīn is a Shar'i evidence. And some people said: the consensus of the *Ṣaḥābah* is a Shar'i evidence and this is the truth. The consensus which is considered to be Shar'i is the *Ijmā'* of the *Ṣaḥābah* only, and the consensus of the others is not considered to be a Shar'i *dalīl*, and the proof that the consensus of the *Ṣaḥābah* is the considered Shar'i *dalīl* is of few matters:

Firstly: they are praised in the Qur'ān and in the *ḥadīth*. In the Qur'ān Allah ﷻ said:

{مُحَمَّدٌ رَسُولُ اللَّهِ وَالَّذِينَ مَعَهُ أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ}

"Muhammad is the Messenger of Allah. And those who are with him are severe against disbelievers and merciful among themselves..."[306],

and He ﷻ said:

{وَالسَّابِقُونَ الأَوَّلُونَ مِنَ الْمُهَاجِرِينَ وَالأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ وَأَعَدَّ لَهُمْ جَنَّاتٍ تَجْرِي تَحْتَهَا الأَنْهَارُ خَالِدِينَ فِيهَا أَبَدًا ذَلِكَ الْفَوْزُ الْعَظِيمُ}

"And the foremost to embrace Islam of the Muhājirūn (those who migrated from Makkah to al-Madinah) and the Anṣār (the citizens of al-Madinah who helped and gave aid to the Muhajiroun) and also those who followed them exactly (in Faith). Allah is well-pleased with them as they are well-pleased with Him. He has prepared for them Gardens under which rivers flow (Paradise), to dwell therein forever. That is the great success"[307],

and He ﷻ said:

{لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلا مِنَ اللَّهِ وَرِضْوَانًا وَيَنْصُرُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ هُمُ الصَّادِقُونَ} {وَالَّذِينَ تَبَوَّءُوا الدَّارَ وَالإِيمَانَ مِنْ قَبْلِهِمْ يُحِبُّونَ مَنْ هَاجَرَ إِلَيْهِمْ وَلا يَجِدُونَ فِي صُدُورِهِمْ حَاجَةً مِمَّا أُوتُوا وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ وَمَنْ يُوقَ شُحَّ نَفْسِهِ فَأُولَئِكَ هُمُ الْمُفْلِحُونَ}

[306] Surah al-Fath:29
[307] Surah al-Tawbah:100

"(And there is also a share in this booty) for the poor emigrants, who were expelled from their homes and their property, seeking Bounties from Allah and to please Him, and helping Allah (i.e. helping His religion) and His Messenger. Those are indeed the truthful} {And (it is also for) those who were before them, had homes (in al-Madīnah) and had adopted the Faith, they love those who emigrate to them, and have no jealousy in their breasts for that which they have been given, and give them (emigrants) preference over themselves even though they were in need of that. And whosoever is saved from his own stinginess, such are they who will be the successful"[308]

And in the *ḥadīth*, Abū Sa'īd al-Khudrī said: the Messenger of Allah ﷺ said: " يَأتِي عَلى النَّاسِ زَمَانٌ, فَيَغْزُ فِئَامٌ مِنَ النَّاسِ, فَيَقُولُونَ: فِيكُمْ مَنْ صَاحَبَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَيَقُولُنَ: نَعَمْ, فَيُفْتَحُ لَهُمْ, ثُمَّ يَأتِي عَلى النَّاسِ زَمَانٌ, فَيَغْزُ فِئَامٌ مِنَ النَّاسِ, فَيُقَالُ: هَلْ فِيكُمْ مَنْ صَاحَبَ أَصْحَابَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَيَقُولُنَ نَعَمْ, فَيُفْتَحُ لَهُمْ, ثُمَّ يَأتِي عَلى النَّاسِ زَمَانٌ, فَيَغْزُ فِئَامٌ مِنَ النَّاسِ, فَيُقَالُ: هَلْ فِيكُمْ مَنْ صَاحَبَ مَنْ صَاحَبَ أَصْحَابَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَيَقُولُنَ: نَعَمْ, فَيُفْتَحُ لَهُمْ" **"A time will come when a troop of people invade, they will say to them: is there among you who accompanied the Messenger of Allah ﷺ, they will say: yes, then they will open for them, then a time will come when a troop of people invade, they will say to them: is there among you who accompanied the companions of the Messenger of Allah ﷺ, they will say: yes, then they will open for them, then a time will come when a troop of people invade, they will say to them: is there among you who accompanied those who accompanied the companions of the Messenger of Allah ﷺ, they will say: yes, then they will open for them"** compiled by al-Bukhārī, praising the *Ṣaḥābah* is clear in this *ḥadīth*, he made the

[308] Surah al-Hashr:8-9.

conquest for them, for those who accompanied them, and for those who accompanied who accompanied them as an honour to them. And the Messenger ﷺ said: " إِنَّ اللهَ اخْتَارَ أَصْحَابِي عَلَى العَالَمِينَ سِوَى النَّبِيِّينَ وَالمُرْسَلِينَ" **"Verily Allah ﷻ had preferred my companions over mankind except the Prophets and the Messengers"** compiled by al-Bazzaar, and he said: "اللهَ اللهَ فِي أَصْحَابِي" "Allah Allah in my companions" compiled by Ibn Hibbān, (it means utter the name of Allah and praise Him when mentioning my companions, and fear Allah ﷻ in them, praise, honour, and respect them), and he ﷺ said: "أَصْحَابِي كَالنُّجُومِ, بِأَيِّهِمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ" " **"My *Ṣaḥābah* are like the stars whichever of them you follow you will be guided"** compiled by Ruzayn. This praising from Allah ﷻ and from the Messenger ﷺ denotes that their sayings are considered and their truthfulness is certain, and although the praising alone is not a proof that their consensus is a Shar'i evidence, it is a proof that their truthfulness is decisive, hence considering their sayings is a decisive matter, so if they had consented on a matter, their consensus is decisively truth and those who were after them are not as such. It is not right to say that Allah ﷻ had also praised (al-Taabi'een) the followers of the *Ṣaḥābah* so their sayings are also decisively truth; it is not right to say that because praising the Taabi'een is not absolute for all of them as it is for the *Ṣaḥābah*, but it came restricted to those who follow the *Ṣaḥābah* righteously, so He restricted the Taabi'een by righteousness not the absolute Taabi'een; therefore not all the Taabi'een's sayings are considered to be decisively truth, but only the sayings of the righteous Tābi'īn are considered to be decisively truth; therefore if they had consented on a matter, their consensus shouldn't be considered as decisively truth. And some one may say that Allah ﷻ had praised some specific individuals of the

Ṣaḥābah, He praised al-Khulafā' al-Rāshidīn, and He praised many of the *Ṣaḥābah* individually like Abū Bakr, 'Umar, 'Ali, 'Ai'shah, Faatimah, al-Zubair, and Sa'd Ibn Abi Waqqaas, He praised the *Anṣār*, and the Muslim Ummah and not only the *Ṣaḥābah*, so why is their consensus considered to be truth and the other's isn't decisively truth? The answer to this is:

Firstly: the praise of some specific individuals of the *Ṣaḥābah* came in the indecisive evidence not in the decisive evidence, the praise to the Muslim 'Ummah and the praise to individuals of the *Ṣaḥābah* came in individuals (*Āhād*) *aḥādīth* and didn't come in the *Mutawātir*, it didn't come in the Qur'ān, nor did it come in the *Mutawātir ḥadīth*; therefore the praise that come in the individual report doesn't make the saying of the praised person decisively truth, this is contrary to the whole *Ṣaḥābah* in their capacity as they are *Ṣaḥābah*, praising them came in the Qur'ān which is a decisive evidence; therefore their consensus is decisively truth. And some one may say that the praise came to the family of the Messenger (*Aal al-Bayt*) in the decisive evidence, it came in the Qur'ān, Allah ﷻ said:

{إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا}

"...Allah wishes only to remove (al-Rijs) the evil deeds and sins from you, O members of the family (of the Prophet), and to purify you with a thorough purification"[309],

and this is a praise to Aal al-Bayt, so their sayings are decisively truth, and therefore their consensus is decisively

[309] Surah al-Aḥzāb:33

truth. The answer to this is the *Āyah* is authentically decisive, but its denotation is not decisive, some say that Aal al-Bayt are: 'Ali, Faatimah, and their two sons (RA); because when this *Āyah* came down the Messenger ﷺ wrapped them with his garment and said: "اللهُمَّ هَؤُلاَءِ أَهْلُ بَيْتِي" O Allah these are the members of my family" compiled by al-Tirmidhī. And there is who says that Ahl al-Bayt are those and the wives of the Prophet ﷺ and this is denoted by what came before and After this *Āyah*, as to what came before it, it is what Allah ﷻ said:

{يَا نِسَاءَ النَّبِيِّ لَسْتُنَّ كَأَحَدٍ مِنَ النِّسَاءِ إِنِ اتَّقَيْتُنَّ}

"O wives of the Prophet! You are not like any other women, if you keep your duty (to Allah)..."[310],

to His saying:

{وَأَطِعْنَ اللَّهَ وَرَسُولَهُ }

"...and obey Allah and His Messenger...",

and as to what is after it, it is the saying of Allah ﷻ:

{وَاذْكُرْنَ مَا يُتْلَى فِي بُيُوتِكُنَّ مِنْ آيَاتِ اللَّهِ وَالْحِكْمَةِ}

"And remember O you Prophet's wives, (the Graces of your Lord), that which is recited in your houses of the Verses of Allah and al-Hikmah (i.e. Prophet's Sunnah)..."[311]

Accordingly the denotation of this *Āyah* is not decisive but indecisive, so according to the two interpretations (*tafsīr*) it cannot be an evidence that the consensus of Ahl al-Bayt is

[310] Surah al-Aḥzāb:32
[311] Surah al-Aḥzāb:34

decisively truth, because if the word Ahl al-Bayt got interpreted by its linguistic meaning only, without a Shar'i evidence that the Sharī'ah had composed for it s meaning other than the linguistic one, then its denotation would be decisive, and the consensus of Ahl al-Bayt according to the linguistic meaning of the word Ahl al-Bayt, that is his ﷺ wives and his children and their children, then its denotation would be decisive, but since there is disagreement in its interpretation, and a Shar'i evidence was narrated that there is a Shar'i meaning for the Word {أَهْلَ} Ahl, so the denotation of the *Āyah* becomes indecisive, so it is not a decisive evidence. From all this it is clear that the praise came in the decisive evidence for the *Ṣaḥābah* only, so their consensus only is decisively truth.

Secondly: it is the *Ṣaḥābah* who gathered the Qur'ān, and they are the ones who memorized it, and transferred it to us, and Allah ﷻ says:

{إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ}

"Verily, it is We (Allah) Who have sent down the Zthikr (the Qur'ān) and surely, We will guard it (from corruption)"[312],

so this which they transferred is the selfsame that Allah had preserved, so the *Āyah* denotes the truth of their consensus in transferring the Qur'ān, because Allah ﷻ had promised to preserve it, and they are who collected it, preserved it, and transferred it as it came down, so this is an evidence for the truthfulness of their *Ijmā'*, because guarding the Qur'ān that is mentioned in the *Āyah* means preserving it from the loss, and the *Ṣaḥābah* are who preserved it from the loss

[312] Surah al-Hijr:9

after the death of the Messenger ﷺ, they memorized it gathered it, and transferred it to us by the decisive way, so it is them who performed what Allah had promised of guarding the Qur'ān, and guarding it, gathering it, and transferring was only by their consensus, so the *Āyah* is an evidence for the truthfulness of their consensus.

Thirdly: mentally it is not impossible that the *Ṣaḥābah* consent on error; because they are not infallible, so mistake is possible for them individually and collectively, so their consent on a mistake is not impossible mentally, but it is impossible for them by the Sharī'ah to consent on mistake; because if their consensus can be mistaken then it is possible for the religion to have mistakes; because it is them who transferred this religion to us by their consensus that this religion is what Muhammad ﷺ brought, and from them we received our religion, so if the mistake is possible in their consensus then it is possible in the Qur'ān; because they transferred the Qur'ān to us by their consensus that this Qur'ān is the selfsame that was descended to Muhammad ﷺ, and from them we received it. And since it is impossible for the religion to include a mistake, as the decisive evidence on its truthfulness has been established, and since the mistake is impossible to be in the Qur'ān, the decisive evidence had been established that no falsehood can come to it from before it nor from behind it, Allah ﷻ said:

{لا يَأْتِيهِ الْبَاطِلُ مِنْ بَيْنِ يَدَيْهِ وَلا مِنْ خَلْفِهِ}

"Falsehood cannot come to it (the Qur'ān) from before it nor from behind it..."[313],

[313] Surah Fussilat:42

hence by the Sharī'ah it is impossible for the consensus of the *Ṣaḥābah* to be in a mistake. And this is a decisive evidence that their consensus is a Shar'i evidence. Also their *Ijmā'* that this is the religion that Muhammad ﷺ brought and their *Ijmā'* that this Qur'ān is the selfsame that got descended by revelation from Allah ﷻ onto Muhammad ﷺ, the decisive evidence has been established on the validity of this consensus by establishing the decisive evidence on the truthfulness of this religion, and by establishing the decisive evidence that falsehood cannot come into the Qur'ān from before it nor from behind it, hence the decisive evidence is established that the consensus of the *Ṣaḥābah* is a Shar'i proof. Accordingly, since it is impossible by the Sari'ah that error occurs in the consensus of the *Ṣaḥābah*, for the impossibility of the error to occur in the religion and in the Qur'ān, it is a decisive evidence that their consensus is a Shar'i evidence. And since the decisive evidence on the truthfulness of their consensus in transferring the religion and the Qur'ān has been established, it is a decisive evidence on the truthfulness of their consensus and that it is a Shar'i proof. And this doesn't exist in the consensus of the others at all not in their time and not in later after them, accordingly the consensus of the *Ṣaḥābah* is the only consensus considered a Shar'i evidence.

Fourthly: The consensus of the *Ṣaḥābah* refers to the Sharī'ah text itself, for they didn't consent on a verdict unless they had a Shar'i evidence from the saying, the action or the approval of the Messenger ﷺ that they relied on it, so their *Ijmā'* had disclosed an evidence, and this is not attainable to other than the *Ṣaḥābah*; because it is them who accompanied the Messenger ﷺ and from them we have received our religion, therefore their consensus is the proof

and other than that is not a proof, for the *Ṣaḥābah* didn't consent on a matter unless they had a Shar'i evidence for it they didn't narrate it, so the consensus of the *Ṣaḥābah* is a Shar'i evidence for the quality that it discloses an evidence, not for the quality that it is their own opinion. So the correspondence of the opinions of the *Ṣaḥābah* on a matter is not considered a Shar'i evidence, and their consensus on an opinion of their own is not considered Shar'i evidence, but their consensus that this verdict is a Shar'i verdict, or that the Shar'i verdict of a certain incident is so, or that the verdict of the so and so incident is so, this consensus is the Shar'i evidence. So the considered consensus of the *Ṣaḥābah* is only their consensus that a certain verdict is a Shar'i verdict, for it shows that there is a Shar'i evidence for this verdict, and that they had narrated the verdict and didn't narrate the evidence.

It might be said that the consensus of the Ummah that is invoked by the mass of scholars (al-Jumhoor) is inevitable to be based on a text or an analogy, i.e. it is inevitable to have a Shar'i evidence, so it can be considered that it discloses an evidence too. The answer to this is that it is not attainable to who didn't see the Messenger ﷺ to make his saying disclose an evidence; because the disclosure of the evidence is only attainable to those who heard or saw the Messenger ﷺ; because his saying, action, and approval are the evidence, and anything other than that is not an evidence, so the disclosure of the evidence is attainable to who transferred it not to who narrated it. The transference is taking the text from its originator, and the narration is taking the text from who narrated it, so the disclosure of the evidence cannot be attained except from the transferor, it cannot be attained from the narrator, and this (ability)

doesn't exist except in the *Ṣaḥābah*; because they are the people who saw the Messenger; therefore it is incorrect to say that the consensus of the Ummah discloses an evidence, but should be said that it is based on evidence then the evidence they are based on it is the proof not their consensus.

And it might be said that the consensus of the ('Itrah) family of the Messenger ﷺ discloses an evidence, and since they had seen the Messenger ﷺ their consensus is a proof. The answer to that is: if Ali, Faatimah, and their sons are what is meant by the 'Itrah, this is true, they did accompany the Messenger ﷺ and saw him, so they are from the *Ṣaḥābah*, and this saying is applicable to them; because they are from the *Ṣaḥābah*, but they are not all the *Ṣaḥābah*, so what is applicable to the *Ṣaḥābah* is applicable to them, so they are allowed to narrate the verdict without the evidence, but that would not be a Shar'i proof; because the decisive evidence for those whose consensus is impossible to be wrong is established for the consensus of the *Ṣaḥābah*, it is not established for the consensus of the 'Itrah; therefore what is considered that it discloses an evidence is only the consensus of the *Ṣaḥābah*, not the individuals of the *Ṣaḥābah*, so the consensus of the 'Itrah is not a Shar'i evidence, even though they had seen the Messenger and accompanied him. But if what is meant by the 'Itrah are whoever came after those from the offspring of al-*ḥasan* and al-Husayn, it is incorrect to say that their saying discloses an evidence; because they hadn't seen the Messenger and didn't transfer from him. And if they had an evidence narrated from them that is because they narrated it by taking it from other than the Messenger ﷺ, so their saying does not disclose an evidence.

These matters are decisive evidence that the *Ijmā'* of the *Ṣaḥābah* is a Shar'i evidence, and the fact that error is impossible by the Sharī'ah to be in their consensus is a sufficient evidence that their consensus is a Shar'i evidence, and this is lacked in the others' consensus. By that the decisive evidence is established that the consensus of the *Ṣaḥābah* is a Shar'i evidence.

كُلُّ إِجْمَاعٍ غَيْرِ إِجْمَاعِ الصَّحَابَةِ لَيْسَ بِدَلِيلٍ شَرْعِيٍّ

Every Consensus other than the Consensus of the *Ṣaḥābah* is Not a Shar'i Evidence

Every consensus other than the consensus of the *Ṣaḥābah* is not a Shar'i evidence; because the decisive evidence is not established that it is a Shar'i evidence, and all the proofs by which they inferred are indecisive evidences, and despite that they are not decisive but indecisive, they have no point of inference that the consensus they designate is a Shar'i evidence. Concerning the consensus of the nation (al-Ummah), the consensus of the influential people (*Ahlu al-Halli wa al-'Aqdi*), and the consensus of the scholars (Mujtahideen), they said that the consensus of the Ummah is a Shar'i proof, and they inferred that from the saying of Allah ﷻ: {وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَى وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّى وَنُصْلِهِ جَهَنَّمَ وَسَاءَتْ مَصِيرًا} {And whoever contradicts and opposes the Messenger (Muhammad ﷺ after the guidance has been shown clearly to him, and follows other than the believers' way, We shall keep him in the path he has chosen, and burn him in Hell - what an evil destination} 115 Surah al-Nisā', and the point of inference in this *Āyah* is that Allah ﷻ have threatened for following

other than the believers' way, and if it is not a forbidden matter He wouldn't had threatened for it, and it wouldn't be fit to gather it in the threat to a forbidden matter which is opposing the Messenger ﷺ, as it is not fit to gather between the disbelief and eating bread which is permissible, accordingly following other than the believers' way is forbidden, and since following other than their way is forbidden, it is obligatory to follow their way; because there is no other options, and there is no means between them. And the obligation of following them necessitates that the consensus of the Ummah is a proof; because the way of the person is what he chooses of saying or action or belief. The answer to this is from three directions:

One of them: Although the *Āyah* is authentically decisive, its denotation is indecisive, so it is not a sufficient evidence that the *Ijmā'* of the Ummah is a Shar'i evidence; because it is inevitable to prove it by the decisive evidence, and the indecisive evidence is not sufficient for it.

The second: the guidance in the *Āyah* means the evidence of the unity of Allah ﷻ and the Prophet hood of the Muhammad ﷺ and it doesn't mean the Shar'i verdict; because the guidance (al-huda) is in the belief principles and opposite to it is the misguidance (al-dhalaal). And following the branches is not called guidance, as not following them is disobedience (fisq). But the believers' way by which they became believers is the unification, and it doesn't necessitate following them in the permissible, nor does it necessitate the forbiddance of everything different to their way, but this is applicable in one figure, it is the disbelief and the likes in the principles of the religion in which is no disagreement. And what denotes that it is obligatory to follow the believers' way by which they became believers is

that the Verse was descended in a man who apostatized, and the cause of the descent of the *Āyah* is what determines the subject that it got descended for, although it is general for all which the subject is applicable to them, so the *Āyah* is special in the apostasy, it is not general for all the believers' ways.

The third: the prohibition of something doesn't mean the command of its opposite, that means the forbiddance of something doesn't mean the obligation of performing its opposite; because the denotation of the prohibition and the command is a linguistic denotation, it is not mental nor is it logical. So if the Sharī'ah commands to do something, it doesn't mean that it prohibits its opposite, and if it prohibits something it doesn't mean that it commands its opposite. Accordingly the prohibition of following other than the believers' way doesn't mean the command of following their way, but the command of following their way needs another text that denotes the command, accordingly the forbiddance of following other than the believers' way doesn't mean the obligation of following their way.

By these three directions it appears clearly that the *Āyah* is not a sufficient proof that the consensus of the Ummah is a Shar'i evidence, so the inference by it doesn't stand up.

They also said: the Sunnah is an evidence that the consensus of the Ummah is a proof, many narrated *aḥādīth* denote that the Ummah's consensus is a Shar'i evidence, some of them are narrated by some honorable *Ṣaḥābah* like 'Umar Ibn al-Khadtaab, Abdullah Ibn Mas'ūd, Abū Sa'īd al-Khudrī, Anas Ibn Mālik, Abdullah Ibn 'Umar, Abū Hurayrah, Huzthayfah Ibn al-Yamman and others, by narrations of different expressions but compatible in the

meaning in denoting the infallibility (*'Ismah*) of the Ummah from the error and misguidance, like his ﷺ saying: "أُمَّتِي لاَ تَجْتَمِعُ عَلَى ضَلاَلَةٍ" "My nation does not gather on a misguidance " " My nation does not gather on an error " narrated by Ibn Mājah, " وَإِنَّ اللهَ عَزَّ وَجَلَّ لَمْ يَكُنْ لِيَجْمَعَ أُمَّةَ مُحَمَّدٍ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَى ضَلاَلَةٍ" "Allah the Almighty never gathers the Ummah of Muhammad ﷺ on a misguidance" narrated by al-Ṭabarānī in his book *al-Kabīr*, "سَأَلْتُ اللهَ عَزَّ وَجَلَّ أَنْ لاَ يَجْمَعَ أُمَّتِي "," لَمْ يَكُنْ اللهُ لِيَجْمَعَ أُمَّتِي عَلَى الخَطَإِ" عَلَى ضَلاَلَةٍ فَأَعْطَانِيهَا" "Allah never gathers my Ummah on an error", "I supplicated to Allah the Almighty to gather not my Ummah on a misguidance and He granted it to me" narrated by Aḥmad. And like the saying of Ibn Mas'ūd: " فَمَا رَأَى المُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللهِ حَسَنٌ" "Whatever the Muslims see as good, it is good in the sight of Allah" narrated by Aḥmad, "يَدُ اللهِ مَعَ الجَمَاعَةِ, وَمَنْ شَذَّ شَذَّ إِلَى النَارِ" The hand of Allah is with the *Jamā'ah*, and whoever deviates he deviates to hellfire" compiled by al-Tirmidhī, " فَمَنْ سَرَّهُ بَحْبُوحَةُ الجَنَّةِ فَلْيَلْزَمِ الجَمَاعَةَ, فَإِنَّ يَدَ اللهِ مَعَ الجَمَاعَةِ, وَإِنَّ الشَّيْطَانَ مَعَ الوَاحِدِ, وَهُوَ مِنَ الإِثْنَيْنِ أَبْعَدُ" "Whoever seeks the pleasure of the affluence of paradise he should remain with the *Jamā'ah* (of Muslims), verily Allah's hand is with the *Jamā'ah*, and the devil is with the one, and he is farer from the two" narrated by al-Ṭabarānī in *al-Awsaṭ*, " مَنْ خَرَجَ مِنَ الجَمَاعَةِ وَفَارَقَ الجَمَاعَةَ قَيْدَ شِبْرٍ فَقَدْ خَلَعَ رِبْقَةَ الإِسْلاَمِ مِنْ عَنُقِهِ" "He who dissents from the *Jamā'ah* and breaks away from the *Jamā'ah* by a hand span, he removes the Islamic tie from his neck" narrated by Aḥmad, "مَنْ فَارَقَ الجَمَاعَةَ شِبْرًا فَمَاتَ إِلَّا مَاتَ مِيتَةً جَاهِلِيَّةً" "Whoever distances himself from the *Jamā'ah* by a hand span then dies, he dies an ignorance death" compiled by al-Bukhārī. And Aḥmad had compiled: "الجَمَاعَةُ رَحْمَةٌ وَالفُرْقَةُ عَذَابٌ" "There is mercy in the *Jamā'ah* and in the separation there is anguish" then Abū Umaamah al-Baahily said: " عَلَيْكُمْ بِالسَّوَادِ

الأَعْظَمِ" "وَإِنَّ أُمَّتِي سَتَفْتَرِقُ عَلَى ثِنْتَيْنِ وَسَبْعِينَ فِرْقَةً كُلُّهَا فِي النَّارِ إِلَّا وَاحِدَةً وَهِيَ الجَمَاعَةُ" "I recommend to you the great majority", "And my nation will separate to seventy two sects all of them are in hellfire except one and that is the *jamā'ah*" compiled by Ibnu Mājah, "لاتَزَالُ طَائِفَةٌ مِنْ أُمَّتِي عَلَى الحَقِّ ظَاهِرِينَ عَلَى مَنْ نَاوَأَهُمْ حَتَى يَأْتِيَ أَمْرُ اللهِ تَبَارَكَ وَتَعَالَى" "A group of my Ummah will remain on the truth, they are victorious over their opposes them until the matter (victory) of Almighty Allah comes" compiled by Aḥmad, "لاَ تَزَالُ طَائِفَةٌ مِنْ أُمَّتِي قَوَّامَةً عَلَى أَمْرِ اللهِ, لاَ يَضُرُّهَا مَنْ خَالَفَهَا" "A group of my Ummah will remain steadfast on the matter of Allah unharmed by whoever opposes them" compiled by Ibnu Mājah, and many other uncountable *aḥādīth* that are still known clearly among the *Ṣaḥābah*, still practiced, no denier had denied them, and no refuter had refuted them, and they are a proof that the consensus of the Ummah is a Shar'i evidence.

The answer to that is from three directions:

One of them: All of these *aḥādīth* are individuals' reports, they do not reach the level of the tawaatur authenticity and they don't denote certainty, so are not capable to prove that the consensus of the Ummah is a Shar'i evidence; because the consensus is from the principles of the Sharī'ah, so it is inevitable to have a decisive evidence for it; therefore the inference by them upon this matter is rejected and they fall from the level of inference. If they say: although not every one of these *aḥādīth* is *mutawātir*, the common portion between them which is the infallibility of the Ummah is *mutawātir* because it came in these reports. The answer to this is: the common portion in these individuals' *aḥādīth* doesn't decisively denote the infallibility of the Ummah, but it denotes the praise for the gathering of the Ummah not for its separation, and that

doesn't make them *mutawātir* in the infallibility of the Ummah. Anyhow they are still individuals' reports and don't rise up to the *mutawātir* level, so they are still insufficient to be a decisive proof for one of the religion's principles.

The second direction: these *aḥādīth* are four divisions:

The first division: the *aḥādīth* that literally say that the Ummah doesn't unite on misguidance, and this is not a proof that the consensus is a Shar'i evidence; because the meaning of not uniting on misguidance is not uniting on leaving Islam, that means it will not unite on the apostasy from Islam: because the misguidance (Dhalaal and Dalaalah) is quitting the religion, that means Allah ﷻ preserves this Ummah from uniting to quit the Islamic religion and apostate from it. And the fact that Allah ﷻ preserves the Ummah from apostasy is not a proof that its consensus is a Shar'i evidence.

The second division: the *aḥādīth* that literally urge to be associated with the *Jamā'ah* and not dissenting from it, and these have no place of inference (for the consensus issue); because preserving the Ummah as a *Jamā'ah*, and not separating and dissenting from it, does not mean its that consensus is a Shar'i *dalīl*, and they are irrelevant to this issue, for they are two different issues completely separated from each other. The unity of the Ummah as it came in *aḥādīth* it came in Verses, like His ﷻ saying: {...وَلا تَفَرَّقُوا...} {...and divide not among yourselves...} 103 Surah Āli 'Imrān, so the urge to be gathered and not divided doesn't denote that the consensus of the Ummah is a proof; therefore there is no place of inference in these *aḥādīth* that the consensus of the Ummah is shar'i evidence.

The third division: the *aḥādīth* that literally say that a part of this Ummah remains adherent to the truth (al-Haqq). The truth is opposite to the falsehood (al-baadtil) and not opposite to the right (al-sawaab), so the adherence to the truth does not mean not making an error, rather it means not falling in the falsehood, and the falsehood is that which has no basis, or that which never been legislated, that means the negation that the Ummah consents on falsehood, which is similar to not consenting on going astray, so that is not a suitable evidence that the Ummah does not consent on making an error, moreover the existence of a part of the Ummah that remains on the truth does not mean that the Ummah consents on the right; because the required evidence should be that the consensus of the Ummah on something is a proof, not that the non consensus of it on something is a proof, so the required evidence is the affirmative not the negative (that is due to the fact that the existence of a part of the Ummah that remains adherent to the truth means that the Ummah does not consent on falsehood), so the fact that a part of the Ummah remains on the truth doesn't necessitate that the consensus of the Ummah is right, it rather necessitates its non consensus (on falsehood), and the required evidence is the consensus not the non consensus, accordingly also from this direction the *aḥādīth* that told about the existence of a part of the Ummah that remains on the truth are not sufficient evidence that the *Ijmā'* of the Ummah is a Shar'i evidence.

The fourth division: the *aḥādīth* that literally told that the Ummah never consents on an error. These *aḥādīth* are weak narrations because the *ḥadīth* originally says: **"My nation does not unite on a misguidance"** and in one narration it says: **"...on an error"**, and the other *ḥadīth* says:

"Allah never gather my Ummah on misguidance" and it is also narrated as: **"...not even on an error"**, and this is a weak narration; therefore the Imām al-Fakhr al-Raazi considered the inference from all these *aḥādīth* to be weak, he said: "the allegation of the meaning twaator is far; because we don't accept that these reports have reached the extent of *tawātur*, so what is the evidence for it? (In his estimation it benefits fame to the *ḥadīth*); because what is decisively common in them is praising the Ummah, and that does not necessitate negating the error from them, since the negation of error is not stated in all the *aḥādīth*".

The third direction: these *aḥādīth* are encountered by other *aḥādīth* in which the Messenger ﷺ had dispraised the late eras. It is narrated from Imraan Ibn Housayn ﷺ that he said: the Messenger of Allah ﷺ said: " خَيرُ أُمَّتِي قَرْنِي, ثُمَّ الَّذِينَ يَلُونَهُمْ, ثُمَّ الَّذِينَ يَلُونَهُمْ، قَالَ عِمْرَانُ: فَلا أَدْرِي أَذَكَرَ بَعْدَ قَرْنِهِ قَرْنَيْنِ أَوْ ثَلاَثًا. ثُمَّ إِنَّ بَعْدَكُمْ قَوْمًا يَشْهَدُونَ وَلاَ يُسْتَشْهَدُونَ، وَيَخُونُونَ وَلاَ يُؤْتَمَنُونَ، وَيَنْذُرُونَ وَلا يُوفُونَ، وَيَظْهَرُ فِيهِمُ السَّمَنُ" **"The best of my nation are those of my century, then those who come after them, then those who come after them, Imraan said: I don't know did he mention two or three centuries after his. Then people will come after you they testify without being asked to give testimony, they betray and cannot be trusted, they vow and don't fulfill, and obesity appears on them"** compiled by al-Bukhārī. And from Ibrāhīm 'Ubaydah from Abdullah ﷺ that the Prophet ﷺ said: " خَيرُ النَّاسِ قَرْنِي، ثُمَّ الَّذِينَ يَلونَهُمْ، ثُمَّ الَّذِينَ يَلُونَهُمْ، ثُمَّ يَجِيءُ مِنْ بَعْدِهِمْ قَومٌ تَسْبِقُ شَهَادَتُهُمْ أَيْمَانَهُمْ ، وَأَيْمَانُهُمْ شَهَادَتَهُمْ" **"The best people are those of my century, then those who come after them, then those who come after them, then will come people whom the testimony of the one of them will be uttered before his oath, and his oath before his testimony"** compiled by al-Bukhārī. And he ﷺ said: " ثُمَّ يَفْشُو الكَذِبُ, حَتَّى يَحْلِفَ الرَّجُلُ وَلا يُسْتَحْلَفُ وَيَشْهَدَ الشَّاهِدُ وَلا

يُسْتَشْهَدُ" **"Then lie will spread so that the man will make the oath without being asked to do so, and the witness gives a testimony without being asked to testify"** compiled by al-Tirmidhī, and other similar *aḥādīth* that encounter the *aḥādīth* that negate the unity of the Ummah on an error, rather they denote the dispraise of the eras, that means there will be error in them, lie, betrayal, treachery and the like will be in them which denotes that their consensus has not legal (Shar'i) value for the existence of whose testimony isn't accepted among them, and this contradicts the previous *aḥādīth* which praised the Ummah in every era, but these *aḥādīth* had dispraised the late eras, which means dispraising the Ummah in the late eras when the lie and corruption appear; therefore those *aḥādīth* are not a proof that the consensus of the Ummah in every era is a Shar'i evidence; because its consensus in the late eras is invalid for the appearance of the corruption and the lie; therefore those *aḥādīth* should be considered for the early eras only, and that is the era of the Messenger and the era of the *Ṣaḥābah*, so they are a sufficient evidence for consensus of the Ummah in the era of the Messenger and the era of the *Ṣaḥābah*, and they are not a valid proof for the late eras.

These three directions prove that all these *aḥādīth* are not a valid proof that the consensus of the Ummah is a Shar'i evidence, so the inference from them drops down, and since the inference from them that the consensus of the Ummah is a Shar'i evidence had dropped down, also the inference from them that the *Ijmā'* of the influential people is a Shar'i evidence had dropped down with greater reason, also the inference from those *aḥādīth* that the consensus of the scholars is a Shar'i evidence had dropped down; because whoever advocated that, they inferred from them, and since

they are not a valid proof for the consensus of the Ummah despite that they literally stated the believers and the Ummah, then they are not a valid evidence for the consensus of the influential people, nor for the consensus of the scholars and they are not stated in them, but they are taken from the word: the believers and from the word: al-Ummah, and thus the idea that the consensus of the Ummah, and the consensus of the influential people, and the consensus of the scholars are Shar'i evidence is rejected, and it became apparent that every consensus of them is not a Shar'i evidence.

As for the consensus of the 'Itrah, they said: the consensus of Ahl al-Bayt is a Shar'i evidence, and they meant by Ahl al-Bayt: Ali, Fatimah, and their sons, and they inferred that from the saying of Allah ﷻ: {... إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا} {... Allah wishes only to remove al-Rijs (evil deeds and sins) from you, O members of the family (of the Prophet ﷺ), and to purify you with a thorough purification} 33 Surah al-Aḥzāb, He informed about removing the evil deeds from Ahl al-Bayt by the expression "إِنَّمَا" "only" which denotes the limitation to them. And they inferred from the action of the Messenger ﷺ that Ahl al-Bayt in the *Āyah* are Ali, Fatimah, and their sons, that when the *Āyah* came down the Prophet ﷺ covered them by his garment and said: "اللَّهُمَّ هَؤُلاَءِ أَهْلُ بَيتي" "O Allah these are my Family" compiled by al-Tirmidhī, they also inferred that consensus of the 'Itrah is a proof from his ﷺ saying: " إِنِّي تَارِكٌ فِيكُمْ مَا إِنْ تَمَسَّكْتُمْ بِهِ لَنْ تَضِلُّوا بَعْدِي, أَحَدُهُمَا أَعْظَمُ مِنَ الآخَرِ: كِتَابُ اللهِ حَبْلٌ مَمْدُودٌ مِنَ السَّمَ
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the consensus of the 'Itrah is a Shar'i evidence; because that needs a decisive evidence, and this is an indecisive evidence.

Secondly: the word rijs means the filth, and removing the rijs is removing the filth, and it means here the moral filth which is the suspicion and the accusation as it is clear in the sentences of the two Verses before this sentence: {يَا نِسَاءَ النَّبِيِّ لَسْتُنَّ كَأَحَدٍ مِنَ النِّسَاءِ إِنِ اتَّقَيْتُنَّ فَلا تَخْضَعْنَ بِالْقَوْلِ فَيَطْمَعَ الَّذِي فِي قَلْبِهِ مَرَضٌ وَقُلْنَ قَوْلا مَعْرُوفًا} {وَقَرْنَ فِي بُيُوتِكُنَّ وَلا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الأُولَى وَأَقِمْنَ الصَّلاةَ وَآتِينَ الزَّكَاةَ وَأَطِعْنَ اللَّهَ وَرَسُولَهُ إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا} {O wives of the Prophet, You are not like any other women, if you keep your piety (your duty to Allah), then be not soft in speech, lest he in whose heart is a disease (of hypocrisy, or evil desire) have hope with desire, but speak in an honourable manner} {And stay in your houses, and do not display yourselves like that of the times of ignorance, and perform the *ṣalāh*, and give the *Zakāh* and obey Allah and His Messenger. Allah wishes only to remove al-rijs (evil deeds and sins) from you, O members of the family of the Prophet, and to purify you with a thorough purification} 32-33 Surah al-Aḥzāb. The word rijs came in the meaning of the moral filth in few Verses, Allah ﷻ said: {فَاجْتَنِبُوا الرِّجْسَ مِنَ الأَوْثَانِ} {So shun the (rijs) abomination of worshipping of idol} 30 Surah al-Hajj, and He ﷻ said: {كَذَلِكَ يَجْعَلُ اللَّهُ الرِّجْسَ عَلَى الَّذِينَ لا يُؤْمِنُونَ} {Thus Allâh puts the (rijs) wrath on those who believe not} 125 Surah al-An'aam, and He ﷻ said: {وَيَجْعَلُ الرِّجْسَ عَلَى الَّذِينَ لا يَعْقِلُونَ} {And He will put the wrath on those who are heedless} 100 Surah Yoonus, and He Te'ala said: {إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالأَنْصَابُ وَالأَزْلامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ} {O you who have believed, the intoxicants, and gambling, and al-Ansaab (Animals that are sacrificed (slaughtered) for the idols), and al-Azlaam (arrows for seeking luck or decision) are (rijs) an abomination of Shaitan's (Satan) deeds} 90 Surah al-

Mā'idah, they all have the meaning of moral filth, so His ﷻ saying: {إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا} {Allah wishes only to remove al-Rijs (evil deeds and sins) from you, O family (of the Prophet ﷺ)} means to remove from you the moral filth, i.e. the accusation; accordingly the removal of the rijs from them doesn't necessitate the banishment of error from them. And the error in the *Ijtihād* is not rijs, rather the *mujtahid* who makes it gets rewarded for it, due to the saying of the Messenger ﷺ: " إِذَا حَكَمَ الحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ, وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ" "If the judge is to issue a judgment performs *Ijtihād* and comes with the right outcome he gets two rewards, and he is to issue a judgment performs *Ijtihād* and makes an error he gets one reward" compiled by al-Bukhārī and Muslim, so this denotes the banishment of the rijs from the family of the Prophet not the banishment of the error; because the error is not of the rijs. Moreover His ﷻ saying: {إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ} {Allah wishes only to remove al-Rijs (evil deeds and sins) from you} does not limit the removal of the rijs to the Ahl al-Bayt, but as He removes from them He removes from the others, and the particle "إِنَّمَا" doesn't have (*mafhūm* al-mukhaalafah) an incompatibility connotation; because it can be used for the limitation and for the confirmation, so the incompatibility connotation of it is should not be used, and banishing the rijs from Ahl al-Bayt doesn't mean not banishing it from the others. Also the Verse came down with regard to the wives of the Prophet ﷺ due to those which came before it and after it prove, as this Verse is a part of three Verses. Allah ﷻ said: {يَا نِسَاءَ النَّبِيِّ لَسْتُنَّ كَأَحَدٍ مِنَ النِّسَاءِ إِنِ اتَّقَيْتُنَّ فَلا تَخْضَعْنَ بِالْقَوْلِ فَيَطْمَعَ الَّذِي فِي قَلْبِهِ مَرَضٌ وَقُلْنَ قَوْلا مَعْرُوفًا} {وَقَرْنَ فِي بُيُوتِكُنَّ وَلا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الأُولَى وَأَقِمْنَ الصَّلاةَ وَآتِينَ الزَّكَاةَ وَأَطِعْنَ اللَّهَ وَرَسُولَهُ إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا} {وَاذْكُرْنَ مَا يُتْلَى فِي بُيُوتِكُنَّ مِنْ آيَاتِ اللَّهِ وَالْحِكْمَةِ إِنَّ

{O wives of the Prophet, You are not like any other women, if you keep your piety (duty to Allah), then be not soft in speech, lest he in whose heart is a disease (of hypocrisy, or evil desire) have hope with his desire, but speak in an honourable manner} {And stay in your houses, and do not display yourselves like that of the times of ignorance, and perform the *ṣalāh*, and give the *Zakāh* and obey Allah and His Messenger. Allah wishes only to remove al-rijs (evil deeds and sins) from you, O members of the family of the Prophet, and to purify you with a thorough purification} {And remember (O Prophet's wives, the Graces of your Lord), that which is recited in your houses of the Verses of Allah and al-Hikmah (i.e. Prophet's Sunnah), verily Allah is Ever Most Courteous, Well acquainted with all things} 32-34 Surah al-Aḥzāb. These Verses came down with regard to the Messenger's wives due to the evidence that He ﷻ explicitly says in their beginning: {يَا نِسَاءَ النَّبِيِّ} {O Prophet's wives} so they didn't come down with regard to Ahl al-Bayt, rather they came down with regard to the wives of the Messenger ﷺ, and as for the narrated *ḥadīth* that when they came down the Messenger wrapped Ali, Fatimah, al-*ḥasan*, and al-Husayn with his garment and said: "اللَّهُمَّ هَؤُلاَءِ أَهْلُ بَيْتِي" "O Allah these are my family" compiled by al-Tirmidhī, it doesn't contradict that the wives are from Ahl al-Bayt, and it denotes that even though the *Āyah* was descended in the wives of the Messenger, it is general and denotes the generality of the word Ahl in the *Āyah*, not that it is special for Ali and Fatimah and their sons, and this is supported by what comes in the narration of Zayd ibn al-Arqam of the *ḥadīth* of the two essentials (al-Thaqalayn) that Husayn said to him: " وَمَنْ أَهْلُ بَيْتِهِ يَا زَيدُ؟ أَلَيْسَ نِسَاؤُهُ مِن أَهْلِ بَيْتِهِ؟ قَالَ نِسَاؤُهُ مِن أَهْلِ بَيتِهِ وَلَكِنْ أَهْلُ بَيتِهِ مَنْ حُرِمَ الصَّدَقَةَ بَعْدَهُ قَالَ: وَمَنْ هُمْ؟ قَالَ: هُمْ آلُ عَلِيٍّ, وَآلُ

And "وَآلُ عَقِيلٍ, وَآلُ جَعْفَرٍ, وَآلُ عَبَّاسٍ, قَالَ: كُلُّ هَؤُلاَءِ حُرِمَ الصَّدَقَةَ؟ قَالَ: نَعَمْ" who are his family O Zayd? Aren't his wives from his family? He said: His wives are from his family, but his family is those who were deprived of the charity after him, he said: who are they? Zayd said: they are the family of Ali, the family of 'Aqeel, the family of Ja'far, and the family of 'Abbaas, Husayn asked: All those were deprived of the charity? He said: Yes" compiled by Muslim. Accordingly the Verse is not an evidence that the consensus of the Itrah is a proof. As for the meaning of "al-Thaqalayn" in the *ḥadīth*, it is not the Itrah but the *Kitāb* and the Sunnah, this *ḥadīth* was narrated that the Prophet ﷺ said: "كِتَابَ اللهِ وَسُنَّتِي" "The Book of Allah and my Sunnah" narrated by al-Hākim and al-Bayhaqy, however if the *ḥadīth* was narrated that he said: "كِتَابَ اللهِ وَعِتْرَتِي" "The Book of Allah and my Itrah", it doesn't denote that the consensus of the Itrah is a proof; because the Itrah is not only Ali and Fatimah and their sons, rather they are all of Aal al-Bayt, those whom the *Zakāh* was forbidden for them due to the evidence in the narration of Zayd ibn Arqam of the Thaqalayn *ḥadīth*, and due to the evidence of what is narrated from the Prophet ﷺ that he said: "أَمَا عَلِمْتَ أَنَّ الصَّدَقَةَ لا تَحِلُّ لآلِ مُحَمَّدٍ" "Do you not know that the Sadaqah (*Zakāh*) is not allowed for Aal Muhammad" compiled by Aḥmad. So the Itrah is all the family of the Messenger. Furthermore no matter what is meant by the Itrah, the *ḥadīth* denotes not except the sticking to Aal al-Bayt, and it doesn't denote that their consensus is a proof, and sticking to them doesn't mean not to stick to other than them. The Messenger ﷺ had requested (the Ummah) to take the *Ṣaḥābah* as models, he said: "أَصْحَابِي كَالنُّجُومِ, بِأَيِّهِمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ" " "My *Ṣaḥābah* are like the stars whichever of them you follow you will be guided" compiled by Ruzayn. And he ﷺ had requested the

adherence of the Sunnah (methodology) of al-Khulafaa' al-Raashdeen, he said: " عَلَيْكُمْ بِسُنَّتِي وَسُنَّةِ الخُلَفَاءِ الرَّاشِدِينَ المَهْدِيِّينَ عَضُّوا عَلَيْهَا بِالنَّوَاجِذِ" "I command you to follow my Sunnah and the Sunnah of the rightly guided Khulafaa', do bite on it with the teeth" compiled by al-Dārimī. And He ﷺ had requested to imitate Abū Bakr and 'Umar saying: " اقْتَدُوا بِاللَّذَيْنِ مِنْ بَعْدِي أَبِي بَكْرٍ وَعُمَرَ" "Do imitate the two who will come after me Abū Bakr and 'Umar" compiled by al-Tirmidhī and Aḥmad. And the speech of the rightly guided Khulafaa' is not a Shar'i evidence, and thus is the speech of Abū Bakr and 'Umar. The praising only, and the request to follow and to be guided by them and to imitate them is not a proof that their consensus is a Shar'i evidence, and so is the Messenger's request to stick to Aal al-Bayt is not a proof that their consensus is a Shar'i evidence. From all this it became clear that the *ḥadīth* is not a sufficient proof that the consensus of the Itrah is a Shar'i evidence. Thus it becomes clear that the Itrah and the consensus of Aal al-Bayt is not Shar'i evidence, so it is not considered to be from the Shar'i evidences (i.e. from the Sharī'ah sources).

With regard to the consensus of the people of Madīnah they said it is a proof, they inferred that from the saying of the Prophet ﷺ: "إِنَّمَا المَدِينَةُ كَالكِيرِ, تَنْفِي خَبَثَهَا, وَيَنْصَعُ طِيبُهَا" "Verily the Madīnah is like the bellows, it expels its evil, but its goodness manifests" compiled by al-Bukhārī. The point of inference is that the *ḥadīth* denoted the banishment of evil from the Madīnah, and error is evil, so it must be banished from its people; because, if it exists in its people it exists in it, and if the error is banished from them, their consensus is a proof. The answer to this is that the *ḥadīth* is authentic in the two *Ṣaḥīḥ* books, and its text in al-Bukhārī: " **عَنْ جَابِرِ بْنِ عَبْدِ اللهِ رَضِيَ اللهُ عَنْهُمَا أَنَّ** أَعْرَابِيًّا بَايَعَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَى الإِسْلامِ, فَأَصَابَهُ وَعَكٌ, فقال: أَقِلْنِي بَيْعَتِي, فَأَبَى, ثُمَّ جَاءَهُ فَقَالَ: أَقِلْنِي بَيْعَتِي,

فَأَبَى, فَخَرَجَ, فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: المَدِينَةُ كَالكِيرِ تَنْفِي خَبَثَهَا وَيَنْصَعُ طِيبُهَا" "From Jaabir ibn Abdillah ﷺ that a Bedouin had pledged the Messenger of Allah ﷺ on Islam, then he got inflicted by an illness, he said: do cancel my pledge, but he (the Messenger) refused, then he came to him again and said: do cancel my pledge, but he refused, so the Bedouin left the Madīnah, then the Messenger of Allah ﷺ said: the Madīnah is like the bellows, it expels its evil, but its goodness manifests", this *ḥadīth* is not a suitable proof that the consensus of the Madeena's people is a Shar'i evidence; because this *ḥadīth* is an individuals' report which is indecisive, so it is not an adequate proof to prove one of the Shri'ah principles. And the proof that something is Shar'i evidence is inevitable to be decisive; because it is one of the srinciples of the Sharī'ah; therefore, the inference by this *ḥadīth* drops down. Moreover, the mistake in the *ijtihād* (the extraction of the Shar'i verdicts) is not an evil, it is wrong to consider it evil; otherwise, the mistaking *mujtahid* wouldn't be rewarded, and the mistake is exempted from the blame, the Prophet ﷺ said: "إِنَّ اللهَ وَضَعَ عَنْ أُمَّتِي الخَطَأَ" "Allah had dropped off of my Ummah the blame for the mistakes" compiled by Ibn Mājah, and the evil is forbidden, he ﷺ said: "ثَمَنُ الكَلْبِ خَبِيثٌ, وَمَهْرُ البَغِيِّ خَبِيثٌ, وَكَسْبُ الحَجَّامِ خَبِيثٌ" "The price of the dog is evil, the dowry (the income) of the whore is evil, and the income of the cupper (al-hajjaam) is evil" so they are not alike; accordingly, the *ḥadīth* is not a proof that the consensus of the people of Madīnah is a Shar'i evidence, so the inference by it falls down. Hence it becomes clear that the consensus of the people of Madīnah is not from the evidences (sources) of the Sharī'ah.

As for the consensus of al-Khulafaa' al-Raashideen (the guided khalifahs), some people said it is a Sharī'ah evidence

inferring to that by his ﷺ saying: " فَعَلَيْكُمْ بِسُنَّتِي وَسُنَّةِ الخُلَفَاءِ الرَّاشِدِينَ المَهْدِيِّينَ عَضُّوا عَلَيْهَا بِالنَّوَاجِذِ" "I command you to follow my Sunnah and the Sunnah of the rightly guided Khulafaa', do bite on it by your molar teeth" compiled by al-Dārimī, the point of inference in it is that he obliged following their Sunnah as he obliged following his Sunnah, and the dissenter of his Sunnah is inconsiderable and thus is the dissenter of their Sunnah, so their consensus is a proof, and the rightly guided Khulafaa' are the four Khulafaa' Abū Bakr, 'Umar, 'Uthmān, and Ali ﷺ, and the evidence that it is them who are meant by the *ḥadīth* is his ﷺ saying: الخِلاَفَةُ فِي أُمَّتِي ثَلاَثُونَ سَنَةً ثُمَّ مُلْكٌ بَعْدَ ذَلِكَ" "The Khilaafah in my Ummah is for thirty years then it becomes a kingdom ship" compiled by al-Tirmidhī and Aḥmad. And the period of their Khilaafah was thirty years so it is affirmed that it is them who are meant by the *ḥadīth*, also the convention had specialized the *ḥadīth* to the four mentioned Imams until it became like the proper noun for them, so the consensus of those Khulafaa' is a Sharī'ah evidence. The answer to that is this *ḥadīth* is an individuals report which is indecisive, so it is not an adequate proof that the *Ijmā'* of al-Khulafā' al-Rāshidīn is a Sharī'ah evidence; because it is one of its priciples, and it is inevitable to have a decisive proof to denote it. Also there is no denotation in the *ḥadīth* that their consensus is a proof, for all that is in it is his command to imitate them, and the command to imitate them doesn't mean that their speech is a Sharī'ah evidence, due to the evidence that he ﷺ commanded to imitate every one of the *Ṣaḥābah*, not only the Khulafā' al-Rāshidīn, he ﷺ said: "أَصْحَابِي كَالنُّجُومِ, بِأَيِّهِمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ" **"My *Ṣaḥābah* are like the stars whichever of them you follow you will be guided"** compiled by Ruzayn. So it is a command to imitate every one of the *Ṣaḥābah*, not only those four, so having them

specialized in the *ḥadīth*: "عَلَيْكُمْ بِسُنَّتِي وَسُنَّةِ الْخُلَفَاءِ الرَّاشِدِينَ" "I command you to follow my Sunnah and the Sunnah of the rightly guided Khulafaa'" to gather with the generality in the *ḥadīth*: "أَصْحَابِي كَالنُّجُوم" "My *Ṣaḥābah* are like the stars..." is not more than showing their preference not specializing them only in the imitation. So there is no denotation in the *ḥadīth* that the consensus of the Khulafā' al-Rāshidīn is a proof. However, what is meant by al-Khulafā' al-Rāshidīn is every rightly guided *Khalīfah*, not only those four. And the *ḥadīth* which says that the Khilaafah is in thirty years has no denotation that they are the only guided Khulafaa', but every guided *Khalīfah* is included in this *ḥadīth*, and as an example, 'Umar ibn Abd al-Azeez is included in it. And their saying that the convention had specialized the *ḥadīth* for the four Imaams has no consideration; because the considered convention is the denotation of the words, or that which is called the conventional reality (*al-Haqeeqah al-'urfiyah*), that is the convention of the linguists (Ahl al-Lughah) not the convention of the people. And the convention of the linguists did not use the word "al-Khulafaa' al-Raashideen" for those four so that it can be said that it is a conventional reality, but it is used by other than the linguists as an accidental convention which has no value; therefore, the meaning of the word al-Khulafā' al-Rāshidīn remains general and includes every guided Khaleefah, hence the inference by this *ḥadīth* falls down, so the *Ijmā'* of Abū Bakr, and "Umar, and 'Uthmān, and Ali is not one of the Sharī'ah evidences.

As for the consensus of Abū Bakr and 'Umar, they inferred it from his ﷺ saying: "اقْتَدُوا بِاللَّذَيْنِ مِنْ بَعْدِي أَبِي بَكْرٍ وَعُمَرَ" "Do imitate the two (leaders) after me: Abū Bakr and 'Umar" compiled by al-Tirmidhī and Aḥmad, and this is not an

adequate proof; because it is an individuals' report, so it is indecisive, and it is not more than a request to imitate them to show their preference as he requested to imitate all the *Ṣaḥābah* in the *ḥadīth*: "...أَصْحَابِي كَالنُّجُومِ" "My companions are like the stars..." so it denotes their preference, and imitating them, and there is no denotation in it that their speech is a Shar'i evidence so the inference from it falls down.

It became clear from all this that every consensus other than the consensus of the *Ṣaḥābah* is not a Shar'i evidence, and shouldn't be considered as Shar'i evidence at all. And originally it shouldn't be referred to saying of other than truthful who is supported with the miracle ﷺ for the possibility of the error and lie penetrating the others. Except that the *Ṣaḥābah* ﷺ are on whose consensus the validity of the religion and the safekeeping of the Qur'ān had depended, and that is what necessitated the impossibility of the existence of error in their consensus, it is for the impossibility of the existence of error in the religion and in the Qur'ān, so the infallibility of their consensus is not because they are *Ṣaḥābah*, because verily no one is infallible from error except the Prophets, but the infallibility of their consensus came from the infallibility of the religion from having error, and from the infallibility of the Qur'ān that no falsehood may come into it, as the infallibility from the error in conveying the religion have necessitated the infallibility of the Prophets, thus the infallibility of the religion -which we received it from them- from having errors, and the infallibility of the Qur'ān – which they transmitted to us- from having errors have necessitated the infallibility of their consensus from the errors; therefore, their *Ijmā'* is a proof for the (Shar'i)

impossibility of the error in their *Ijmā'*; that is because if the error is not impossible to be in the consensus of the *Ṣaḥābah* then it would be possible for them to consent on concealing some of the Qur'ān, or on adding into the Qur'ān some of which is not from it, that means it would be possible that they add to it or to take from it, and it would be possible for them to consent on telling lie on behalf of the Messenger of Allah, and it would be possible for them to make errors in transmitting something on the account that it is from the Qur'ān while it is not from it, and it would be possible for them to conceal some of the religion, or to add to it what is not from it, and all this is contrary to the validity of the religion which is certainly proved by the decisive evidence, and contrary to the fact that no falsehood can come into the Qur'ān from before it or from behind it, that is why the impossibility of error was inevitable in their consensus on what they transmit to us of the religion and of the Qur'ān; and therefore, only their consensus is a Shar'i evidence, and the others are not as such; and therefore, the consensus of the *Ṣaḥābah* only is a Shar'i evidence, and any other consensus is not a Shar'i evidence.

الإِجْمَاعُ السُّكُوتِي

The Silent Consensus (*al-Ijmā' al-Sukūtī*)

The silent consensus means that one of the *Ṣaḥābah* held a verdict and the *Ṣaḥābah* knew about him and none of them disapproved it of him, so their silence is considered to be a consensus, and it is called the silence consensus which is equivalent to the saying (declared) consensus, i.e. as if the *Ṣaḥābah* had consented on an opinion in an incident and

they all agreed that the Shar'i verdict about it is so, thus if one of the *Ṣaḥābah* had held a verdict concerning an issue, and the *Ṣaḥābah* knew about him and none of them disapproved it of him, their consensus to keep silent is a considered consensus. And the silence consensus is a Shar'i evidence like the saying consensus if it fulfills all its conditions, but if it doesn't fulfill any one of its conditions then it is not a considered consensus, and it is not considered as a proof.

There are some conditions for the silence consensus:

The first condition: if the matter is usually disprovable and the *Ṣaḥābah* don't keep silent of it; because it is impossible that the *Ṣaḥābah* consent on evil. And if the matter is not usually disprovable, then the silence of the *Ṣaḥābah* is not considered as a consensus, and an example for the silence consensus is when 'Umar took back the land from Bilāl; because he neglected it for three years, and the silence of the *Ṣaḥābah* about that, Yūnus had reported from Muhammad ibn Ishaaq from Abdullah ibn Abū Bakr that he said: " جَاءَ بِلاَلُ بْنُ الحَارِثِ المُزَنِي إِلَى رَسُولِ اللهِ صلى اللهُ علَيْهِ وسلَّمَ فَاسْتَقْطَعَهُ أَرْضًا, فَأَقْطَعَها لهُ طَوِيلَةً عريضةً، فَلَمَّا وُلِّيَ عُمَرُ قالَ لَهُ: يا بِلاَلُ إِنَّكَ اسْتَقَطَعْتَ رسولَ اللهِ صلَى اللهُ عليهِ وسلمَ أرضًا طويلةً عريضةً, فَقَطَعَهَا لَكَ، وإِنَّ رسولَ اللهِ عليهِ السلامُ لَمْ يَكُنْ يمنعْ شَيْئًا يُسْأَلُهُ, وأنتَ لاَ تُطِيقُ ما في يَدَيْكَ، فقالَ: أَجَل، فقالَ: فَانْظُرْ ما قَوِيتَ علَيْهِ مِنْها فأمسِكْهُ, وما لم تُطِقْ, وما لم تقوَى عليهِ, فَادْفَعْهُ إِلَيْنَا نَقْسِمْهُ بَينَ المُسْلِمِينَ، فَقالَ: لا أَفْعَلُ واللهِ, شَيْئًا أَقْطَعَنِيهُ رسولُ اللهِ، فقالَ عُمَرُ: واللهِ لَتَفْعَلَنَّ، فأخذَ مِنهُ ما عَجَزَ عن عِمَارَتِهِ فَقَسَمَهُ بَيْنَ المُسْلِمِين" "Bilāl ibn al-Haarith al-Muzany came to the Messenger of Allah ﷺ and asked him to allocate a land to him, he allocated it to him, it was long and wide, when 'Umar was given the authority he said to him: O Bilāl you've asked the Messenger of Allah ﷺ to allocate to you a long and wide land, and he allocated it to you, and the Messenger of Allah used not to prevent something if he is

asked for it, and you cannot bear what is in your hand, he said yes, 'Umar said then keep what you can put up with from it, and that which you cannot bear and you cannot put up with, give it back to us so we divide it among the Muslims, Bilāl said: by Allah I will not do, it is something the Messenger of Allah ﷺ had allocated to me, 'Umar said: by Allah you shell do, and he took back from him what he couldn't reclaim (fix) from it an divided it among the Muslims" narrated by Yahya ibn Aadam in the book *al-Kharaaj*. And that happened before the eyes of the *Ṣaḥābah* and none of them disapproved of him, so it was a silence consensus; because taking the ownership of the Muslim without the right to do so is usually of the disapproved matters, so the silence of the *Ṣaḥābah* on that while it is usually of the disapproved matters made it a silence consensus.

The second condition: the action must be well known and known by the *Ṣaḥābah*, but if it didn't spread between the Muslims, and the *Ṣaḥābah* didn't know it then it is not a silence consensus; because it may not have reached them, and if the adopted verdict didn't reach them, they are not considered to be kept silent of it; accordingly, it is not of which the *Ṣaḥābah* have kept silent of it, so it is not a consensus.

The third condition: it should not be of the matters which the Imām has the right of disposal in them by his own opinion like the money in the treasury (Bayt al Maal), the disposal of it is made to be according to the opinion of the Imām, so his disposal in a matter like giving money by preferences not equally, then the silence of the *Ṣaḥābah* on that is not considered a silence consensus; because although it appears to be injustice between people, but the reality is

that it had been made the Imām's right of disposal according to his opinion and *Ijtihād*, so their silence is not on an evil matter (Munkar), and the deed of the Khaleefah will be his own *ijtihād* not a consensus. Thus all that of which the opinion is made to be up to the Imām is not considered to be of the consensus, even if the *Ṣaḥābah* kept silent on it.

So if it fulfills these three conditions, i.e. it is usually a disagreeable matter, it is well known among the Muslims and the *Ṣaḥābah* knew it, and it is not of the matters which are made to be up to the Imām to dispose them according to his opinion, then it is a silence consensus. The proof that the silence consensus is a Shar'i evidence is impossibility for the *Ṣaḥābah* to keep silent on an evil deed, so the fact that it is impossible by the Sharī'ah that they consent to keep silent on an evil is an evidence that their silence on an opinion with the consideration that it is a Shar'i verdict is a Sharī'ah proof, and it is considered to be from the Sharī'ah evidences.

الصَّحَابَةُ

The Companions (*al-Ṣaḥābah*)

The expression "al-Ṣahābi" applies upon who had a long period of companionship with the Prophet ﷺ and sat to him many times for the purpose of following him and acquiring from him, it is narrated that Shu'bah Ibn Mūsā al-Saylaany said: "I went to Anas Ibn Mālik and said to him: have any one of the companions of the Messenger of Allah ﷺ other than you remained? He said: there remained some

Bedouin people who have seen him, but none of those who have accompanied him" narrated by Ibn Abi al-Salaah in his book (*al-Muqaddimah*), and al-Maaziny said in the annotation (sharh) of the book (al-Burhaan): "By saying the *Ṣaḥābah* are just (*'Udūl*) we don't mean everyone who one day saw the Prophet ﷺ, or who saw him infrequently, or who met him for a need then he left shortly afterwards, but we mean those who accompanied him and supported him and followed the light that Allah Had sent down to him, they are the successful ones", and the Memorizer Imām Abū Bakr Aḥmad ibn Ali mentioned in his attribution (*Isnād*) that Sa'īd ibn al-Musaiyab said: "we don't consider someone to be from the *Ṣaḥābah* except he who stayed with the Messenger of Allah ﷺ for one or two years, and participated with him in one or two incursions"; accordingly, no one is considered to be from the *Ṣaḥābah* except he who fulfilled the meaning of companionship by staying with the Prophet ﷺ and setting with him for long time. And it can be known that the one of them is a companion either by means of frequent reports (*al-tawātur*), by means of plentiful reports which is lesser than the *tawātur*, or by narrations from individuals of the *Ṣaḥābah* or of the Followers (al-Taabi'een) that someone is a companion (*Ṣaḥābī*), and sometimes by him saying or reporting on himself that he is a *Ṣaḥābī* after proving that he is just ('Adl).

All the *Ṣaḥābah* are just (*'Udūl*), and they all have a special quality that is the justice of any one of them is unquestionable, but it is an obvious matter; because they absolutely are given this justice quality by texts from the Qur'ān and the Sunnah, from that is His ﷻ saying:

{وَالسَّابِقُونَ الأَوَّلُونَ مِنَ الْمُهَاجِرِينَ وَالأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ وَأَعَدَّ لَهُمْ جَنَّاتٍ تَجْرِى تَحْتَهَا الأَنْهَارُ خَالِدِينَ فِيهَا أَبَدًا ذَلِكَ الْفَوْزُ الْعَظِيمُ}

"And the foremost to embrace Islam of the Muhaajirun[314] and the Anṣār[315] and also those who followed them righteously. Allah is well pleased with them as they are well pleased with Him. He has prepared for them Gardens under which rivers flow (Paradise), to dwell therein forever. That is the supreme success"[316]

and His ﷻ saying:

{مِنَ الْمُؤْمِنِينَ رِجَالٌ صَدَقُوا مَا عَاهَدُوا اللَّهَ عَلَيْهِ فَمِنْهُمْ مَنْ قَضَى نَحْبَهُ وَمِنْهُمْ مَنْ يَنْتَظِرُ وَمَا بَدَّلُوا تَبْدِيلا}

"Among the believers are men who have been true to their covenant with Allah, some of them have fulfilled their obligations (i.e. have been martyred); and some of them are still waiting, but they have never changed in the least"[317]

the *Ṣaḥābah* are meant by them for they are some of the believers. And His ﷻ saying:

{لَقَدْ رَضِيَ اللَّهُ عَنِ الْمُؤْمِنِينَ إِذْ يُبَايِعُونَكَ تَحْتَ الشَّجَرَةِ فَعَلِمَ مَا فِى قُلُوبِهِمْ فَأَنْزَلَ السَّكِينَةَ عَلَيْهِمْ وَأَثَابَهُمْ فَتْحًا قَرِيبًا}

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[314] Those who migrated from Makkah to al-Madīnah.

[315] The citizens of al-Madīnah who protected and gave aid to the Messenger.

[316] Surah al-Tawbah:100

[317] Surah al-Aḥzāb:23

"Indeed, Allah was pleased with the believers when they gave the Bai'ah (pledge) to you (O Muhammad) under the tree: He knew what was in their hearts, and He sent down calmness and tranquility (al-Sakeenah) upon them, and He rewarded them with a near victory"[318]

and He Ta'ala said:

{لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلا مِنَ اللَّهِ وَرِضْوَانًا وَيَنْصُرُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ هُمُ الصَّادِقُونَ}

"(And there is also a share in this booty) for the poor emigrants, who were expelled from their homes and their properties, seeking Bounty from Allah and to please Him, and helping Allah (i.e. helping His religion) and His Messenger (Muhammad). Such are indeed the truthful"[319]

and His ﷻ saying:

{مُحَمَّدٌ رَسُولُ اللَّهِ وَالَّذِينَ مَعَهُ أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ تَرَاهُمْ رُكَّعًا سُجَّدًا يَبْتَغُونَ فَضْلا مِنَ اللَّهِ وَرِضْوَانًا}

"Muhammad is the Messenger of Allah. And those who are with him are severe against disbelievers, merciful among themselves. You see them prostrating and bowing (in prayer), seeking Bounty from Allah and (His) Good Pleasure..."[320]

There are many *aḥādīth* that denote the favor of the *Ṣaḥābah*, from them is his ﷺ saying: " أَصْحَابِي كَالنُّجُومِ, بِأَيِّهِمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ" " **"My *Ṣaḥābah* are like the stars whichever of them you follow you will be guided"** compiled by Ruzayn.

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[318] Surah al-Fath:18
[319] Surah al-Hashr:8
[320] Surah al-Fath:29

al-Tirmidhī had narrated from Abū Maghfil that he said: The Messenger of Allah ﷺ said: " اللهَ اللهَ فِي أَصْحَابِي, اللهَ اللهَ فِي أَصْحَابِي لا تَتَّخِذُوهُمْ غَرَضًا بَعْدِي, فَمَنْ أَحَبَّهُمْ فَبِحُبِّي أَحَبَّهُمْ, وَمَنْ أَبْغَضَهُمْ فَبِبُغْضِي أَبْغَضَهُمْ, وَمَنْ ءَاذَاهُمْ فَقَدْ ءَاذَانِي, وَمَنْ ءَاذَانِي فَقَدْ ءَاذَى اللهَ, وَمَنْ ءَاذَى اللهَ يُوشِكُ أَنْ يَأْخُذَهُ" **"Do remember Allah in my companions, do remember Allah in my companions, take them not as unessential matter after me, whoever loves them he loves them because of loving me, and whoever hates them he hates them because of hating me, whoever harms them he indeed harms me, and whoever harms me he indeed harms Allah, and whoever harms Allah He is about to take him in torture"**. And in the two authentic books (al-Saheehayn) from Abū Sa'īd al-Khudrī from the Saying of the Prophet ﷺ: " فَوَالَّذِي نَفْسِي بِيَدِهِ لَوْ أَنَّ أَحَدَكُمْ أَنْفَقَ مِثْلَ أُحُدٍ ذَهَبًا مَا أَدْرَكَ مُدَّ أَحَدِهِمْ وَلا نَصِيفَهُ" By He in whose hand is my soul if one of you spends what equals 'Uhud (the kown mountain in al-Madīnah) in gold he wouldn't reach (in the good deeds) the mudd (measure of dry food in wheat it is equal to 544 grams) of one of them but not even half of it". And al-Bazzaar narrated in his *Musnad* (*ḥadīth* book) an authentic *ḥadīth* whose men are trustworthy from Sa'īd ibn al-Musaiyab from Jaabir that the Messenger of Allah ﷺ said:"إِنَّ اللهَ اخْتَارَ أَصْحَابِي عَلَى العَالَمِينَ سِوَى النَّبِيِّينَ وَالمُرْسَلِينَ" **"Verily Allah ﷻ had preferred my companions over mankind except the Prophets and the Messengers"**. These Shar'i texts from the *Kitāb* and the Sunnah explicitly express the merit, the high rank, and the justice of the *Ṣaḥābah*, and the obligation of loving and honouring them. However the status of the *Ṣaḥābah* denotes their justice, verily they were in a great status of the superior deeds of the Hijrah (Migration), the *Jihād*, sacrificing their blood and their wealth in supporting Islam, killing the fathers and the sons for the sake of Islam, offering the advice in the religion, and

the strength and certainty of their belief. And this denotes the decisiveness of their justice, and the belief in their honesty, and that they are all better than all the successors after them, and better than the mu'addiline (the Muslim scholars of men's justice and injustice) that came after them. This is the truth, because the Messenger is truth, and the Qur'ān is truth, and what he brought is truth, and it is only the *Ṣaḥābah* are who carried all this to us, may Allah be pleased with them, if they are not just then how could that which is transferred to us by them be true? And those who defame the *Ṣaḥābah* they really want to degrade our witnesses to disprove the Qur'ān and the Sunnah. Although the individual *Ṣaḥābī* is not infallible and it is possible for him what is possible for all mankind of making mistakes and committing forbiddances; because only Prophets and Messengers are infallible, they are just in that which they transferred to us of the religion from the Messenger of Allah ﷺ even if they transfer it individually, for his ﷺ saying: "بِأَيِّهِمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ" **"...whichever of them you follow you will be guided"** compiled by Ruzayn. Also that which they consent on it is decisively true for the impossibility of error in their consensus. So the allegation that any of them is infallible is wrong; because error is possible for every one of mankind except the Prophets in what they convey from Allah ﷻ, and degrading the justice of any one of them is wrong; because the Messenger says: "بِأَيِّهِمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ" **"...whichever of them you follow you will be guided"**, and the consideration of their consensus as a Sharī'ah evidence is an obligation; because by the Sharī'ah it is impossible for them to consent on error.

الدَّلِيلُ الرَّابِع القِيَاس

The Fourth Evidence - The *Shar'i* Analogy (*al-Qiyās*)

The *Qiyās* linguistically means the estimation, but in the terminology of the *uṣūl* scholars it has a few definitions: it is defined as: giving the verdict of a known matter to another known matter because they share the reason (*'illah*) of the verdict in the sight of the scholar who derives that verdict, and it is defined as: carrying a known matter according to another known matter in proving or disproving a verdict for them, and it is defined as: deriving a similar verdict of a mentioned matter for an unmentioned matter because there is something in common between them, and it is defined as: it is an equality between a branch matter and an original matter in the reasoning (*'illah*) which is derived from the verdict of the original, so it is obtaining the verdict of the original matter to apply a similar to it in the branch matter for their similarity in the *'illah* in the sight of the scholar. All the definitions of the *Qiyās* necessitate a similar, and a similar to, and a point of a similarity, that is something to be measured (مَقِيس), and something to be measured to (مَقِيسٌ عَلَيْهِ), and a point of a measurement (وَجْهُ القِيَاس). According to any one of the definitions what makes the analogy existent is when both the matter that it is measured to and the measured matter share something, i.e. when there is something in common between them that gathers them together. This single matter that gathers the measured matter and the matter measured to together is the reason of the verdict.

Accordingly, measuring a verdict to another one for any similarity between them is not considered a Shar'i *Qiyās*; because, even if one of them is similar to the other in one of the matters, but this matter is not the reason of the verdict, but it is the similarity, just the similarity, and that is not the Shar'i *Qiyās*, but the matter which gathers the original and the branch is inevitable to be what necessitated the verdict; therefore, the most accurate definition of them is the first one; because it doesn't un-restrict what gathers the measured matter and the matter that it is measured to, but it determined it that it is the reason of the verdict, i.e. what necessitated the legislation of the verdict. And similar to this definition is what some had defined it by saying: the *Qiyās* is supplementing a matter to another one in the Shar'i verdict for a unity between them in the *'illah*, i.e. for their unity in what necessitates the verdict in each one of them.

The *Qiyās* is a Sharī'ah evidence on which Sharī'ah verdicts can be based, it is a proof to prove that the verdict is a Shar'i verdict. It is proven that the *Qiyās* is one of the Sharī'ah evidences by a decisive evidence and by indecisive evidences. As for the decisive evidence, the consideration is in the situation where the *Qiyās* refers to the text itself; because the *'illah* is not considered in the *Qiyās* unless the Sharī'ah denotes it, so the consideration of the *Qiyās* as a Sharī'ah evidence definite, and in reality it is referred to the text itself, therefore it is called the reasoning of the text (*ma'qūl* al-nass). Accordingly, the evidence for the analogy is the text itself which denotes the *'illah*, i.e. the reason of the verdict. If the evidence of the *'illah* came in is the *Kitāb*, the evidence for that *Qiyās* is the *Kitāb*. And if the evidence of the *'illah* came in the Sunnah, the evidence of that *Qiyās*

is the Sunnah. And if the evidence of *'illah* came in the consensus of the *Ṣaḥābah*, the evidence of that *Qiyās* is the consensus of the *Ṣaḥābah*. Thus the evidence of the Shar'i analogy is decisive; because it is the same evidence of the text which denotes the reason of the verdict, i.e. the *Kitāb* and the Sunnah and the consensus of the *Ṣaḥābah*, and they are decisive evidences. Accordingly, the Shar'i evidence that the *Qiyās* is a Sharī'ah proof is the group of evidences which denote that the *Kitāb* and the Sunnah and the *Ijmā'* of the *Ṣaḥābah* are Sharī'ah evidences.

The indecisive evidences are evidences for the *Qiyās* and they are also evidences for the kind of *Qiyās* which is considered as a Shar'i evidence. And it is proven by the Sunnah and by the *Ijmā'* of the *Ṣaḥābah* that the *Qiyās* is a proof, for it is confirmed that the Messenger ﷺ had guided to the *Qiyās* and approved it. From Ibn Abbas that a woman said O Messenger of Allah: " إِنَّ أُمِّي مَاتَتْ, وَعَلَيْهَا صَوْمُ نَذْرٍ, أَفَأَصُومُ عَنْهَا؟ قَالَ: أَرَأَيْتِ لَوْ كَانَ عَلَى أُمِّكِ دَيْنٌ فَقَضَيْتِهِ أَكَانَ يُؤَدِّي ذَلِكِ عَنْهَا؟ قَالَتْ: نَعَمْ, قَالَ: فَصُومِي عَنْ أُمِّكِ" "My mother died and she had to fast for a vow, shall I fast for her? He said: you see if your mother owes a debt and you pay it, would that pay her debt? She said: yes, he said: then do fast for her" compiled by Muslim. And Aḥmad had narrated from Abdullah ibn al-Zubair that he said: " جَاءَ رَجُلٌ مِنْ خَثْعَمٍ إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: إِنَّ أَبِي أَدْرَكَهُ الإِسْلاَمُ وَهُوَ شَيْخٌ كَبِيرٌ لاَيَسْتَطِيعُ رُكُوبَ الرَّحْلِ, وَالحَجُّ مَكْتُوبٌ عَلَيْهِ, أَفَأَحُجُّ عَنْهُ؟ قَالَ: أَنْتَ أَكْبَرُ وَلَدِهِ؟ قَالَ نَعَمْ, قَالَ: أَرَأَيْتَ لَوْ كَانَ عَلَى أَبِيكَ دَيْنٌ فَقَضَيْتَهُ عَنْهُ أَكَانَ ذَلِكَ يُجْزِئُ عَنْهُ؟ قَالَ: نَعَمْ, قَالَ: فَاحْجُجْ عَنْهُ" "A man from Khath'am came to the Messenger of Allah ﷺ and said to him: Islam reached my father while he is an old man and cannot ride the saddle, and the Hajj is an obligation to him, shall I perform the Hajj on his behalf? He said: are you the older of his children? H said: yes, he said: see if your father is in debt

and you paid it off for him, would that pay his debt? He said: yes, he said: then do perform the Hajj for him". And al-Bukhārī narrated from ibn Abbaas that a woman from Juhainah came to the Prophet ﷺ and said: " إِنَّ أُمِّي نَذَرَتْ أَنْ تَحُجَّ فَلَمْ تَحُجَّ حَتَى مَاتَتْ, أَفَأَحُجُّ عَنْهَا؟ قَالَ: نَعَمْ حُجِّي عَنْهَا, أَرَأَيْتِ لَوْ كَانَ عَلَى أُمُّكِ دَيْنٌ أَكُنْتِ قَاضِيَتَهُ؟ قَالَتْ نَعَمْ, فَقَالَ: اقْضُوا اللهَ الَّذِي لَهُ, فَإِنَّ اللهَ أَحَقُّ بِالوَفَاءِ"

"My mother made a vow to perform hajj and she didn't perform it until she died, shall I perform the hajj on her behalf? He said yes do perform the hajj for her; see if your mother had a loan to pay would you pay it for her? She said: yes, he said: pay up to Allah His right, verily Allah is more deserving to be paid back", and al-Dāraquṭnī narrated that Ibn Abbaas said: " أَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَجُلٌ فَقَالَ لَهُ: إِنَّ أَبِي مَاتَ وَعَلَيْهِ حِجَّةُ الإِسْلاَمِ, أَفَأَحُجُّ عَنْهُ؟ قَالَ: أَرَأَيْتَ لَوْ أَنَّ أَبَاكَ تَرَكَ دَيْنًا عَلَيْهِ, أَقَضَيْتَهُ عَنْهُ؟ قَالَ: نَعَمْ, قَالَ: فَاحْجُجْ عَنْ أَبِيكَ" "A man came to the Prophet ﷺ and said: my father died and he hasn't perform the hajj of Islam, shall I do it on his behalf? He said: see if your father is in debt, would you pay it for him? He said: yes, the Prophet said: do perform hajj for him". And it is narrated that when al-Khath'amiyah girl asked him saying: " يَا رَسُولَ اللهِ, إِنَّ فَرِيضَةَ اللهِ فِي الحَجِّ أَدْرَكَتْ أَبِي شَيْخًا كَبِيرًا, لاَ يَسْتَطِيعُ أَنْ يَثْبُتَ الرَّاحِلَةِ, أَفَأَحُجُّ عَنْهُ؟ قَالَ لَهَا: أَرَأَيْتِ لَوْ كَانَ عَلَى أَبِيكِ دَيْنٌ أَكُنْتِ قَاضِيَتَهُ؟ "قَالَتْ: نَعَمْ, قَالَ: فَدَيْنُ اللهِ أَحَقُّ بِالقَضَاءِ" "O Messenger of Allah, the hajj obligation had reached my father when he was an old man and cannot hold himself on the saddle, shall I perform the hajj on his behalf? He said to her: see if your father had a loan to pay, would you pay it off for him? She said: yes, he said the loan of Allah is worthier to be paid" Ibn Qudaama mentioned it in al-Mughny. All these *aḥādīth* are evidence that the *Qiyās* is a proof, and the point of evidence in them is that the Messenger made the loan of Allah like the loan of the mankind in the obligation of paying it off and in considering its benefit, and this is the selfsame of the

Qiyās. And it is narrated that the Messenger ﷺ said to ‘Umar when he asked him about the verdict of the kiss of the fasting person: “ أَرَأَيْتَ لَوْ تَمَضْمَضْتَ بِمَاءٍ وَأَنْتَ صَائِمٌ؟ فَقُلْتُ: لاَ بَأْسَ بِذَلِكَ, فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: فَفِيمَ؟ ” “See if you rinse your mouth with water while you are fasting? I said: there is nothing wrong with that, the Messenger ﷺ said: then where is the problem?” compiled by Aḥmad. The Messenger had guided to the *Qiyās* when he explained to ‘Umar that the kiss without ejaculation doesn’t spoil the fasting, as rinsing the mouth with water without swallowing doesn’t spoil the fasting, and his ﷺ saying: “you see” came for the estimation. And it is mentioned in al-Ihkaam book of al-Aamidy that the Prophet ﷺ: “ بَعَثَ مُعَاذًا وَأَبَا مُوسَى إِلَى اليَمَنِ قَاضِيَيْنِ, كُلُّ وَاحِدٍ مِنْهُمَا عَلَى نَاحِيَةٍ, فَقَالَ لَهُمَا: بِمَ تَقْضِيَانِ؟ فَقَالاَ: إِذَا لَمْ نَجِدِ الحُكْمَ فِي الكِتَابِ وَلاَ السُّنَّةِ قِسْنَا الأَمْرَ بِالأَمْرِ, فَمَا كَانَ أَقْرَبَ إِلَى الحَقِّ عَمِلْنَا بِهِ, فَقَالَ عَلَيْهِ الصَّلاَةُ وَالسَّلاَمُ: أَصَبْتُمَا ”

“Sent Mu’ādh and Abū Mūsā as judges to Yemen, every one of them to an area, and he ﷺ said to them: with what would you judge? They said: if we find not the issue in the *Kitāb* nor in the Sunnah we measure the matter by another matter, and whatever is closer to the truth we carry it out, he ﷺ said: you’ve said the right thing”, and thus there came in the Sunnah what denotes the *Qiyās*.

As for the consensus, the *Ṣaḥābah* ﷺ repeatedly mentioned the *Qiyās*, and they considered it as a Sharī’ah evidence, without any denial from any one of them despite that such an issue can be denied, so it became a consensus. It had been narrated that when ‘Umar ﷺ appointed Abū Mūsā al-Ash’ary as a governor over Basrah and wrote to him the covenant, he commanded him in it to do *Qiyās*, there came in the letter: “ الفهمُ الفهمُ فيما تَلَجْلَجَ في صدركَ مِمَا ليس في بَعْضِ كتابٍ ولا سُنةٍ, ثُمَّ اعرفِ الأشْكَالَ والأمثالَ, فَقِسِ الأمورَ ثمَّ ذلك بِأشبهِهَا بالحَقِّ ”

"...do understand what is given to you of statements and testimonies which is not clear to you and doesn't exist is some of the *Kitāb* and the Sunnah, and know the figures and the similar matters then measure them to the most similar to them of the truth" al-Sheeraazi mentioned it in his book the stages of scholars (Dtabaqaat al-fuqahaa'). And it had been narrated that Ali ﷺ said about the intoxicant drinker: "I see that if he drinks he hallucinates, and if he hallucinates he slanders, so he is entitled to the penalty of the slanderer", it mentioned by Ibn Qudaamah in his book al-Mughny, so he measured the intoxicant drinker to the false accuser (al-Qaazthif who falsely accuses someone by committing adultry). And it is narrated that Ibn Abbaas ﷺ said: "would Zayd Ibn Thaabit fear Allah, he considers the grand son as a son, and doesn't consider the paternal grand father as a father, he didn't mean to call him father because he knew that he is not called father in reality, but he considered him like the father in the brothers' disinheritance, as the grand son is like the son in their disinheritance, so Ibn Abbaas measured the grand father to the grand son in the brothers' disinheritance" (al-Sarkhasy mentioned it in his book al-Mabsoudt and al-Sheeraazy mentioned it in his book al-Tabsirah and many other scholars mentioned it too). And it had been narrated that Abū Bakr ﷺ "made the maternal grand mother inherit without the paternal grand mother, then some people of al-*Anṣār* told him: you've made a woman to inherit from a dead person that if she is the dead one he doesn't inherit from her, and you've deprived a woman that if she is the dead one he inherits all that she left, then he returned and made them both partners in the sixth, so he measured the relationship of the dead person in the issue of the inheritance of the live one from him (the dead one) to the

relationship of the dead person in his inheritance from the live one if the situation is vise versa, so making the mother of the father and the mother of the mother partners in the sixth was based on the *Qiyās*" al-Ghazaaly mentioned it in al-Mustasfa. And it had been narrated that 'Umar ﷺ used to have doubt in the (qawad) penalty of seven people who shared in killing one person. Ali ﷺ said to him: "O Amir al-Mu'mineen, do you see if some people shared in stealing a jazour (a camel ready for slaughtering) and one took an organ of it and the others took the other organs, would you cut their hands? He said: yes, Ali said: it is as such" compiled by Abd al-Razzaaq in his book al-Musannaf, so he measured the killing by the stealing. It is not known that there is a denier for these incidents, and they were well known among the *Ṣaḥābah* despite that they are usually denied, so the silence of the *Ṣaḥābah* upon them -while they are of things on which they don't keep silent- is a consensus that the *Qiyās* is a Sharī'ah proof.

Also the Messenger ﷺ had reasoned (showed the *'illah* of) many verdicts and the reasoning (*ta'līl*) necessitates the compliance with the reason (*'illah*) wherever it exists, and that is the reality of the *Qiyās*, from that is what Muslim compiled: "They said: " قَالُوا: نَهَيْتَ أَنْ تُؤْكَلَ لُحُومُ الضَّحَايَا بَعْدَ ثَلاثٍ, "They said to the Messenger ﷺ: you prohibited us to eat the sacrifices' meat after three days, he said: I've prohibited you for the purpose of the comers who came in (they are some needy Bedouins who came to the Madīnah) so eat from them and save and give in charity". And he ﷺ said: " كُنْتُ نَهَيْتُكُمْ عَنْ زِيَارَةِ الْقُبُورِ, فَزُورُوهَا, فَإِنَّهَا تُزَهِّدُ فِي الدُّنْيَا وَتُذَكِّرُ الآخِرَةَ" فَقَالَ: إِنَّمَا نَهَيْتُكُمْ مِنْ أَجْلِ الدَّافَّةِ الَّتِي دَفَّتْ فَكُلُوا, وَادَّخِرُوا, وَتَصَدَّقُوا "I had prohibited for you visiting the graves, do visit them for they decrease one's interest in life, and they remind in the

life after" compiled by Ibn Mājah. And when he ﷺ was asked about selling the ripe dates (rudtab) by dried dates he said: " هَلْ يَنْقُصُ الرُّطَبُ إِذَا يَبِسَ؟ فَقَالُوا: نَعَمْ, فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: فَلاَ إِذَنْ" "Does the rudtab decrease (in weight) if it dries? They said: yes, he said: then no" compiled by al-Dāraquṭnī. And he ﷺ said in the muhrim (pilgrim in his ihram) that his she camel threw him down and broke his neck: " لاَتُمِسُّوهُ طِيبًا, وَلاَ تُخَمِّرُوا رَأْسَهُ, فَإِنَّ اللهَ يَبْعَثُهُ يَوْمَ القِيَامَةِ مُلَبِّيًا" "Do not touch him with any perfume, and do not wrap his head with a veil, for Allah resurrects him in the day of judgment and he will be doing talbyah (supplicating) compiled by al-Bukhārī. and he ﷺ said in the martyrs of Uhud: " زَمِّلُوهُمْ بِدِمَائِهِمْ, فَإِنَّهُ لَيْسَ كَلْمٌ يُكْلَمُ فِي اللَّهِ إِلَّا يَأْتِي يَوْمَ الْقِيَامَةِ يَدْمَى, لَوْنُهُ لَوْنُ الدَّمِ, وَرِيحُهُ رِيحُ الْمِسْكِ" "Do cover them in their blood, because no wound happens for the cause of Allah but it comes bleeding in the day of resurrection, its colour will be the blood colour, and its smell will be the smell of musk" compiled by al-Nassa'ie. And he ﷺ said in the cat: " إِنَّهَا لَيْسَتْ بِنَجَسٍ، إِنَّهَا مِنَ الطَّوَّافِينَ عَلَيْكُمْ وَالطَّوَّافَاتِ" It is not impure, it is (male and female) of (the dtawwafeen and dtawwafaat) those who are always about and around you (like your domestic servants)" compiled by Aḥmad. This reasoning of the verdicts is an indication to clarify the thing for which the verdict got legislated, and it necessitates the compliance with the *'illah* wherever it is, and this is the *Qiyās*.

From that it becomes clear that the *ḥadīth*, the consensus of the *Ṣaḥābah*, and the reasoning of many verdicts showed by the Messenger ﷺ are evidence that the *Qiyās* is a Sharī'ah evidence which is a proof that the verdict derived by it is a Shar'i verdict. It also clarifies the kind of analogy which is considered to be Sharī'ah evidence; because they all came in the *Qiyās* that is based on the *'illah* which came in the text,

i.e. in all the analogies that came in the Sunnah and in the consensus of the *Ṣaḥābah*, the reason of the verdict is what is considered in the *Qiyās*, and it is especially the reason that came in the text without any other reasons; therefore these evidences are not a proof for any analogy, but they are proof for the analogy of which the *'illah* is indicated by an evidence from the Sharī'ah, and that is the *Qiyās* which is considered to be Shar'i. If the *Qiyās* is not like that, it has no value in the inference of the Shar'i verdicts, nor is it considered to be a Sharī'ah evidence. Since the *aḥādīth* and the *Ṣaḥābah*'s consensus and the reasoning (*ta'līl*) given by the Messenger ﷺ are all confirmed with what the text denoted of reasons only, so it is specific in its subject not general for any *Qiyās*; accordingly, the considered *Qiyās* is only that which refers to the text itself. So what is meant by the analogy is the Shar'i analogy not the mental *Qiyās*, i.e. the *Qiyās* that has an indication from the Sharī'ah to denote that it is considered, i.e. the *Qiyās* in which exists a Sharī'ah reason that came in a specific Sharī'ah text.

As for the mental *Qiyās* that the mind understands from the totality of the Sharī'ah without being denoted by a specific texts, or that *Qiyās* which the mind understands it from measuring a verdict to another verdict just for the mental similarity without having a reason for verdict which comes in the Sharī'ah, all that is not allowed by any means. That is because considering the logical perception necessitates the equalization between the similar matters in their verdicts; therefore it makes *Qiyās* between every two matters that have a point of similarity. But the Sharī'ah had distinguished similar matters very often, as well as it gathered different matters very often, and this is unlike the issue of mental measurement and logical perception, but it

is in contrast with it, because the Sharī'ah denotes that the *Qiyās* is inapplicable in all similar matters, and that it possibly applicable in different matters, and what determines the lawfulness of the *Qiyās* is a Shar'i matter so that it clarifies when the *Qiyās* is applicable, not only the existence of the similarity; hence, it is not permissible to apply the *Qiyās* (analogy) just for existence of the similarity and the alikeness, but it is inevitable to have a Shar'i reason (*'illah*) to denote that the *Qiyās* exists in it only and should not exceeded to other issues at all.

The evidence for the impermissibility of applying analogy by logical perception, i.e. the impermissibility of mental *Qiyās* is the Sharī'ah texts in which the Sharī'ah verdicts are brought. Verily the legislator had distinguished between similar matters, and gathered (gave same verdict to) different matters, and had confirmed verdicts the mind has no room to decide in them.

As for clarifying the distinction between the similar matters, the Sharī'ah had distinguished between times in the nobility, it preferred the night of al-Qadr (Decree) over the other nights, and it had distinguished between places in nobility, like the distinction of Makkah over the Madīnah, and the Madīnah over other places. And it had distinguished between the prayers in the concession to shorten some of them, it had permitted to shorten the prayers of four rak'ah (prostration) and didn't allow to shorten the prayers of three and two rak'ah. And it considered the mani (sperm) to be pure and the mazthi (pre seminal fluid) to be impure, although they run down from one place, and it obliged the ghusl (ritual wash) after the mani ejaculation, and He made its deliberate ejaculation nullify the fasting, unlike the mazthi, although they come

down from one place, and He obliged to wash the clothes if touched by the urine of a young girl, and to splash them if touched by the urine of a young boy. And He obliged the menstruating woman to (do qaḍā') make up for the days she didn't observe the fast, unlike the prayer. And He commanded to cut the hand of the stealer of three *dirham*, not the usurper of quintals. And He obliged the flogging for the false accuser of adultery, and He didn't oblige it for the false accuser of disbelief. And He made the 'iddah (period in which a woman mustn't remarry) of the divorced woman three menses periods (quroo'), and He made the 'iddah of the widow four months and ten days, despite the equality of the womb situation in both 'iddah periods. And thus many things are similar to each other in a matter and have something that gathers them, the legislator had made for each one of them a verdict different to the verdict of the other, which denotes that the existence of a gathering matter in the different things is not sufficient to do *Qiyās* (analogy), but it is inevitable for this gathering matter to be a Shar'i *'illah* (reason of legislation) dictated by the Sharī'ah.

As for clarifying the gathering between the differences, the Sharī'ah gathered in the purification between the water and the soil, despite that the water cleans and the soil defaces. And it obliged the compensation on the pilgrim during his ihram if he kills an animal or a bird in the hunt whether he kills it deliberately or accidentally, despite that the accidental killing is different to the deliberate killing. And it made the killing a penalty for the apostate and for the married adulterer, even though its method is different, despite that the deed of each one of them is different to the other. And thus many verdicts their incidents are clearly

different, and despite that there is nothing common between them to gather them, the Sharī'ah made one verdict for them.

As for clarifying the matters that are not the field of the mind to make decisions in them, the Shri'ah obliged (al-ta'affuf) to lower the gaze away from the free ugly woman her hair and her skin, despite that the disposition doesn't incline to her, and it didn't oblige to lower the gaze away from the beautiful female slave that the disposition inclines to her. Also Allah ﷻ obliged the cut for stealing the little, unlike usurping much. And He obliged to flog the false accuser in the zina (adultery), unlike the false accuser in other than the zina, despite that it may be more horrible than it, like the accusation by disbelief. And He put a condition of four men in the testimony of zina, and made two witnesses sufficient in the testimony of killing, despite that the killing is rougher than the zina. And He ﷻ obliged the *Zakāh* in gold and silver, not in diamond and ruby and other precious minerals. And He allowed the trade and forbade the *riba* (usury) despite that both of them are sale, and they are alike. And He put a condition for the testimony of the raj'ah (One's return to his wife within the 'iddah after devorsing her) that the witness must be Muslim, and He permitted a kaafir witness in the will. And he forbade the sanctification of stones, and commanded to kiss the black stone (in the Ka'bah), and many others. So if the mind is meant to understand reasons for the verdicts from the totality of the Sharī'ah, or from the literal meaning of the text, or to understand from just the similarity between two matters the existence of analogy between them, then it would forbid so much of which Allah had Allowed, and it would allow so much of which

Allah had forbade; therefore it is not permissible to do *Qiyās* except in a *'illah* mentioned in the text; therefore our master Ali ﷺ said: "If the religion of Allah is to be made by the mind, then the bottom of the slippers would be more deserving to be wiped (in the *wuḍū'*) than their tops" compiled by al-Dāraquṭnī. Hence there is no *Qiyās* in the worship matters; because, it became clear after following up the Sharī'ah texts that non of the worships' texts is reasoned by a reason that may get repeated so that other things can be measured on it; therefore, the obligation of praying by gesture in the right of someone who is incapable to perform the prayer cannot not be based on measuring the issue on the obligation to pray as sitting down in the right of the incapable to pray standing up, on the pretext that the gatherer between the two situations is the incapability to perform the prayer perfectly; because the incapability is not the reason of praying as sitting down, nor is it the reason of legislating the verdict; because the verdict is to pray, not to pray as sitting down, but praying as sitting down is permissible because it came in the text, and it shouldn't be measured on. And the expiation of breaking the fast (sawm) by eating in the day of Ramadhan cannot be measured on breaking the fast by the intercourse. And removing the impurity from the clothes by stones cannot be measured on removing the impurity from oneself (istinjaa') by stones. And the earthquake cannot be made a cause (*sabab*) of a prayer by measuring it on the eclipse on the pretext that the legislator made the eclipse a cause of the prayer. And the wudhou' cannot be made a condition for fasting by measuring it on that it had been made a condition for the prayer. And thus are all the worships. And like that there is no *Qiyās* in every verdict proven by a text without a reason given for that text, whether it is of

the transactions, or the penalties, or others; because the considered *Qiyās* is only the Shar'i *Qiyās* which has a reason that came in a Sharī'ah text, and that is what they called the reasoning (ma'qoul) of the text.

So the *Qiyās* doesn't occur except in the verdicts that are reasoned by reasons that came in the Sharī'ah texts, and only this is the Shar'i *Qiyās*. This is supported by the previous clarification that the indecisive evidences for the *Qiyās* had clarified the kind of *Qiyās* that is considered to be Sharī'ah evidence, so what made the *Qiyās* Sharī'ah evidence is the approval of the Messenger ﷺ of the *Qiyās*, and his guidance to the Khath'amiyah woman in it, and his reasoning (*ta'līl*) of many verdicts, hence the *Qiyās* that is valid to be Sharī'ah evidence is this kind of *Qiyās* only. His approval of the *Qiyās* came unrestricted, since Mu'ādh and Abū Mūsā said to him ﷺ: " قِسْنَا الأَمْرَ بِالأَمْرِ, فَمَا كَانَ أَقْرَبَ إِلَى الحَقِّ عَمِلْنَا بِهِ" "We measure the matter by another matter, and whatever is closer to the truth we carry it out". This includes all kinds of *Qiyās*, but his advise to al-Khath'amiyah had restricted it to a specific *Qiyās*, that which the gatherer element in it (which gathers the matters so they take the same verdict) is the reason for legislating the verdict, He said to her: " أَرَأَيْتِ لَوْ كَانَ عَلَى أَبِيكِ دَيْنٌ فَقَضَيْتِيهِ؟... قَالَ: فَدَيْنُ اللهِ أَحَقُّ بِالقَضَاءِ ..." "...do you see if your father had a debt to pay, and you paid it off for him? Then he said to her: the debt of Allah is worthier to be paid". So the reason of the permissibility of performing the Hajj (on behalf of her father who was incapable to perform it) is that it was an execution of a debt; therefore this *Qiyās* here is permissible, otherwise performing Hajj is a worship, and lending money is a transaction, and everyone of them is different to the other, but discharging the lent money is similar to

discharging the unperformed Hajj, and since each one of them is a debt that is the reason of legislating the verdict, that is dropping off the request of the money owner, and dropping off the request of Allah ﷻ. Thus by following up the verdicts that the Messenger ﷺ gave reasons (*'ilal*) for them like his saying: "إِنَّمَا نَهَيْتُكُمْ مِنْ أَجْلِ الدَّافَّةِ..." "...I've prohibited you (to eat the sacrifices' meat after three days) for the purpose of the comers who came in" compiled by Muslim, and his ﷺ saying: " كُنْتُ نَهَيْتُكُمْ عَن زِيَارَةِ القُبُورِ, فَزُورُوهَا, فَإِنَّهَا تُزَهِّدُ فِي الدُّنْيَا وَتُذَكِّرُ الآخِرَةَ" **"I've prohibited you from visiting the graves, do visit them for they decrease one's interest in life, and they remind in the life after"** compiled by Ibn Mājah, and his saying: " إِذَا اسْتَيْقَظَ أَحَدُكُمْ مِنْ نَوْمِهِ فَلاَ يَغْمِسْ يَدَهُ فِي الإِنَاءِ حَتَّى يَغْسِلَهَا ثَلاَثًا, فَإِنَّهُ لاَ يَدْرِي أَيْنَ بَاتَتْ يَدُهُ" **"When one of you wakes up he must not immerse his hand in the utensil until he washes it three times, for he doesn't know where his hand goes when he is asleep"** compiled by Muslim. And other than that, they are all reasoned by the reason of the verdict in which the *Qiyās* occurs. And this limits the *Qiyās* to that it is analogy on the verdict in which the reason of its legislation exists, and that is the Shar'i *'illah*; accordingly, the *Qiyās* doesn't occur at all for just the existence of a similarity that gathers the measured matter to the measured on matter, but it is inevitable for the measured on verdict to have a Shar'i *'illah*, which is the reason of its legislation so that the analogy on it will be valid, and a considered Shar'i analogy, i.e. Shar'i evidence.

It becomes clear from all that, that the analogy is limited to what has a Sharī'ah reason. And the gatherer between the measured to and the measured on matters is the Sharī'ah *'illah* only. Accordingly no verdict should be measured on another verdict for the similarity only, or for sharing

something other than the Shri'ah *'illah*. As for what they said in the *Qiyās* (measurement) of the verdicts of the person in charge of the endowment (al-waqf) to the verdicts of the guardian for the intense similarity between the two duties, it is inappropriate saying; because the similarity between the two duties doesn't give them one verdict unless there is a Sharī'ah text, whether they are similar or different to each other, so the similarity only between two duties does not permit the *Qiyās* of one of them to the other and giving it its verdict, and the will and the endowment are inferred from one *ḥadīth*, Aḥmad, al-Bukhārī and Muslim have narrated from Anas that Abū Dtalhah said: " يَا رَسُول اللَّهِ, إِنَّ اللَّهَ تَبَارَكَ وَتَعَالَى يَقُولُ: {لَنْ تَنَالُوا الْبِرّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ} وَإِنَّ أَحَبَّ أَمْوَالِي إِلَيَّ بَيْرُحَاء, وَإِنَّهَا صَدَقَة لِلَّهِ, أَرْجُو بِهَا بِرّهَا وَذُخْرهَا عِنْد اللَّه, فَضَعْهَا يَا رَسُول اللَّه حَيْثُ أَرَاك اللَّه, فَقَالَ رَسُولُ اللهِ صَلَّى اللَّه عَلَيْهِ وَسَلَّمَ: بَخٍ, ذَلِكَ مَالٌ رَابِحٌ ذَلِكَ مَالٌ رَابِحٌ, وَقَدْ سَمِعْتُ مَا قُلْتَ, وَإِنِّي أَرَى أَنْ تَجْعَلهَا فِي الْأَقْرَبِينَ, فَقَالَ أَبُو طَلْحَةَ: أَفْعَلُ يَا رَسُول اللَّه. فَقَسَمَهَا أَبُو طَلْحَةَ فِي أَقَارِبه وَبَنِي عَمّه" "O Messenger of Allah, Allah ﷻ says: {You will not obtain the good reward until you spend (in charity) of that which you love (of your wealth)}, and the mostly adored to me of my wealth is Barayhaa' (a farm opposite the masjid, the Messenger ﷺ used to go in it and drink from its water), and I've made it a charity for the sake of Allah, he said: the Messenger ﷺ said: excellent, this is a profitable wealth, this is a profitable wealth, and I've heard what you said, and I suggest that you give it to your relatives, Abū Dtalhah said: I shall do. Then Abū Dtalhah divided it in his relatives and cousins", they inferred from this *ḥadīth* the validity of the endowment, and they inferred from it that the will to distribute a third of the wealth is valid as Allah ﷻ has showed, and they inferred the permissibility for the live person to donate more than the third of his wealth in other than his death sickness;

because the Messenger did not request details from Abū Dtalhah about the amount he donated. The issue here is not of the *Qiyās*, but it is of the derivation from the evidence. And as for what they said that one is not permitted to devote more than one third of his wealth for endowment in his death sickness except after a permission from his inheritors, by the *Qiyās* (measurement) on one is not permitted to make a will for more than a third of his wealth except after the permission of the inheritors for the consideration that both of them are donation, this also is inappropriate because these two verdicts were derived from the *ḥadīth* which is narrated by Muslim from 'Imraan ibn al-Husayn: " أَنَّ رَجُلًا أَعْتَقَ سِتَّةَ مَمْلُوكِينَ لَهُ عِنْدَ مَوْتِهِ, لَمْ يَكُنْ لَهُ مَالٌ غَيْرَهُمْ, فَدَعَا بِهِمْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَجَزَّأَهُمْ أَثْلَاثًا, ثُمَّ أَقْرَعَ بَيْنَهُمْ, فَأَعْتَقَ اثْنَيْنِ, وَأَرَقَّ أَرْبَعَةً, وَقَالَ لَهُ قَوْلًا شَدِيدًا" "A man had freed six slaves at his death, he had no other properties than them, then the Messenger of Allah ﷺ asked for them and divided them to three groups, he drew a lot between them freeing two of them and enslaved four, and he said to him harsh words", they inferred from this *ḥadīth* that the disposals of the sick person are to be executed from the third of his wealth, even if they are executed straightaway and not added to what is left after his death, so this is not special in the will, but it is general that includes all disposals, and the endowment is one of them. As for what they said of measuring the payable (wikaalah) agency contract on the employment contract in making them binding contracts, despite that the agency is from the unbinding contracts; because of their association in the salary, this is not a (*Qiyās*) measurement of a verdict on another verdict for the similarity in their duties, but it is a measurement of a verdict on another verdict for their association in the reason (*'illah*) of the verdict, because what makes the

employment contract binding is the salary, so if the salary exists in the wikaalah then the reason of making the contract binding exists, so the payable wikaalah becomes one of the binding contracts, so if the payable wikaalah is agreed up on at a specific salary, it becomes from the binding contracts by measuring it on the employment; because binding the employer to pay the salary and the employee to do the work denote by necessity that the employment contract is one of the binding contracts, so the wikaalah can be measured on it if it includes this binding, so it is the measurement of a verdict on another verdict which has a Sharī'ah reason that came in a text, and it is not the measurement of a verdict on another verdict just for the similarity in their duties. And as for their saying about the verdicts of usurping that the usurper must return the usurped thing itself as long as it remains in the same condition, and he must return similar to it or the value of it if it gets damaged, so changing the usurped thing so that it becomes different to its previous condition, like milling the usurped wheat, or making the piece of steel a sword can be measured on the damage of the usurped thing; because changing the state of something is similar to damaging it for the disappearance of the first state of it, this is not from the measurement of the verdict, but it is from the measurement of the reason (*'illah*). So the damage is the *'illah* of returning the similar to it or the value of it, so anything similar to this *'illah* occurs to the usurped thing can be measured on the *'illah*, and the disappearance of its previous state is the *'illah* for returning a similar thing or its value, so everything that causes the previous state to disappear is considered to be *'illah* by measuring it on the damage; therefore the change of the state is a *'illah* like the damage of the thing; because by that change the thing becomes

different to its previous state. This is like the verdict that the judge must not judge while he is angry, so anything that causes distraction can be measured on the anger, so he doesn't judge while he is hungry for instance. Thus all the measurements of verdicts on other verdicts should be scrutinized, if it is a measurement for just the similarity in the duties then the *Qiyās* is not valid and not considered; because it is not the Shar'i *Qiyās* which is a considered Sharī'ah evidence. And if it is a measurement of a verdict on another verdict for their association in the Sharī'ah reason (*'illah*) of the verdict which the Sharī'ah brought, then it is a valid *Qiyās*; because this is the Shar'i *Qiyās* which is considered to be a Sharī'ah evidence.

The *Qiyās* is joining a branch to an origin; therefore the *Qiyās* doesn't mean the generality of the general text; because the general text includes all the individual matters that are included in its meaning only, so the saying of Allah Ta'ala: {فَـَٔاتُوهُنَّ أُجُورَهُنَّ} {...if they give suckle to the children for you, give them their due payment} 6 Surah al-Dtalaaq, it is a general expression that includes the due payment of the foster mother, the labour, the house, the car and others. It shouldn't be said that the due payment of the labour is measured on the due payment of the foster mother, or the due payment of the car is measured on the due payment of the labour, but they are the individuals of the general expression and they are included in it. And His ﷻ saying: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ} {Forbidden to you are al maytah (the dead un-slaughtered animals)} 3 Surah al-Mā'idah, it is a general expression that includes all kinds of maytah whether they are packed in cans or not, and it shouldn't be said that the forbiddance of the canned meat of animals that are not slaughtered in accordance with the Sharī'ah is measured on

the verdict of the maytah meat, but this cans' meat is maytah meat, for it is included in the general expression "al-maytah" and it is one of its individuals. But the *Qiyās* means that the texts include the kinds of incidents and their individuals that enter in the reasoning (*ma'qūl*) of the texts by supplementation; because of their association in the *'illah*, for example it is proven in the Sharī'ah that the employee should be compelled to do the work that he is hired for it; because the employment contract is from the binding contracts, and that text doesn't include the (wakeel) agent; because the (wikaalah) agency is from the unbinding contracts, but if the agent is authorized for a salary then he can be measured on the employee; because the agent who earns a salary is like the employee who earns a salary for the existence of the salary for everyone of them, and if the agent gets paid; he is compelled to do what he is assigned to do; because by getting paid he becomes like the employee; because the salary is the reason of the binding verdict in the employment contract, and thus the salary in the payable agency is the reason of the binding verdict. In contrast with the agent who doesn't earn salary, he is not compelled (to do the work), and he is not measured on the employee for the absence of the salary of the employee; therefore, the *Qiyās* doesn't mean the generality, but it means making the text include other kinds or individuals of incidents, not by the expression of it but by supplementation for their association in the *'illah* that came in the text. So the existence of the pillars of the *Qiyās* is inevitable to make *Qiyās*, and if one of them doesn't exist then the *Qiyās* is invalid; therefore it is inevitable to know the pillars of the *Qiyās*.

The *Qiyās* is one of the very sensitive issues, and it must be known that it is only for people with minds that understand the texts and the verdicts and the incidents, and it is not for every one to perform it according to his desire and lust, but it is inevitable to be for those whom Allah gave them insight and understanding, otherwise it can be a mean of destruction and distancing from the reality of the verdict of Allah ﷻ. The imam al-Shaafi'i said: "And no one has the right to make *Qiyās* until he is knowledgeable in the methods that existed before him, in the sayings of the earlier scholars and in the tongue of the Arabs, and he must have a strong mind that enables him to distinguish between the ambiguities, and he should not hurry in giving opinions, and he should not refuse to listen to whom contradicts his opinion; because this may alert him out of a possible unawareness in himself, or it may make him aware of a false that he thinks it is true" so making *Qiyās* needs an accurate understanding. And the *Qiyās* is not permissible except for a *mujtahid*, even if he is a *mujtahid* in one issue (*mujtahid mas'alah*), but not for the (*muttabi'*) follower; because he is an imitator not a *mujtahid*, and the imitator is not permitted to derive a verdict by the *Qiyās* (analogy).

أَرْكَانُ القِيَاس

The Pillars of *Qiyās* (Analogy)

The *Qiyās* requires pillars without them it could not be made, they are: the branch which is wanted to be measured, the origin which is wanted to be used as a measurement origin, the Sharī'ah verdict concerning the origin and the *'illah* that gathers the origin and the branch. An example

for it is the forbiddance of leasing something at the time of the Friday prayer call that is measured on the forbiddance of the sale at the Friday prayer call time, for the existence of the *'illah* that is the diversion from the Jumu'ah prayer. The branch here is the leasing, and the origin is the sale, and the Sharī'ah verdict concerning the origin is the forbiddance that exists in the sale at the Friday prayer call time, and the *'illah* is the diversion from the Jumu'ah prayer. The verdict of the Branch is not considered as a pillar of the *Qiyās*, but it is the fruit of it, so if the *Qiyās* occurs, it results the verdict of the branch, since the verdict of the branch depends on the correctness of the *Qiyās*, so if it is one of its pillars then it would depend on itself and this is impossible. Accordingly, the conditions of the *Qiyās* are limited to the conditions of these pillars, some of them are for the branch, and some are for the origin, and some are for the verdict of the origin, and some are for the *'illah*.

شُرُوطُ الفَرْعِ

The Conditions of the Branch *(al-far')*

The branch is that which the verdict of it is disputed, it is (*maqees*) (something measured by an origin). And it has five conditions:

The first condition: it must not be opposed by a stronger verdict that necessitates anything contrary to that which the *'illah* of the *Qiyās* necessitates, so that the *Qiyās* will be beneficial.

The second condition: the *'illah* that exists in the branch must be sharing the *'illah* of the origin either in itself or in

its kind; because the *Qiyās* is the extension of the verdict of the origin to the branch by the *'illah* of the origin, so if the *'illah* of the branch doesn't share the *'illah* of the origin in its quality as general or special so that the *'illah* of the origin doesn't exist in the branch, then it is not possible to extend the *'illah* of the origin to the branch.

The third condition: the verdict of the branch must come out to be the selfsame verdict of the origin, like the capital punishment that is shared between (al muthqil) the killer who kills by a heavy stone and (al-muhdid) the killer who kills by a piece of metal, or the verdict of the branch comes out to be similar to the origin in its kind, like establishing the guardianship for the young girl in her marriage by measurement (*Qiyās*) on the guardianship in her money, so the two verdicts share the kind of guardianship not the selfsame of it.

The forth condition: the verdict of the branch must not be dictated (by other evidence); otherwise it will be a *Qiyās* of something already has a dictated verdict. And none of them would have the priority to be measured on the other. And it is incorrect to say that the multitude of evidences on the denoted verdict is permissible; because this can be in other than the *Qiyās*, as if the verdict is proven by the Qur'ān and the Sunnah and the *Ijmā'* of the *Ṣaḥābah*. But what is proven in the *Qiyās* is the *'illah*. And its extension to the branch is what makes the *Qiyās* exist, so if there is a text for the verdict of the branch, then the verdict should be proven by the text not by the *'illah*, and there will be no room for the *Qiyās*.

The fifth condition: the verdict of the branch shouldn't be precedent to the verdict of the origin; because if it is precedent to it then the *Qiyās* could not exist for the

absence of the original verdict. Accordingly, the measurement (*Qiyās*) of the branch on the origin necessitates the precedence of the original verdict to the verdict of the branch.

شُرُوطُ الأَصْل

The Conditions of the Origin (*al-aṣl*)

The origin is the base on which other things can be built, i.e. it is known by itself without any need to other things, it is what other matters are measured on it, and its condition is the existence of the verdict in it; because the establishment of the original verdict in the branch is a branch of its existence in it (in the origin); therefore, the existence of the verdict in the original matter is a condition for it.

شُرُوطُ حُكْمِ الأَصْل

The Conditions of the Original Verdict *(ḥukm al-aṣl)*

There are eight conditions for the verdict of the original matter:

The first condition: the verdict must be a Sharī'ah verdict; because the aim of the Shar'i *Qiyās* is to determine the Sharī'ah verdict of the branch, so if the original verdict is not a Sharī'ah verdict, the aim of the Shar'i *Qiyās* would not be achieved. Moreover, the *Qiyās* that is searched for is the Shar'i analogy, hence it necessitates that the original

verdict is a Sharī'ah verdict, otherwise the *Qiyās* prevented by the Sharī'ah.

The second condition: the original verdict must be established by an evidence from the *Kitāb*, from the Sunnah or from the consensus of the *Ṣaḥābah*, but not by the *Qiyās*; because if it is established by the *Qiyās*, then if their reasons (*'illah*) unite the *Qiyās* must be on the first origin not on that inferred verdict. And if their reasons differ, then the second *Qiyās* doesn't occur; therefore it is conditional that the original verdict must be established by a Sharī'ah evidence other than the *Qiyās*, i.e. it must be established by the *Kitāb*, or the Sunnah, or by the consensus of the *Ṣaḥābah*.

The third condition: the denotative evidence of the original verdict should not include the branch; because, if it includes it then proving the verdict of the branch would be by that evidence not by the *Qiyās*, then the *Qiyās* perishes.

The forth condition: the denotative evidence of the original verdict should be continuing not abrogated, so that the branch can be based on it; because the verdict got extended from the original matter to the branch only on the basis of the gathering quality (the *'illah*), and that depends on the consideration of that verdict in the Sharī'ah, so if the verdict is not continuing, but abrogated by the Sharī'ah, then it is not considered, and nothing can be measured on it.

The fifth condition: the original verdict should not be made as an exception from the rules of the *Qiyās*, and that which had been excepted from the measurement rules is of two divisions:

The first: it is that which has no (*ma'qūl al-nass*) text reasoning (*'illah*), and it is either excluded from a general rule, or it is initially originated (not excepted from a general rule). As for that which is excluded from a general rule, this is like the acceptance of the testimony of Khuzaymah alone (instead of two witnesses), as al-Bukhārī narrated, despite that it has no text reasoning, it is excluded from testimony rule. And the initially originated is like the numbers of the prayer pillars, the limites of the quorums (*nisāb*) of the *Zakāh*, and the limits of the punishments and the expiations. Despite that they don't have a *ma'qūl* of text (*'illah*), they are not excluded from a general rule, and in both cases the *Qiyās* on them is prevented.

The second: it is that which had been legislated initially and has no similarity, and the *Qiyās* on it doesn't occur for the lack of the similarity, like the concessions of the travels, the rub on the slippers, the oath in the Qisaamah (repeated oaths in the crime cases to be swore by the plaintiffs to prove the crime against the accused ones and swore by the defendants to prove their innocence), and like imposing the (*diyah*) blood money upon the (*'aaqilah*) male relatives of the killer, if the killing is by mistake, and some other verdicts.

The sixth condition: the denotative evidence that proves the original verdict should not denote the verdict of the branch; otherwise making one of them as an origin on which the other can be measured is not worthier than the opposite.

The seventh condition: the original verdict must be (*mu'allal*) reasoned by a specific unambiguous *'illah*; because, joining the branch to the origin which is for the existence of the *'illah* necessitates the certainty in its

existence, and this certainty depends on reasoning the original verdict and on determining its *'illah*.

The eighth condition: the original verdict must not be belated from the verdict of the branch; because if it is belated it necessitates that the verdict of the branch is established on a different evidence before the legislation of the original verdict; because in the *Qiyās* the evidence of the branch's verdict is based on the *'illah* of the original verdict, and it didn't exist yet; therefore the precedence of the original verdict to the verdict of the branch is a condition for the *Qiyās*.

العِلَّة

The Reason of the Legislation of the Verdict (*al-'illah*)

The *'illah* is the thing for which the verdict became existent, in other word it is the reason of the verdict, i.e. the reason of the legislation, not the reason of performing the verdict and making it existent (that means it is not the (*sabab*) cause), hence it is inevitable to be a proper description, i.e. an indicative description, that means the description must include a meaning suitable to be the purpose for which the legislator had legislated the verdict. If the description is not an indicative, i.e. it doesn't include a suitable meaning to be the purpose for which the legislator had legislated the verdict, but it is just an indication for the verdict, then reasoning the verdict by it is impermissible; because it is only a sign for introducing the verdict. And the verdict is basically known by the address

(*al-khiṭāb*) not by *'illah* that is derived from it; therefore it is wrong to define the *'illah* as it is the introducer of the verdict; because this means that it is just an indication, despite that it is not just an indication, but is it the reason of the legislation. Although the *'illah* (if it exists) is an evidence for the verdict, it is different to the address as an evidence. The address is an evidence for the verdict, a sign for it and an introducer for it. And the *'illah* is an evidence for the verdict, a sign for it and an introducer for it, but in addition to that it is the incentive matter for the verdict. It is the matter for which the verdict got legislated, so beside the introduction it has the reasoning, i.e. the denotation on the matter for which the legislation occurred; therefore it is the (*ma'qūl*) reasoning of the text. If the text doesn't include *'illah*, it has a (*manṭūq*) literal meaning and a (*mafhūm*) connotation, but it doesn't have the (*ma'qūl*) *'illah*, then no other thing can be a supplement to it at all. But if the text includes a *'illah*, that is the verdict in it is joined to an indicative description, that means it has a literal meaning, a connotation, and an indicative description, then other things can be supplemented to it. So the existence of the *'illah* makes the text include other kinds and individuals of incidents, this inclusion is not by its literal meaning, nor is it by its connotation, but by the supplementation; because they share in the *'illah* that came in it. So the *'illah* has something new in addition to the indication on the verdict, that is the reason for legislating this verdict. Therefore defining the *'illah* that it is the introducer of the verdict is incorrect; because this definition is insufficient to denote the essence of it; therefore it should be defined that it is the reason of the verdict, and form this definition it is understood that the *'illah* is also the introducer of it.

Furthermore the *'illah* may come in the evidence of the verdict, so the verdict would be denoted by the address and by the *'illah* included in the in the address, like the saying of Allah ﷻ:

{مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَى فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ}

"What Allah granted as booty (Fai') to His Messenger from the people of the townships, it is for Allah, His Messenger, the kindred (of Messenger), the orphans, the poor (al-Masaakeen), and the wayfarer, in order that it may not become a fortune used by the rich among you..." 7 Surah al-Hashr,

then He ﷻ said:

"لِلْفُقَرَاءِ الْمُهَاجِرِينَ"

"For the poor emigrants (al-Muhājirūn), who were expelled from their homes and their properties, seeking Bounties from Allah and to please Him..." 8 Surah al-Hashr,

the *Āyah* denotes the verdict, that is giving the booty to the poor and the emigrants; therefore the Messenger ﷺ gave the booty of Bani al-Nadheer in which the *Āyah* got descended to the emigrants only, and he didn't give the *Anṣār* from it except men who were really poor, also the *'illah* that came in the Verse:

"كَيْ لا يَكُونَ دُولَةً بَيْنَ الأَغْنِيَاءِ مِنْكُمْ"

"In order that it may not become a fortune used by the rich among you" that means in order that the money circulation

doesn't remain between the rich, but it gets transferred to the others, the *'illah* denoted the verdict, and it is the reason for its legislation. And as it is narrated that the Prophet ﷺ was asked about the permissibility to sell the ripe dates by dried dates, he ﷺ said: " هَلْ يَنْقُصُ الرُّطَبُ إِذَا يَبِسَ؟ قَالُوا: نَعَمْ, فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: فَلاَ إِذَنْ" **"Do *ruṭad* become lighter if they dry? They said: yes, then the Prophet ﷺ said: then no"** compiled by al-Dāraquṭnī. The *ḥadīth* denoted the verdict, that is the impermissibility of selling ripe dates for dried dates, also the *'illah* that came in the *ḥadīth* which is being the ripe dates becomes lighter when it dries, it denotes the verdict, and it is the reason of its legislation. In these two examples the *'illah* came in the evidence of the verdict. And the evidence may come to denote the *'illah*, and its denotation on the *'illah* was aimed, so the verdict in this situation is denoted by the *'illah*, and it is the reason of its legislation. The verdict of usurp is to return the usurped thing in accordance with the saying of the Messenger of Allah ﷺ: "عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ" **"The hand is in debt of what it takes until it gives it back"** compiled by Aḥmad, it is an evidence that the person must return back to the owner the property that his hand had taken as loan, rent, or usurp, but if the usurped property gets damaged, the usurper must return a similar to it or its value, for the *ḥadīth* that Anas had narrated saying: one of the Messenger's wives sent to the Messenger ﷺ food in a bowl as gift, 'Ā'ishah hit the bowl by her hand and throw what is in it, then the Prophet ﷺ said: "طَعَامٌ بِطَعَامٍ, وَإِنَاءٌ بِإِنَاءٍ" **"Food for food and a bowl for a bowl"** compiled al-Tirmidhī, and in the narration of Ibn Abi Haatim: the Messenger of Allah ﷺ said: "مَنْ كَسَرَ شَيْئًا فَهُوَ لَهُ, وَعَلَيْهِ مِثْلُهُ" **"whoever breaks something it becomes his, and he is in debt of one similar to it"** this is an evidence for the verdict of the thing that

gets damaged, and from this is the damage of the usurped property, and the damage is a *'illah* for returning the value of it or a similar property, so it is an evidence for the *'illah*. Also the verdict of the property of the individual is that it is respected, and nothing can be taken from the person except by his own free will in accordance with the general saying of the Messenger ﷺ: " لا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلاَّ بِطِيبِ نَفْسٍ مِنْه" **"The property of the Muslim person is not allowed except by his own free will"** compiled by al-Bayhaqy, but if his prevention causes harm, then what is needed will be taken from him unwillingly, due to what is narrated from Ibn Abbaas that he said: the Messenger of Allah ﷺ said: " لا ضَرَرَ، وَلا ضِرَارَ، وَلِلرَّجُلِ أَنْ يَغْرِزَ خَشَبَةً فِي حَائِطِ جَارِهِ" **"Forbidden is the harm and the harmful, and the man has the right to insert a timber in the wall of his neighbour"** compiled by Aḥmad, and Abū Hurairah narrated that the Prophet ﷺ said: "لاَ يَمْنَعْ جَارٌ جَارَهُ أَنْ يَغْرِزَ خَشَبَهُ فِي جِدَارِهِ" **"A neighbour should not prevent his neighbour from inserting his timbers in his wall"** compiled by al-Bukhārī. The two *Ḥadīths* denote that the neighbour is not allowed to prevent his neighbour from inserting his timber in his wall, and the ruler compels him if he refuses, since the wall belongs to him he can prevent his neighbour from inserting the timber, but this prevention harms his neighbour, so to remove this harm he is compelled to allow his neighbour, and the *'illah* is the harm, and this is an evidence for disallowing the harm, and the harm is the *'illah* for compelling the owner to give up his right, so it is an evidence for the *'illah*. The damage in the first example and the harm in the second example, each one of them is a Sharī'ah *'illah*, and the *dalīl* came denoting every one of them. Accordingly it is not a condition that the *dalīl* of the *'illah* is the *dalīl* of the verdict, but the *dalīl* of it could also

be a *dalīl* for the verdict, and it could be a *dalīl* that is aimed to denote the *'illah*.

Knowing the *'illah* doesn't depend on the verdict, because it is proven by the text, so it doesn't depend on the verdict, but it depends on the existence of the *dalīl*. So the verdict alone doesn't denote the *'illah* even if it is denoted by a *dalīl*; because the *'illah* is other then the verdict, and the verdict is not a right *dalīl* for it. Hence the *Qiyās* of one verdict on the other just for the similarity of the duties is not attainable, but it is inevitable to have a *'illah* denoted by a Shar'i *dalīl*, accordingly the verdict and the *'illah* are two different things, and every one of them needs a *dalīl* from the *Kitāb*, the Sunnah, or from the consensus of the *Ṣaḥābah* that denotes it. So the denotation of the *dalīl* on the verdict is not sufficient to denote the existence of the *'illah*, but it is inevitable to have a *dalīl* that denotes it, either in the *dalīl* of the verdict itself by a special text that denotes it, or by a *dalīl* in which the denotation of the *'illah* is aimed. But the *'illah* itself can be a *dalīl* for the verdict, without a necessity for another *dalīl*; because the *'illah* itself is a *dalīl*, since it is the *ma'qūl* of the text, it is like the *manṭūq* and the *mafhūm* of the text. Hence its definition that it is the reason of the verdict is the most accurate definition.

As the definition of the (*'illah*) reason is the thing for which the verdict existed makes ambiguity between it and the (*sabab*) cause, and between it and the (*manāṭ*) object of the verdict, it is inevitable to clarify the difference between *'illah* and the *sabab*, and the difference between the *'illah* and the object (*manāṭ*).

الفَرْقُ بَيْنَ العِلَّةِ وَالسَّبَب

The Difference between the Reason (*al-ʿIllah*) and the Cause (*al-Sabab*)

The *sabab* is the thing that its existence necessitates the existence of the verdict (the execution of it), and its absence necessitates the absence (of the verdict), but it is not the reason for legislating the verdict. So the *sabab* is related to the existence of the verdict in the reality, but it is not related to the legislation of the verdict to treat the reality, like witnessing the month of *Ramaḍān* is a *sabab* for the obligation to fast upon whoever witnesses it, Allah ﷻ said:

{فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ} □

"So whoever of you witnesses the month of Ramadan (i.e. he is present), he must fast it"[321]

so the *sabab* is an indicator for the existence of the obligation (in practice), not for the reason of the obligation, i.e. not for the cause of making it obligatory, and the existence of the obligation (the execution of it) is other than the reason of the obligation. And this is different to the *ʿillah*; because it is the thing for which the verdict exists, i.e. it is the reason for legislating the verdict, so it is related to the legislation of the verdict not to the practical existence (performance) of it, it is the reason of the obligation of the verdict (in the *wājib*), not a cause to make it exist in practice. And the cause (*sabab*) precedes the existence (performance) of the verdict, so if it exists the existence of

[321] Surah al-Baqarah:185

the legislated obligation verdict becomes obligatory, but before the existence of the *sabab* the legislated verdict is obligatory upon the assigned person *(al-mukallaf)*, but the existence of this obligation in practice depends on the existence of the *sabab*, contrary to the *'illah*, it accompanies the legislation of the verdict, since it is the reason of its legislation. As an example, the sight of the crescent of *Ramaḍān* is the cause of the existence of the fasting (sawm), so it is precedent to the sawm, contrary to the waterfalls as a public property by which the electricity is generated, they are a reason for making the electricity a public ownership, and this reason is in association with the legislation of the verdict. Because the waterfalls are a public property, it associates the verdict of the electricity that is generated by them, and because they are a public property, it is the reason of the verdict. And the *sabab* is special for that which it is a cause for its existence, and it doesn't exceed it to other matters, and nothing can be measured on it. And this is contrary to the *'illah*, it is not special for the verdict which is legislated for it, but it exceeds it to other verdicts, and other matters can be measured on the verdict of it, and they can be measured on the *'illah*. For instance the coming of the time of praying the Maghrib (sunset) is the cause (*sabab*) for making the maghrib prayer exist, and it is not the reason of its obligation, and it is not a good cause for anything but for the Maghrib prayer, so nothing can be measured on it. But since the diversion from the prayer is the *'illah* of legislating the forbiddance of sale at the time of the call (azthaan) of the Jumu'ah prayer, as denoted the saying of Allah ﷻ:

{إِذَا نُودِيَ لِلصَّلاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ}

"When the call is proclaimed for the (Friday) Jumu'ah prayer, come to the remembrance of Allah and leave off the business"[322]

the verdict is not special in the sale, but if the *'illah* exists in other than the sale, the verdict extends to that other, so due to its existence the *Qiyās* on the verdict occurs, so leasing, swimming and writing are forbidden at the azthaan of the Jumu'ah prayer. So the *'illah* is the reason legislating the verdict, and the *sabab* is the cause of making the verdict exist in practice, i.e. the cause to perform it.

Accordingly, the Saying of Allah ﷻ:

{أَقِمِ الصَّلاةَ لِدُلُوكِ الشَّمْسِ}

"Perform the prayer from mid-day till the darkness of the night"[323]

is not *'illah* but it is a *sabab*, because the pass of the sun from the mid-day line is the cause to perform the prayer and not the reason of its legislation. And what is narrated that 'Ā'ishah رضي الله عنها said: " أَنَّ الشَّمْسَ خَسَفَتْ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ, فَبَعَثَ مُنادِيًا: الصَّلاةُ جَامِعَةٌ، فَاجْتَمَعُوا، وَتَقَدَّمَ فَكَبَّرَ وَصَلَّى أَرْبَعَ رَكَعَاتٍ فِي رَكْعَتَيْنِ وَأَرْبَعَ سَجَدَاتٍ" **"The sun had eclipsed at the time of the Messenger of Allah ﷺ, then he sent a caller: (*al-salaatu jaami'ah*) come to the prayer together, so they gathered, and he came forward and made takbeer and prayed four raka'aat in two bowing downs and four prostrations"** compiled by Muslim, this is not a *'illah* but a *sabab*, since the sun's eclipse is the cause for performing the prayer not the reason for its legislation. And what is narrated from Salamah Ibn al-Akwa': " أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ

[322] Surah al-Jumu'ah:9
[323] Surah al-Isrā':78

وَسَلَّمَ كَانَ يُصَلِّي الْمَغْرِبَ إِذَا غَرَبَتْ الشَّمْسُ وَتَوَارَتْ بِالْحِجَابِ **"That the Messenger of Allah used to pray the Maghrib when the sun sets and becomes unseen"** compiled by Muslim, it is not a *'illah* but it is a *sabab*; because the sunset and its hiding from the seen is a cause for performing the prayer not a reason for legislating it. So all these and their similarities are of the sorts of the causes not of the sorts of the reasons of legislation; the pass of the sun, the sun eclipse and the sunset are all causes to make the verdict exist in practice; they are not reasons for its obligation, i.e. they are causes to make the verdicts exist by the specific assigned person and not reasons for their legislation. Hence it is clear that what came in the worship matters as causes and not reasons of legislation make the worships (*al-'ibaadaat tawqeefiyah*) dependent on the revelation, they are unreasoned and cannot be measured on; because the cause is special for that which it is specifically a cause for it, and it is (a sign) for performing the verdict not for its legislation.

الفَرْقُ بَيْنَ العِلَّةِ وَالمَنَاط

The Difference between the *'Illah* and the *Manāṭ* (The Object of the Verdict)

The *'illah* is the matter for which the verdict got legislated and it is inevitable to have a *dalīl* that denotes it. As for the *manāṭ*, it is the object that the legislator made the verdict for it and related it to it, it is the issue upon which the verdict is applicable, it is not the *dalīl* nor is it the reason of the verdict. And the word *manāṭ* means the place of something, and the verbal noun (*ināṭah*) means relating and attaching, the poet Habeeb al-Dtaa'I said:

بِلادٌ بِها نِيطَت عَلَيَّ تَمَئِمي وَأَوَّلُ أَرضٍ مَسَّ جِلدي تُرابَها

A country in which my charms were put on me

And the first land my skin had touched

That means the charms (the word *niṭat* is passive past tense verb of the infinitive word *manāṭ*) were hanged on me in it, and this linguistic meaning of the word *al-manāṭ* is what is considered, since no Sharī'ah meaning other than this came for it, so it must be explained by its linguistic meaning. Accordingly, what is meant by the word *al-manāṭ* is: the object to which the verdict is related, so the *manāṭ* of the Sharī'ah verdict is the object for which the verdict is brought, so the verdict is related to it. This is the explanation of the *manāṭ*, and it has no other meaning at all. Accordingly, (*tahqeeq al-manāṭ*) verifying the *manāṭ* is scrutinizing the reality of the object for which the verdict came, to know its actuality, i.e. the *dalīl* and the *'illah* of the verdict that came are known, but does it apply on a specific object or it does not? So studying the applicability of the known verdict upon an individual of the objects is the verification of the *manāṭ*, so the *manāṭ* of the verdict is the non transmitted area of the Sharī'ah verdict. So it is other than what is transmitted, it is the object upupon which the verdict is applied. When you say the intoxicant is forbidden, the Sharī'ah verdict is the forbiddance of the intoxicant, so the examination of a certain drink whether it is an intoxicant or not, so that it takes the verdict of forbiddance or it doesn't is the verification of the *manāṭ*, so it is inevitable to examine the drink is it an intoxicant or not to be able to say that it is forbidden, and this scrutiny in the reality of the drink whether it is intoxicant or not is the verification of the object (*tahqeeq al-manāṭ*) of the Sharī'ah verdict. And when you say the water by which the

wuḍū' is valid is the absolutely pure (*muṭlaq*) water, the Sharī'ah verdict is that the *muṭlaq* water is the water permissible to use for the *wuḍū'*. So examining the water whether it is *muṭlaq* or it is not, so that it can take the verdict whether it is permissible to make *wuḍū'* from it or it is not is the verification of (*al-manāṭ*) the object of the verdict, so it is inevitable to examine the water whether it is *muṭlaq* or not to be able to say that it is permissible to make *wuḍū'* from it or it is not, and this examination of the actuality of the water is the verification of the *manāṭ*. And when you say that the (muhdith) person who loses his *wuḍū'* must make *wuḍū'* for the prayer, the Sharī'ah verdict is that the muhdith must make *wuḍū'* for the prayer, so assuring whether the person is muhdith or not is the verification of the *manāṭ*, and so on. So the verification of (*al-manāṭ*) the object of the verdict in these examples is making sure whether a certain drink is an intoxicant or not, and making sure whether the water is absolutely pure or not, and making sure whether the person is muhdith or not, so the *manāṭ* of the verdict in them are the drink, the water and the person. And verifying the *manāṭ* in knowing the reality of these things with regard to whether their related Sharī'ah verdicts are applicable on them or not applicable. So verifying the *manāṭ* is knowing the existence of the Sharī'ah verdict in the individual figures after knowing it from its Sharī'ah evidence or from the Sharī'ah reason (*'illah*). The direction of the Qiblah is the object (*manāṭ*) of the obligation of facing it (in the prayer), and the obligation of facing it is the Sharī'ah verdict, and it is previously known from the saying of Allah ﷻ:

{فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ وَحَيْثُ مَا كُنْتُمْ فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ}

"so turn your face in the direction of al-Masjid al-ḥarām. And wherever you people are, turn your faces (in prayer) in that direction"[324]

and the *manāṭ* here is that this direction is the direction of the Qiblah, so achieving this direction in the situation of ambiguity is the verification of the *manāṭ*. Accordingly, verifying the *manāṭ* is making sure of the object that it is the place of the verdict. Accordingly, the *manāṭ* is different to the *'illah*, and verifying the *manāṭ* is different to the *'illah*; because verifying the *manāṭ* is the scrutiny in the reality of the thing upon which the verdict is wanted to be applied, like the examination of the drink, is it intoxicant or not? And the examination of the water is it absolutely pure or not? And the examination of the person is he muhdith or not? And the examination of the direction is it the Qiblah or not? And so on. Whereas the verification of the *'illah* is the scrutiny in the reason of the verdict, like the scrutiny in the saying of the Prophet ﷺ: " هَلْ يَنْقُصُ الرُّطَبُ إِذَا يَبِسَ؟" "Do *ruṭad* become lighter when they dry?" when he was asked about selling ripe dates for dried dates and he said: "فَلاَ إِذَنْ" "...then no" compiled by al-Dāraquṭnī, does it imply reasoning (*ta'līl*) or it doesn't? And like the scrutiny in His ﷻ saying:

{كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ}

[324] Surah al-Baqarah:144

{...in order that it (the wealth) may not become a fortune used by the rich among you...} 7 Surah al-Hashr,

does it imply reasoning or it doesn't? And like the scrutiny in His ﷻ saying:

{إِذَا نُودِيَ لِلصَّلاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ}

{When the call is proclaimed for the (Friday) Jumu'ah prayer, come to the remembrance of Allah} Surah al-Jumu'ah:9

together with His saying:

{فَإِذَا قُضِيَتِ الصَّلاةُ فَانْتَشِرُوا فِي الأَرْضِ}

{Then when the prayer is ended, you may disperse through the land} 10 Surah al-Jumu'ah,

could a *'illah* be derived from them or it could not? And like the scrutiny in His ﷻ saying:

{وَالْمُؤَلَّفَةِ قُلُوبُهُمْ}

{...and to those whose hearts are attracted (to make them incline to Islam)...} 60 Surah al-Tawbah,

does it denote an *'illah* or it doesn't? And so on... so the verification of the *manāṭ* is referred to the knowledge in that which the object cannot be known without it, it is referred to other than the transmitted evidences, it is referred to the sciences, the technologies and the various knowledge that verify that thing; therefore it is not a condition for whoever wants to verify the *manāṭ* to be a *mujtahid*, but it is enough to have knowledge in that thing. Whereas the verification of the *'illah* is referred to the understanding of the text that came reasoned (with an

'illah), it is referred to what has been transmitted (al-*dalīl* al-naqly) and to the knowledge in the *Kitāb* and the Sunnah; therefore it is conditional for whoever wants to verify the *'illah* to be a *mujtahid*. This is the difference between the *'illah* and the object of the verdict (almanaadt), and consequently the difference between the verification of the *'illah* and the verification of the *manāṭ*.

When the *ijtihād* is concerning (about) the verification of the *manāṭ* it doesn't need a *mujtahid* that fulfills the Sharī'ah conditions of the *ijtihād* to be able to verify it, that means it doesn't require knowledge in the Sharī'ah evidences, nor does it require knowledge in the Arabic language; because what is meant by this *ijtihād* is the knowledge in the actuality of the subject as it is, i.e. the knowledge in the thing upon which the Sharī'ah verdict is wanted to be applied, but it requires the knowledge in that which that subject could not be known without it whenever the knowledge in it is required, so it is inevitable for that person to be knowledgeable in the knowledge that are related to that thing so that the Sharī'ah verdict applies in accordance with that requisite (actuality). And whether that person is the *mujtahid* himself or a different person to whom that *mujtahid* refers to know that thing or whether it is a book that explained it, so the knowledge in the Sharī'ah matters and in the Arabic language that is a condition for the *ijtihād* is not a condition for the verification of the *manāṭ*, but it is sufficient that he knows the subject upon which the verdict is wanted to be applied, even if he is totally ignorant in other knowledge, like the narrator of the *ḥadīth* (al-Muhaddith) who knows the situations and the ways of the chains of narrations and their straight from their weak, and he knows the good proof of

their bodies (texts) from that which is not a proof, such a knowledge is considered in what is related to the *ḥadīth* science, whether he is knowledgeable in the Sharī'ah matters and in the Arabic language or he is not, like the doctor in the knowledge of the diseases and the failings, like the tradesman in knowing the failings of the industries, like the experts of the markets in knowing the valuable goods and the entrances of their defects, like the land surveyor in knowing the estimation of the lands etc., like the linguist in knowing the expression and its meaning, like the inventor of the machines, like the nuclear scientist, and like the expert in the space sciences, thus are all these knowledge and their similar by which the *manāṭ* of the Sharī'ah verdict can be known, it is not a condition for the knowledgeable person in them to be a *mujtahid*, and not even to be a Muslim; because the aim of verifying the *manāṭ* is understanding the actuality of the thing, and this has nothing to do with the *ijtihād*, nor with the Sharī'ah knowledge, nor with the Arabic language, but the aim of it is specifically limited to knowing the thing.

Verifying the *manāṭ* of the verdict, i.e. the thing upon which the verdict is wanted to be applied is an inevitable matter before knowing the verdict, and it is impossible to know the verdict before verifying the *manāṭ*, indeed every Sharī'ah evidence (verdict) is based on two bases: one of them is due to the verification of the *manāṭ*, and the other is due to the Sharī'ah verdict itself. The first one is absolutely mental, i.e. it is proven by sought and scrutiny and that is other than what is transmitted. And the second one is transmitted, i.e. it is proven by understanding the Sharī'ah text that is straightly transmitted, and that is the *Kitāb*, the Sunnah and the consensus of the *Ṣaḥābah*. So the

mujtahid is obliged to firstly understand the actuality of the incident, or the fact or the thing that he wants to verify the Sharī'ah verdict of it, and after he understands it he moves on to the transmitted evidences, i.e. to understand the Sharī'ah text from which the verdict will be derived for the incident, the fact or the thing (if it is by derivation), or to understand the Sharī'ah verdict that is meant to be applied on the incident, the fact or the thing (if it is by *Qiyās*), i.e. during the derivation and the adoption of the verdicts it is inevitable to understand the reality and have (*fiqh*) comprehension in it, then to understand what the Sharī'ah evidence necessitates to treat this reality, and that is the verdict of Allah ﷻ that He issued concerning this reality, then he applies one of them on the other, in other word he achieves the knowledge of the verdict of Allah by understanding the reality and having *fiqh* in it.

شُرُوطُ العِلَّةِ

The Conditions of the *'Illah*

There are eight conditions for the *'illah*:

The first condition: it is inevitable for the *'illah* to signify the motive (behind the verdict), but if it is a (Dtardy) direct description (the scholars of '*Uṣūl* al-Fiqh called the description upupon which no verdict is dependent "a Dtardy description" like the whiteness, the blackness, the tallness, the shortness, etc.) then the reasoning by it is banned; because in that situation it would be an indication for the verdict, i.e. a sign for it, and it has no more significance than announcing the verdict, and the verdict is

announced by the address (al-khidtaab) not by the *'illah* that is derived from it; therefore it is a condition for the *'illah* to be the motive behind the verdict.

The second condition: the *'illah* must be a clear and precise description containing a suitable meaning, i.e. it must be a description that instructs the reasoning, since various descriptions come in the Sharī'ah texts, and that doesn't mean that all these descriptions are Sharī'ah reasons (*'ilal*) just because they come in the Sharī'ah evidences, but they are just like the other descriptions, and what makes them suitable to be an *'illah* is a certain status in the sentence, and they have to be specific descriptions; therefore it is inevitable to perceive the actuality of the description, and to perceive its status in the structure of the sentence so that it can be a considerable *'illah*, and so that it will be permitted to use for reasoning by it; therefore it is conditional for the *'illah* to be a description, and it is conditional for the description to be clear and evident and free from any confusion, and it is conditional that its status in the sentence signifies the reasoning, i.e. it must be an informative description.

The third condition: the description must be influential in the verdict, if it has no influence in it; it is not permitted to be an *'illah*. And the meaning of the influence of the *'illah* in the verdict is it becomes dominant (most probably) in the mind of the *mujtahid* that the verdict occurs when it exists, i.e. the verdict occurs only because it exists without anything else. So the saying of Allah ﷻ in the issue of Hajj: {لِيَشْهَدُوا مَنَافِعَ لَهُمْ} {So that they may witness things that are of benefit to them...} 28 Surah al-Hajj, it doesn't signify any *'illah*; because the description, that is witnessing the benefits doesn't influence the verdict; therefore it is not an

'illah, and His Saying in the issue of booties: {كَيْ لا يَكُونَ دُولَةً بَيْنَ الأَغْنِيَاءِ مِنْكُمْ} {...in order that it may not become a fortune used by the rich among you...} 7 Surah al-Hashr, it signifies an 'ilaah: because the description, that is the prevention of the wealth from being used by the rich only has influenced the verdict, and the verdict occurs at the existence of it. Hence it is inevitable for the *'illah* to be influential in the verdict.

The forth condition: the *'illah* must be sound, i.e. it is not contradicted by any text from the *Kitāb*, the Sunnah or the consensus of the *Ṣaḥābah*.

The fifth condition: it must be equable (*mudtarid*), i.e. whenever it exists the verdict exists.

The sixth condition: it must be transitive, and if it is limited then it is invalid; because the benefit of the *'illah* is verily in proving the verdict, and the limited *'illah* doesn't prove the verdict originally; because it is proven by the text or by the consensus of the *Ṣaḥābah*, and because the *'illah* is derived, it is a branch of the verdict, but if it is the evidence of the verdict then the verdict would be a branch of it and this is a circulation. And likewise the limited *'illah* is not an evidence for the branch verdict; because it is not transitive; therefore it is invalid.

The seventh condition: it must be proven by a Sharī'ah way similar to the Sharī'ah verdict, i.e. by the *Kitāb*, the Sunnah and the consensus of the *Ṣaḥābah*, and if it is not proven by one of these evidences it is not a considered Sharī'ah *'illah*.

The eighth condition: it must not be a Sharī'ah verdict, so that the Sharī'ah verdict would not be reasoned by the Sharī'ah verdict; because if the verdict is the *'illah* of the

verdict then it means either an introducing indication for the verdict, or a reason for its legislation. If it means the introducing indication then it is wrong to reason the verdict by it; because the *'illah* is not an introducing indication, but it is the reason of legislating the verdict. And if the verdict is the reason of the legislation it is impossible to occur; because that necessitates the verdict to be the *'illah* of itself, i.e. cutting the hand of the thief becomes the *'illah* of cutting the hand of the thief, and this doesn't happen; therefore it is wrong for the *'illah* to be a Sharī'ah verdict.

أَدِلَّةُ العِلَّة

The Evidences of the *'Illah*

It is not permitted to take the *'illah* except from what is considered to be brought by the revelation, i.e. except from the *Kitāb*, the Sunnah and the consensus of the *Ṣaḥābah*; because the *Kitāb* was brought by the revelation as text and meaning, and the Sunnah was brought by the revelation as meaning, and the consensus of the *Ṣaḥābah* discloses an evidence that the Messenger ﷺ either said it, did it or approved it, so it is considered of that which the revelation brought. So if the *'illah* comes in one of these three then it is a Sharī'ah *'illah*, but if it doesn't come in one of them it is not a considered Sharī'ah *'illah*. And by studying the Sharī'ah texts in the *Kitāb* and the Sunnah it became clear that the Sharī'ah text denotes the *'illah* either: explicitly, denotatively, by derivation or by *Qiyās*. And there is no other denotation for the Sharī'ah *'illah* from the considered Sharī'ah texts other than these four situations.

The Sharī'ah text denotes the *'illah* either explicitly by the text. Or by denotation, i.e. it can be denoted by the expressions or the structure or the arrangement of the text. Or it can be derived from one text or from a number of specific texts that can be understood from their specific denotation -not from their number- that something is an *'illah*. Or by (*Qiyās*) measuring an *'illah* that didn't come in the text nor did it come in the consensus of the *Ṣaḥābah* on another *'illah* which came in the *Kitāb* or in the Sunnah, i.e. in the text or in the *Ijmā'* of the *Ṣaḥābah*; because it includes the thing that the Sharī'ah made the (initial) *'illah* a *'illah* because of it, i.e. this *'illah* which didn't come in the text includes the same thing that the Legislator considered to be the motive of making the *'illah*, i.e. the point of reasoning in it is the same point of reasoning of the *'illah* that the text brought.

The *'illah* that is explicitly denoted by the text is the *'illah* that can be understood from the (*manṭūq*) literal meaning or the (*mafhūm*) connotation of the text, that is when a *dalīl* from the *Kitāb* or the Sunnah mentions a reasoning description by an expression that is composed for it in the language, without a need for scrutinizing and inference, and that is of two divisions:

The first: what is explicitly mentioned that a specific description is the *'illah* of the verdict, like the saying of the Prophet ﷺ: "إِنَّمَا جُعِلَ الاسْتِئْذَانُ مِنْ أَجْلِ البَصَرِ" "Seeking the permission is made for the sight" compiled by al-Bukhārī, that means it is legislated for entering the house of the others; lest the sight falls on what is forbidden to look at. And his ﷺ saying (when they said to him you forbade us to eat the meat of the sacrifices after three days): " إِنَّمَا نَهَيْتُكُمْ مِنْ أَجْلِ الدَّافَّةِ الَّتِي دَفَّتْ, فَكُلُوا, وَادَّخِرُوا, وَتَصَدَّقُوا" "I only prohibited

you for the purpose of the (daaffah) comers who came in, so eat from them and save and give in charity" compiled by Muslim, the daaffah are the Bedouin who travel slowly seeking graze when there is draught, and it is from the root ward "al-dafeef" which means crawling, and what is meant in the *ḥadīth* is the caravan, or the army that crawls toward the enemy. And like His ﷻ saying: {مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا} {Because of that We ordained for the Children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind...} 32 Surah al-Mā'idah.

The second: the text in which one of the reasoning (*ta'līl*) particles came, like: (لِ) (laam al-*ta'līl*) (the reasoning laam) it means for, in order that, (كَيْ) (kay) it means: so that, in order that, for the purpose of..., lest, etc., (إِنَّ) (inna) it means: verily, truly, indeed, and the particle الباء (al-baa') it means because of. As for the particle (لِ) it is for the saying of Allah ﷻ: {لِئَلا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ} {in order that mankind should have no plea against Allah after the (coming of) Messengers} 165 Surah al-Nisā', being that there is no plea is a description, and the particle (لِ) entered to it, so it denotes that it is the reason (*'illah*) for sending the Messengers; because the description is what makes the reasoning not the noun, and for the declaration of the linguists that the particle (لِ) is for the reasoning, and their saying in the expressions is a proof; therefore the reasoning by the description to which the reasoning laam enters is a Shar'i reasoning. As for reasoning particle (كَيْ), it is like His ﷻ saying: {كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ} {...in order that it may not become a fortune used by the rich among you...} 7 Surah al-Hashr, that means in order that the circulation of

wealth does not remain within the rich people, but it passes on to the others, that means the *'illah* of giving the Muhaajireen without the *Anṣār* is lest the wealth not be circulated by the rich of them. and like His ﷻ saying: {لِكَيْ لا ...so} يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ إِذَا قَضَوْا مِنْهُنَّ وَطَرًا} that there will be no difficulty to the believers in respect of (the marriage of) the wives of their adopted sons when the latter have no desire to keep them (i.e. they have divorced them)} 37 Surah al-Aḥzāb, that means the *'illah* of making the Messenger ﷺ married Zainab the divorcee of Zaid is that the believers do not refrain from marrying the divorcees of their adoptive. As for the reasoning particle (إنَّ) like his ﷺ saying in the killed peoples of Uhud: " زَمِّلُوهُمْ بِدِمَائِهِمْ, فَإِنَّهُ لَيْسَ كَلْمٌ يُكْلَمُ فِي اللَّهِ إِلَّا يَأْتِي يَوْمَ الْقِيَامَةِ يَدْمَى, لَوْنُهُ لَوْنُ الدَّمِ, وَرِيحُهُ رِيحُ الْمِسْكِ" "Do cover them with their blood, because no wound happens for the cause of Allah but it comes bleeding in the day of resurrection, its colour will be the blood colour, and its smell will be the smell of musk" compiled by al-Nassa'ie, so the *'illah* of not washing the martyr is that he will be gathered on the resurrection day with his wound bleeding. And like his saying ﷺ concerning the pilgrim who his she camel threw him down and broke his neck: " لاَتُمِسُّوهُ طِيبًا, وَلاَ تُخَمِّرُوا رَأْسَهُ, فَإِنَّ اللهَ يَبْعَثُهُ يَوْمَ القِيَامَةِ مُلَبِّيًا" "Do not touch him with any perfume, and do not wrap his head with a veil, for Allah resurrects him in the resurrection day and he will be doing talbyah (supplicating)" compiled by al-Bukhārī. And like his ﷺ ssaying about the cat: "إِنَّهَا مِنَ الطَّوَّافِينَ عَلَيْكُمْ وَالطَّوَّافَاتِ" Verily it is (male and female) of (the dtawwafeen and dtawwafaat) those who are always about and around you (like your domestic servants)" compiled by Aḥmad. And like his ﷺ saying: "لا تَشْتَرُوا السَّمَكَ فِي المَاءِ فَإِنَّهُ غَرَرٌ" "Do not buy the fish in the water, Surly it is a (gharar) deceiving sale" compiled

by Aḥmad. And as for the reasoning particle (باء), it is like His ﷻ saying: {فَبِمَا رَحْمَةٍ مِنَ اللَّهِ لِنْتَ لَهُمْ} {It is by the Mercy of Allah you dealt with them gently} 159 Surah Aali 'Imraan, He made the particle (بَاء) and that which it entered to an *'illah* for the kindness of the Prophet ﷺ. And like His ﷻ saying: {جَزَاءً بِمَا كَانُوا يَعْمَلُونَ} {A reward for what they used to do} 24 Surah al-Waaqi'ah.

These are the explicit forms of the reasoning, but signifying the reasoning in the form only occurs if three matters are fulfilled: one of them: if the particle is linguistically composed for the reasoning. The second: the expression to which the reasoning particle enters must be a description. The third: the description must be appropriate for the verdict, and the verdict must be constant according to it. if these three matters exist the tense signifies the reasoning. And it becomes obligatory to reasoning the verdict for which the text came. And if these three matters are not gathered then the tense is not for the reasoning. The particle (لام) in His ﷻ saying in the issue of Hajj: {لِيَشْهَدُوا مَنَافِعَ لَهُمْ} {So that they may witness things that are of benefit to them...} 28 Surah al-Hajj, and in His ﷻ saying about the pharaoh: {فَالْتَقَطَهُ آلُ فِرْعَوْنَ لِيَكُونَ لَهُمْ عَدُوًّا وَحَزَنًا} {Then the household of Fir'awn (Pharaoh) picked him up, that he might become for them an enemy and a (cause of) grief} 8 Surah al-Qasas, the particle (لام) is not for reasoning, but is for the end (al-'aaqibah); because despite that the particle was composed in the language for the reasoning, the verdict is not constant in accordance with it, the Hajj wasn't legislated for witnessing benefits, and pharaoh and his wife didn't take Mūsā for the purpose of being an enemy to them. And the particle (بَاء) in His ﷻ saying: {ذَلِكَ بِأَنَّهُمْ شَاقُّوا اللَّهَ وَرَسُولَهُ} {this is because they defied and disobeyed Allah and

His Messenger} 13 Surah al-Anfāl, and (إِنَّ) in His ﷻ saying: {إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ} {Satan wants only to excite enmity and hatred between you with intoxicants (alcoholic drinks) and gambling...} 91 Surah al-Mā'idah, it is not for the reasoning; because although the particle was composed in the language for the reasoning, it didn't enter into an appropriate reasoning description, so its reasoning description is void in such situations.

As for the *'illah* that the evidence proves it by denotation which is called simulation and gesture, and that is of two divisions:

The first: when the verdict is focused on an indicative description (وَصْفٌ مُفْهِم) that has a connotation of compatibility (مَفْهُومُ المُوَافَقَة) or a connotation of incompatibility (مَفْهُومُ المُخَالَفَة), in this situation the description is considered to be an *'illah* by which the verdict is reasoned, like the saying of Allah ﷻ: {إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ} al-Sadaqaat (here it means the *Zakāh*) are only for the fuqaraa' (the poor who don't get enough to satisfy their basic needs), and the masaakeen (the destitute who don't find what satisfy their needs, and no one knows their situation, and thy don't ask for alms), and those employed to collect it (the funds), and for those whose hearts have been inclined (towards Islam)...} 60 Surah al-Tawbah, the people whose hearts are inclined towards Islam are Muslims, their hearts become inclined by giving them from the *Zakāh*, so their situation is not a noun, but it is an appropriate description for the verdict of giving them the *Zakāh*. And so are the fuqaraa', the masaakeen and those who are employed to collect the *Zakāh*, the *'illah* of giving them is due to their descriptions

as poor, destitute and being employed to collect it. And thus is his ﷺ saying: "لاَ يَرِثُ القَاتِلُ شَيْئًا" "The killer does not inherit anything" compiled by Abū Dāwud, the word "the killer" is an indicative description (for reasoning the verdict); therefore it denotes that it is an *'illah* of not inheriting, i.e. being he is the killer is the *'illah* of not allowing him to inherit. And his ﷺ saying: "لاَضَمَانَ لِمُؤتَمَنٍ" "No liability on he who is entrusted (with something)" compiled by al-Dāraquṭnī, the *'illah* of the not being liable is his being entrusted (with that which got damaged or lost); because the expression "entrusted with" is an appropriate description for the verdict of not being liable, so it is the 'llah of it. and similar to it is his ﷺ saying: " لاَ يَرِثُ الكَافِرُ المُسْلِمَ, وَلاَ المُسْلِمُ الكَافِرَ" "The disbeliever does not inherit the Muslim, nor does the Muslim inherit the disbeliever" compiled by Aḥmad, it verily denotes that the *'illah* of not allowing him to inherit is his being disbeliever. And like his ﷺ saying: "مَنْ سَلَّفَ فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ, وَوَزْنٍ مَعْلُومٍ, إِلَى أَجَلٍ مَعْلُومٍ" "Whoever advances (sells by salaf), he should advance in a known measure, and a known weight, to a known term" compiled by Aḥmad, the *'illah* of the permissibility of the salaf sale is that the goods can be measured or weighted; because the word "measure" is an appropriate description for the verdict of the permissibility of the salaf sale; so being a known measure and a known weight is an *'illah*, and as such.

The second division: when the reasoning is necessitated by the meaning of the expression by its composition not by its construction and this is of five kinds:

The first: when the verdict is attached to the description by the particle of subsequence and causation (فَ) it means: then, so, subsequently, thereupon, like his ﷺ saying: " إِذَا

بَايَعْتَ فَقُلْ لاَ خِلاَبَةَ" "If you want to sell then say no deceiving" compiled by al-Bukhārī, and his ﷺ saying: " مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ" "Whoever repairs a dead land thereupon it is his" compiled by al-Bukhārī, and his saying to Burayrah: " مَلَكْتِ نَفْسَكِ فَاخْتَارِي" "You became free so choose (for yourself)" al-Shawkaany mentioned it in Nayl al-Awdtaar. So if the particle faa' enters into any sentence where the verdict is subsequent to a description it signifies the reasoning (al-*ta'līl*), whether it enters into the verdict or into the description; because the particle faa' was structured in these figures for the causation so it signifies the reasoning. As for its existence in the language by the meaning "then" which means the delay and the limited time, this is not clear in it, in addition to that it only has this meaning if the is an indication that prevents the subsequence and the causation; and therefore it originally signifies the reasoning, but the gathering and the delaying is contrary to its origin, that is because the particle faa' is composed in the language to signify the order and the subsequence, so in the saying of the Prophet ﷺ: "مَنْ أَحَاطَ حَائِطًا عَلَى أَرْضٍ فَهِيَ لَهُ" "Whoever builds a fence around a land then it is his" compiled by Aḥmad, the order signifies the reasoning; because the particle faa' here is for the subsequence, so it necessitates the confirmation of the verdict after that which it is dependent on, so that necessitate the causation of the verdict, so the particle faa' in its composition for the order and for the subsequence signifies the causation; it signifies the reasoning, and if it is used in other than that then that usage is different to its origin.

The second: If an incident happened and being submitted to the Prophet ﷺ then subsequently he issued a verdict for it, it verily signifies that what had happened is the *'illah* of that

verdict. And that is as al-Bukhārī had compiled from the way of Abū Hurayrah, he said: " أَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَجُلٌ "فَقالَ: هَلَكْتُ، قالَ: ولِمَ؟ قالَ: وَقَعْتُ عَلَى أَهْلِي فِي رَمَضَانَ، قالَ: فَأَعْتِقْ رَقَبَةً "A man came to the Prophet ﷺ and said: I am perished, he said: why? He said: (I fell on my wife in *Ramaḍān*), he meant to say: I had copulated with my wife in *Ramaḍān*, the Prophet said: then do free a slave", it denotes that the copulation is an *'illah* for the freeing; that is so because we know that the man asked the Prophet ﷺ about an incident to clarify its Sharī'ah verdict, and that the Prophet ﷺ had mentioned that verdict in the occasion of answering him, not that he mentioned it initially by himself, otherwise the question wouldn't be answered, and the clarification would be delayed from when it is needed. Although all this is possible, but it is contrary to what apparently happened, and since that was an answer to his question, it means the question which the answer came for it is implicitly existed in the words of the answerer, so it is as if he said to him: you had copulated then do the expiation.

The third: If the Legislator mentions together with the verdict a description that if it is not supposed to be for the reasoning it is meaningless to mention it, and the rank of the Legislator is far above that, and usually all that is mentioned of the Sharī'ah texts have a legislative consideration; therefore this description is considered to be an *'illah*, and the text is reasoned, that is if the talk is an answer to the question, whether the description came in the place of the question, or that the clarification of the verdict came deviated from the place of the question to something similar to the place of the question. And that is as it was narrated that: " أَنَّهُ سُئِلَ عَنْ جَوَازِ بَيْعِ الرُّطَبِ بِالتَّمْرِ, فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: هَلْ يَنْقُصُ الرُّطَبُ إِذَا يَبِسَ؟ فَقَالُوا: نَعَمْ, فَقَالَ: فَلاَ

"إِذَنْ" "He ﷺ was asked about the permissibility of selling the ripe dates (rudtab) for dried dates (tamr), the Prophet ﷺ said: do rudtad decrease (become lighter) when they dry? They said: yes, he said: then no" compiled by al-Dāraquṭnī, so the association of the verdict to the decrease description in their answer that the rudtab decrease when they dry is not uselessly, but it is inevitable to have a significance. And the association of the answer of the Messenger to the particle faa' (فَـ) in his saying: "فَلاَ إِذَنْ" "then no", and it is one of the reasoning forms, this association denotes that the decrease is an *'illah* for the forbiddance of selling the rudtab for dates, it came from relating the verdict to the description by the particle faa', and its association with the particle "إِذَنْ" "izthan" which means: in that case, therefore, consequently, accordingly, hence, etc., in this example description came in the place of the question. The example of the case where the description is not in the place of the question, as when he ﷺ clarifies the verdict he deviates from the place of the question to mentioning a similarity to it, as it is narrated that when the woman al-Khath'amiyah asked him ﷺ saying: O Messenger of Allah, my father died, and he didn't perform the Hajj obligation, if I perform it on his behalf would that be beneficial to him? He ﷺ said: " أَرَأَيْتِ لَوْ كَانَ عَلَى أَبِيكِ دَيْنٌ أَكُنْتِ قَاضِيَتَهُ؟ قَالَتْ: نَعَمْ, قَالَ: فَدَيْنُ اللهِ أَحَقُّ بِالقَضَاءِ" "You see if your father had a loan to pay, would you pay it off for him? She said: yes, he said then the loan of Allah is worthier to be paid" Ibn Qudaama mentioned it in al-Mughny, the Khath'amiyah asked about the Hajj, and the Prophet ﷺ mentioned to her the human debt, so he mentioned to her a similarity of what she asked him about, but he mentioned it making the verdict she asked him about it dependent on it, so the verdict got association of the verdict with a description, which is the debt could

never be uselessly, but it is inevitable to be for a significance. And since the Messenger ﷺ mentioned this description and made the verdict dependent on it, it denotes the reasoning by it, or otherwise mentioning it would be useless.

The fourth: if he mentions the verdict of a certain matter in the text, followed by the separation between it and another matter that could be included in the verdict if this separation between them is not mentioned, like his ﷺ saying in selling the commodities:" الذهبُ بِالذهبِ، والفضةُ بالفضةِ، والبُر بالبُرِّ، والشعيرُ بالشعيرِ، والتَّمرُ بِالتمرِ، والملحُ بِالملحِ مِثْلاً بِمثلٍ، سواءً بسواءٍ، يداً بيدٍ، فإذا اختلفتْ هذه الأصنافُ، فَبيعُوا كيف شِئْتُمْ إِذَا كَانَ يَداً بِيَدٍ" "(Do sell) the gold for gold, the silver for silver, the wheat for wheat, the barley for barley, the dates for dates and the salt for salt equally and hand by hand, but if these kinds are different to each other then do sell the way you like if it is hand by hand" compiled by Muslim, he mentioned the verdict of selling the wheat by the wheat that it is forbidden, then he followed that if the two kinds of beans are different like the wheat and the barley then it is permissible. This separation between the verdicts denotes that the unity in the kind of goods is the *'illah* of the forbiddance of the sale due to the evidence of the permissibility of the sale if the kinds are different to each other. And this separation comes in various expressions that signify meanings of separation between the things, from them is the conditional or reward expression like:" فإذا اختلفتْ هذه الأصنافُ، فَبيعُوا" "but if these kinds are different to each other then do sell". And from them is the expression of limitation, like His ﷻ saying: {وَلا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ} {...and go not unto them till they are purified (from menses)...} 222 Surah al-Baqarah, and as al-Bukhārī had

compiled from Jaabir: " نَهَى النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الثِّمَارِ حَتَّى يَبْدُوَ صَلاَحُهَا" "The Prophet ﷺ prohibited the sale of the fruits until their readiness appears", and like his prohibition of selling the grapes until it becomes black, and the prohibition of selling the beans until it becomes hard. And from them are the expressions of exception, like His ﷻ saying: {فَنِصْفُ مَا فَرَضْتُمْ إِلا أَنْ يَعْفُونَ} {...then pay half of what you have obliged yourselves to pay (al-Mahr), unless they (the women) agree to forego it...} 237 Surah al-Baqarah. And from them is the expression of amendment (al-'istidraak) like His ﷻ saying: {لا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ} {Allah will not punish you for what is unintentional in your oaths, but He will punish you for your deliberate oaths...} 89 Surah al-Mā'idah. And from them is resuming one of the two things by mentioning one of its descriptions after mentioning the other thing, like his ﷺ saying: "وَلِلرَّاجِلِ سَهْمٌ, وَلِلفَارِسِ ثَلاَثَةٌ" "One portion is for the one who goes on foot, and three portions are for the horseman".

The fifth: if the Legislator mentions with the verdict a reasoning indicative description that signifies its point of reasoning, like his ﷺ saying: " لاَ يَقْضِي القَاضِي بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانُ" "The judge should not judge between two people while he is angry" compiled by Aḥmad. The Legislator mentioned the anger status with the prohibition of the judgment, and the anger is an indicative description that signifies the reasoning, and it signifies that it is the *'illah* of the prohibition of the judgment because of the mental disturbance and the confusion status that it causes, so that indicates that the anger is an *'illah*. And like that is what was narrated that Abū Hurayrah said: " نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ حَاضِرٍ لِبَادٍ" "The Messenger of Allah ﷺ

prohibited the sale of an urbanite to a nomad" compiled by al-Bukhārī, he mentioned the prohibition of the sale of the urbanite to the nomad, so he mentioned with the prohibition that the seller is from the urban people and that the buyer is from the nomads, and each one of them is an indicative description that it is for reasoning the prohibition of the sale, and signifies that it is the *'illah* of the of the prohibition because of the ignorance of the buyer in the market price, so it indicates that since he is a nomad is an *'illah*; because he doesn't know the market price, and this is the reasoning point. And similar to it is the prohibition of receiving of the nomad goods, and the point of the reasoning came in it explicitly, Abū Hurayrah said: " نَهَى صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ يُتَلَقَّى الجَلَبُ, فَإِنْ تَلَقَّاهُ إِنْسَانٌ فَابْتَاعَهُ, فَصَاحِبُ السِّلْعَةِ فِيهَا بِالخِيَارِ إِذَا وَرَدَ السُّوقَ" "The Prophet ﷺ prohibited the reception of the nomad goods (before reaching the market), but if someone receives it and buys it then the owner of the goods has the right of option in it if he goes to the market" compiled by al-Tirmidhī. And thus if someone says: do honour the knowing person and insult the ignorant, so with the verdict of the honouring he mentioned an indicative description that it is for the reasoning which signifies that it is an *'illah* for the honour, for the knowledge he has, and thus he mentioned with the insult an indicative description that it is for the reasoning which signifies that it is an *'illah* for the insult, for his lack of knowledge, i.e. for the ignorance. And thus every indicative description signifies that it is for the reasoning and signifies the point of the reasoning in it, if it is mentioned in the Sharī'ah text with the verdict; it is the *'illah* of that verdict, and it revolves with the reasoned verdict in the existence and in the absence.

As for the *'illah* that is derived from one single text or from a numerous specific texts, that is when the Legislator commands something or prohibits something in a situation that is either mentioned with the verdict in the text or understood from the practical contexts of it that determine its existence practically, then He prohibits what He commanded or commands what He prohibits for the vanish of that situation, then it is understood that the verdict is reasoned by that situation or by what it indicates, and that is like His ﷻ saying:

{يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ}

{O you who have believed, when the call is proclaimed for the Friday prayer, come to the remembrance of Allaah and leave off the business...} 9 Surah al-Jumu'ah,

the *Āyah* was carried on to clarify verdicts for the Jumu'ah prayer, not to clarify the verdicts of the sale, so the prohibition of the sale is due in the situation of the Jumu'ah prayer call, then the text says:

{فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ}

{Then when the (Jumu'ah) prayer is ended, you may disperse through the land, and seek from the Bounty of Allaah (by conducting business, work, etc.)}, 10 Surah al-Jumu'ah,

He commanded to disperse through the land, and to seek from the bounty of Allah when that situation vanishes, that means the sale is permitted when the situation is over, i.e. when the Jumu'ah prayer is over. So what is derived from this is that the *'illah* of prohibition of the sale when the

Jumu'ah prayer is due is the distraction from the prayer, and that is what that situation indicates. And like the saying of the Prophet ﷺ: " الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلاَثٍ: فِي الكَلَإِ وَالمَاءِ وَالنَّارِ" **"The Muslims are partners in three things: in the pasture, in the water and in the fire"** compiled by Abū Dāwud, and it was proven that the Messenger ﷺ approved people to own water wells in their lands, and he approved the ownership of the water by individuals in the Madīnah and the Dtaa'if, but the wells that the Messenger allowed the individuals to own them were to irrigate the gardens, and the community had no need in them, so the permission to own them indicates that the partnership in the water is only in that which the community is in need for it, so from this it is derived that the existence of the need of the community to the water is the *'illah* of the partnership in it, i.e. because the water is from the public utilities it is the *'illah* of their partnership in it, i.e. the *'illah* that it is from the public utilities. And accordingly the partnership is not only in three, but in everything in which the community has a need, and if the community need vanishes from any one of them, the partnership vanishes for the absence of the *'illah*. And thus every text in which the verdict is carried on for a situation or a description and another text comes commanding a verdict in contrast to that verdict, then it is derived from the two texts that that situation is an *'illah*, or it indicates the *'illah* of the verdict. And like that is when the Legislator prohibits a matter a general prohibition, then He permits it in one of its two situations, so it derives from its permissibility in one of its two situations with the presence of the general prohibition that the *'illah* of the prohibition is the situation that is opposite to the situation in which it is permited.

As for the *ʿillah* that is inferred by *Qiyās*, it is the *ʿillah* that didn't come it the Sharī'ah text, but the Sharī'ah text brought something which is selfsame to it and of the same category, so the *ʿillah* that is not brought by a Sharī'ah *dalīl* can be measured on *ʿillah* which is brought by Sharī'ah text; because the reasoning point in it is brought by the Sari'ah text. But it conditional for the *ʿillah* on which it is measured to be taken from a text that indicates the reasoning, and indicates the point of the reasoning in itself so that the point of the reasoning is brought in the text, and in order to be considered that it is from that which the revelation (wahi) brought. So the wahi brought the point of the reasoning in it, and this is what makes it able to be measured on the *ʿillah* that the wahi brought and signified the point of the reasoning in it. This is the only situation in which the *ʿillah* is permitted to be measured on another *ʿillah*, and except in this situation it is not permissible to measure an *ʿillah* on an other *ʿillah* at all; that is because measuring an *ʿillah* on another *ʿillah* is like measuring a verdict that has no Sharī'ah evidence on another verdict that has a Shri'ah evidence brought for it, so as it is impermissible to measure a verdict on another verdict unless the verdict on which it is measured is reasoned by a Sharī'ah *ʿillah* denoted by the Sharī'ah, and as it is not permissible to measure a verdict on another verdict just for the resemblance of their duties, thus it is not permissible to measure an *ʿillah* on another *ʿillah* unless the *ʿillah* on which we measure is reasoned that it is an *ʿillah* by a clarification of its point of the reasoning in it from the Sharī'ah, i.e. unless the point of the reasoning is brought by the Sharī'ah, and it is not permitted to measure an *ʿillah* on another *ʿillah* just for the resemblance between them; therefore it is not permitted to measure an *ʿillah* except in

the indicative description in which the point of the reasoning in it is signified; and that is because in the *Qiyās* of the *'illah* on another *'illah* it is inevitable to have the point of the reasoning clarified either by the Legislator or from the denotation of the language. If the point of the reasoning is clarified in it, that means the *'illah* has got what makes it permitted to measure on it, exactly as the *'illah* by which the *Qiyās* occurs exists in the verdict on which other verdict could be measured, so if the *'illah* has the point of the reasoning clarified by the Sharī'ah, that is when the text that brought it clarifies the point of the reasoning in it, then it is permitted to make *Qiyās* on this *'illah*, and if it is not clarified it is not permissible to measure on it. And through the reading we found that this only exists in one situation, that is when the *'illah* is taken from a reasoning indicative description that signifies the point of the reasoning, and in other than that the *Qiyās* in the *'illah* is not permitted at all. So it is not permitted to measure on the derived *'illah*, nor on the *'illah* which is inferred from an un-indicative description, nor on the defective (inactive) noun because it is not a description, and it doesn't include a reasoning meaning, so it cannot be reasoned in order to make *Qiyās* on it. And as an example for the description that the Legislator mentioned with the verdict and its expression according to the language signifies the point of the reasoning in it, that is the saying of the Prophet ﷺ: " لاَ يَقْضِي القَاضِي بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانُ" **"The judge should not judge between two people while he is angry"** compiled by Aḥmad, the anger is the *'illah* of the prohibition of the judgment, it is a preventive *'illah*, and the expression anger signifies that because he is angry there is a preventive *'illah* from the judgment, and what made it an *'illah* is the mental disturbance and the confusion status that it causes, so

everything that causes mental disturbance and confusion status should be measured on it, like the hunger for instance, so the judge should not issue a judgment while he is hungry. So the anger is the is the original *'illah* which is taken as a basis to make *Qiyās* on it, and by the scrutiny it is clarified that it is an appropriate description that signifies the reason of making it an *'illah*, i.e. it is an indicative description that signifies the reasoning and signifies the point of the reasoning in it; therefore the *Qiyās* that is made on it is valid. And the example of the description that the Legislator mentioned with the verdict where the Sharī'ah text clarified the point of the reasoning in it, that is what was narrated that Abū Hurayrah said:" نَهَى صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ يُتَلَقَى الجَلَبُ, فَإِنْ تَلَقَّاهُ إِنْسَانٌ فَابْتَاعَهُ, فَصَاحِبُ السِّلْعَةِ فِيهَا بِالخِيَارِ إِذَا وَرَدَ السُّوقَ" **"The Prophet ﷺ prohibited the reception of the nomad goods (before reaching the market), but if someone receives it and buys it then the owner of the goods has the right of option in it if he goes to the market"** compiled by al-Tirmidhī, so the reception of the nomad goods (before reaching the market) is the *'illah* of the impermissibility to sell it, and its point of being an *'illah* is the ignorance of the owner of the goods in the market price as the text itself clarified. Since his saying "if he goes to the market" means if he knows the market price, accordingly what made the reception of the nomad goods an *'illah* is unknowing the market price; therefore (the buy and sell from) everyone who ignores the market price is measured on the reception of the nomad goods, even if he lives in the city, so meeting someone who was imprisoned while he is getting out of the prison is an *'illah* for the impermissibility of selling to him by the *Qiyās* on receiving the nomad goods; because it comprises what is comprised in the reception of the nomad goods, and that is the ignorance in the market price. And

thus every matter which has no evidence from the Legislator that makes it a considered *'illah*, but it comprises something similar to the description for which a *dalīl* came from the Legislator to consider it an *'illah* because of the point of the reasoning it comprises, it is permissible to consider it an *'illah* by the *Qiyās*, and its verdict is the same as that which the Sharī'ah text came and considered it to be an *'illah*. And it is inevitable to notice always that this doesn't occur unless the original *'illah* on which it is analogized is itself a reasoning indicative description, and that it signifies the reasoning point in itself.

Consequently it is conditional for the measuring *'illah* which is taken as a basis for the *Qiyās* to have three conditions gathered in it: the first: it has to be a description not an inactive noun. The second: it has to be an indicative description, i.e. a description that indicates a meaning other than the denotation of the expression, i.e. it indicates that it is for the reasoning. The third: it has to indicate the point of the reasoning in itself; therefore there is no reasoning in the (solid) inactive expressions at all. Accordingly his ﷺ saying: :" الذهبُ بِالذهبِ مِثْلاً بِمِثْلٍ، والفضةُ بالفضةِ مِثْلاً بِمِثْلٍ، والتَّمرُ بِالتمرِ مِثْلاً بِمِثْلٍ، والبُرُّ بالبُرِّ مِثْلاً بِمِثْلٍ، والملحُ بِالملحِ مِثْلاً بِمِثْلٍ، والشعيرُ بالشعيرِ مِثْلاً بِمِثْلٍ، فَمَنْ زَادَ أَوْ ازْدَادَ فَقَدْ أَربَى" **"(It is permitted to exchange) The gold for the gold like for like, the silver for the silver like for like, the wheat for the wheat like for like, the barley for the barley like for like, the dates for the dates like for like and the salt for the salt like for like, and whoever increases or asks for an increase he surly deals with (*Riba*) usury"** compiled by al-Tirmidhī, what came in this *ḥadīth* are not reasoned at all; because the things that are mentioned in it are inactive expressions not descriptions, they don't signify any linguistic or Sharī'ah

reasoning. So the forbiddance of the *Riba* in the *ḥadīth* is limited to these six things, and the *Riba* properties are limited to these six only. So it is incorrect to say that the *Riba* is forbidden in the gold because it is a weighed thing (it is sold by weight) (mawzoon), or because it is a precious metal, so that the *ʿillah* of forbidding the *Riba* in it is because it is gold and silver, and that the reasoning in it is for it is a weighed kind of things, or for it is a precious metal; because the words gold and silver are inactive nouns not descriptions, so it is absolutely incorrect to make them a reason, and nothing could be measured on it. And it doesn't include any reasoning, nor does it signify the reasoning point in itself, so it is not an *ʿillah* to be able to measure on it, hence no verdict could be analogized on it; because it is not an *ʿillah*, and no other *ʿillah* could be analogized on it; because it doesn't signify the point of the reasoning in itself. And it is incorrect to say that *riba* in the wheat, in the barley, in the dates and in the salt is forbidden because they are measured (sold by measure) (makeel), so that the *ʿillah* of forbidding the *riba* in them is because they are wheat, barley or salt, and the point of the reasoning in them would be because they are measurable kind of things (makeel), or because they are foods; because the words wheat, barley, dates and salt are inactive nouns (they don't signify an *ʿillah*) and they are not descriptions, so it is absolutely incorrect to make them an *ʿillah*, hence nothing could be analogized on them. And they also don't include any reasoning, nor do they indicate the point of the reasoning in themselves, so no *Qiyās* could be made on them. So no verdict could be measured on them; because they are not *ʿillah*, nor could an *ʿillah* be measured on them; because they don't indicate the point of the reasoning in themselves. And it is incorrect to say that the *ʿillah* is the

increase, and it occurs in every kind of things, hence it is forbidden to exchange any kind of things for the existence of the increase, it is incorrect to say that; because the saying of the Prophet ﷺ in the *ḥadīth*: "like for like" is a description and not an *'illah* for the forbiddance, and it is impossible to be understood as an *'illah*, neither linguistically and not by the Sharī'ah; therefore the verdict remains directed to the inactive expression; and therefore he said at the end of the *ḥadīth*: "فَمَنْ زَادَ أَوْ ازْدَادَ فَقَدْ أَربَى" **"and whoever increases or asks for an increase he surly deals with *Riba*"** that means whoever increases or asks for an increase in these dictated things, so the increase is limited to these things for the text that mentioned them, and because his saying: "like for like" and his saying: "and whoever increases or asks for an increase he surly deals with *Riba*" came as a description for these six things; therefore he repeated this description with every one of them to emphasize its description, and he confirmed it by saying: "and whoever increases or asks for an increase he surly deals with *Riba*", hence the *riba* is not considered in the exchange of the precious jewels like the diamond and the likes, even if someone increases or asks for an increase; because it is not included in the text. And accordingly there is no *riba* in the olives, nor there is in the onions, or in the oranges, or the apples, or the iron, or the copper, or the soil, or the cement, or in other things; because they are not dictated in a text.

Accordingly his ﷺ saying: " مَا مِنْ صَاحِبِ ذَهَبٍ وَلَا فِضَّةٍ لَا يُؤَدِّي مِنْهَا حَقَّهَا إِلَّا إِذَا كَانَ يَوْمُ الْقِيَامَةِ صُفِّحَتْ لَهُ صَفَائِحَ مِنْ نَارٍ..." **"No owner of gold or silver who does not their due right but he will have sheets of fire made for him on the Day of Judgment..."** compiled by Muslim, what came in this *ḥadīth*

is not reasoned at all; because these things are inactive expressions that do not signify reasoning, so the reasoning could not be understood from them, neither linguistically and not by the Sharī'ah, so the *Zakāh* in the currency is limited to the gold and the silver, so it shouldn't be said that the *Zakāh* is obligatory in them because they are money and every kind of money should be measured on them; this shouldn't be said because the word gold and the silver are inactive nouns so they are inappropriate to be an *'illah*; therefore no *Qiyās* can be made on them, and they don't include any reasoning, nor do they indicate a point of reasoning in themselves, so no *Qiyās* can be made on their *'illah*; therefore the *Zakāh* is not obligatory in the iron, nor is it in the copper, or in the steel, even if the year elapses while they are in the possession of the person, and thus the *Zakāh* is not obligatory in the diamond and the jewel even if the year elapses while they are in the possession of their owner, and thus the *Zakāh* is not obliged in the houses that are owned for leasing purpose, or in the cars that are owned for leasing purpose, whether they are passenger vehicles or freighting vehicles, they cannot be measured on the gold and the silver on the pretext that they are all money by analogizing them on the gold and the silver; because being the gold and the silver money is not the *'illah* of the *Zakāh* obligation in them, and the obligation of the *Zakāh* in them is not reasoned at all, and they are inactive expressions, so they cannot be an *'illah*, and the reasoning doesn't occur in them, so by their nature no analogizing can be made on them, and it cannot be claimed that they have an *'illah* to analogize (measure) on it. And thus is the livestock *Zakāh*, it is not obligatory except in which the text came; because it is an inactive expression, and thus is the *Zakāh* of the grains, it is not obligatory except in which the text came;

because it is an inactive expression, so it cannot be reasoned and no reasoning could be understood from it; because the existence of the *'illah* is limited to the description that indicates the reasoning and signifies the point of the reasoning, and this doesn't exist in what the *aḥādīth* have dictated the *Zakāh*, in addition to that, the Legislator had clarified the *nisāb* of every kind in which the *Zakāh* is obligatory and determined it by its inactive expression. And thus is His ﷻ saying:

{حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ}

"Forbidden to you (for food) are: al-Maitah (the dead animals)..." 3 Surah al-Mā'idah,

it is not correct to analogize on it; because the expression "al maitah" is not a description that indicates the forbiddance; because it is an inactive noun so no analogy on it can be made, and it doesn't indicate the point of the reasoning in itself, so it shouldn't be claimed that it has an *'illah* on which a *Qiyās* can be made. And also the reasoning doesn't occur in the non indicative description; because it doesn't signify the reasoning, and it doesn't include any reasoning neither linguistically and not by the Sharī'ah, "مَنْ ابْتَاعَ نَخْلًا بَعْدَ أَنْ تُؤَبَّرَ فَثَمَرَتُهَا لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ" **"Whoever buys pollinated palm trees then its fruits belong to the seller, unless the buyer put a condition that they are his..."** compiled by al-Bukhārī, it is special for the palm trees only, and no *Qiyās* can be made on it; because the pollinating is a specific action, and although the word "تَأْبِير" "pollinate" is a description, it is not a description that indicates the *'illah* of the verdict, so it doesn't include reasoning; therefore the *Qiyās* cannot be made on it, and no supplementary can be made to it. And thus every non indicative description

cannot be a basis on which the *Qiyās* can be made, and accordingly the *Qiyās* of the *'illah* is limited to the *'illah* that is proven by the indicative description only.

These are the evidences of the *'illah* from the *Kitāb*, the Sunnah and the *Qiyās*. As for the *Ijmā'* of the *Ṣaḥābah*, that is when the *Ṣaḥābah* narrate their consensus to consider something as an *'illah*, then it becomes a Sharī'ah *'illah*; because their consensus discloses that there is a *dalīl* for it. And they had consented to consider the justice as an *'illah* for the testimony, and to consider youngness as an *'illah* for the custody over the young one, so every one of them became a Sharī'ah *'illah*; because it is proven by the *Ijmā'* of the *Ṣaḥābah*, and it is same like the *'illah* that is proven by the *Kitāb* and the Sunnah.

مَقَاصِدُ الشَّرِيعَةِ

The Aims of the Sharī'ah

The Islamic Sharī'ah came as a mercy for the world, Allah ﷻ said in sending the Messenger ﷺ: {وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً لِلْعَالَمِينَ} {And We have sent you (O Muhammad ﷺ): not but as a mercy for the al-'Aalameen (mankind, jinn and all that exists)} 107 Surah al-Anbiyaa', and He ﷻ said about the Qur'ān: {وَنُنَزِّلُ مِنَ الْقُرْآنِ مَا هُوَ شِفَاءٌ وَرَحْمَةٌ لِلْمُؤْمِنِينَ} {And We send down of the Qur'ān that which is a healing and a mercy to the believers (in Islam)...} 17 Surah al-Isrā', being the Messenger a mercy, and being the Qur'ān a healing and a mercy, all that denotes that the Sharī'ah came as a mercy for the people, but the fact that the Sharī'ah came as a mercy is the consequence of the Sharī'ah not the incentive (the reason) of legislating it, i.e. Allah ﷻ told us that His wisdom behind legislating the Sharī'ah is to result to be (itself) a mercy for the people, not that it had been legislated because it is a mercy. Accordingly being a mercy for the people is the legislator's objective that He aimed from legislating the Sharī'ah, it is not the cause for which the Sharī'ah had been legislated. The evidence on this is the text of the verses which denote that it is a mercy, Allah ﷻ says: {وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً...} {And We have sent you not but as a mercy...}, {وَنُنَزِّلُ مِنَ الْقُرْآنِ مَا هُوَ شِفَاءٌ وَرَحْمَةٌ...} {And We send down of the Qur'ān that which is a healing and a mercy...} and that doesn't signify reasoning, it is like the His ﷻ saying concerning Pharaoh with Moses: {فَالْتَقَطَهُ آلُ فِرْعَوْنَ لِيَكُونَ لَهُمْ عَدُوًّا وَحَزَنًا} {Then the household of Fir'awn (Pharaoh) picked him up, that he might become for them an enemy and a (cause of) grief} 8 Surah al-Qasaa, and His

ﷻ saying about His assistance to the Muslims with the angels: {وَمَا جَعَلَهُ اللَّهُ إِلا بُشْرَى} {And Allah made it only as glad tidings...} 8 Surah al-Anfāl, and His Saying: {وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَى لِلْمُسْلِمِينَ} {And We have sent down to you the Book (the Qur'ān) as an exposition for everything, a guidance, a mercy and glad a tiding for the Muslims} 89 Surah al-Nahl, and His saying: {فَإِنَّهُ نَزَّلَهُ عَلَى قَلْبِكَ بِإِذْنِ اللَّهِ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ وَهُدًى وَبُشْرَى لِلْمُؤْمِنِينَ} {...for indeed he has brought it (this Qur'ān) down to your heart by Allah's Permission, confirming what came before it (the *Tawrāt* and the Injeel) and guidance and glad tidings for the believers} 97 Surah al-Baqarah, so what is meant by them is that the consequence of sending the Messenger is that he will be a mercy for the people, and His saying about the Qur'ān: {مَا هُوَ شِفَاءٌ وَرَحْمَةٌ...} {And We send down of the Qur'ān that which is a healing and a mercy...} is a description of the Sharī'ah with respect to the consequence of it, and not the *'illah* of legislating it, and there isn't not even one Verse that has reasoning in its tense. So all the tenses do not denote the reasoning; and therefore the reasoning is banished, and the Verses remain on there denotation that the wisdom of Allah for legislating the Sharī'ah is that it will be a mercy. By that the reasoning is banished so the reason is banished, so that being the Sharī'ah a mercy for the worlds is not the reason of legislating it, but it is the consequence that occurs from (implementing) the Sharī'ah.

It shouldn't be said that these Verses have informed us of what the legislator aimed from the Sharī'ah as informed us the Verses that clarified the *'illah* of the Sharī'ah; therefore they are *'illah* for the Sharī'ah; that shouldn't be said because these Verses although they informed us of the

intention of the legislator and His aim for legislating the Sharī'ah, they didn't inform us that they are His reason of legislating the Sharī'ah. So the aim is different to the reason. So the Verses informed us of the aim that may result from the Sharī'ah, but they didn't inform us of the reason of legislating it, and there are no texts that indicate the reason of legislating the Sharī'ah, i.e. the motive behind legislating it, neither from the Qur'ān and not from the Sunnah, but all that exist are texts that indicate the aim of the Sharī'ah, and these do not signify reasoning so they are not a reason. Thereupon there isn't any text that indicate an *'illah* for legislating the Sharī'ah, but the texts which exist indicate the aim that occurs from the Sharī'ah, and these are the objectives of the Sharī'ah, and there doesn't exist for the Sharī'ah as a whole any aim other than what occurs from it as a mercy for the people.

These aims are for the Sharī'ah as a whole, i.e. the aims of the Islamic religion as a whole, and they are not the aims of every (individual) verdict in specific, as the evidence which denoted them is clear that the mercy results from the Ahari'ah as a whole, not from every verdict in specific, since He ﷻ said: {وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً...} {And We have sent you not but as a mercy...}, that means the mission is a mercy, and He said: {وَنُنَزِّلُ مِنَ الْقُرْآنِ مَا هُوَ شِفَاءٌ وَرَحْمَةٌ...} {And We send down of the Qur'ān that which is a healing and a mercy...}, and the particle {مِنَ} {of} here is an explanatory particle, i.e. We send down the Qur'ān as a healing and a mercy, and it doesn't mean We send down some of the Qur'ān as a healing and a mercy; because according to the connotation of incompatibility (*Mafhūm* al-mukhaalafah) it would mean that some of it is not as such, and this is contrary to the Sharī'ah itself, and the established mental

and the Shar'i evidence were invalidate it; accordingly the healing and the mercy are the whole Qur'ān not some of it. Hence the evidence came clearly that the mercy is the aim of the Sharī'ah with regard to it as a whole, and it has no denotation that the mercy is the aim of every verdict in specific, or the aim of every individual text of the Sharī'ah; therefore we find that the Legislator simultaneously clarified the aims of the Sharī'ah as a whole, and He clarified His aim of legislating some specific verdicts, He said about the creation of the jinn and the human: {وَمَا خَلَقْتُ الْجِنَّ وَالإِنْسَ إِلا لِيَعْبُدُونِ} {And I (Allah) created not the jinn and mankind except that they should worship Me (Alone)} 56 Surah al-Zthariyaat, and He said other than that in many verdicts, hence Allah had clarified His aim of legislating the Sharī'ah as a whole, and His aim of legislating some of the verdicts, so the aim of Allah of legislating a specific verdict is not His aim of the Sharī'ah as a whole, and His aim of the Sharī'ah as a whole is not His aim of every verdict in specific, but the aim of Allah ﷻ can be known from the evidence in the subject it denotes, without exceeding to the others, but it is limited to the denotation of the evidence. Accordingly the aims of the Sharī'ah in totality are the wisdom of Allah for legislating it, and the objective that He aims form its legislation. And indeed this aim which is a mercy for the worlds is not the aim of every verdict of the Sharī'ah in specific, but it is the aim of the Sharī'ah as a whole.

مَقَاصِدُ الشَّرِيعَةِ

The Aims of the Sharī'ah [*Maqāṣid al-Sharī'ah*]

The Islamic Sharī'ah came as a mercy for the world, Allah ﷻ said in sending the Messenger ﷺ:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً لِلْعَالَمِينَ}

"And We have sent you (O Muhammad) not but as a mercy for the al-'Ālamīn (mankind, jinn and all that exists)"[325],

and He ﷻ said about the Qur'ān:

{وَنُنَزِّلُ مِنَ الْقُرْآنِ مَا هُوَ شِفَاءٌ وَرَحْمَةٌ لِلْمُؤْمِنِينَ}

"And We send down of the Qur'ān that which is a healing and a mercy to the believers (in Islam)..."[326],

being the Messenger a mercy, and being the Qur'ān a healing and a mercy, all that denotes that the Sharī'ah came as a mercy for the people, but the fact that the Sharī'ah came as a mercy is the consequence of the Sharī'ah not the incentive (the reason) of legislating it, i.e. Allah ﷻ told us that His wisdom behind legislating the Sharī'ah is to result to be (itself) a mercy for the people, not that it had been legislated because it is a mercy. Accordingly being a mercy for the people is the legislator's objective that He aimed from legislating the Sharī'ah, it is not the cause for which

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[325] Surah al-Anbiyā':107

[326] Surah al-Isrā':17

the Sharī'ah had been legislated. The evidence on this is the text of the verses which denote that it is a mercy, Allah ﷻ says:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً}

"And We have sent you not but as a mercy...",

{وَنُنَزِّلُ مِنَ الْقُرْآنِ مَا هُوَ شِفَاءٌ وَرَحْمَةٌ}

"And We send down of the Qur'ān that which is a healing and a mercy..."

and that doesn't signify reasoning, it is like the His ﷻ saying concerning Pharaoh with Moses:

{فَالْتَقَطَهُ آلُ فِرْعَوْنَ لِيَكُونَ لَهُمْ عَدُوًّا وَحَزَنًا}

"Then the household of Fir'awn (Pharaoh) picked him up, that he might become for them an enemy and a (cause of) grief"[327],

and His ﷻ saying about His assistance to the Muslims with the angels:

{وَمَا جَعَلَهُ اللَّهُ إِلا بُشْرَى}

"And Allah made it only as glad tidings..."[328],

and His Saying:

{وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَى لِلْمُسْلِمِينَ}

[327] Surah al-Qasas:8
[328] Surah al-Anfāl:8

"And We have sent down to you the Book (the Qur'ān) as an exposition for everything, a guidance, a mercy, and glad tidings for the Muslims"[329],

and His saying:

{فَإِنَّهُ نَزَّلَهُ عَلَىٰ قَلْبِكَ بِإِذْنِ اللَّهِ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ وَهُدًى وَبُشْرَىٰ لِلْمُؤْمِنِينَ}

"...for indeed he has brought it (this Qur'ān) down to your heart by Allah's Permission, confirming what came before it (the Tawrāt and the Injeel) and guidance and glad tidings for the believers"[330],

so what is meant by them is that the consequence of sending the Messenger is that he will be a mercy for the people, and His saying about the Qur'ān:

{مَا هُوَ شِفَاءٌ وَرَحْمَةٌ}

"And We send down of the Qur'ān that which is a healing and a mercy..."

is a description of the Sharī'ah with respect to the consequence of it, and not the *'illah* of legislating it, and there isn't not even one Verse that has reasoning in its tense. So all the tenses do not denote the reasoning; and therefore the reasoning is banished, and the Verses remain on there denotation that the wisdom of Allah for legislating the Sharī'ah is that it will be a mercy. By that the reasoning is banished so the reason is banished, so that being the Sharī'ah a mercy for the worlds is not the reason of

[329] Surah al-Nahl:89
[330] Surah al-Baqarah:97

legislating it, but it is the consequence that occurs from (implementing) the Sharī'ah.

It shouldn't be said that these Verses have informed us of what the legislator aimed from the Sharī'ah as informed us the Verses that clarified the *'illah* of the Sharī'ah; therefore they are *'illah* for the Sharī'ah; that shouldn't be said because these Verses although they informed us of the intention of the legislator and His aim for legislating the Sharī'ah, they didn't inform us that they are His reason of legislating the Sharī'ah. So the aim is different to the reason. So the Verses informed us of the aim that may result from the Sharī'ah, but they didn't inform us of the reason of legislating it, and there are no texts that indicate the reason of legislating the Sharī'ah, i.e. the motive behind legislating it, neither from the Qur'ān and not from the Sunnah, but all that exist are texts that indicate the aim of the Sharī'ah, and these do not signify reasoning so they are not a reason. Thereupon there isn't any text that indicate an *'illah* for legislating the Sharī'ah, but the texts which exist indicate the aim that occurs from the Sharī'ah, and these are the objectives of the Sharī'ah, and there doesn't exist for the Sharī'ah as a whole any aim other than what occurs from it as a mercy for the people.

These aims are for the Sharī'ah as a whole, i.e. the aims of the Islamic religion as a whole, and they are not the aims of every (individual) verdict in specific, as the evidence which denoted them is clear that the mercy results from the Shari'ah as a whole, not from every verdict in specific, since He ﷻ said:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً}

"And We have sent you not but as a mercy...",

that means the mission is a mercy, and He said:

{وَنُنَزِّلُ مِنَ الْقُرْآنِ مَا هُوَ شِفَاءٌ وَرَحْمَةٌ}

"And We send down of the Qur'ān that which is a healing and a mercy...",

and the particle {مِنَ} "of" here is an explanatory particle, i.e. We send down the Qur'ān as a healing and a mercy, and it doesn't mean We send down some of the Qur'ān as a healing and a mercy; because according to the connotation of incompatibility (*Mafhūm al-mukhālafah*) it would mean that some of it is not as such, and this is contrary to the Sharī'ah itself, and the established mental and the Shar'i evidence were invalidate it; accordingly the healing and the mercy are the whole Qur'ān not some of it. Hence the evidence came clearly that the mercy is the aim of the Sharī'ah with regard to it as a whole, and it has no denotation that the mercy is the aim of every verdict in specific, or the aim of every individual text of the Sharī'ah; therefore we find that the Legislator simultaneously clarified the aims of the Sharī'ah as a whole, and He clarified His aim of legislating some specific verdicts, He said about the creation of the jinn and the human:

{وَمَا خَلَقْتُ الْجِنَّ وَالإِنْسَ إِلا لِيَعْبُدُونِ}

"And I (Allah) created not the jinn and mankind except that they should worship Me (Alone)"[331],

and He said other than that in many verdicts, hence Allah had clarified His aim of legislating the Sharī'ah as a whole, and His aim of legislating some of the verdicts, so the aim

[331] Surah al-Zthariyaat:56

of Allah of legislating a specific verdict is not His aim of the Sharī'ah as a whole, and His aim of the Sharī'ah as a whole is not His aim of every verdict in specific, but the aim of Allah ﷻ can be known from the evidence in the subject it denotes, without exceeding to the others, but it is limited to the denotation of the evidence. Accordingly the aims of the Sharī'ah in totality are the wisdom of Allah for legislating it, and the objective that He aims form its legislation. And indeed this aim which is a mercy for the worlds is not the aim of every verdict of the Sharī'ah in specific, but it is the aim of the Sharī'ah as a whole.

مَقْصِدُ كُلِّ حُكْمٍ بِعَيْنِهِ

The Aim of Every Verdict in Specific

As Allah ﷻ had clarified His aim for which the Sharī'ah is legislated, so did he clarify His aim for which many of the verdicts are legislated, every verdict in specific, He ﷻ clarified concerning the Hajj that His aim of legislating it is that people may witness benefits for them, He ﷻ said:

{لِيَشْهَدُوا مَنَافِعَ لَهُمْ}

"So that they may witness things that are of benefit to them"[332]

And He clarified that His aim of forbidding the intoxicants and the gambling is to avoid the enmity and the hatred that happen between the people because of them, He ﷻ said:

{إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ}

[332] Surah al-Hajj:28

"The shaitaan (Satan) wants only to excite enmity and hatred between you with the intoxicants (alcoholic drinks) and the gambling..."[333]

And He clarified that His aim of sending the winds is to be a herald of the rain, He ﷻ said:

{وَهُوَ الَّذِى أَرْسَلَ الرِّيَاحَ بُشْرًا بَيْنَ يَدَىْ رَحْمَتِهِ}

"And it is He Who sends the winds as a herald of glad tidings, going before His Mercy (rain); and We send down pure water from the sky"[334]

And He clarified that His aim of creating the Jinn and the human is to worship Him alone, He said:

{وَمَا خَلَقْتُ الْجِنَّ وَالإِنْسَ إِلا لِيَعْبُدُونِ}

"And I (Allah) created not the jinn and mankind except that they should worship Me (Alone)"[335]

And He clarified that His aim when the household of fir'awn picked up Mūsā from the sea after his mother throw him in it is that Mūsā should be an enemy to them, He ﷻ said:

{فَالْتَقَطَهُ آلُ فِرْعَوْنَ لِيَكُونَ لَهُمْ عَدُوًّا وَحَزَنًا}

"Then the household of Fir'awn (Pharaoh) picked him up, that he might become for them an enemy and a (cause of) grief..."[336]

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[333] Surah al-Mā'idah:91
[334] Surah al-Furqaan:48
[335] Surah al-Zthaariyaat:56
[336] Surah al-Qasas:8

And that His aim of supplying the Muslims with angels is to be a glad tiding for them, He ﷻ said:

{وَمَا جَعَلَهُ اللَّهُ إِلا بُشْرَىٰ وَلِتَطْمَئِنَّ بِهِ قُلُوبُكُمْ}

"Allah made it only as a glad tiding, and that your hearts will tranquil therewith. And there is no victory except from Allah. Verily, Allah is All-Mighty, All-Wise"[337]

And that His aim of creating death and life is to trial people and examine them, He ﷻ said:

{الَّذِى خَلَقَ الْمَوْتَ وَالْحَيَاةَ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلا}

"Who has created death and life that He may test you which of you is best in deeds..."[338]

And that His aim of (sending) the religion isn't to confine on the people, but to purify them and to complete His favour upon them, He ﷻ said:

{مَا يُرِيدُ اللَّهُ لِيَجْعَلَ عَلَيْكُمْ مِنْ حَرَجٍ وَلَكِنْ يُرِيدُ لِيُطَهِّرَكُمْ وَلِيُتِمَّ نِعْمَتَهُ عَلَيْكُمْ}

"Allah does not want to place you in a difficulty, but to make you clean, and to complete His favour to you..."[339],

And

{وَمَا جَعَلَ عَلَيْكُمْ فِى الدِّينِ مِنْ حَرَجٍ}

[337] Surah al-Anfāl:10
[338] Surah al-Mulk:2
[339] Surah al-Mā'idah:6

"...and He has imposed no difficulties on you in the religion..."[340]

And that His aim of obligating the fasting is that they become pious, He ﷻ said:

{يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ}

"O you who have believed, Fasting is prescribed to you as it was prescribed to those before you, that you may do (self-restraint) taqwa"[341]

And that His aim of the prayer is that it prevents them from the shameful and the evil deeds, He ﷻ said:

{إِنَّ الصَّلاَةَ تَنْهَى عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ}

"...indeed the Prayer restrains from the shameful and the evil deeds"[342]

And that His aim of making al-Ka'bah a (*qiblah*) direction to which the Muslims direct themselves in the prayer is that people will have no point of argument against them, He ﷻ said:

{فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ لِئَلا يَكُونَ لِلنَّاسِ عَلَيْكُمْ حُجَّةٌ}

"...so turn your faces towards it (al-Ka'bah) that people will have no point of argument against you..." [343]

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[340] Surah al-Hajj:78
[341] Surah al-Baqarah:183
[342] Surah al-'Ankabūt:45
[343] Surah al-Baqarah:150

And His aim of drinking Zamzam water to heal whoever drinks it from that which he drinks it for, the Prophet ﷺ said: "مَاءُ زَمْزَمَ لِمَا شُرِبَ لَهُ" **"Zamam water is for that which it is drank for"** compiled by Aḥmad. And His aim of forbidding marrying the woman over her paternal or maternal aunty...etc. is that so they do not cut their family (Rahim) ties, as it came in the *ḥadīth* narrated by Ibn Abbas ﷺ that the Messenger ﷺ: " نَهَى أَنْ تُزَوَّجَ المَرْأَةُ عَلَى العَمَّةِ وَعَلَى الخَالَةِ" وَقَالَ إِنَّكُمْ إِنْ فَعَلْتُمْ ذَلِكَ قَطَّعْتُمْ أَرْحَامَكُمْ **"The Messenger of Allah ﷺ forbade marrying the woman over her paternal or maternal aunty, and he said: if you do so; you break your rahim ties"** compiled by al-Ṭabarānī in his book "*al-Kabīr*". And thus the legislator had clarified His aim of many verdicts, but indeed His aim that He clarified here is the purpose which results from the verdict, it is not the motive (reason) behind legislating it, which means His ﷻ wisdom behind legislating this verdict aims to result that which He had clarified, so Allah informs us that His wisdom from legislating this verdict is to result so and so to whoever performs it.

The aim of the Legislator behind the verdict is other than the reason for which the verdict has been legislated, with respect to both the wording tense, and the reality. As for the wording tense, His ﷻ saying:

{وَمَا خَلَقْتُ الْجِنَّ وَالإِنْسَ إِلا لِيَعْبُدُونِ}

"And I (Allah) created not the jinn and mankind except that they should worship Me (Alone)"

and His saying in the Hajj issue:

{لِيَشْهَدُوا مَنَافِعَ لَهُمْ}

"So that they may witness things that are of benefit to them"

and His saying in the origin of the creation:

{لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلا}

"so that He may test you which of you is best in deed"

and their likes, the tense of any of these Verses does not denote that the motive (reason) of the creation is the examination by Allah, nor does the other tense denote that the motive of legislating the Hajj is that people may witness (gain) benefits for themselves, nor does the other tense denote that the motive of creating the creation is that they worship Allah, but they denote that the consequence which occurs from this action is so and so, i.e. the result of this action is so and so. So what is in these Verses and their likes is not a motive, but it is the purpose or the result, i.e. the consequence. So Allah ﷻ clarified that His aim of this is that the consequence will be so and so. This is in contrast with the Verses which denote the motive, because indeed their tenses denote that what came in them is the incentive behind the verdict and the motive of its legislation. His ﷻ saying:

{لِكَيْ لا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ}

"...so that there will be no difficulty to the believers in respect of (the marriage of) the wives of their adopted sons..."[344],

and His ﷻ saying:

{كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ}

[344] Surah al-Aḥzāb:37

"...in order that it may not become a fortune used by the rich among you..."[345],

and His ﷻ saying:

{لا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِى أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ}

"Allah will not punish you for the unintentional of your oaths, but He will punish you for the oaths you affirm..."[346],

the tense of every one of these Verses denotes that what is mentioned in it is reason of the verdict, and not the aim of it. So because the wealth is not being circulated, it is the reason for which Allah ﷻ legislated the verdict, and it is not just an informing from Allah ﷻ about His aim of legislating the Verdict, and thus is the banishment of the difficulty in the wives of the adopted sons in the first *Āyah*, and the affirmation of the oaths in the third *Āyah*, every one of them is a motive for legislating the verdict, not an aim of its legislation, i.e. they are not the result that occurs from it. This is with respect to the tense of every Verse which came to clarify the motivation reason for which Allah ﷻ legislated the verdict. As for the reality of both the aim and the motive, it is that the aim is the wisdom of Allah and the result that may occur from this verdict, in contrast with the motive which is not the result, but it is the cause of the legislation, and it exists before the verdict and along with it, and it is not a result of it. So when Allah ﷻ says what denotes that His aim of legislating the verdict is so and so, the meaning of this saying is a clarification of

[345] Surah al-Hashr:7
[346] Surah al-Mā'idah:89

His aim, not a clarification of the legislating reason, and when He says what denotes that the reason of legislating this verdict is so and so, the meaning of this saying is a clarification of the thing for which He legislated the verdict, not a clarification of His aim from the verdict, and there is a big difference between the clarification of the reason and the clarification of the aim.

On the other hand, when Allah ﷻ clarifies His wisdom of legislating a verdict, i.e. His aim, it doesn't mean that this aim will inevitably occur, but it may occur and it may not, so if Allah clarified His wisdom of legislating a verdict it doesn't mean that the aim of Allah from the verdict must occur, but it only means that His aim of the verdict is that so and so results from it, not that it must result; and therefore the wisdom of Allah from the verdict may occur and may not. For instance Allah ﷻ says about the Hajj:

{لِيَشْهَدُوا مَنَافِعَ لَهُمْ}

"So that they may witness things that are of benefit to them"

and what is seen and tangible is that millions of people had performed Hajj and did not witness any benefits for themselves. And His ﷻ saying about the intoxicants and the gambling:

{إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ}

"The shaitaan (Satan) wants only to excite enmity and hatred between you with the intoxicants and the gambling..."

and there are many intoxicants' companions and gamblers whom the shaitaan did not instigate enmity and hatred between them. And the Messenger ﷺ says: " مَاءُ زَمْزَمَ لِمَا شُرِبَ لَهُ" **"Zamam water is for that which it is drank for"**

compiled by Aḥmad, and many people drank from Zamzam water with the intention of something and it didn't happen. This denotes that the aim of Allah from a matter He informed about it, or from a verdict He legislated doesn't necessary occur, but it is an informing from Allah ﷻ about His aim, not an informing that this aim must occur. So it is wrong to make the aim of the Legislator a motive for the verdict; accordingly it is not an *'illah* for it, but it is a clarification of the wisdom of Allah from the verdict, and if it is permissible to make the aim of the Legislator in these Verses a motive for the verdict, i.e. a Sharī'ah *'illah*, then instigating the enmity and the hatred would be the *'illah* of the forbiddance of the intoxicants and the gambling, if it exists they become forbidden, and otherwise they are not forbidden, and witnessing the benefit becomes the *'illah* of the Hajj, then if the benefit exists the Hajj exists and otherwise it doesn't, and as such... and this is invalid; and therefore the aim of the Legislator from the verdict, i.e. its purpose cannot be a motive (reason) for the verdict, but it is the wisdom of Allah from the verdict, and the result that occurs from its application.

Accordingly the purposes of the verdicts which Allah ﷻ clarified His aim of legislating them are the wisdoms of Allah from these verdicts, not reasons (*'ilal*) for them; therefore *Qiyās* cannot be based on them nor can it be based on the meanings which came in those wisdoms, and every wisdom of them is special for its specific verdict and it doesn't exceed it the others, and it may occur and may not, and it is not related to the Sharī'ah *'ilal*, nor is it related to the *Qiyās*, but it is the wisdom of Allah from the verdict.

And it must be known that the wisdom of Allah from the verdict is His own purpose of legislating it, and His aim from it, so it is inevitable that the Legislator Himself clarifies it in order to be known that it is His aim, i.e. the Sharī'ah purposes whether they are for the Sharī'ah as a whole or they are special for every specific verdict, they are not considered to be Sharī'ah purposes unless they are brought by a Shar'i text revealed from Allah, either as expression and meaning, or as a meaning and the Messenger expresses it, so if they are not brought by a text brought by the revelation it is not permissible to consider them as Sharī'ah purposes, i.e. wisdoms of Allah ﷻ; because the meaning of that they are Allah's purposes and His wisdoms from the verdicts or from the Sharī'ah is that it is Him ﷻ who set them as purposes, and it is impossible mentally or by the Sharī'ah to know the wisdom of Allah unless He informs us about it by a revealed text; therefore it must be brought by a text revealed from Allah, but if it is not brought by a text, it is not considered to be the purpose of the Legislator nor is it His wisdom; because Allah ﷻ didn't inform us of that, and because it is not permissible to derive a wisdom by *Qiyās* on the wisdoms about which He informed us.

From all that it became apparent that whatever the aim of legislating the verdict is, i.e. whatever result occurs from the verdict, and no matter how significant is this result, the Sharī'ah purposes are not Sharī'ah reasons, but they are informing from Allah, so they are a sort of notification about things not about verdicts, so they take in the Sharī'ah texts the verdict of the narratives, the information, the preaching and the instructions, and they are improper to be other than that, so they shouldn't be entered in the

legislation nor should they be entered in the derivation of the verdicts by any mean.

جَلْبُ المَصَالِحِ وَدَرْءُ المَفَاسِدِ

لَيْسَا عِلَّةً لِلْشَرِيعَةِ بِوَصْفِهَا كُلاً, وَلاَ عِلَّةً لِأَيِّ حُكْمٍ بِعَيْنِهِ

Bringing Benefits and Avoiding Evils are Not a Reason (*'Illah*) For the Sharī'ah as a Whole, Nor are they a Reason For Any Specific Verdict

Some of the Fiqh Principles' scholars say: the legislation of the verdict aims to either bring a benefit, avoid an evil, or both matters together; concerning the servant for the superiority of God from harms and benefits. And that may be the aim of the servant; because it is suitable to him and compatible with himself; therefore if the choice of existence and nonexistence of that is given to the worker (*al-Mukallaf*) he chooses its existence over its nonexistence. And if it is known that legislating the verdict aims to achieve a benefit or to avoid a harm, it is either in the here life or in the life after. And what is aimed to achieve from legislating the verdict is either a kind of the necessary objectives or not of the necessary objectives. If it is of the necessary objectives, it is either an origin or it is not an origin. If it is an origin, it is referable to the five objectives which all religions care for them, and they are the preservation of: the religion, the human being, the mind, the offspring and the wealth, for indeed the preservation of them is from the necessary objectives. And if it is not an origin then it is the supplementary that completes the necessary objective, like the exaggeration in preserving the

mind by forbidding drinking the little of the intoxicant which necessitates the forbiddance of the much even if it doesn't intoxicate.

And if what is aimed to achieve is not of the necessary objectives, it is either a kind of what is necessitated by people's need, or it is not necessitated. If it is a kind of what is necessitated by the need, it is either an origin or it is not an origin. If it is an origin then it is the second division which is referable to the additional necessities, like giving the guardian the authority of marrying off the young girl. And if it is not an origin then it is the supplementary which trends the completion trend of second division, like the consideration of the competency of the suitor (who proposes to marry a woman), and like the dowry of the like in marrying off the young girl.

And if what is aimed to achieve is not a kind of the additional needs then it is the third division, and that is categorized under the improvement and the beautification and the consideration of the best methods in the customs and the treatments, like depriving the slaves the testimonial competency.

In summary, according to this group of the scholars of the Fiqh principles the benefits are five divisions:

(1) The necessary objectives that are an origin, like the five objectives.

(2) The necessary objectives that are not an origin, like the forbiddance of drinking the little of the intoxicant.

(3) The unnecessary objectives that are a kind of what the need necessitates and it is an origin, like giving the guardian the authority to marrying off the young girl.

(4) The unnecessary objectives that are a kind of what need necessitates, but it is not an origin, like the consideration of the competency.

(5) The unnecessary objectives that are not a kind of what the need necessitates, but they are categorized under the category of the improvement, the beautification and the consideration of the best methods in the customs and the treatments, like depriving the woman the competency of governing.

And they said that the verdicts were legislated to meet the objectives of the servants. And their evidence for that is the text and the consensus (*Ijmā'*). As for the *Ijmā'*: the imams of the Fiqh have consented that the verdicts of Allah ﷻ are not free from wisdom and an objective, although they differed whether they are by necessity as the Mu'tazilah said, or they coincidentally occurred without any necessity as Ahlu al-Sunnah said. And as for the text: indeed the Sharī'ah verdicts are of that which the Messenger brought, so they are mercy for the worlds; for the saying of Allah ﷻ:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً لِلْعَالَمِينَ}

"And We have sent you (O Muhammad) but a mercy for the al-'Ālamīn (mankind, jinn and all that exists)"[347],

so if the verdicts are free from wisdoms of which the worlds benefit, they wouldn't be a mercy but a wrath. Also His ﷻ saying:

{وَرَحْمَتِي وَسِعَتْ كُلَّ شَيْءٍ}

[347] Surah al-Anbiyā':107

"...My Mercy extends to all things..."[348],

so if the legislation of the verdicts concerning the servants is not for a wisdom, they would be a wrath not a mercy. And also his ﷺ saying:"لا ضَرَرَ، وَلا ضِرَارَ فِي الإِسْلاَمِ" **"The harm and the harmful are forbidden in Islam"** compiled by al-Ṭabarānī, so if the assignment with the verdicts is not for a wisdom that is beneficial for the servants, their legislation would be an absolute harm, and that would be because of Islam, and that is contrary to the text. And if it is proven that the verdicts are legislated only for the benefits of the servants, then when we find a legislated verdict necessitates a beneficial matter then it is either that matter is the purpose of legislating the verdict, or that the purpose of the legislation is not apparent to us. If the purpose of legislating the verdict is not apparent to us, this makes the legislation of the verdict for the purpose of worship, and that is contrary to the principle; because principally the legislation of the verdict is for a wisdom, so nothing is left except that the verdict is legislated for what is apparent (in it); accordingly, the verdicts have been legislated only for the benefits of the servants.

This is the summary of what some scholars of the principals say that the Sharī'ah came to provide a benefit or to avoid an evil, but they say that it is inevitable for this benefit to be proven by an evidence in order to be considered in the verdict as an *'illah* (reason) for it, and if it is not proven by an evidence it is not considered. So they say that the Sharī'ah came to provide benefits and to avoid evils, and that in every specific Shar'i verdict it is inevitable

[348] Surah al-A'rāf:156

to have a *dalīl* that denotes the benefit so that it will be considered; therefore they said that the establishment of the description is a cause and an *'illah* from the Legislator, and that its evidence is inevitable to be from the Sharī'ah. So they say that bringing benefits and avoiding evils are the *'illah* of the Sharī'ah verdicts as a whole, and they are the *'illah* of every Sharī'ah verdict in specific, but they say: although the *'illah* of every specific verdict is bringing the benefit and avoiding the evil, the determination of it must be received from the Legislator by text. So they consider that the *'illah* clarified by the Legislator is bringing the benefit and avoiding the evil, for instance the *'illah* of forbidding the *riba* in the gold and the silver is their being jewels, and the *'illah* of the concession in the travel is the hardship, and the *'illah* of depriving the killer from the inheritance is because he is a killer, and as such. So these benefits are denoted by a text from the Legislator; therefore they are considered Sharī'ah *'ilal* (reasons).

And there is another group of Fiqh principles' scholars who say: the aim of legislating the verdict is: either bringing a benefit, or avoiding an evil, or both matters together. Indeed the composition of the legislations is but for the servants' benefits in both the here and the life after. And they said: and the dispute about it took place in the theology (*'ilm al-kalām*), and al-Rāzī alleged that the verdicts of Allah ﷻ are not reasoned by any *'illah* at all and His actions are also as such. And the Mu'tazilah have consented on that the verdicts of Allah are reasoned by maintaining the benefits of the servants, and they said: we scrutinized the Sharī'ah and found that it is composed for the servants' benefits, a scrutiny in which not al-Rāzī and nor others can dispute, indeed Allah ﷻ says:

{رُسُلاً مُبَشِّرِينَ وَمُنْذِرِينَ لِئَلا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ}

"Messengers who are conveyors of good news and warning so that mankind should have no plea against Allah, after (the coming of) the Messengers"[349],

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً لِلْعَالَمِينَ}

"And We have sent you (O Muhammad) not but as a mercy for the al-'Ālamīn (mankind, jinn and all that exists)"[350],

and He said in the origin of the creation:

{وَهُوَ الَّذِي خَلَقَ السَّمَاوَاتِ وَالأَرْضَ فِي سِتَّةِ أَيَّامٍ وَكَانَ عَرْشُهُ عَلَى الْمَاءِ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلا}

"And He it is Who created the heavens and the earth in six Days - and His Throne was over the Waters so that He might try you, which of you is best in deeds"[351],

{وَمَا خَلَقْتُ الْجِنَّ وَالإِنْسَ إِلا لِيَعْبُدُونِ}

"And I (Allah) created not the jinn and mankind except that they should worship Me (Alone)"[352],

{الَّذِي خَلَقَ الْمَوْتَ وَالْحَيَاةَ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلا}

"Who has created death and life that He may test you which of you is best in deeds..."[353],

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[349] Surah al-Nisā':165
[350] Surah al-Anbiyā':107
[351] Surah Hūd:7
[352] Surah al-Zthariyaat:56
[353] Surah al-Mulk:2

and as for the reasoning (*al-ta'līl*) of the detailed verdicts in the *Kitāb* and the Sunnah, they are uncountable, like His ﷻ saying in the Verse of the ablution:

{مَا يُرِيدُ اللَّهُ لِيَجْعَلَ عَلَيْكُمْ مِنْ حَرَجٍ وَلَكِنْ يُرِيدُ لِيُطَهِّرَكُمْ وَلِيُتِمَّ نِعْمَتَهُ عَلَيْكُمْ}

"...Allah does not wish to place you in a difficulty, but to make you clean, and to complete His favour to you"[354],

and He said in the Fasting:

{يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ}

"O you who have believed, Fasting is prescribed to you as it was prescribed to those before you, that you may do (self-restraint) taqwa"[355],

and in the prayer:

{إِنَّ الصَّلَاةَ تَنْهَى عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ}

"...indeed the Prayer restrains from the shameful and the evil deeds"[356],

and He said in the *Qiblah*:

{فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ لِئَلا يَكُونَ لِلنَّاسِ عَلَيْكُمْ حُجَّةٌ}

"...so turn your faces towards it (al-Ka'bah) that people will have no point of argument against you..."[357],

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[354] Surah al-Mā'idah:6
[355] Surah al-Baqarah:183
[356] Surah al-'Ankabūt:45

and in the *Jihād*:

{أُذِنَ لِلَّذِينَ يُقَاتَلُونَ بِأَنَّهُمْ ظُلِمُوا وَإِنَّ اللَّهَ عَلَى نَصْرِهِمْ لَقَدِيرٌ}

"The permission (to Fiqht) is given to those against whom war is made; because they are wronged, and verily, Allah is Most Powerful for their aid"[358],

and in the penalty: imsm

{وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ}

"And in al-Qiṣāṣ (the Law of Equality in punishment) there is (saving of) Life for you, O men of understanding, so that you may restrain yourselves"[359],

and He ﷻ said in the confession in His oneness:

{وَأَشْهَدَهُمْ عَلَى أَنْفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى شَهِدْنَا أَنْ تَقُولُوا يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ}

"...and He made them testify as to themselves (saying): "Am I not your Lord?" They said: "yes! We testify," lest you should say on the Day of Resurrection: "verily, we have been unaware of this"[360],

and what is meant in it is the awareness. And since the scrutiny has denoted this, and it signifies certainty in such issue, so we are certain that the matter is continuous in all the Sharī'ah detailes.

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[357] Surah al-Baqarah:150
[358] Surah al-Hajj:39
[359] Surah al-Baqarah:179
[360] Surah al-A'rāf:172

And they said: the assignments of the Sharī'ah refer to the preservation of its objectives in the creatures, and these objectives are not more than divisions (principles): one of them: the necessaries objectives. The second: the needed objectives. The third: the improvement objectives. As for the necessary objectives, they are inevitable for the execution of the benefits of the religion and life so that if they get lost the commonweal of life would not be established on straightness but on corruption. And the sum of the necessities is five: the preservation of the religion, the human being, the offspring, the wealth and the mind. And as for the needed objectives, they are needed with respect to the wideness and the removal of the confinement that mostly leads to the difficulty which follows the missing out of what is required, and these are taking place in the issues of the worships, the customs of life, the transactions and the crimes. In the worships they are like the reducing concessions with respect to the difficulty caused by the sickness and the travel. And in the custom of life, that is like the permissibility of hunting and enjoying the allowed delicacies. And in the transactions, like the "Qiraadh" (the Mudhaarabah partnership), and the "Musaaqaat" (when an owner of trees agrees with someone to irrigate and look after his trees for a known fee), and the salam transaction. And in the crimes: like the "Qasaamah" (the repeated oaths in the killing court case), and like imposing the diyah (the blood money) upon the 'Aaqilah (the close relatives of the killer). And as for the improvements, that means taking the best of the proper customs, and avoiding the dirty situations that sound minds reject, and that is gathered in the division of the high moral standards, and these are current in the worships, in the customs of life, in the transactions and in the crimes. In the worships like

removing the impurity, and like all the ritual purities, covering the '*Awrah*, and seeking the closeness to Allah ﷻ by performing the good deeds of donations and pious acts. And in the customs of life like the eating drinking etiquettes, and avoiding the impure foods, the filthy drinks, the excessiveness and the stinginess. And in the transactions like the prohibition of selling what is impure and the remainder of the water and the pasture, and like depriving the woman the governing positions, and in the issue of the crimes, like the prohibition of killing women, and killing infants and monks in the *Jihād*.

And they said: the fact that the Legislator aims to preserve the three principles: the necessities, the needed and the improvements, is inevitable to be based on evidence. And the evidence is that no one of the scholars of *ijtihād* is in doubt that these principles are proven by the Sharī'ah, and that they are considered as the aim of the Legislator, and the evidence of this is the scrutiny of the Sharī'ah and the study of its total and partial evidences, and what it includes of these general matters that are in the boundary of the moral induction that is not proven by a specific evidence, but by evidences added to each other, and have different purposes so that one matter gets formed from their collection, and they are unanimous on it to the extent of what is proven to the masses of the existence of Haatim (al-Dtaa'i) and the courage of Ali ﷺ, and the like matters, so people didn't rely in proving the objective of the Legislator in these principles on a specific evidence, nor on a specific direction, but they got that from the apparent phenomenon, from the general matters, from the absolute matters, from the limited matters and from the specific partial matters, in different people, and different incidents.

And they said: the principle concerning the customs is the consideration of the meanings, and that is by studying we found that the Legislator aiming the servants' benefits, and the normal verdicts revolve around them wherever they revolve, you would find something prohibited in a situation where there is no benefit in it then when there is a benefit in it, it becomes permissible, like the *Dirham* for the *Dirham* to a known term, it is forbidden to sell, but allowed as a loan, and the sale of the moist (green) for the dried where it is unjust and *riba*, and it is permissible if it has an outweighing benefit. And Allah ﷻ said:

{وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الأَلْبَابِ}

"And in al-Qiṣāṣ (the Law of Equality in punishment) there is (saving of) Life for you, O men of understanding",

and in the *ḥadīth*: "لا يَقْضِي القَاضِي بَيْنَ إِثْنَيْنِ وهُوَ غَضْبَانُ" **"The judge must not issue a judgment between two people while he is angry"** compiled by Aḥmad, and others that are uncountable, and they all indicate but explicitly announces the consideration of the servants' benefits, and that they revolve with them wherever they are, so this indicates that the customs are of that which the Legislator established them on the consideration of the meanings, and we understood from this that the Legislator meant to adopt the meanings and not to stop at the texts, and some of them have extended this until they said that every benefit received by the mind with acceptance is considered to them, even if there is no special origin for it from the Sharī'ah to cancel it or to consider it, and that the Sharī'ah is suitable for every time and place, and that is because if the benefit is denoted by a partial evidence then it is a Sharī'ah *'illah* and a Sharī'ah evidence, and if no partial

evidence denotes it, indeed the Sharī'ah texts as altogether have denoted it either by general evidence or by a collection of evidences.

As for the first group who considered the bringing of the benefits and the avoidance of the evil to be a Sharī'ah *'illah* for the Sharī'ah as a whole and a Sharī'ah *'illah* for every Shar'i verdict in particular, and they set a condition that the Shar'i evidence denotes the benefit in every particular verdict. As to that group the answer is that the consideration of bringing the benefits and avoiding the evil as an *'illah*, that is not free from either being indicated by the mind or by the Sharī'ah. If it is indicated by the mind, that has no and there is no consideration for its indication; because the issue is not the belief that Allah ﷻ is Just, and that His justice necessitates that His Sharī'ah as a whole, as well as every verdict in particular came to bring benefits to the servants and to avoid evils from them, but the issue is the Sharī'ah verdicts and their reasons, so it is related to the legislation of the verdicts, not to the belief in the Sharī'ah. So the subject of the belief is something, and the subject of the legislation is something else; because the belief is to believe decisively, and it must be established on certainty only, in contrast with the Sharī'ah verdicts for their derivation means understanding them from the Sharī'ah texts, and this is not belief or disbelief, but understanding and derivation, and it is not necessary to be established on certainty, but it is permissible to establish it on probability as well as on certainty, so the discussions in this subject which the theology scholars mentioned have no place here in the derivation of the verdicts, neither in evidences and reasons. It is true that the scholars of the theology had

discussed this subject and some of them said that Allah is just:

{وَلَا يَظْلِمُ رَبُّكَ أَحَدًا}

"...and your Lord treats no one with injustice"[361],

and that He is All Wise He doesn't do an act except for a wisdom and a purpose:

{وَمَا خَلَقْنَا السَّمَاءَ وَالأَرْضَ وَمَا بَيْنَهُمَا لاعِبِينَ}

"And We created not the heavens and the earth and all that is between them for a play"[362],

so the acts of Allah are reasoned that they are for the benefit of mankind for the superiority of Allah ﷻ from the harm and the benefit, so Allah does aim an objective from His acts and that is the benefit of the servants, So He aims the goodness for the servants, so His Sharī'ah and religion and all His commands and prohibitions are for bringing the benefits for the servants and avoiding them from the evils. And those scholars of theology who say that Allah's acts are reasoned, and that He aims the goodness for the servants had divided into two divisions: one division says: it is a must on Allah to consider what is best, and the other division says: that is not a must on Allah, it is not a must on Allah to act that within which is the goodness for His servants, but it is the system or the law that Allah aims in His act. So all of those see that the acts of Allah are reasoned, and that He aims a purpose out of them, and that is benefiting the servants. And their difference is only

[361] Surah al-Kahf:49
[362] Surah al-Anbiyā':21

whether it is a must on Allah ﷻ or it is His way and His law, and you will not find any change in the way of Allah.

And there is another group of the theology scholars who see that the acts of Allah are not reasoned by any aim, so the incentive for Allah to act is not the objective:

{لا يُسْأَلُ عَمَّا يَفْعَلُ}

"He cannot be questioned as to what He does..." [363]

{إِنَّمَا أَمْرُهُ إِذَا أَرَادَ شَيْئًا أَنْ يَقُولَ لَهُ كُنْ فَيَكُونُ}

"Verily, His Command, when He intends a thing is only that He says to it: be then it is"[364].

And this whole discussion is related to the belief not to the verdicts, and it is related to attributes of Allah not to the Sharī'ah that He sent down; therefore there is no place for it in the science of the Fiqh Principles neither in the Fiqh, and it is not related to the Sharī'ah *'illah* neither to the Sharī'ah verdicts. So the inference by it to that bringing the benefits and avoiding the evils are an *'illah* for the Sharī'ah and for the Sharī'ah verdicts is basically a false inference for its incompatibility, and for the difference between the two issues: the attributes of Allah, and the Sharī'ah *'illah* and the Sharī'ah verdicts.

Accordingly, the consideration of "bringing the benefits and avoiding the evils" an *'illah* established by the mind is a false consideration and has no value, so it is inevitable for this consideration to come from the Sharī'ah to make it an

[363] Surah al-Anbiyā':23
[364] Surah Yā Sīn:82

'illah from the Sharī'ah not from the mind, especially that the *'illah* is but Sharī'ah *'illah* (reason) not any *'illah*.

As for their inference that "bringing benefits and avoiding evils" is an *'illah* showed by the Qur'ān, the *ḥadīth* and the *Ijmā'*, it is also a false inference. Concerning the Qur'ān and the *ḥadīth*, the Verses they cited do not denote the reasoning neither in their structure nor in the reality. They cited His ﷻ saying:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً لِلْعَالَمِينَ}

"And We have sent you (O Muhammad) but as a mercy for al-'Ālamīn (mankind, jinn and all that exists"[365],

{وَرَحْمَتِي وَسِعَتْ كُلَّ شَيْءٍ}

"...And My Mercy extends to all things..."[366],

and his ﷺ saying: "لا ضَرَرَ، وَلا ضِرَارَ" **"The harm and the harmful are forbidden"** compiled by al-Hākim, and these don't have any denotation of their allegation. As for the first *Āyah*, verily being the Messenger a mercy does not mean literally that he is sent to bring benefits and avoid evils, but that is denoted by the denotation of necessity (***delaalat*** *al-'iltizaam*); because being his sent is a mercy necessitates that his mission is for bringing benefits and avoiding evils, hence the meaning of the *Āyah* is that the objective of sending the Messenger is that his mission will be a mercy for the servants, and being a mercy necessitates that it is for bringing benefits for them and avoiding evils from them, hence the objective of the Islamic Sharī'ah as a

[365] Surah al-Anbiyā':107
[366] Surah al-A'rāf:156

whole is bringing benefits and avoiding evils, it is not that bringing benefits is the reason of the Islamic Sharī'ah as a whole, neither it is the objective of every particular verdict of the Sharī'ah, nor is it a reason of every particular verdict; because the text denotes that the objective of the Islamic Sharī'ah is bringing benefits and avoiding evils, and it doesn't denote other than that. It means that bringing the benefits and avoiding the evils are the result of the Sharī'ah, not that bringing the benefits and avoiding the evils are the motive of legislating the Shari'sh. So they are the result of the Sharī'ah that which the Legislator aimed from its legislation, not the reason for which it had been legislated, and there is a difference between the result and the reason; because the result occurs in consequence of implementing the Sharī'ah so it is the result of it, whereas the cause (of the legislation) occurs before legislating the Sharī'ah, and it accompanies it after it exists, but it doesn't result from its implementation. So the issue is: there is an objective, and there is a motive, and the motive is different to the objective; and therefore being "bringing benefits and avoiding evils" the objective of legislating the Sharī'ah as a whole, doesn't mean at all that it is the motive and the incentive of legislating it; therefore they are not the *'illah* of its legislation.

However, the text of the Verse in its structure does not denote any reasoning, nor does it signify reasoning at all, it says:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً لِلْعَالَمِينَ}

"And We have sent you (O Muhammad) but as a mercy for al-'Ālamīn (the worlds)",

and this does not signify the reasoning, it is like the saying of Allah ﷻ concerning the people of Fir'awn with Mūsā:

{فَالْتَقَطَهُ آلُ فِرْعَوْنَ لِيَكُونَ لَهُمْ عَدُوًّا وَحَزَنًا }

"Then the people of Fir'awn picked him up (from the river) so that he (Mūsā) becomes to them an enemy and a sorrow ...",

and the saying of Allah Ta'ala in supplying angels to assist the Muslims:

{وَمَا جَعَلَهُ اللَّهُ إِلا بُشْرَى}

"And Allah made it only as glad tidings..."[367],

and His saying about the Qur'ān:

{وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَى لِلْمُسْلِمِينَ}

"...And We have sent down to you the Book (the Qur'ān) as an exposition for everything, a guidance, a mercy and a glad tiding for the Muslims (who submit themselves to Allah)"[368],

and His saying:

{فَإِنَّهُ نَزَّلَهُ عَلَى قَلْبِكَ بِإِذْنِ اللَّهِ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ وَهُدًى وَبُشْرَى لِلْمُؤْمِنِينَ}

"...for indeed he has sent it (this Qur'ān) down to your heart by Allah's Permission, confirming what came before it i.e. the

[367] Surah al-Anfāl:8
[368] Surah al-Nahl:89

Tawrāt and the Injeel and guidance and glad tidings for the believers"[369],

these Verses and their likes do not signify reasoning, but they signify the purpose. For instance, in the *Āyah*:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً}

"And We have sent you (O Muhammad): but as a mercy..."

there isn't any denotation of reasoning; because the text that denotes reasoning is that which the reasoning in it is by the description composed for it in the language, provided that the description is appropriate, and that is by inserting one of the reasoning particles to the appropriate description, like:

{كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ}

"...in order that it may not become a fortune used by the rich among you..."[370],

or by placing it (the description) in the sentence in a way that signifies reasoning, like: "...ولا يرِثُ القاتِلُ شيأً" **"...And the killer does not inherit anything"** compiled by Abū Dāwud, "لا يَقْضِي القَاضِي بَيْنَ إِثْنَيْنِ وهُوَ غَضْبَانُ" **"The judge must not issue a judgment between two people while he is angry"** compiled by Aḥmad, "...وفِي صَدَقَةِ الغَنَمِ فِي سَائِمَتِهَا..." " **"...and the *zakāh* of the sheep and goats is in their saa'imah (the animals that graze in the forest and do not get fed by people)..."** compiled by al-Bukhārī, and the likes, indeed this signifies reasoning, so what comes in it (of a

[369] Surah al-Baqarah:97
[370] Surah al-Hashr:7

description) is a reason for the verdict, in contrast with when the expression is not a description, or when it is an inappropriate description, that does not signify reasoning nor could it be understood from it; therefore it cannot be *'illah*, like the poet's saying:

"لِدُوا لِلْمَوْتِ وَابْنُوا لِلْخَرَابِ"

"Generate for death and build for the destruction",

and like His ﷻ saying:

{وَهُوَ الَّذِى أَرْسَلَ الرِّيَاحَ بُشْرًا بَيْنَ يَدَىْ رَحْمَتِهِ}

"And it is He Who sends the winds as a herald of glad tidings, going before His Mercy (rain); and We send down from the sky pure water"[371],

and His ﷻ saying:

{وَمَا خَلَقْتُ الْجِنَّ وَالإِنسَ إِلا لِيَعْبُدُونِ}

"And I (Allah) created the jinn and mankind but that they should worship Me",

they don't signify reasoning; therefore what came in them is not an *'illah*, and exactly similar to that is His ﷻ saying:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً لِلْعَالَمِينَ}

"And We have sent you (O Muhammad) but a mercy for the worlds",

it does not signify reasoning, so it is not a reason for legislating the Sharī'ah (as a whole), and naturally by

[371] Surah al-Furqān:48

greater reason it is not the *'illah* of every specific verdict of it, so there isn't any denotation of reasoning (*Ta'līl*) in the Verse, and no *Qiyās* can be based on it at all.

As for His ﷻ saying:

{وَرَحْمَتِي وَسِعَتْ كُلَّ شَيْءٍ}

"...and My Mercy extends to all things..."[372],

it is not of this matter, nor is it in the issue of the Sharī'ah, it is speaking about the extent of the mercy of Allah ﷻ, not about sending Messengers, nor is it about His Sharī'ah, so there is no denotation in it for this issue.

And as for the saying of the Prophet ﷺ: " لا ضَرَرَ، وَلا ضِرَارَ فِي الإِسْلاَمِ" **"The harm and the harmful are forbidden in Islam"** compiled by al-Ṭabarānī. It is negating the harm in Islam, and the negation of the harm in it doesn't necessitate that there is benefit in it; because the negation of the harm doesn't necessitate the existence of the benefit, for instance there is no harm in (one) sesame seed, and thus there is no benefit in it, so there is no denotation in it that there is benefit in the Sharī'ah, but it denotes that the harm is negated from Islam, so no harm occurs from it, and its connotation is: that which harm occurs from it is not from Islam. However it does not denote the benefit in Islam neither literally nor by connotation; accordingly it does not denote that bringing the benefits and avoiding the evils are the reason of the Sharī'ah verdicts, but the utmost denotation of it is the negation of the harms from the Sharī'ah as a whole, and it doesn't mean any reasoning, neither for the Sharī'ah nor for the for any specific verdict

[372] Surah al-A'rāf:156

of it; because there is no significance of reasoning in this negation of harm alone, so it is not an *'illah* for legislating the Sharī'ah as a whole, nor is it an *'illah* for any particular Sharī'ah verdict.

Accordingly, even if the texts of the Qur'ān and the Sunnah denote that bringing benefits and avoiding evils are the result occurs from the Sharī'ah, they don't denote that bringing benefits and avoiding evils are the reason of legislating the Sharī'ah, nor are they the reason of every Sharī'ah verdict in particular; therefore the inference by it is refuted.

As for the consensus (*Ijmā'*) they alleged, they say that it is the *Ijmā'* of the imams of the Fiqh, and this has no value; because the *Ijmā'* that is a considered Sharī'ah evidence is only the *Ijmā'* of the *Ṣaḥābah*; therefore the *Ijmā'* they infer from is not considered. However, they say that the consensus occurred that the verdicts of Allah are not free from an intended wisdom, and they don't say that they consented that bringing benefits and avoiding evils are a reason; because the *Ijmā'* that the Sharī'ah is not free from a wisdom means it is not free from a purpose and an aim, and this doesn't mean that this is an *'illah*, but it is a purpose, i.e. the result of implementing it, and the purpose is other different to the *'illah*.

And as for their saying: if we find a legislated verdict that necessitates a beneficial matter, and this is what proves that the Sharī'ah verdicts are legislated only for the benefits of the servants, so the matter is inevitable to be beneficial, whether it is apparent to us or unapparent. If it is unapparent to us this is false; because it necessitates that the verdict was legislated to be a worship matter, and it is contrary to the principle, so nothing remains except that it

is legislated for the beneficial matter apparent in it. This saying of them does not denote that bringing the benefits and avoiding the evils are the reason of the Sharī'ah, neither that they are a reason for every Sharī'ah verdict in particular; that is because, being the Sharī'ah got legislated for the benefits of the servants is proved to be the purpose of it not the reason of it, and it is not proven by any way that it is reason of the legislation. However, being the result of the whole Sharī'ah benefits for the servants, it doesn't mean that it is the result of every verdict of it particular. And being the result of legislating the Sharī'ah as a whole doesn't necessitate that it is result of every verdict in specific, do you see the law the people legislate, like the penal code, they only legislate it for the benefit of the people. So the basis of the law and the purpose of legislating it are the peoples' benefits, but the legislation of every specific verdict of the law, or every specific clause of the law, only happens according to the necessity of the law itself, not according to the benefits of the people, i.e. it happens according to the legislative aspect necessitated by the thoughts and the principals of the law and the legislative direction in it, not according to the benefits of the people in this particular verdict, and by this it is apparent that being the Sharī'ah came so that benefits for the people result from it, it doesn't mean that every one of its verdicts is for the benefits of the servants; because there is difference between legislating the Sharī'ah as a whole and every particular verdict of it, or every particular text of it, so the result of the Sharī'ah as a whole should not be given to the every one of its verdicts; because it was legislated for a purpose as a whole, in contrast with particular verdict of it, it is legislated in accordance with that which the

legislation of this Sharī'ah necessitates, not according to the result that Allah ﷻ aimed from its legislation.

And the purpose of the Sharī'ah which is bringing benefits and avoiding evils can be achieved only from the Sharī'ah as a whole, but with regard to every verdict in particular they may occur and may not, and from adhering to it alone an apparently seen harm may occur to the Muslim. For instance in a capitalist society, like societies in the countries of Islam these days, it is seen that the *riba* which is forbidden by the decisive text, became part of the economic, the financial and the commercial aspect of life, so any businessman or manufacturer who doesn't deal with *riba* in his transactions, his economy and business get harmed, so he bears severe losses for the sake of the adherence to his religion, and he becomes like the one gripping on the firebrand, so where is the benefit of the people in this situation and it is a Sharī'ah verdict; although there is no dispute that the result of Sharī'ah is achieving benefits and avoiding evils, but this doesn't mean that it is the result of every one of its verdicts.

This is with regard to the negation of that which is for the Sharī'ah as a whole to be for every verdict of it in particular. As for their saying that the verdict got legislated for the benefit that appears in it, how did this benefit appear? Did it appear to the mind that has no value in denoting it; because it is related to the Sharī'ah verdicts not to the belief (aqeedah), or did it appear from the text, and the text doesn't denote it, or that when the text didn't denote it the mind had to fish for the denotation of it to say this is the benefit of this verdict? Why is this artificiality which is far from the reality? And why wouldn't the verdict be an act of worship if there is no reasoning for it?

Isn't the text is what denoted it, and it is not reasoned? So from where do we get the *'illah*? The truth is when we find a legislated verdict, it doesn't necessitate a benefit for the fact that the Sharī'ah came for the benefits of the servants, since this isn't necessitated by that; and therefore there is no need to fish for a benefit for this verdict, whether it appears or it doesn't, hence bringing benefits and avoiding evils are not the result of every verdict in particular so that they shall be fished in every verdict, and obviously they are not the reason of every particular verdict, as they are not the reason of the Sharī'ah as a whole.

There remains the issue of the benefits that they claim for every verdict in particular, and they bring evidences for every one of them, indeed these benefits are the result of the Sharī'ah verdict, they are not part of it, nor are they the *'illah* of it, and the Sharī'ah verdict is not considered to be an evidence for them; because from one side, the Sharī'ah verdict is not a Sharī'ah evidence, and from the other side this benefit may occur as a result of the Sharī'ah verdict, and this result may not occur, since it isn't from the denotation of it, neither it is from the denotation of its evidence, and obviously it is not an *'illah* for it, hence the issue is an issue of a Sharī'ah verdict denoted by a Sharī'ah evidence, regardless whether this verdict has a result of bringing a benefit or avoiding an evil, or it has nothing of that. Accordingly, the issue is an issue of Sharī'ah verdicts get derived from Sharī'ah evidences, it is not an issue of benefits for the servants, so the matter in it is a Sharī'ah verdict and a Sharī'ah evidence, and it is not a Sharī'ah benefit and a non Sharī'ah benefit. As for the result of implementing this verdict, or what this verdict denotes, that is another thing that is not related to the derivation. So

wedging it in the science of the Fiqh principles, and discussing it in the derivation of the verdicts, and categorizing it in the Sharī'ah reasons has no room, and there is no excuse for its existence, and it is not just unnecessary insertion and mingling, but it is contradicted with the Sharī'ah, and with the legislation, and with the derivation, and it is a severe error which alienates the people especially the Muslims from the accurate adherence to the Sharī'ah verdicts, and it causes carelessness in this adherence, and it also causes error and mingling in the legislation and in the derivation. Indeed the occurrence of the ownership is from the verdicts of the sale, and the occurrence of the benefit is from the verdicts of the leasing, and the occurrence of preserving the human being is from the verdicts of the penal codes, and the occurrence of completion of the marriage benefit is from the stipulation of the testimony and dowry of the like, and the occurrence of the reward of the prayer, all these are results of implementing these verdicts, they are not parts of them, nor are they *'illah* for them, and they are not of their denotations, they may occur like the benefit of the leasing and they may not occur, as someone may rent and doesn't get any benefits, so the issue in it is that the verdict of sale is denoted from the saying of Allah ﷻ:

{وأحلَّ اللهُ البيعَ}

"And Allah has permitted the sale..."[373],

and the verdict of hiring someone is denoted from His ﷻ saying:

[373] Surah al-Baqarah:275

{فَآتُوهُنَّ أُجُورَهُنَّ}

"...if they give suckle to the children for you, give them their due payment"[374],

and the verdict of the killing is denoted from the saying of the Prophet ﷺ:

"...وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِمَّا يُودَى وَإِمَّا يُقَادُ..."

"...and whoever has a relative killed as a victim, he has the right of the best of two choices: (either getting paid the blood money, or the killer will be brought to be executed)..." compiled by al-Bukhārī, and as such... and the issue is not the occurrence of the ownership, the benefit, and the preservation of the human being etc. so where is its place in deriving the verdict, or in its *'illah*, or in its evidence, or other than that? Then why it is wedged in the discussion of Sharī'ah verdicts, besides the discussion of the reasons and derivation?

Also in the cases like: being the verdict of validity of the sale due to the right of disposal leads to the proof of ownership, and being the capital punishment verdict of the deliberate offensive killing leads to the preservation of the human's life, and being the legislation of penalty for drinking the intoxicant results the preservation of the mind, and being the validity of the marriage of a woman in the menopause stage leads to (achieving) the objective of human reproduction, all these results may occur and may not, and even if they supposedly occur, they are also the results of acting in compliance with the verdicts, they are

[374] Surah al-Ṭalāq:6

not parts of their legislation, nor are they reasons (*'ilal*) for them, and they are not noticed during their derivation, but it is not allowed to notice them, and they don't have any consideration during the derivation and the inference and the *Qiyās*, so why are they inserted in the discussion of reasons, and why are they called Sharī'ah benefits? Despite that they may occur from non Islamic verdicts, i.e. they may occur from the *kufr* verdicts, so what justifies their insertion in the field of reasons (*'ilal*), and in the discussion of derivation? And also what is the relation between the necessary and unnecessary benefits and the discussion of the Sharī'ah verdicts and the Sharī'ah reasons? These benefits with respect to themselves are real, but with respect to that they are results of particular verdicts they differ in accordance with the differences in the viewpoints. And also they may not occur, so it is incorrect to regard them with a general perspective, and it is incorrect to make them a necessary matter for the verdicts and consequentially making them part of the legislation of the verdict or an *'illah* for it. For instance the five objectives which they said that there is no religion and no Sharei'ah that doesn't take care of them are the preservation of: the religion, the human being, the mind, the offspring and the wealth are not the only necessities for the society as a society, indeed the preservation of the state, the preservation of the security and the preservation of the human dignity are also from the necessities of the society. So the necessities with respect to their reality are not five only, but they are eight. As for the verdicts of the various Shari'ahs that are legislated for those benefits, the religions differ in the way they regard some of them, for instance the Christianity does not regard that the preservation of the mind comes through the forbiddance of the intoxicant, but on the

contrary it says: "a little of the intoxicant delights the heart of the human" then how are theses objectives the objectives of every religion? And even if we suppose the occurrence of these objectives, they occur as a result of the Sharī'ah verdict, so they are not related to the derivation of the verdict, nor to the inference of it and neither to the reasoning of it.

And as such the unnecessary objectives are results of verdicts, for instance the continuity of the marriage which they said that it is the benefit resulted from the consideration of the competency of the suitor (who proposes to marry a woman) and the dowry of the like, and the non-missing out on the competent suitor which is resulted from giving the guardian the authority of marrying off the young girl, all these are results, so they are not related to the Sharī'ah reason. As for the benefits which they said that they are reasons of Sharī'ah verdicts and they consider them as motives not as results, if they are indicated by the mind not by the expression of the text they don't have any value, like their saying that depriving the slaves the competence of being witnesses is because the slave is inferior in the rank and the class; because he is subjected for his master and busy serving him. They made this benefit an *'illah* for the verdict, which is the incompetence of the slaves for being witnesses, this has no value, because this benefit is not indicated by the Sharī'ah, but it is an inference from the situation of the slave in the Islamic society, is it not a derivation from the Sharī'ah evidence; therefore it is not considered and it has no value in the derivation neither in the reasoning. As for that which the Sharī'ah evidence denoted, like being the wealth circulating between the wealthy people is the *'illah* of distributing the

spoils of war between the all the poor among the Muslims, and like being the petroleum a mineral similar to the unceasing water is an *'illah* to make it of public ownership, this is not a benefit denoted by the Sharī'ah, but it is a Shar'i reason denoted by the Sharī'ah; because this *'illah* appears to the Muslim as a benefit but it may not appear to the non Muslim, and it may appear to the Muslim when the whole Sharī'ah is implemented, and it may not appear when a particular verdict is implemented without the rest of the Sharī'ah verdicts. So it is a considered benefit because it is the denotation of the Sharī'ah evidence, not because man incurs a benefit from it or avoids a harm by it, the reality of it is that it is the denotation of the evidence only, not the indication of what man sees as a benefit. So naming it a benefit is a description of a reality with respect to the Muslim as he sees it, not with respect to the denotation of the evidence, so being a benefit is not part of the evidence, nor is it a part of its denotation, that means the evidence did not show that it is a benefit, nor is it noticed during the derivation from the evidence, so it is an issue of a Sharī'ah reason denoted by the evidence, regardless whether it brings a benefit to the Muslim or it avoids him from a harm, or if it doesn't bring or avoid anything, or if it brings a harm, so the benefit is not noticed in the evidence, nor is it noticed in its denotation, so it is the issue of Sharī'ah *'illah* derived from a Shar'i evidence, not an issue of benefits for the servants to be derived from the Sharī'ah evidences. Accordingly, the Sharī'ah reason is not a Sharī'ah benefit nor is it a non Sharī'ah benefit, but it is only that which is derived from the evidence that signifies the reasoning, regardless whether it brings benefits, or avoids harms or it doesn't. So being the rudtab decrease (in weight) when they dry is a Sharī'ah *'illah* for the impermissibility to sell dates

for rudtab, and this decrease in the rudtab is not a Sharī'ah benefit or a non Sharī'ah benefit, but it is only what can be derived from the *ḥadīth* that:

"سُئِلَ أَيَجُوزُ بَيْعُ الرُّطَبِ بِالتَّمْرِ, فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: هَلْ يَنْقُصُ الرُّطَبُ إِذَا يَبِسَ؟ فَقَالُوا: نَعَمْ, فَقَالَ: فَلاَ إِذَنْ"

"He was asked: is it permissible to sell the ripe dates for dried dates, the Prophet ﷺ said: do rudtad decrease (become lighter) when they dry? They said: yes, he said: then no" compiled by al-Dāraquṭnī. This *ḥadīth* signifies the reasoning then this 'ilaah got derived from it, regardless whether it brings benefit or it avoids harm or it doesn't, but this wasn't noticed during the derivation of the *'illah* from the *dalīl*.

Accordingly, bringing the benefits and avoiding the harms have no recognition in the Sharī'ah verdicts with respect to their derivation, neither with respect to their legislation, and they are not a reason for the verdicts at all, even the Shar'i reasons that are derived from the Sharī'ah evidences are not benefits for the servants, but they are only the meanings that the Shar'i evidence denotes, regardless the benefits and the harms.

As for the second group who considers "bringing the benefits and avoiding the evils" a Shar'i reason for every specific verdict as well as for the Sharī'ah as a whole, and who allege that "bringing the benefits and avoiding the evils" is a certainty came in all the Sharī'ah details, and that the Sharī'ah assignments and the assignment of every verdict of it are only due to their objectives which are bringing the benefits and avoiding the evils. This group based its opinion on three things:

Firstly: the scrutiny of the Sharī'ah signifies certainty that "bringing the benefits and avoiding the evils" are Sharī'ah reasons.

Secondly: the principle concerning the habits (the actions) is that the meanings should be considered, and the Verses and the *aḥādīth* have indicated that, but they explicitly show the consideration of the benefits of the servants.

Thirdly: there is no argument about the benefits which are denoted by the Sharī'ah that are considered to be reasons for the denotation of the Sharī'ah on them, and the benefits that are not denoted by the Sharī'ah, even if they don't have partial evidences that denote them, the Sharī'ah texts denote their consideration in a general way, so the partial verdicts can be established on their basis at the absence of the Sharī'ah text concerning the incident or its similarity; accordingly, the benefit become an evidence if a partial evidence from the Legislator denotes it, and if the evidences as a whole and the general evidences denote it.

The answer to that is:

Firstly: the scrutiny which they said that it denotes that the Sharī'ah came for the benefits of the servants doesn't denote that, neither by the compatibility denotation (*delaalat al-muwaafaqah*), nor by the inclusion denotation (*delaalat al-tadhammun*) and nor by the binding denotation (*delaalat al-iltizaam*). That is because the scrutiny of the Sharī'ah shows that there are reasoned verdicts in it, but it doesn't show that all the Sharī'ah verdicts are reasoned. In addition, the reasoning of the reasoned verdicts didn't come as that bringing the benefits and avoiding the evils are their reasons, neither as it is the reason of any verdict of them, but for every reasoned verdict the reasoning came only in a

specific meaning, like the circulation of the wealth between the wealthy people, and like the diversion from the Jumu'ah Prayer, and like if the inheritor is a disbeliever, and the likes. And the Legislator made every one of these meanings a reason for a specific verdict and different to the other meanings by which other verdicts are reasoned. And every one of them is a meaning different to the other, and nothing in them shows that it is the bringing of the benefit and the avoidance of the evil, neither collectively, or in any one of them. As for the viewpoint of the Muslim about these meanings that he found by studying them that they are nothing but bringing a benefit and avoiding an evil, this is how the Muslim called them, it is not that Allah ﷻ said about them, or about every individual one of them that it is a benefit, i.e. the Muslim named it benefit by himself, but the Sharī'ah didn't name it benefit, nor did it call it benefit, and the naming of the Muslim to it that it is benefit has no value; because what is considered is what the Sharī'ah called it, i.e. the denotation of the evidence. And since the Legislator didn't say that it is a benefit, there is no such a benefit; because if it is not called by the Legislator it is not considered. Moreover, the Muslim who lives in the Islamic society is who says that it is a benefit, whereas the non Muslim regards the share companies, the *riba*, drinking the intoxicant, the dance parties, the companionship of the boys and girls in seclusion and excursion, etc. he regards them as benefits for the people, but the Muslims see them as evils. So the view that the verdict or the *'illah* is a benefit or an evil is the view of the Muslim with respect to his viewpoint about the life, it is not the viewpoint of the mankind as mankind; therefore the view about them differ in accordance with the difference in the viewpoints, so calling the Sharī'ah verdicts and reasons benefits is special

for the Muslim. This is in one hand. In the other hand, it is a call the Muslim issued by himself, not by a derivation from a Sharī'ah evidence; because Allah ﷻ did not say that the verdict of the forbiddance of drinking the intoxicant for instance, that there is a benefit for you in it or avoidance for you from evil, He also didn't say that in this *'illah* for instance the diversion from the Jumu'ah prayer or other than that, that there is a benefit in it for you or avoidance for you from evil; therefore it is not considered as a Sahri'ah benefit; because the Sharī'ah didn't say that it is a benefit. And the only thing in it is that the Muslim said from his own (mind) that it is a benefit, and the saying of the Muslim that is free from the evidence has no value. Accordingly, the study of the Sharī'ah texts, verdicts and reasons does not show that the Sharī'ah came for the benefits of the servants. So the study of the texts shows only that there are some reasoned verdicts in the Sharī'ah, not that they came for the benefits of the servants. And the study of the verdicts showed only specific meanings they are the verdict of Allah concerning the issue, and it didn't show that these verdicts are benefits for the servants neither by the *manṭūq* (literally) and nor by the *mafhūm* (by connotation). And the study of the Sharī'ah reasons showed specific meanings that they are reasons for specific verdicts, and it didn't show that these reasons are benefits for the servants, so there is no evidence that this specific reason is for the benefit of the servants, nor that these reasons as reasons came as benefits for the servants. Accordingly the inference by the study that the Sharī'ah verdicts, and the Sharī'ah reasons are the bringing of the benefits and the avoidance of the evils is an invalid inference, and it is not compatible with the reality of the texts, nor is it compatible with the reality of the verdicts

and the reality of the reasons; therefore the inference by it is refuted.

However, the texts which they adduced and said that they denote that the Sharī'ah came for the benefits of the servants, do not denote that, they denote that the result which occur from implementing the Sharī'ah as a whole are benefits for the servants, not that every Sharī'ah verdict is a benefit for the servants, and neither that every specific Sharī'ah *'illah* is benefits for the servants, and nor that the benefit is the Sharī'ah reason of every specific Shar'i verdict. For instance, the saying of Allah ﷻ:

{لِئَلا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ}

"...in order that mankind should have no plea against Allah after the (coming of) Messengers"[375],

it is the reasoning of sending the Messengers, not the reasoning of the Sharī'ah verdicts, neither of the Sharī'ah, and it denotes that there are reasoned texts in the Sharī'ah, not that bringing benefits and avoiding evils are the reason of the Sharī'ah. And His ﷻ saying:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً لِلْعَالَمِينَ}

"And We have sent you (O Muhammad): not but as a mercy for the (al-'Aalameen) worlds"[376],

it denotes by the binding denotation that the aim of the Sharī'ah is bringing the benefits and avoiding the evils, i.e. the result occurs from its implementation is benefits for the

[375] Surah al-Nisā':165
[376] Surah al-Anbiyā':107

servants, not that the benefits of the servants are the *'illah* of it as a whole, or an *'illah* for every verdict of it in specific. And His ﷻ saying:

{لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلا}

"...so that He may test you which of you is best in deeds..."[377],

it is a clarification that the objective of creating heavens and the earth is examining mankind and burdening them, so it denotes one of the wisdoms of Allah, not the *'illah* of His act ﷻ. And the wisdom is other than the *'illah*; because the wisdom is the result that occurs from the verdict, and it may occur and may not, so it is the aim of the action (of the verdict), but the *'illah* is the incentive of the verdict or the action, so there is no denotation in the Verse that the *'illah* of the Sharī'ah is that it came for the benefits of the servants. And thus His ﷻ saying:

{وَمَا خَلَقْتُ الْجِنَّ وَالإِنْسَ إِلا لِيَعْبُدُونِ}

"And I (Allah) created not the jinn and mankind except that they should worship Me (Alone)"[378],

and His ﷻ saying:

{الَّذِى خَلَقَ الْمَوْتَ وَالْحَيَاةَ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلا}

"Who has created death and life that He may test you which of you is best in deeds"

and His ﷻ saying:

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[377] Surah al-Mulk:2

[378] Surah al-Zthariyaat:56

{كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ}

"...Fasting is prescribed to you as it was prescribed to those before you, that you may do (self-restraint) taqwa"[379],

all of them denote the objective not the *'illah*, and there is no denotation in them that "bringing the benefits and avoiding the evils are the *'illah* of the Sharī'ah, nor are they the *'illah* of every specific verdict of it, but there is no denotation in it that there are reasoned texts; because they are not for reasoning, nor do they signify reasoning by any way.

Yes there are some other texts that came reasoned, but these reasoned texts didn't come to reason the whole Sharī'ah, since there isn't not even one text came to reason all the Sharī'ah as a whole by one *'illah*, but there are texts that came to reason some specific verdicts, so only these verdicts get reasoned, not every other verdict. And there are texts that denoted some unreasoned verdicts, so the *'illah* is limited to the verdict that the text came with its reasoning, and it doesn't exceed it to the others. So not every one of the Sharī'ah verdicts is reasoned by an *'illah*, neither is the whole Sharī'ah reasoned by one *'illah*, but there is some reasoned verdicts in the Sahri'ah, and nothing denotes other than that.

Secondly: their saying: "the principle concerning the actions is that the meanings should be considered, and the Verses and the *aḥādīth* have indicated that, but they

[379] Surah al-Baqarah:183

explicitly show the consideration of the benefits of the servants" this saying is not correspondent with the reality; because the issue is not the actions or the worships, but it is the Sharī'ah texts. So the principle concerning the Sharī'ah texts is following the meanings not stopping at the extent of the text; because these texts are legislative texts, and what is meant by them is the meaning included in the text; therefore it is incorrect to stop at the extent of the text, but it is inevitable to understand its denoted meaning, either from the sentence itself, or from its combination with other sentences, so the discussion is about the text with respect to its denoted meaning, it is not about the essence of the meaning of the text. So the meanings must be followed in all the Sharī'ah texts of the *Kitāb* and the Sunnah, and it is not permitted to stop at text alone, or at the extent of the expressions of the text alone, but it is inevitable to follow the meanings wherever they exist, whether in the text alone, or in it in combination with other texts. So the issue is not an issue of actions and worships, but it is an issue of texts and understanding them, so there is no place for the issue of bringing benefits and avoiding evils since the meaning of the text must be followed and not stopping at the extent of the expression.

Yes it became clear after following up and studying the texts that the texts which denote the verdicts of the worships are not reasoned by any *'illah*, but they include causes, and the cause is other than the *'illah*, and it became clear that the texts which denote the verdicts of transactions many of them are reasoned and some of them are not reasoned, so it should be said that the worships are not reasoned by any *'illah*, and many of the transaction verdicts are reasoned by an *'illah*, and this depends on the

Shar'i *'illah* and doesn't depend on the meanings, but it shouldn't be said: "the principle concerning the actions is that the meanings should be considered". Accordingly the meanings must be considered in the texts only not in the verdicts, whether they are verdicts of worships or verdicts of transactions. So the meaning should be looked for in the text not in the verdict, and what should be looked for in the verdict is its compatibility or incompatibility with the matter for which it came as a verdict, for instance, the partnership is permitted due to the evidence that denoted it, and being the permissibility is for the partnership in which binding and acceptance have occurred, it is of the compatibility of the evidence with the verdict and the compatibility of the verdict with the matter for which it came, so for (obtaining) the permissibility of the partnership, it should not be looked at as beneficial or unbeneficial. So in the verdicts there is no place for considering the meanings, and in their conformation or non conformation there is no place in them for considering the benefits and the evils, not even in the result of a particular verdict unless the text denotes the result like Hajj and the Sawm. So benefits and evils are not considered at all in the derivation of a particular verdict or in its compatibility or in its application, but what is considered is the evidence of it and the reality for which it came to clarify the verdict of Allah about it.

This is concerning their saying: "the principle concerning the actions is that the meanings should be considered. As for their saying that the Verses and the *aḥādīth* have indicated that, but they explicitly show the consideration of the benefits of the servants, it is a proof-less saying, and the reality indicates the opposite. There isn't any Verse or

ḥadīth which denotes that the benefits of the servants are considered Sharī'ah reasons for the verdicts, but the study of the Verses and the *aḥādīth* and the follow up of all their individuals show four matters:

The first: it shows that the objective of the Sharī'ah is the mercy of the servants, and it indicates by the binding way that the objective of it is bringing the benefits and avoiding the evils, so it indicates the result of the Sharī'ah, not the reason of it, and not that it is the reason of every verdict in particular.

The second: it shows the objective of some particular verdicts not all of them, so the results of the verdict the Sharī'ah denotes is for the particular verdict alone, and it is not an *'illah* for this verdict, so it is not the result of other verdicts nor is it *'illah* for them.

The third: the principle in the Sharī'ah texts is the follow up of the meanings and not stopping at the extent of the text; because these are legislative texts and what is wanted is the meaning included in the text, and this is related to the understanding of the text not to the benefits and the evils, and it is related to the text itself not to the verdict.

The forth: there are specific texts for specific verdicts that are reasoned by a specific *'illah*, and what is considered in that is the *'illah* that came in the text only regardless of the benefit and the evil, and the benefit and the evil shouldn't be noticed in that *'illah*, but it is only considered in the text in which it came, and in the verdicts for which it came as an *'illah*, not in other verdicts.

These are the matters that the Verses and the *aḥādīth* brought, and nothing in them indicates or declares the consideration of the benefit of the servants; accordingly,

their second evidence of the consideration of the benefits as Shar'i *'illah* is wrong because it contradicts the reality, and because the Verses and the *aḥādīth* indicate the opposite.

Thirdly: they say: the benefits that are denoted by the Sharī'ah among them is what is denoted by a partial special evidence so the Legislator says: the benefit is so and so, and among those benefits are what the Sharī'ah commonly denoted the consideration of them, so the partial Sharī'ah verdicts can be established on their basis at the absence of the Shar'i text concerning the incident or the similarity of it. And this saying is extremely invalid, and the refutation of it is from a several ways:

One of them: the Sharī'ah did not denote the benefits, but the benefits are the objective the Legislator aimed from the legislation of the Sharī'ah, and there is difference between that the Sharī'ah is what denoted the benefits, and that the benefits were the objective of legislating the Sharī'ah. The Sharī'ah denoted only thoughts and verdicts, regardless in the denotation whether these thoughts and verdicts are for the benefits of the servants or not for their benefits. For instance, the Sharī'ah denoted that the sale is allowed, the *riba* is forbidden, the *jihād* is obligatory, the voluntarily charity is preferable, wasting the money is detested and the likes, and it did not denote that making treaties is a benefit, and that appointing a *Khalīfah* is a benefit, and lying is evil, and fleeing the day of the invasion is evil, and the likes, it had denoted the verdict and didn't the benefit, but it didn't consider the benefit or the absence of it in the denotation, and it is not permitted to make the benefit or the evil an object of consideration in the denotation of the Sharī'ah on the verdict, hence the benefits are not denoted by the Sharī'ah, so this inference is invalid from its basis.

The second: the partial evidences which they said that they denoted benefits, so these benefits became Sharī'ah benefits for the denotation of the partial evidence on them, these evidences are for the verdicts or for the reasons, they are not evidences for the benefits. For instance, cutting the hand of the thief is proven by the saying of Allah ﷻ:

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا}

"And the male thief and the female thief, cut off (from the wrist joint) their (right) hands..."[380],

and the punishment of the highway robbers is proven by His ﷻ saying:

{إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلافٍ أَوْ يُنْفَوْا مِنَ الأَرْضِ}

"The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off from opposite sides, or be exiled from the land..."[381],

and killing the apostate is proven by the saying of the Prophet ﷺ: "مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ" **"Whoever changes his religion do kill him"** compiled by al-Bukhārī, and the punishment of the adultery is proven by His ﷻ saying:

{الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ}

[380] Surah al-Mā'idah:38
[381] Surah al-Mā'idah:33

"The fornicatress and the fornicator, flog each of them with a hundred stripes..."[382],

and by his ﷺ stoning the married fornicator. And the forbiddance of the dead meat is proven by His ﷻ saying:

{حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ}

"Forbidden to you (for food) are: (al-Maitah) the dead animals..."[383],

and the prohibition of leasing the land is proven by his ﷺ saying: " مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا, أَو لِيُزْرِعْهَا أَخَاهُ, وَلاَ يُكَارِيهَا بِثُلُثٍ, وَلا رُبُعٍ, وَلا بِطَعَامٍ مُسَمًّى" **"Whoever has a land he shall plant it, or he gives it to his brother to plant it, he should not lease it for a third, not for a quarter, and not for a known amount of food"** compiled by Aḥmad, and as such. The partial evidences denote specific verdicts, they don't denote benefits. And thus His ﷻ saying:

{كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ}

"...in order that it may not become a fortune used by the rich among you..."[384],

and His saying:

{لِكَيْ لا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ}

"so that (in future) there may be no difficulty to the believers in respect of (the marriage of) the wives of their adopted sons..."[385],

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[382] Surah al-Nūr:2
[383] Surah al-Mā'idah:3
[384] Surah al-Hashr:7
[385] Surah al-Aḥzāb:37

and his ﷺ saying: "...ولا يرِثُ القاتِلُ شيأً" **"...And the killer does not inherit anything"** compiled by Abū Dāwud, and his saying:"لا يَقْضِي القَاضِي بَيْنَ إِثْنَيْنِ وهُوَ غَضْبَانُ" **"The judge must not issue a judgment between two people while he is angry"** compiled by Aḥmad. They denote specific reasons (*'ilal*), they do not denote benefits, nor do they denote that they came for the benefit. Accordingly, there is no partial evidences that denote benefits, nor do they denote that they came for the purpose of the benefits, and not that the verdicts they came in or the *'ilal* included in them are benefits, but their denotation is limited to the verdicts or the reasons and nothing else, so the saying that there are benefits denoted by partial evidences is refuted.

The third: the saying that the Sharī'ah in a general way denoted some of the benefits is a corrupt and completely baseless saying; because the general evidence is: either a specific evidence that denotes a particular general benefit, or a combination of specific evidences, or the combination of the whole Sharī'ah evidences. If they meant a specific general evidence that denotes a general benefit, that doesn't exist; because on one hand the evidences don't denote benefits. And on the other hand the totally and the partially in the logical meaning has no value in the discussion of the Fiqh Principles; therefore there is no room and no consideration for it. As for the generally and the partially in the denotation of the expressions in the language; they are of the denotations of the singular (al-Mufrad) not of the denotations of the compound (al-Murakkab); therefore there is no room for it in the compounding denotations, i.e. in the denotations of the sentences, so there is no generally and partially in the compound at all; accordingly, it is incorrect to say that

some evidences signify generally and partially denotations with respect to their composition; because that doesn't exist in the language, nor does it exist in the Sharī'ah. And as for the generally and partially in the noun, that is if the noun is appropriate that many can share its connotation then it is the general noun, like: the animal, the human, the author, or the sun and their likes. And if it is inappropriate that many can share its connotation then it is the partial noun, like Zaid (a proper noun for a man), and like the pronouns like: he and she. And the general is of two divisions: the first is the conniver (*al-Mutawaadti'*) (مُتَوَاطِئ), like the expression: human (because its individuals are equal in their animalism and their ability to speak), and like the expression: horse (because no one of its individuals has priority over the other), and it is called conniver (*Mutawaadti'*) because it is correspondent, they say: so-and-so connive means they correspond. And the second is the uncertain (al-Mushakkak) (مُشَكَّك) like the expression: the existence (الوُجُود) (it varies between the necessity and the possibility, the existence is necessity for the Creator, possibility for the others), and the white (الأَبْيَض) (it varies in the whiteness quality). The general is also of two types: generic noun like the horse and the human, and derived like the black (الأَسْوَد) and the horseman (الفارِس). And the partial is of two types: a proper noun, and a pronoun. This is the issue of the general and the partial in the language, and there is no room for it here in the Sharī'ah denotation, neither in the denotation of the texts, but its place is in the discussion of the words; therefore it is irrelevant here; and accordingly the evidences signify either the general or the specific, and nothing in them signifies totality or partiality, and the general includes only its individuals which it denotes, and it doesn't include other than them, and

thereby it became clear that a specific total evidence which denotes a total benefit doesn't exist. As for making the theft of the individual property an *'illah* for legislating a punishment in order to preserve the individual property this is incorrect; because the theft is an *'illah* for cutting the hand not an *'illah* for an absolute punishment in order to preserve the individual property; therefore it is a special *'illah* for a special verdict, and it is not a general *'illah* for various punishments to preserve the individual property, so it is wrong to make it a general *'illah* on which a general verdict is established and various parts branch from that general verdict. The Verse says:

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا}

"And the male thief and the female thief, cut off their hands..."

the thief is a significant description (it signifies a reason for what comes after it), and it is appropriate for the cut (of the hand), so the cut is because of the theft; therefore it is suitable to be an *'illah* for cutting the hand, but being an *'illah* it signifies the reasoning only, and it doesn't signifies the point of reasoning; therefore its reasoning is inadequate for the *Qiyās* (analogy), so it shouldn't be said that the theft is an *'illah* because it is an invasion on the individual property so that the invasion on the individual property will be made an *'illah* because it is an *'illah* for the cut, that shouldn't be said; because the plunder is an invasion on the individual property and there is no cut in it, and the usurp is an invasion on the individual property and there is no cut in it, hence the theft is not made an *'illah* for cutting the hand because it is an invasion on the individual property, but it is made an *'illah* only because it is a theft not for anything else, and the proof is there are specific conditions

inevitable to exist in order for the cut to occurs, so if one steals less than the *nisāb*, or from other than the adequate protected storage, or if he steals food ready to eat, or the likes, he wouldn't be cut even though it is an invasion on the individual property, hence the theft is the *'illah* of cutting the hand, that is the reality of it , so it shouldn't be said that it is a total or a partial *'illah*, and not even a general *'illah*, but it is a specific *'illah* for a specific verdict, and it is not one of the *'ilal* on which *Qiyās* can be made. Accordingly the *'illah* of cutting the hand is not the preservation of the individual property, the *'illah* of cutting the hand is the theft because it is theft, so the preservation of the individual property is not an *'illah* at all. Accordingly it shouldn't be said that the one accused with stealing a punishment of hitting him should be legislated until he confesses, in order to preserve the individual property, as taken from the total evidence which is cutting the hand of the thief; that cannot be said because there is no evidence denotes the permissibility of the hitting, the preservation of the individual property is not an *'illah* for cutting the hand, nor is it an *'illah* for executing the theft punishment, so it shouldn't be made as an *'illah* to establish on it the legislation of punishment for the one accused with theft. In addition the accused one is innocent until something like theft, plunder or usurp is proven, then the Shar'i punishment which the Legislator legislated for the proven offence, whether it is a punishment or censure (*Ta'zīr*), and it is not permissible to carry out any punishment on him until the offence is proven, and no punishment for the offence should be carried out other than the punishment which the Legislator has legislated. Accordingly the one accused with theft shouldn't be hit, and it is not allowed to take from the evidence of cutting the hand an evidence for

the permissibility of hitting him; because it doesn't denote that.

It maybe said that the punishment of the theft and the plunder and the usurp and the likes that the Legislator has legislated, it could be understood from them that they are legislated to preserve the individual property, so the preservation of the individual property is an *'illah* taken from that combination to legislate a punishment for it. The answer to that is: the preservation of the individual property is either: an *'illah* for the verdict or it is an objective the Legislator aims it from the legislation of the verdict, and it is inevitable for both of them to be denoted by the text, and there no text denotes that the preservation of the individual property is an *'illah* for the verdict, neither there is a text that denotes that it is the objective of the Legislator that He aims from legislating the verdict; therefore it is incorrect to say that it is an *'illah* for the verdict or the wisdom of Allah ﷻ of legislating the verdict; and therefore there is no Sharī'ah basis for it at all to consider it in the punishments, so it is not considered by any ways. But if we look at the reality of these punishments we find that all of them indicate the preservation of the individual property, but this reality is a tangible result that may occur and may not, but this doesn't indicate that the Legislator has clarified that it is His objective; therefore it is a description of a reality and it can be explained like any other reality, but not on the basis that it is a denotation from the Legislator, neither that it is the *'illah* of the verdict. Do you see that the permissibility of marrying more than one wife eliminates the girlfriends in the society, and the prohibition of marrying more than one increases the girlfriends in the society, but this seen

result is a description of a reality, it is not the *'illah* of the verdict, nor is it the objective of the Legislator for which He legislated the verdict, so it should not be discussed with regard to the Sharī'ah. And thus are the preservation of the individual property and the likes of the five or the other necessities. Hence a specific total evidence which denotes total benefits does not exist.

As for the existence of a combination of evidences that denote benefits, that doesn't exist at all, and the verdicts that exist and their reality indicates a specific matter, like: the theft, the usurp, the plunder that they all preserve the individual property. Indeed this is a description of a reality, not a denotation on an *'illah*, and neither on a benefit that can be utilized as an *'illah* to legislate according to it. However if it is alleged that it is the denotation of this group of verdicts, then it would be a kind of the denotation of the verdicts on the meanings, and not a denotation of evidences, so even in this consideration it is not a specific group of verdicts which denote benefits; accordingly in the Sharī'ah there doesn't exist a specific group of evidences that denote specific benefits that could be made an *'illah* for verdicts.

As for the denotation of the whole Sharī'ah, this saying is not worth to be considered; because the denotation can only be in specific texts, and the saying in the denotation of the whole Qur'ān and the whole Sunnah is a corrupt saying; because in this combination there is no denotation on a specific thing, but in many of its texts there is denotation on something, and in other texts there is denotation on something else, so it is a kind of specific texts denote a specific thing, and as for the combination of the

whole Sharī'ah to denote a specific thing, this matter doesn't exist.

Accordingly there doesn't exist a benefit that the Sharī'ah denoted in a general way, or by general texts, or by a group of texts, or by the whole Sharī'ah together; hence to consider the benefit a Shar'i *'illah* is basically invalid, since there doesn't exist in the Sharī'ah any benefit that is considered to be an *'illah* for the legislation, and there is no Sharī'ah and non Sharī'ah benefit.

مَا ظُنَّ أَنَّهُ دَلِيلٌ وَلَيْسَ بِدَلِيلٍ

What is Thought to Be an Evidence But it is Not an Evidence

These are the four considered evidences: the *Kitāb*, the Sunnah, the *Ijmā'* of the *Ṣaḥābah* and the Analogy whose reason came in the Sharī'ah. And that which some Imams and scholars (*mujtahideen*) have considered evidences except these four are not evidences; because these alone are the Sharī'ah evidences considered by the decisively established proof. And there is no decisive proof established for other than them, so they are the considered evidences according to the Sharī'ah; because the Sharī'ah evidence is one of its principles, it is like the creeds unproven except by certainty, so it is inevitable to have a decisive evidence to prove it. But the inference by the suspected evidence other than these four evidences is considered of the Shar'i inference, and the verdict derived in accordance with it is considered Shar'i verdict; because it has a suspected evidence, but he who doesn't consider them evidences, it is not a Shar'i verdict with respect to him, but he sees it as a Shar'i verdict; because it has a suspected evidence.

As for that which are thought to be evidences but they are not, they are those which have proofs that they are evidences, but their proofs are indecisive or incompatible with what had been inferred by them, and the most important of them are four, they are: the Sharī'ah Laws of those before us (شَـرْعُ مَـنْ قَبْلَنَـا), the *fiqh* school of the companion (مَذْهَبُ الصَّحَابِي), the juristic preference (الاسْتِحْسَان) and the unmentioned benefits (المصَالِحُ المُرْسَلَة).

شَرْعُ مَنْ قَبْلَنَا

The Law of Those before Us *(shar' man qablana)*

Some Imams said that the *shar' man qablana* (Law of those before us) is one of the Sharī'ah evidences, and the Prophet ﷺ used to worship by that which is true of the laws of those before him through the revelation to him, not from the direction of their altered books and the transmission of their authors, and they said: it is true that the Sharī'ah of the Prophet ﷺ abrogated the previous Shari'ahs, but what is abrogated is that which is contrary to the Islamic Sharī'ah, so whatever from among his Sharī'ah is contrary to the previous Shari'ahs it abrogates it, and whatever from among his Sharī'ah is not contrary to the previous Shari'ahs; he is restricted in it to follow the Sharī'ah of the previous people, and it doesn't abrogate it; therefore his Sharī'ah is not described that it abrogates some of what was legislated before him, like the obligation to believe, and the forbiddance of disbelieve, the zina, the killing, the theft and other than that of which our Sharī'ah is compatible in it to the Sharī'ah of the previous people. And they inferred by the *Kitāb* and the Sunnah that the Sharī'ah of the previous people is a Sharī'ah for us, as for the *Kitāb*, Allah ﷻ said regarding the Prophets:

{أُولَٰئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهُدَاهُمُ اقْتَدِهِ}

"They are those whom Allah had guided, so follow their guidance..."[386],

He ﷻ commanded him ﷺ to follow their guidance, and their Sharī'ah is from their guidance, so he must follow it. And He ﷻ said:

{إِنَّا أَوْحَيْنَا إِلَيْكَ كَمَا أَوْحَيْنَا إِلَى نُوحٍ وَالنَّبِيِّينَ مِنْ بَعْدِهِ}

"Verily, We have sent the revelation to you (O Muhammad) as We sent the revelation to Nūḥ (Noah) and the Prophets after him..."[387],

and He ﷻ said:

{شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا}

"He (Allah) has legislated for you of the religion that which He commanded Nūḥ (Noah)..."[388],

so that denotes the obligation to him to follow the Sharī'ah of Nūḥ. And He ﷻ said:

{ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ}

"Then, We have sent the revelation to you (O Muhammad) saying: 'Follow the religion of Ibrāhīm..."[389]

He commanded him to follow the religion of Ibrāhīm, and the command here is an obligatory. And Allah ﷻ said:

{إِنَّا أَنْزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ}

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[386] Surah al-An'ām:90
[387] Surah al-Nisā':163
[388] Surah al-Shūra:13
[389] Surah al-Nahl:123

"Verily, We did send down the Tawrāt (Torah), therein was guidance and light, by which the Prophets judge..."[390]

and the Prophet ﷺ is among the Prophets, so it is obligatory upon him to govern by it. And as for the Sunnah, verily it is narrated that he ﷺ referred to the *Tawrāt* in stoning the Jew, and it is narrated that said when he was requested to inflict the punishment in a broken tooth: "يَا أَنَسُ, كِتَابُ اللهِ القِصَاصُ" **"O Anas, the *Kitāb* of Allah is *al-qiṣāṣ*"** compiled by al-Bukhārī, and the law of equality in punishment is not commanded in any Book except the *Tawrāt*, and that is His ﷻ saying:

{وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالأَنْفَ بِالأَنْفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ}

"And We ordained therein for them: life for life, eye for eye, nose for nose, ear for ear, tooth for tooth..."[391],

and also what was narrated that he ﷺ said:

"مَنْ نَسِيَ صَلاةً, أَوْ نَامَ عَنْهَا, فَلْيُصَلِّهَا إِذَا ذَكَرَهَا إِنَّ اللهَ تَعَالَى يَقُولُ: {وَأَقِمِ الصَّلاةَ لِذِكْرِي} "

"Whoever forgets a prayer or he is asleep when it is due, he must pray it when he remembers it, verily Allah Ta'ala says: '*...and perform the ṣalāh for My Remembrance*'"[392], compiled by al-Dārimī, and that was an address to Mūsā عليه السلام. Also what was narrated from Abū Hurairah that the Messenger of Allah ﷺ said:

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[390] Surah al-Mā'idah:44
[391] Surah al-Mā'idah:45
[392] Surah Ṭāha:14

" الْأَنْبِيَاءُ إِخْوَةٌ مِنْ عَلَّاتٍ، وَأُمَّهَاتُهُمْ شَتَّى، وَدِينُهُمْ وَاحِدٌ "

"The Prophets are brothers from 'allat (linguistically it means from one father), and their mothers are different, and their religion is one" compiled by Muslim, it means that their Sharī'ah is a Sharī'ah for the Messenger ﷺ. Also his ﷺ saying when he saw the Jews fasting the day of 'Aashoora': "نَحْنُ أَوْلَى بِمُوسَى مِنْهُم" "We are worthier to Mūsā than them" compiled by al-Bukhārī, it denotes explicitly that the Sharī'ah of Mūsā is his Sharī'ah, so it is a proof that the Sharī'ah of the previous people is Sharī'ah for us.

These are the evidences of those who said that the Sharī'ah of the previous people is Sharī'ah for us, but this saying is false from its roots, the mentioned evidences cannot be an established proof for it, and the true is the Shari'ahs of the previous people are not Sharī'ah for us, and they are not considered as one of the Sharī'ah evidences. And the proof on that is the *Kitāb*, the Sunnah, the Consensus of the *Ṣaḥābah* and the reality of the Sharī'ah verdicts of those before us and the verdicts of our Sharī'ah.

As for the *Kitāb*, Allah ﷻ said:

{إِنَّ الدِّينَ عِنْدَ اللَّهِ الإِسْلامُ}

"Truly, the religion with Allah is the Islam..."[393],

and He ﷻ said:

{وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ}

[393] Surah Āli 'Imrān:19

"And whoever seeks a religion other than the Islam, it will never be accepted of him..."[394],

and He ﷻ said:

{وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ}

"And We have sent down to you (Muhammad) the Book (this Qur'ān) in truth, confirming the Scripture that came before it and Muhaymin (has an authority) over the old Scriptures..."

and He said in the same Verse:

{لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا}

"...To each among you, We have prescribed a Sharī'ah law and a method..."[395],

the point of inference in the first two Verses is, although the word Islam means the submission to Allah, in these two verses it is coupled with the word "الدِّين" "the religion", that means what is meant by it is the Islamic religion, not the submission to Allah ﷻ, and the word Islam wasn't used as a name of any religion except for the Sharī'ah that Muhammad ﷺ brought; therefore the meaning of the first Verse is that the religion which is accepted by Allah after sending the Messenger is the Islam, and the meaning of the second Verse is after the mission of Muhammad ﷺ whoever embraces other than the Islamic religion, verily Allah will not accept it from him and he is among the losers. And what supports this is that the christian and the Jew are

[394] Surah Āli Imrān:85
[395] Surah al-Mā'idah:48

addressed by the Islamic Sharī'ah and commanded to leave their Sahri'ahs, and christianity and judaism are considered disbelief, and their followers are disbelievers, so that confirms that the meaning of the two Verses is: after sending the Messenger ﷺ every Sharī'ah other than his Sharī'ah is *kufr*. And the point of inference in the third Verse is that the word "مُهَيْمِنًا" "*Muhaymin*" doesn't mean confirming; because in the same Verse He said: "مُصَدِّقًا""Musaddhiq" means confirming, and He said: "مُهَيْمِنًا" "Muhaymin" so it is inevitable to have a different meaning to the confirmation, and that is the authority over the previous Sharī'ah laws. And the authority of the Qur'ān over the previous Sharī'ah laws is abrogating them, i.e. confirming and abrogating them. And the point of inference in the second part of the third Verse is that Allah ﷻ made for every Messenger a Sharī'ah different to the Sharī'ah of the other, it means that the Sharī'ah of Muhammad ﷺ is different to the previous Shari'ahs, and the previous Shari'ahs are not a Sharī'ah for Muhammad; because they are not his Sharī'ah and method, since for every Messenger there is a Sharī'ah and a method, and this is an evidence that he is restricted to his Sharī'ah not to the Sharī'ah of the others. Also Allah ﷻ said:

{أَمْ كُنْتُمْ شُهَدَاءَ إِذْ حَضَرَ يَعْقُوبَ الْمَوْتُ إِذْ قَالَ لِبَنِيهِ مَا تَعْبُدُونَ مِنْ بَعْدِي قَالُوا نَعْبُدُ إِلَهَكَ وَإِلَهَ آبَائِكَ إِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ إِلَهًا وَاحِدًا وَنَحْنُ لَهُ مُسْلِمُونَ} {تِلْكَ أُمَّةٌ قَدْ خَلَتْ لَهَا مَا كَسَبَتْ وَلَكُمْ مَا كَسَبْتُمْ وَلَا تُسْأَلُونَ عَمَّا كَانُوا يَعْمَلُونَ}

"Or were you witnesses when death approached Ya'qoob (Jacob)? When he said to his sons: "What will you worship after me?" They said: "We shall worship your Ilaah (Allah), the Ilaah

of your fathers, Ibrāhīm (Abraham), Isma'eel (Ishmael), Ishaaq (Isaac), One Ilaah (God), and to Him we are submissive} {That was a nation who has passed away. They shall receive the reward of what they earned and you of what you earn. And you will not be asked for what they used to do"[396],

Allah had told us that He will not ask us for what those Prophets used to do, and since we won't be asked for their deeds, we won't be asked for their Sharī'ah; because the conveyance and the adherence to it and the performance in accordance with it is of their deeds, and that which we won't be asked for it we are not requested of it, and it is not binding to us.

As for the Sunnah, Jābir narrated that the Messenger of Allah ﷺ said:

" أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ قَبْلِي: ... كَانَ كُلُّ نَبِيٍّ يُبْعَثُ إِلَى قَوْمِهِ خَاصَّةً وَبُعِثْتُ إِلَى كُلِّ أَحْمَرَ وَأَسْوَدَ "

"I am given five matters they were not given to any one before me: ...every Prophet used to be sent to his people in specific and I am sent to every red and black" compiled by Muslim. And from Abū Hurayrah that the Messenger of Allah ﷺ said:

" فُضِّلْتُ عَلَى الأَنْبِيَاءِ بِستٍّ: ... وَأُرْسِلْتُ إِلَى الخَلْقِ كَافَّةً "

"I am given preference over the Prophets by six matters: ... and I am sent to the whole creation" compiled by Muslim. So the Messenger ﷺ told that every Prophet before him was sent to his people in specific. So he wasn't sent to other than his people, and the Sharī'ah of other than their

[396] Surah al-Baqarah:133-134

Prophet is binding to them, so this proves that non of the Prophets was sent to us, hence their Sharī'ah is not a Sharī'ah for us. This is supported by what came explicitly in some Verses of the Qur'ān concerning the Prophets:

{وَإِلَى ثَمُودَ أَخَاهُمْ صَالِحًا}

"And to Thamūd (people, We sent) their brother Ṣāliḥ..."[397],

{وَإِلَى عَادٍ أَخَاهُمْ هُودًا}

"And to 'Aad (people, We sent) their brother Hūd..."[398],

{وَإِلَى مَدْيَنَ أَخَاهُمْ شُعَيْبًا}

"And to (the people of) Madyan (Midian), (We sent) their brother Shu'aib..."[399],

and came explicitly concerning the Prophet ﷺ:

{وَمَا أَرْسَلْنَاكَ إِلا كَافَّةً لِلنَّاسِ}

"And We have not sent you (O Muhammad) except as a giver of glad tidings and a warner to all mankind"[400].

Also the Prophet ﷺ said to Mu'ādh when he sent him to Yemen as a judge:

" كَيْفَ تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ قَالَ أَقْضِي بِكِتَابِ اللَّهِ. قَالَ فَإِنْ لَمْ تَجِدْ فِي كِتَابِ اللَّهِ؟ قَالَ فَبِسُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ. قَالَ فَإِنْ لَمْ تَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَلَا فِي كِتَابِ اللَّهِ؟ قَالَ أَجْتَهِدُ رَأْيِي وَلَا آلُو "

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[397] Surah al-A'rāf:73
[398] Surah al-A'rāf:65
[399] Surah al-A'rāf:85
[400] Surah Saba':28

"How would you judge if a case is submitted to you? He said: I will judge by the *Kitāb* of Allah. He said: what if you don't find (the appropriate judgment) in the *Kitāb* of Allah? He said: then by the Sunnah of Messenger of Allah ﷺ. He said: what if you don't find in the Sunnah of the Messenger of Allah ﷺ neither in the *Kitāb* of Allah? He said: I will work out my opinion (perform *ijtihād*) and exhaust my effort" compiled by Abū Dāwud, and he didn't mention any of the Prophets' books and methods, and the Prophet ﷺ approved him on that and made supplication for him and said:

" الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ لِمَا يُرْضِي رَسُولَ اللَّهِ "

"All the praises be to Allah that He grant the messenger of the Messenger of Allah the success that pleases the Messenger of Allah", so if the Sharī'ah of the previous people is that from which the Shar'i verdicts are taken then it would take the same course of the *Kitāb* and the Sunnah in the obligation of referring to them when Shar'i verdict is required, and it wouldn't be permitted to deviate from it and work out the opinion except after searching in it and giving up the hope of knowing it. Also it is narrated that he ﷺ saw 'Umar Ibn al-Khaṭṭab had a piece of the *Tawrāt* looking at it then he ﷺ got angry and said:

" لَقَدْ جِئْتُكُمْ بِهَا بَيْضَاءَ نَقِيَّةً، لَا تَسْأَلُوهُمْ عَنْ شَيْءٍ فَيُخْبِرُوكُمْ بِحَقٍّ فَتُكَذِّبُوا بِـهِ، أَوْ بِبَاطِلٍ فَتُصَدِّقُوا بِهِ، وَالَّذِي نَفسِي بِيَدِهِ، لَوْ أَنَّ مُوسَى صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ كَانَ حَيًّا، لَمَا وَسِعَهُ إِلَّا أَنْ يَتَّبِعَنِي "

"I definitely brought it to you pure as white, do not ask them anything lest they tell something true then you deny it, or they tell you something false then you believe it, by He in whose Hand is my soul, if Mūsā ﷺ is alive he cannot

be successful unless he follows me" compiled by Aḥmad. He told that if Mūsā is alive he cannot but following him (Muhammad ﷺ), so that the Messenger doesn't follow Mūsā عليه السلام after his death is worthier, and if the Prophet ﷺ was to worship by following the Sharī'ah of those before him then he must of have returned to it and he wouldn't stop and wait until the revelation comes down with verdicts of incidents the previous Shari'ahs had verdicts for them, but the reality is when the Prophet ﷺ used to be asked about an incident for which the revelation didn't come down yet; he used not to answer until the revelation comes down, and the examples on that are many, from that is what al-Bukhārī compiled that Ibn al-Munkadir said:

" مَرِضْتُ فَجَاءَنِي رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَعُودُنِي وَأَبُو بَكْرٍ وَهُمَا مَاشِيَانِ، فَأَتَانِي وَقَدْ أُغْمِيَ عَلَيَّ، فَتَوَضَّأَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ ثُمَّ صَبَّ وُضُوءَهُ عَلَيَّ فَأَفَقتُ فَقُلْتُ: يَا رَسُولَ اللهِ, وَرُبَّمَا قَالَ سُفْيَانُ: فَقُلْتُ: أَيْ رَسُولَ اللهِ كَيْفَ أَقْضِي فِي مَالِي؟ كَيْفَ أَصْنَعُ فِي مَالِي؟ قَالَ فَمَا أَجَابَنِي بِشَيْءٍ حَتَّى نَزَلَتْ آيَةُ المِيرَاثِ "

"I heard Jaabir Ibn Abd Allah saying: I got sick, then the Messenger of Allah ﷺ and Abū Bakr came to visit me walking, so he came to me while I was unconscious, then he ﷺ took ablution then poured his ablution water on me, then I recovered consciousness and said: O Messenger of Allah, how would I judge with my wealth? What would I do with my wealth? He didn't answer me until the Verse of inheritance came down", so if the Sharī'ah of those before him was a Sharī'ah for him he would have referred to the previous Shari'ahs and answer him.

As for the consensus of the *Ṣaḥābah*, their consensus have agreed that the Sharī'ah of the Prophet ﷺ has abrogated the

previous Shari'ahs, and if he used to worship by following them, he would have been a reporter and teller of them not abrogating them, nor would he be a legislator, and this is impossible. And also if any Sharī'ah of those before us is our Sharī'ah then learning it would be of the collective obligations (*Farḍ al-Kifāyah*), like the Qur'ān and the *ḥadīth*, and it would be obligatory upon the *Ṣaḥābah* after the (death of) Prophet ﷺ to refer to it and to search for it and to ask those who transmitted it at the occurrence of the controversial incidents in which they had differed, like the issue of (the inheritance of) the grandfather, and the issue of *al-'Awl* (linguistically it is: infinity of 'aala, it means: to provide for the dependents, the increase, the injustice, the multitude of children, and it is used for the decrease and for the betrayal. And in the convention of the inheritance scholars, *al-'Awl* is: increasing the number of shares of the legitimate inheritors and decreasing their portions, when there is many legitimate shares), and the issue of selling the slave if she is the mother of the son, and *al-Mufawwidhah* (the married woman whose dowry is not clearly named in the marriage agreement), and the penalty of drinking the intoxicant, etc. and since nothing of that was transmitted from them, then the Sharī'ah of those before us is not a Sharī'ah for us.

As for the reality of the previous Sharī'ah verdicts in comparison with our Sharī'ah verdicts, the Qur'ān includes some verdicts of the previous Shari'ahs, and they are affirmed in the Qur'ān and not abrogated, but they are different to the verdicts that the Messenger brought to us. And those Verses of the Qur'ān in which verdicts of the previous people came are not considered abrogated as verdicts, in a meaning that other verdicts came and

abrogated them like the situation in the abrogation of the verdicts, but they are considered from the Sharī'ah of those before us, and we are not commanded by them, and this is an evidence that the previous Shari'ahs are not a Sharī'ah for us, and there is many of them in the Qur'ān, from that kind is what Allah Ta'ala said about the Sharī'ah of Sulaimaan:

{وَتَفَقَّدَ الطَّيْرَ فَقَالَ مَا لِيَ لا أَرَى الْهُدْهُدَ أَمْ كَانَ مِنَ الْغَائِبِينَ لأُعَذِّبَنَّهُ عَذَابًا شَدِيدًا أَوْ لأَذْبَحَنَّهُ أَوْ لَيَأْتِيَنِّي بِسُلْطَانٍ مُبِينٍ}

"He inspected the birds, and said: what is the matter that I see not the hoopoe? Or is he among the absentees? I will surely punish him with a severe torment, or slaughter him, unless he brings me a clear reason"[401],

and there is no disagreement among the Muslims about the drop off of the punishment of the birds even if they spoil, but the drop off of the punishment of all animals, and that came in the text, the Prophet ﷺ said: "العَجْمَاءُ جَرْحُهَا جُبَارٌ" **"The wound of the beast is of no compensation"** compiled by al-Bukhārī, and among the rules of Mūsā is what Allah ﷻ said:

{وَعَلَى الَّذِينَ هَادُوا حَرَّمْنَا كُلَّ ذِي ظُفُرٍ وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا إِلا مَا حَمَلَتْ ظُهُورُهُمَا أَوِ الْحَوَايَا أَوْ مَا اخْتَلَطَ بِعَظْمٍ}

"And unto those who are Jews, We forbade every (animal) with undivided hoof, and We forbade them the fat of the cows and

[401] Surah al-Naml:20-21

the sheep except what adheres to their backs or their entrails, or that which is mixed up with a bone..."[402],

and in the Islamic Sharī'ah all that is allowed for the Muslims by His ﷻ saying:

{وَطَعَامُكُمْ حِلٌّ لَهُمْ}

"*...and your food is lawful to them...*"[403],

and these fats are from our food so it is allowed for them. And from the rules of Mūsā:

{وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالأَنْفَ بِالأَنْفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ}

"And We ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds are Qiṣāṣ (equal for equal)..."[404],

and we don't punish by these; because we are not commanded by them, but the others were commanded by them, but in Islam there is no law of equality in punishment for any of the organs less than the soul, but there is compensation (*Arash/ Diyah*) for all these things as the Sunnah clarified in details, al-Nasā'i narrated that the Messenger ﷺ said:

"...وَفِي الأَنْفِ إِذَا أُوْعِبَ جَدْعُهُ الدِّيَةُ, وَفِي اللِّسَانِ الدِّيَةُ... وَفِي العَيْنَيْنِ الدِّيَةُ..."

"...and there is *diyah* in the nose if it gets chopped off, and there is *diyah* in the tongue... and there is *diyah* in the

[402] Surah al-An'ām:146
[403] Surah al-An'ām:5
[404] Surah al-Mā'idah:45

eyes..." the *ḥadīth*. And as for his ﷺ saying which is compiled by al-Bukhārī:

"يَا أَنَسُ, كِتَابُ اللهِ القِصَاصُ "

"O Anas, the *Kitāb* of Allah is the *qiṣāṣ* (penalty of equality)", when al-Rabie' the aunty of Anas broke the front tooth of a slave girl, the *qiṣāṣ* mentioned here is not with reference to the Verse

{وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالأَنْفَ بِالأَنْفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ}

"And We ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds are qiṣāṣ (equal for equal)..."

because the *qiṣāṣ* in the Verse is mentioned with the wounds, but the incident is breaking a tooth, which denotes that his ﷺ saying in the *ḥadīth* is not referring to the mentioned Verse, but it is a special *qiṣāṣ* verdict for breaking the tooth, and it is the only bone in which there is *qiṣāṣ* if it gets broken deliberately. And in the Sharī'ah of Yūsuf:

{مَنْ وُجِدَ فِى رَحْلِهِ فَهُوَ جَزَاؤُهُ}

"...His penalty should be that he, in whose bag it is found, should be held as punishment (of the crime)..."[405],

that is inslaving the thief is his punishment, but Islam made the cut of the hand punishment of the thief. And in the Sharī'ah of Shu'aib:

[405] Surah Yūsuf:75

{قَالَ إِنِّى أُرِيدُ أَنْ أُنكِحَكَ إِحْدَى ابْنَتَىَّ هَاتَيْنِ عَلَى أَنْ تَأْجُرَنِى ثَمَانِىَ حِجَجٍ فَإِنْ أَتْمَمْتَ عَشْرًا فَمِنْ عِنْدِكَ}

"He said: I want to wed one of these two daughters of mine to you, on condition that you serve me for eight years, but if you complete ten years, it will be (a favour) from you..."[406],

and this is not permissible in Islam; because the employment in it is based on unknown matters: *'one of my daughters' 'whichever of the two terms I fulfil'* and because in Islam the dowry is for the woman not for her father:

{وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً}

"And give to the women (whom you marry) their dowry with a good heart..."[407].

And from the Sharī'ah of the people at the time of Zakariyah is what Mariyam said:

{إِنِّى نَذَرْتُ لَكَ مَا فِى بَطْنِى مُحَرَّرًا}

"(and mention O Muhammad) when the wife of 'Imraan said: O my Lord! I have vowed to You what (the child that) is in my womb to be dedicated for Your services (free from all worldly work)..."[408],

and basically this is not permissible in Islam. And from the Sharī'ah of Ya'qub:

{كُلُّ الطَّعَامِ كَانَ حِلا لِبَنِى إِسْرَائِيلَ إِلا مَا حَرَّمَ إِسْرَائِيلُ عَلَى نَفْسِهِ}

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[406] Surah al-Qusas:27
[407] Surah al-Nisā':4
[408] Surah Āli Imrān:35

"All food was lawful to the Children of Israel, except what Israel made unlawful for himself..."[409],

and in Islam it is not permissible to make anything unlawful for oneself unless Allah made it unlawful, He ﷻ said to the Messenger:

{لِمَ تُحَرِّمُ مآ أَحِلَّ اللهُ لَكَ}

"...Why do you forbid (for yourself) that which Allah has allowed for you"[410].

And from the Sharī'ah of the people of the Book at the time of the people of the cave:

{قَالَ الَّذِينَ غَلَبُوا عَلَى أَمْرِهِمْ لَنَتَّخِذَنَّ عَلَيْهِمْ مَسْجِدًا}

"...(then) those who won their point (most probably the disbelievers) said: we verily shall build a place of worship over them"[411],

and this is forbidden in Islam, the Prophet ﷺ said:

" إِنَّ أُوْلَئِكَ, إِذَا كَانَ فِيهِمُ الرَّجُلُ الصَّالِحُ فَمَاتَ, بَنَوْا عَلَى قَبْرِهِ مَسْجِدًا, وَصَوَّرُوا فِيهِ تِلْكَ الصُّوَرَ, أُوْلَئِكَ شِرَارُ الخَلْقِ عِنْدَ اللهِ يَوْمَ القِيَامَةِ"

"they are the people whom when a righteous man among them dies, they build over his grave a place of worship, and they drew those picture in it, they are the most evils of the creatures in the sight of Allah on the day of resurrection" compiled by al-Bukhārī and Muslim. And thus in many Verses of the Qur'ān Allah ﷻ had reported to us the

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[409] Surah Āli Imrān:93
[410] Surah al-Tahrīm:1
[411] Surah al-Kahf:21

verdicts of those before us, and the Messenger brought to us verdicts different to them, and those verdicts are not individually abrogated like the abrogated Verses of the Qur'ān, but all the Shari'ahs of the people before us are abrogated, so these Verses tell about the Sharī'ah of the previous people, so we are not commanded by them; because they are Shari'ahs of those before us.

From all that it became evident that the previous Shari'ahs are not our Sharī'ah, so they are not considered from the Sharī'ah evidences of which the Shar'i verdicts are derived. And all the evidences they adduced to support their saying don't have this denotation. The saying of Allah ﷻ:

{فَبِهُدَاهُمُ اقْتَدِهِ}

"...So follow their guidance..."[412],

it means the monotheism (*al-Tawhīd*); He said: {follow their guidance} and didn't say: "follow them", i.e. be following that by which they got guided, and that is the *Tawhīd*. And His ﷻ saying:

{إِنَّا أَوْحَيْنَا إِلَيْكَ كَمَا أَوْحَيْنَا إِلَى نُوحٍ وَالنَّبِيِّينَ مِنْ بَعْدِهِ}

"Verily, We have sent the revelation to you (O Muhammad) as We sent the revelation to Nūḥ (Noah) and the Prophets after him..."[413],

there is no denotation in the *Āyah* that he received the same revelation which was revealed to Nūḥ and the Prophets after him, so that it can be said that he should follow their

[412] Surah al-An'ām:90
[413] Surah al-Nisā':163

Shari'ahs, but what is meant is: it is revealed to him as it was revealed to the other Prophets, i.e. as Allah ﷻ had revealed to those before you, He revealed to you. And the saying of Allah ﷻ:

{شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا}

"He (Allah) has ordained for you of the religion (Islamic Monotheism) which He ordained for Nūḥ (Noah)..."[414],

that means the basis of the monotheism (*Tawhīd*), not that which had disappeared of his Sharī'ah; therefore it hasn't been transmitted from the Prophet ﷺ that he searched for the Sharī'ah of Nūḥ. And the saying of Allah ﷻ:

{ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ}

"Then, We have revealed to you (O Muhammad) saying: Follow the millah (religion) of Ibrāhīm (Abraham)..."[415],

what is meant by the word {*millah* of Ibrāhīm} is the principles of *Tawhīd*, and the glorification of Allah ﷻ, not the Sharī'ah branches, and what proves that is, the expression *millah* is not used for the Sharī'ah branches, so we don't say the *millah* of al-Shafi'i, and the *millah* of Ja'far for their *maddhabs* in the Sharī'ah branches, and this is supported by the saying of Allah after that:

{مَا كَانَ إِبْرَاهِيمُ يَهُودِيًّا وَلَا نَصْرَانِيًّا وَلَكِنْ كَانَ حَنِيفًا مُسْلِمًا وَمَا كَانَ مِنَ الْمُشْرِكِينَ}

[414] Surah al-Shūra:13
[415] Surah al-Nahl:123

"Ibrāhīm (Abraham) was neither a Jew nor a Christian, but he was Haneef (true muslim, submissive) and he was not of the polytheists (al-Mushrikeen)", [416],

He mentioned that in the comparison of the religion, and the *Tawhīd* (monotheism) is opposite to the *shirk* (polytheism), so it is an evidence that the requested imitation is only in the principle of the *Tawhīd*. And the saying of Allah ﷻ:

{إِنَّا أَنْزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ}

"Verily, We did send down the Tawrāt (Torah), therein was guidance and light, by which the Prophets, who submitted themselves to Allah's Will, judged..."[417],

this is a report not a command tense, and it doesn't denote the obligation of following it, so there is no denotation in the Verse that the Messenger should judge by it, and as for what is narrated that the Messenger did refer to the *Tawrāt* in stoning the Jew, he didn't really refer to it to judge by what came in it, but to show his truthfulness in that which he told that the stoning is mentioned in the *Tawrāt*, and the denial of the Jews of that, and he didn't refer to it in other than that matter. And as for his ﷺ saying to Anas:

" يَا أَنَسُ, كِتَابُ اللهِ القِصَاصُ "

"O Anas, the *Kitāb* of Allah is *al-qiṣāṣ* (what Allah prescribed is the law of equality in punishment)" as it is compiled by al-Bukhārī, this doesn't refer to His ﷻ saying: *"...and the tooth is for a tooth..."*; because the law of equality

[416] Surah Āli 'Imrān:67
[417] Surah al-Mā'idah:44

is mentioned in the Verse in the wounds, and the incident is breaking a tooth, so if the saying of the Messenger ﷺ: **"O Anas, what Allah prescribed is the law of equality in punishment"** refers to the Verse then the reference would be to the punishment of the wounds, and this is different to the incident which is breaking the tooth. As for the rest of the organs like the nose and the eye, the compensation (*arsh/diyah*) came for them clarified in the Sunnah of the Messenger ﷺ not the punishment mentioned in the Verse. And as for the *ḥadīth*:

" مَنْ نَسِيَ صَلاةً, أَوْ نَامَ عَنْهَا, فَلْيُصَلِّهَا إِذَا ذَكَرَهَا إِنَّ اللهَ تَعَالَى يَقُولُ: {وَأَقِمِ الصَّلاةَ لِذِكْرِي} "

"Whoever forgets a prayer or he is asleep when it is due, he must pray it when he remembers it, verily Allah Ta'ala says: *'...and perform the ṣalāh for My Remembrance'*[418]**"**, compiled by al-Dārimī, he didn't infer by the Verse that it necessitates the (*qaḍa'*) making up for the prayer missed out while sleeping or forgetting, but he only implied that this command to the Muslims Mūsā was commanded by similar to it; therefore the Messenger didn't recite the Verse, but he only commanded whoever misses out on a prayer while he is asleep or forgetting, he said:

" مَنْ نَسِيَ صَلاةً, أَوْ نَامَ عَنْهَا, فَلْيُصَلِّهَا إِذَا ذَكَرَهَا "

"Whoever forgets a prayer or he is asleep when it is due, he must pray it when he remembers it" compiled by al-Dārimī, so this saying of the Messenger is what proves the verdict, and after it is proven the Messenger implied that his nation is commanded to do so as Mūsā ﷺ was

[418] Surah Ṭāha:14

commanded. And as for the saying of the Messenger ﷺ in the *ḥadīth*:

" الأَنْبِيَاءُ إِخْوَةٌ "

"The Prophets are brothers...", there is no proof in it; because Allah ﷻ said:

{لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا}

"...To each among you, We have prescribed a Sharī'ah law and a method..."[419],

and the meaning of his saying "دِينُهُمْ وَاحِدٌ" **"...and their religion is one"** this means only the basis of the monotheism in which they basically never differ. And as for the saying of the Prophet ﷺ when he saw the Jews fasting the day of Āshūrā':

" نَحْنُ أَوْلَى بِمُوسَى مِنْهُم "

"We are worthier to Mūsā than them" compiled by al-Bukhārī, the answer to this is, the Messenger was commanded to fast it, and if Allah didn't command him to fast it he wouldn't do so following the Jews. From all that it became clear that all these evidences have no denotation that the Sharī'ah of those before us is a Sharī'ah for us; therefore they fall off of the inference level, and the evidences that the Shari'ahs of those before us are not a Sharī'ah for us remain established, and by that it is proven that the verdicts of the previous nations which came in the Qur'ān and the *ḥadīth* are special for those before us, and not considered Sharī'ah for us; because the Sharī'ah of those

[419] Surah al-Mā'idah:48

before us is not a Sharti'ah for us unless an evidence says that a specific verdict is for us as if it comes in a general form, or if there is an indication (*qarīnah*) that indicates that it is ours, then we will be requested by it, not because it is the Sharī'ah of the those previous to us; but because the evidence proves that it is of our Sharī'ah, so it is a Sharī'ah because of the evidence that brought it.

مَذْهَبُ الصَّحَابِيِّ

The Fiqh School of the Companion (*Madhhab al-Ṣahābī*)

There is no dispute that the *madhhab al-Ṣaḥābī* (Fiqh School of the companion) in the *ijtihād* issues is not a proof over the other scholars (*mujtahids*) of the *Ṣaḥābah*, so it is not considered Shar'i evidence in their concern, but the dispute is whether it is a proof over the followers (*al-Taabi'een*) and the *mujtahids* who came after them. Some imams said that it is a proof, and they considered it as one of the Sharī'ah evidences of the the Sharī'ah verdicts, and they inferred that it is a proof by the *Kitāb*, the Sunnah and the *Ijmā'*. As for the *Kitāb*, that is the saying of Allah ﷻ:

{كُنتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ}

"You (true believers in Islam) are the best nation ever raised up for mankind; you enjoin al-Ma'rūf (what is good)..."[420],

and that is an address pro the *Ṣaḥābah* that what they enjoin is a *Ma'rūf*, and enjoinment of the *Ma'rūf* is obligatory to accept. And as for the Sunnah, their evidence is in his ﷺ saying:

"أَصْحَابِي كَالنُّجُومِ بِأَيِّهِمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ"

"my companions are like the stars which ever one of them you imitate; you will be guided" compiled by Ruzayn, and his saying:

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[420] Surah Āli Imrān:110

"اقْتَدُوا بِاللَّذَيْنِ مِنْ بَعْدِي أَبِي بَكْرٍ وَعُمَرَ"

"Do imitate the two who have the authority after me Abū Bakr and 'Umar" compiled by al-Tirmidhī, and this cannot be regarded as if it is addressing imitators of them and the common people; because that would specify the general without a *dalīl* (specifier), and because that would annul the benefit of specializing the *Ṣaḥābah* in that quality with respect to occurred unanimous agreement that it is permissible for the common people to imitate scholars from other than the *Ṣaḥābah*, so nothing remains except that what is meant by it is the obligation of imitating their *madhhabs*. And as for the *Ijmā'*, that is when Abd al-Rahmān Ibn 'Awf appointed 'Ali ﷺ to the Khilafah providing that he imitates the two previous Imams before him and he refused, then he appointed 'Uthmān and he accepted, non of the *Ṣaḥābah* disapproved, so it became *Ijmā'*. And also the silence *Ijmā'* is when the saying of one Ṣahābī became widely known and no one disapproved it, it is considered a proof, thus the saying of the Ṣahābī if it didn't become widely known is a proof.

This is the summary of the evidences of those who say that the *madhhab* of the Ṣahābī is a proof, and these evidences are insufficient to prove the worthiness of the *madhhab* of the Ṣahābī as evidence. As for the Verse, there is no denotation in it; because the Verse is an address to whole nation of Muhammad ﷺ, not only to the *Ṣaḥābah*, nor is it only to the era of the Messenger, also the saying of Allah ﷻ:

{تَأْمُرُونَ بِالْمَعْرُوفِ}

"...you enjoin al-Ma'rūf (what is good)..."

doesn't mean that what they enjoin is *Ma'rūf*, for the evidence of the saying of Allah ﷻ that came after it:

{وَتَنْهَوْنَ عَنِ الْمُنْكَرِ}

"...and you forbid al-Munkar (the evil)",

but it means that you are the best nation because you enjoin the *Ma'rūf* and forbid the *Munkar*. And as for the two *aḥādīth*, they are praising the *Ṣaḥābah*, it is not that their saying is Shar'i evidence and as for his ﷺ saying: " بِأَيِّهُمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ" **"...which ever one of them you imitate; you will be guided"**, what is meant by that is that which they narrate from the Messenger ﷺ not imitating them in everything, since the *Ṣaḥābah* are not infallibles, and no one should be imitated in everything except the infallible. And the worthiness of the silence '*Ijmā'* as a Sharī'ah evidence is not established because it is not widely known only, but it is established because it is widely known, and because it is of that which is usually disapprove-able, and these two matters don't exist in the *madhhab* of the Ṣahābī, because even if the *madhhab* of the *Ṣahābī* is widely known, the disapproval of the *Ṣaḥābah* of it is not considered silence over it; because the silence is special in the disapprove-able, and the *madhhab* of the *Ṣahābī* is general in every verdict, and because the silence can be considered if the opinion became widely known and the *Ṣaḥābah* knew about it, and that didn't get widely spread, so it is not considered that they were silent about it; therefore it cannot be based on the silence of the *Ṣaḥābah*, and from all that it became apparent that these evidences are not a sufficient proof that the *madhhab* of the *Ṣahābī* is a Sharī'ah evidence.

However there is what refutes that the *madhhab* of the *Ṣahābī* is Sharī'ah evidence, from that is what Allah ﷻ said:

{فإن تنازعتم في شيء فردّوه إلى الله والرسول}

"...And if differ in anything, refer it to Allah and the Messenger if you believe in Allah and the last day..."[421],

so He determined the directions to which the dispute should be referred, they are Allah and the Messenger, i.e. the *Kitāb* and the Sunnah, and except them nothing should be referred to, and the *madhhab* of the *Ṣahābī* is not of the *Kitāb*, nor is it of the Sunnah, so it should not be referred to; therefore it is not considered a proof. And from that is that the *Ṣahābī* is from the people of *ijtihād*, and the mistake of him is possible, and since the possibility of mistake exists then his *madhhab* is not considered a proof. And from that is that the *Ṣaḥābah* have differed in some issues, in which every one them had a different opinion to the other, hence if the *madhhab* of the Ṣahābī is a Sharī'ah proof then the proofs of Allah Ta'ala become different and in contrast to each other, and following one of them wouldn't be worthier than the other, so their *madhhabs* are not Sharī'ah evidences. Also the *Ṣaḥābah* ﷺ acknowledge and admit that much of the Sunnah didn't reach them, and very often they retracted opinions after that which is contrary to them from the Messenger have reached them, and this is also an evidence that their *madhhab* is not a proof for the possibility that what the Messenger said in that issue didn't reach them, and the evidence on their acknowledgement that much of the Sunnah of the Messenger didn't reach them is what is narrated from Abū Hurairah ﷺ:

[421] Surah al-Nisā':59

" أَنَّ إِخْوَانِي الْمُهَاجِرِينَ كَانَ يَشْغَلُهُمْ الصَّفَقُ بِالأَسْوَاقِ, وَأَنَّ إِخْوَانِي مِنَ الأَنْـصَارِ كَانَ يَشْغَلُهُمْ القِيَامُ عَلَى أَمْوالِهِمْ"

"My brothers of the Migrants (*al-Muhaajireen*) used to be busy with the transaction deals, and my brothers of the Protectors (*al-Anṣār*) used to be busy managing their wealth", and al-Baraa' Ibn Aazib said:

" مَا كُلُّ مَا نُحَدِّثُكُمُوهُ سَمِعْنَاهُ مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ, وَلَكِنْ حَدَّثَنَا أَصْحَابُنَا, وَكَانَتْ شُغُلُنَا رَعْيَةُ الإِبِلِ "

"No everything we tell you we have heard it from the Messenger of Allah ﷺ, but our companions told us, and camel herds made us busy", and 'Umar ﷺ said about the *ḥadīth* of seeking the permission:

" أُخْفِيَ عَلَيَّ هَذَا مِنْ أَمْرِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ أَلْهَانِي الـصَّفَقُ فِـي الأَسْوَاقِ "

"Was this matter of the Messenger of Allah ﷺ hidden from me? The transaction deals in the markets diverted me from that", and much as such. And the evidence that they had retracted opinions after reaching them from the Messenger that which is different to those opinions is what was narrated that 'Umar used to return the women who used leave Makkah without performing the farewell *ṭawāf* in the *Masjid al-ḥarām* due to their menses, until he was told that the Messenger ﷺ had allowed that, then he stopped returning them. And he used to make preference between the fingers in the compensations, until reached him the command of the Messenger ﷺ to make them equal, and then he retracted his saying and took the equality. And he wanted to stone an insane woman until he was informed about the saying of the Messenger of Allah ﷺ:

" رُفِعَ القَلَمُ عَنْ ثَلاَثَةٍ "

"The pen (responsibility) is lifted up from three", then he commanded not to stone her. And Abdullah Ibn 'Umar used to lease the land for the agriculture then it reached him that the Prophet ﷺ prohibited that then he stopped leasing it. Abdullah Ibn 'Abbas didn't know about the prohibition of the temporary marriage (*Zawāj al-Mut'ah*), and about the forbiddance of the donkeys, until Ali ﷺ informed him. And Ibn Abbas said: "Do you not fear that Allah may sink down the earth with you, I tell you the Messenger of Allah ﷺ said and you say: Abū Bakr and 'Umar said". And the *Anṣār* had forgotten the saying of the Prophet ﷺ:

" الأَئِمَّةُ مِنْ قُرَيْشٍ "

"The Imams (*Khalīfah*) are from Quraish" compiled by Aḥmad, and Anas had narrated it, and thus are many incidents, so all these show that the *madhhab* of the *Ṣahābī* is subject to the mistake and the forgetfulness; therefore it is incorrect to make it a proof. What is remained is the issue of the *Ijmā'* of the *Ṣaḥābah* on the request of Abdullah ibn 'Awf from 'Ali and from 'Uthmān to imitate the two Imams: Abū Bakr and 'Umar, this is not an *Ijmā'* that the *madhhab* of the *Ṣahābī* is a proof, but it is an *Ijmā'* on the permissibility for the *mujtahid* to leave his opinion and imitate other *mujtahid*, and what is meant by that is gathering the word of the Muslims on one opinion, this is something, and the idea that the *madhhab* of the *Ṣahābī* is a proof is different thing, so from all that it became apparent that the *madhhab* of the *Ṣahābī* is not from the Sharī'ah evidences.

الاسْتِحْسَانُ

The Juristic Preference (*al-Istiḥsān*)

The word *Istiḥsān* linguistically is a verbal noun derived from the word "*al-ḥusn*" which means: beauty, goodness, etc. it is used to call the figures and the meanings which the human inclines to and loves, even if they are repulsive to the others, and this linguistic meaning is not what is meant by the word *Istiḥsān* in the Fiqh principles, for indeed there is no dispute that it is not permissible to say (to issue opinions) in the religion by the desire, and there is no dispute in the prevention of the verdict issued by the *mujtahid* in the Sharī'ah of Allah ﷻ by his desires and fantasies without a Shar'i evidence, regardless whether he is a *mujtahid* or a common person. But the discussion is in the *Istiḥsān* as an idiom set conventionally by the scholars of the Fiqh principles, so what is sought after is the meaning of it in the Fiqh principles not the linguistic meaning, and those who advocate it have differed in defining it, some of them said: it is an evidence that sparks in the mind of the *mujtahid* and he cannot clarify it for the lack of the wording assistance to express it. And some of them said: it is the deviation from that which an analogy (*Qiyās*) necessitates to a stronger analogy. And some of them said: it is specifying a *Qiyās* by an evidence stronger than it. And some of them said: it is leaving one of the directions of the *ijtihād* which is not as comprehensive as the expressions to a stronger direction, and it is practically emergent to the first one (direction). And some of them said: it is separating the issue from its parallels for something stronger. And some of them said: it is separating the issue from the verdict

of its parallels to another verdict for a stronger indication that necessitates this separation.

They made the *Istiḥsān* of four kinds: the analogical *Istiḥsān* (الاستحسان القِيَاسي), the *Istiḥsān* of the necessity (استحسان الضرورة), the *Istiḥsān* of the Sunnah (استحسان السُّنَّة) and the *Istiḥsān* of the *Ijmā'* (استحسان الإجماع). And some of them made divided it into two divisions: the *Istiḥsān* of the necessity (استحسان الضرورة) and the analogical *Istiḥsān* (الاستحسان القِيَاسي). The analogical *Istiḥsān* according to them is to deviate from a clear verdict of the *Qiyās* to a different verdict; they say it is a different *Qiyās* more accurate and more concealed than the first one, but it is of a stronger proof, more to the point and of more appropriate inference, and they call it the hidden *Qiyās*, for instance if two persons bought a car on credit from two persons in one deal, then one of the two creditors collected a part of this debt, indeed he has no right to take it for himself, but his partner in the debt has the right to ask him for his portion of what is collected; because he collected it as a part of the price of something shared between them sold in one deal, i.e. if one of the partners collects the price of the sold item, he collects it for both of them, and non of them has the right to specify himself with it. If the collected money vanishes while in the hand of who collected it before his partner takes his portion of it, according to the *Qiyās* the vanished money is a loss for both of them, i.e. it is lost from the account of the company, but according to the *Istiḥsān* the vanished money is considered a loss of the share of the receiver only, and it shouldn't be charged on the account of the other partner; because initially he is not obliged to share the money with the collector, but he has the right to leave the collected amount to the collector and

ask the debtor for his portion. This is the *Istiḥsān* of the *Qiyās*. And as for the *Istiḥsān* of the necessity, it is when the verdict originated from the *Qiyās* is violated due to a binding necessity, or due to a beneficial requirement to fulfill a need or to remove a difficulty, and that is when the verdict of the *Qiyās* leads to a difficulty or to a problem in some issues, then on the basis of the *Istiḥsān* it will be deviated from that verdict to a different verdict by which the difficulty and the problem will be removed, an example for that is the employee, his hand is considered a hand over a trust (the material) that which he is hired for, and he is not liable for it if it gets damaged when it is with him without any transgression of him, so if a tailor is hired to sew clothes for a person for one month then he is a private employee, and if the clothes get damaged in his hand without any transgression of him, he doesn't guarantee them; because his hand is a hand over a trust, and if a tailor is hired to sew a dress for a person and he sews clothes to other people then he is a general employee, and if the dress gets damaged in his hand he doesn't guarantee; because his hand is also a hand over a trust. But according to the *Istiḥsān* the private employee doesn't guarantee, and the general employee does guarantee; in order that he doesn't accept jobs more than his capacity. And as for the *Istiḥsān* of the Sunnah, it is the deviation from the verdict of *Qiyās* to a different verdict proved by the Sunnah. An example for that is the testimony of Khuzaymah, the Prophet ﷺ specialized Khuzaymah in accepting his testimony alone, and made it equal to the testimony of two men, he ﷺ said:

"مَنْ شَهِدَ لَهُ خُزَيْمَةُ, أَوْ شَهِدَ عَلَيْهِ, فَحَسْبُهُ"

"Whoever Khuzaymah testifies in his favour or against him, it is sufficient for him" (it is in al-Ṭabarānī *al-Kabīr*, in

Majma' al-Zawā'id and in *Fath al-Baary*), so the acceptance of the testimony of Khuzaymah is deviation from the *Qiyās*; because according to the *Qiyās* the *nisāb* (minimum number) of the testimonial proof is two men or one man and two women, but it has been deviated from the *Qiyās* for the arrival of the text. And as for the *Istiḥsān* of the *Ijmā'*, it is the deviation from the result of the *Qiyās* to a different verdict on which the consensus occurred, and the example for that is the *Istisnā'* (the request to manufacture a specific product in a specific time for a known fee), indeed the *Qiyās* necessitates the impermissibility of it; because it is selling something doesn't exist, but the Consensus occurred on the permissibility of it. This is the *Istiḥsān* which they considered a Sharī'ah evidence, and they inferred that by the *Kitāb*, the Sunnah and by the *Ijmā'*. As for the *Kitāb*, they inferred it by the saying of Allah ﷻ:

{الَّذِينَ يَسْتَمِعُونَ الْقَوْلَ فَيَتَّبِعُونَ أَحْسَنَهُ}

"Those who listen to the saying and follow the best thereof..." 18 Surah al-Zumar,

and His ﷻ saying:

{وَاتَّبِعُوا أَحْسَنَ مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ}

"And follow the best of that which is sent down to you from your Lord..." 55 Surah al-Zumar,

and the point of inference in the first Verse is it is in the course of praise and tribute to the followers of the best saying, and in the second Verse it is in His command to follow the best of what came down, and if the *Istiḥsān* is not a proof they wouldn't be as such. And as for the inference by the Sunnah, that is in his ﷺ saying:

" فَمَا رَأَى الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللهِ حَسَنٌ "

"Whatever the Muslims consider good it is good in the sight of Allah" compiled by Aḥmad, and if the *Istiḥsān* is not a proof it wouldn't be good in the sight of Allah. And as for the *Ijmā'*, that is in the Consensus of the Ummah on the *Istiḥsān* (Juristic Preference) of entering the public bath and drinking the water from the hands of the cupbearers without estimating the staying time and the quantity of water and the fee. This is the summary of the *Istiḥsān* and their opinions in it and their evidences on it.

The truth is the *Istiḥsān* is not considered Sharī'ah evidence, and the definitions and analysis and evidences are not sufficient proofs to prove that it is a Sharī'ah evidence. As for the definitions, according to the meanings they denote they are of three divisions: the first division is their saying: it is an evidence that sparks in the mind of the *mujtahid*...etc. this definition is false from the basis of it; because the evidence that sparked in the mind of the *mujtahid* and he doesn't know what it is, it is not permissible to consider it evidence as long as it is not known, then if he is not sure whether it is a proven evidence or it is a corrupted fantasy there is no dispute on the prevention of the adherence to it, and if it is a proven evidence of the Sharī'ah evidences then there is no dispute on the permissibility of the adherence to it concerning himself, not as *Istiḥsān*, but as taking the evidence. But as for the concern of the others he needs to express his affirmation that it is an evidence for the validity of taking it, and in either ways the *Istiḥsān* is not an evidence; and therefore the *Istiḥsān* according to this definition is invalid. As for the second division, in which the definitions signify one meaning, that is their saying: it is the deviation from

that which an analogy (*Qiyās*) necessitates to a stronger analogy, and it is specifying a *Qiyās* by an evidence stronger than it, and it is separating the issue from its parallels for something stronger, and it is separating the issue from the verdict of its parallels to another verdict for a stronger indication that necessitates this separation. All these definitions have one meaning, that is to deviate from the analogy to a stronger evidence. In these definitions and explanations of the *Istiḥsān* if they meant by the stronger evidence a text from the *Kitāb* or the Sunnah then it is not *Istiḥsān*, but it is making the text outweighs, so it is inference by the text, and if the stronger evidence is the mind for the benefit it considers, and this is what they meant, then it is invalid; because *Qiyās* is based on a Shar'i *'illah* established by the text, but the mind and the benefit are not a text, neither are they another *'illah* stronger than the *'illah* on which the *Qiyās* is established, but they have no relation with the Sharī'ah text, i.e. they have no relation with that which the revelation brought; therefore this deviation from the text is invalid. As for the third division of the definitions, that it their saying: it is leaving one of the directions of the *ijtihād* which is not as comprehensive as the expressions to a stronger direction, and it is practically an emergent to the first one (direction). Although this definition is like the second division with respect to that it is leaving the inference by the apparent evidence to a different evidence, it is different to the second division with respect to that the second division means the deviation from the *Qiyās* to a stronger evidence, but this definition is more general because it means the deviation from an apparent evidence, that may be a *Qiyās* or other evidence, to another evidence; because it says: "leaving one of the directions of the *ijtihād*", so it is more general than

the *Qiyās*. And also this division considers the direction to which the deviation is made as practically emergent to the first one (direction). And this is unlike the second division that it is not practical emergent. The response to this third division is as the response to the second division, the return from a verdict of a specific evidence to a counterpart of it established by a stronger evidence emergent to it, if the emergent evidence is from the *Kitāb* or the Sunnah, or it is the *Ijmā'* of the *Ṣaḥābah* then there is no dispute on the validity of the inference by it, in this situation it is not *Istiḥsān*, and if the stronger evidence is the mind and the benefit then that is not a Shar'i evidence, and far from being stronger than a Shar'i evidence; therefore it is impermissible to infer by it, and in this situation the deviation is invalid; and accordingly the *Istiḥsān* based on this definition is rejected, and it is not permissible to consider it a Sharī'ah evidence; because in one of its situations it is inference by the *Kitāb* or the Sunnah or the Consensus of the *Ṣaḥābah*, so it is not *Istiḥsān* (Juristic Preference). And in the second situation it is invalid; because it is deviation from the evidence to that which is not evidence. This is concerning the definitions or the explanations of the *Istiḥsān*, as for the divisions of the *Istiḥsān*, the first two divisions that are the *Istiḥsān* of the *Qiyās* and the necessary *Istiḥsān*, they are invalid. The invalidity of the *Qiyās Istiḥsān* is apparent from the invalidity of the second division of the definitions or the explanations of the *Istiḥsān*, that is deviating the issue from what is similar to it. Also their consideration to it as hidden *Qiyās* is invalid; because it is not related to the *Qiyās*, but it is only reasoning by the benefit, so in the example of the price of the shared item that was sold in one deal; it is incorrect to differentiate the verdict of the vanished money

that one of the two partners received as company money, from the verdict of the reception by one of the two partners as reception for the company; because the money, whether it is the sold car or the price of it is the company money, not the money of one partner, so the loss of it is a loss of the company money, not a loss of the receiver money alone. So here by the *Istiḥsān* they deviated from the Shar'i verdict and from the Shar'i evidence to a non-Shar'i verdict, and to the arbitration of their self desire. Indeed if there is a shared loan for several persons, like a debt on one person for two partners, then one of the two partners received of the loan what is equal to his share, and it vanished in his hand before the other partner takes his share of it, the vanished amount is considered on the account of both partners, not on the account of the share of the receiver alone; because the partner is an agent and a trustee, and his hand is a hand over an agency and a trust, so if he receives the loan his reception is for both, and if it vanishes in his hand he is not liable because his hand is a hand over a trust. This is the Shar'i verdict denoted by the Sharī'ah texts, and it is not a *Qiyās*, this issue is not based on the *Qiyās*, and this verdict is not proved by the *Qiyās*, but it is one of the issues of the partnership, and one of the issues of the trust, it is proved by the Shar'i evidence from the Sunnah, but those who advocate the *Istiḥsān* despite their acknowledgement that the partner is not allowed to specify himself with what he has received, but his partner in the loan has the right to ask for his share of what is received, but they say that the *Istiḥsān* necessitates to consider the vanished amount in the hand of the receiver a loss his share only, so they deviate from the necessitation of the Shar'i verdict to something else with no evidence except the *Istiḥsān*, i.e. the *Istiḥsān* of the *mujtahid* if he sees that,

for the argument that the partner was not bound to share what his partner have received, but he can leave what is received for the receiver, and request the remainder from the debtor, and he can share it with him, so they inferred by this that the loss of what is received is on the receiver not on both of them, and this is abandoning the Shar'i evidence, and ruling by the desire.

As for the *Istiḥsān* of the necessity, it is when the verdict originated from the *Qiyās* is violated due to a binding necessity, or due to a beneficial requirement to fulfill a need or to remove a difficulty. So the *Istiḥsān* of the necessity according to them is a way to the verdicts of benefits as the mind of the *mujtahid* sees, not as the Sharī'ah decides, and he violates the Sharī'ah and follows the mind for what he sees as benefit. So the invalidity of it is apparent, that is because he makes the mind arbitrate, not the Sharī'ah text, and he outweighs over the Shar'i *'illah* denoted by the Sharī'ah, and this is invalid with no argument, the invalidity of it is apparent in the example of the employee; because making the general employee liable, and the private employee not liable is outweighing without evidence, and a violation of the Shar'i text, the Messenger ﷺ says:

" لا ضَمَانَ عَلَى مُؤتَمَنٍ "

"There is no liability on a trustee" compiled by al-Dāraquṭnī, so absolutely there is no liability on the person who is trusted on something; because the expression in the *ḥadīth* by the generic negation particle " لا ضَمَانَ" "no liability" includes every trustee, whether he is a private employee or a general employee, so issuing this verdict by *Istiḥsān* is abandonment of the evidence and ruling by the tendency, it is abandonment of the *ḥadīth*, and deciding by

that which the mind sees as benefit, and that is so lest the general employee not accept of the properties of the people more than his capacity seeking to increase his profit, so he makes the properties of people subject to the loss; therefore the *ḥadīth* of the Messenger was left, so there is no doubt that this *Istiḥsān* is invalid with no argument.

By that the invalidity of the *Istiḥsān* in the two first figures, the *Istiḥsān* of the *Qiyās* and the *Istiḥsān* of the necessity became apparent. And as for the *Istiḥsān* of the Sunnah and the *Istiḥsān* of the *Ijmā'*, it is not *Istiḥsān* but it is outweighing evidences, so in the testimony of Khuzaymah it is apparent that it is outweighing the *ḥadīth* over the *Qiyās*, so it is of the situations of outweighing the evidences, and it has nothing to do with the *Istiḥsān*. And in the issue of the *Istisnā'* (the request to manufacture) it is clear that it is outweighing the *Ijmā'* of the *Ṣaḥābah*, although the *Istisnā'* is established in the Sunnah, the Messenger ﷺ did request the manufacturing of a ring, and the manufacturing of the platform (*al-minbar*), so the *Istisnā'* is not from the *Istiḥsān*. However the examples the advocates of *Istiḥsān* adduced are proved by the Shar'i evidences, so the entrance into the public bath without estimating the payment in return of the service, and without estimating the water and the staying time in the bath, and also drinking water from the hands of cupbearers without estimating the payment in return and the quantity of the drinking water, they are all proved in the Sunnah, indeed these things happened at the time of the Messenger ﷺ, and he knew them and approved them, so they are proved by the approval evidence of the Sunnah not by the *Istiḥsān*.

As for the evidences they brought to prove that the *Istiḥsān* is a proof, indeed all of them are not sufficient for the inference; because they are not applicable to the *Istiḥsān* in the meaning of it in the Fiqh Principles they wanted, for instance the Verse:

{الَّذِينَ يَسْتَمِعُونَ الْقَوْلَ فَيَتَّبِعُونَ أَحْسَنَهُ}

"Those who listen to the saying and follow the best thereof..."[422]

there is no denotation in it on the obligation of following the best saying, also following the best saying doesn't mean following the *Istiḥsān* in the principles meaning, but it means if there is two sayings one of them is good and the other is better, the better should be followed, but if there is an evidence then it is incumbent to follow it, and the Verse:

{وَاتَّبِعُوا أَحْسَنَ مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ}

"And follow the best of that which is sent down to you from your Lord..."[423]

it has no denotation that the *Istiḥsān* is a sent down evidence, in addition to that it is the best of what was sent down, and it has no relation to the *Istiḥsān* in the *Fiqh* principles meaning, and as for what they consider a *ḥadīth*, it is a saying of Ibn Mas'ūd:

"فَمَا رَأَى الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللهِ حَسَنٌ "

"Whatever the Muslims consider good it is good in the sight of Allah" compiled by Aḥmad, that means whatever

[422] Surah al-Zumar:18
[423] Surah al-Zumar:55

they see of the permissible matters, but if the evidence is established that something is obligatory, or preferable , or forbidden, or hateful, or invalid, or corrupted, the evidence must be followed, not what the Muslims see, however this is in the consultation (*al-Shura*) when the opinion of the Muslims is returned to, it is not in the inference on the Shar'i verdict, so what the Muslims see is not a Shar'i evidence, nor is it valid to infer the Shar'i verdict by it, however the saying of Ibn Mas'ūd has nothing to do with the *Istiḥsān* (Juristic Preference) as it means in the Fiqh principles at all.

From all this it became apparent that the *Istiḥsān* is not a Sharī'ah evidence, but it is deciding by tendency, and it is abandonment of the Sharī'ah evidence, and taking what the mind sees as benefit, but since those who advocate it have a suspected evidence (*shubhat dalīl*), the verdict which they derive by it is considered Shar'i verdict; because it has a suspected evidence (*shubhat dalīl*).

المَصَالِحُ المُرْسَلَةُ

The (Unmentioned Public) Interest (*al-Maṣāliḥ al-Mursalah*)

Some imams and mujtahids consider the benefit a Sharī'ah evidence, and they divide it into three divisions, and they say: the benefit in respect of the Sharī'ah certification is of three divisions: One division is that which the Sharī'ah has certified the consideration of it so it is a proof, and the outcome of it is due to the *Qiyās*, that is the derivation of the verdict from the reasoning (*ma'qūl*) of the text or from the Consensus (*Ijmā'*). The second division is that which the Sharī'ah certified its invalidity, like the saying of a scholar to one of the Khalifs when he had a sexual intercourse in the day of *Ramaḍān*: you must fast two sequent months, then when they disapproved that of him since he didn't command him to free a slave despite the abundance of his wealth, he said: If I commanded him to do that then it would be easy for him, and he would find freeing the slave light beside the satisfaction of his lust, so the benefit is in obliging him to fast so that he restrains by it, this saying is invalid and contrary to the text of the Sunnah; because the Messenger ﷺ said to the Bedouin who told him: I had an intercourse with my wife in *Ramaḍān*, he said to him:

" فَأَعْتِقْ رَقَبَةً, قَالَ: لَيْسَ عِنْدِي, قَالَ: فَصُمْ شَهْرَيْنِ مُتَتَابِعَيْنِ, قَالَ: لا أَسْتَطِيعُ, قَالَ: فَأَطْعِمْ سِتِّينَ مِسْكِينًا "

"Then do free a slave, he said: I don't have, he (the Prophet) said: then fast two sequent months, he said: I can't, he said:

then feed sixty needy" compiled by al-Bukhārī, this *ḥadīth* denotes the sequence intensively. The third division is that which no Sharī'ah text certifies invalidity or consideration for it, and this is what is called "*al-Maṣāliḥ al-Mursalah*" the benefits that are free from evidence. And they said: if the benefit is denoted by a specific text, like teaching to read and write or it is of that which a general text denotes its kind and certifies its consideration, like enjoining all kinds of (*al-Ma'rūf*) what is good and forbidding all kinds of (*al-Munkar*) the evil, then in these two situations it is not considered from the *Maṣāliḥ al-Mursalah*; because its consideration is due to the *Qiyās*, but the *Maṣāliḥ al-Mursalah* are the benefits that are free from evidence, i.e. which no evidence denotes them, but they are considered because the Sharī'ah in general came to bring benefits and to prevent evils. So the *Maṣāliḥ al-Mursalah* according to them are every benefit that no text dictates its consideration in specific, and that which no text dictates the consideration of its kind, so they are the benefits that are free from evidence, but the Sharī'ah texts in general denote their consideration, so the Sharī'ah verdicts can be established on their basis at the absence of the Sharī'ah text concerning an incident or concerning what is similar to it, so the benefit itself becomes the evidence. So according to that the jurisprudent (*al-Faqīh*) can judge that every action in which there is a dominant benefit becomes Sharī'ah request without a need for an evidence from the Sharī'ah texts to denote it. However they differentiate between the Sharī'ah benefits and the non-Sharī'ah benefits, they say: the benefit that is suitable to be an evidence is the one compatible with the Sharī'ah objectives, and one of the most important objectives of it is the preservation of the five necessary pillars, and they are the preservation of: the

religion, the human being, the mind, the offspring and the wealth, and the divine religions have agreed on the obligation of observing and preserving these pillars, and other benefits may branch out of these pillars the mind understands that they are benefits, so because they are benefits according to the estimation of the mind they are Sharī'ah evidences, since whatever supports the Sharī'ah objectives and helps to achieve them is a benefit. And it is not conditional that the benefit should be different to the (verdict of) *Qiyās*, but it may be different to it, and it may be the Sharī'ah evidence initially.

And those who advocate the evidence-free benefits (*al-Maṣāliḥ al-Mursalah*) make them specify the indecisive Sharī'ah texts, for instance the Messenger ﷺ says:

" البَيِّنَةُ عَلَى مَنِ ادَّعَى, وَاليَمِينُ عَلَى مَنْ أَنْكَرَ "

"The plaintiff should provide the evidence, and the denying defendant should make an oath" compiled by al-Dāraquṭnī, so those who advocate the evidence-less benefits see that if someone prosecutes another for money, and he is not able to prove his claim, and he requests that the defendant should make an oath, they don't oblige the defendant to make the oath unless there is a partnership between them, lest the foolish people not falsely accuse the kind people and draw them to courts by false claims. So those who advocate the evidence-less benefits consider them a self-standing principle like the *Kitāb* and the Sunnah to the extent that they make them specify the *Kitāb* and the Sunnah if the text is indecisive. And they decided that the Sharī'ah brought only benefits in its verdicts. And that (the benefits) which exists in the text it can be known by it, that which is not known by the text the demand of it is known

by the general texts of the Sharī'ah. So according to this consideration of them the *Mujtahid* can judge that every action in which there is a benefit and no harm in it, or in which the benefit is bigger than the harm, it is requested without a need for a special evidence, and every matter in which there is a harm and no benefit in it, or its offence is bigger than its benefit, it is prohibited without a need to a special text.

And they said: we found that the Legislator aims to achieve the benefits for the servants, and the dealing verdicts circulate with the benefit wherever it circulates, so you would see the same thing prohibited when there is no benefit in it, but when there is benefit in it, it becomes permissible, like selling the *Dirham* for a *Dirham* for a fixed term, it is prohibited in the sale, but permissible in the loan, and the Legislator intended in the texts the adherence to their meanings, not to stop at the texts.

And they defended the idea that making the Evidence-free Benefits a Sharī'ah evidence leads to making the inclination a Sharī'ah evidence, so they decided concerning the attachment of the inclinations to the benefits that the association between them is not constant, since the absolute inclinations and desires are not noticed in the Sharī'ah benefits that are considered and decided, so the considered benefits are what is considered with respect to the life system as a mean for the life after, not with respect to the personal desires in obtaining benefits; because the Sharī'ah came to release the assigned people out of the necessities of their desires; because Allah ﷻ says:

{وَلَوِ اتَّبَعَ الْحَقُّ أَهْوَاءَهُمْ لَفَسَدَتِ السَّمَاوَاتُ وَالأَرْضُ وَمَنْ فِيهِنَّ}

"And if the truth had been in accordance with their desires, verily, the heavens and the earth, and whosoever is therein would have been corrupted..."[424]

And they inferred the consideration of the Evidence-free benefits by two evidences:

The first: the Legislator had considered the kind of the benefits in the kind of the verdicts, and the consideration of the kind of the benefits necessitates the probability of the consideration of this benefit for being one of them. Hence the Evidence-free Benefits are of that which the Sharī'ah considered.

The second: Whoever follows the situations of the *Ṣaḥābah* ﷺ finds out that decisively that they used to be contented with the incidents just for their benefits, without discussing any other matter, so that was a Consensus of them on acceptance of those matters, and they narrated actions of the *Ṣaḥābah* saying that they carried them out standing on the Evidence-free benefits (*al-Maṣāliḥ al-Mursalah*), some of them are:

1- The Companions of the Messenger of Allah ﷺ used to perform matters that were not performed at his time, Abū Bakr had gathered the Qur'ān in one book, and 'Uthmān commanded to copy it and burn all copies except the one he copied, and that wasn't done at the time of the Messenger ﷺ, but Abū Bakr and 'Uthmān found the benefit necessitates those actions so they performed them when they feared that the Qur'ān may get forgotten by the death of its memorizers.

[424] Surah al-Mu'minūn:23

2- The Companions of the Messenger ﷺ have agreed after him on eighty flogs as punishment of the intoxicant drinker establishing that on the benefits or on the inference by the *Mursal* (the Evidence-free).

3- 'Umar Ibn al-Khaṭṭāb used to share equally the money of the governors of the provinces whom he accused that their private money got mixed with the money they benefited from their authority over the province, and he did that out of the Evidence-free benefit.

4- It is narrated that 'Umar spilled the milk that was cheated with water disciplining the cheater, and that is out of the public interest lest the sellers cheat people.

5- It is reported that 'Umar Ibn al-Khaṭṭāb killed the group as punishment for them for participating in killing one person; because the benefit necessitates that, since there is no text concerning the issue.

This is in summary the reality of *al-Maṣāliḥ al-Mursalah* in the opinion of those who advocate them, and these are the evidences they adduced.

As for the evidences of them, the first evidence is corrupted from two directions:

The first direction: the allegation that the Legislator considers the kind of the benefits in the kind of the verdicts is an invalid allegation from its basis and has no support from the Sharī'ah, since no text from the *Kitāb* and neither from the Sunnah came to denote the consideration of the kind of the benefits in the kind of the verdicts, and thus the *Ijmā'* of the *Ṣaḥābah* never consented on this, and since that is not proved in the *Kitāb*, nor in the Sunnah and neither in the *Ijmā'* of the *Ṣaḥābah*, and they are what is brought by

the Legislator, hence this allegation is invalid from its basis. And as for the saying of Allah ﷻ:

{وَمَا أَرْسَلْنَاكَ إِلا رَحْمَةً لِلْعَالَمِينَ}

"And We have sent you (O Muhammad): not but as a mercy for the al-'Aalameen (mankind, jinn and all that exists)"[425],

indeed it doesn't signify reasoning, not in the structure and neither in the meaning, it is like His ﷻ saying:

{وَمَا جَعَلَهُ اللَّهُ إِلا بُشْرَى}

"And Allah made it only as a glad tidings..."[426]

what is meant by that is the result occurs from sending the Messenger ﷺ is that he will be a mercy for mankind, so being the Sharī'ah mercy for mankind is not the *'illah* of legislating the Sharī'ah, but the mercy is the result occurs from implementing the Sharī'ah; accordingly, the legislator didn't consider the kind of the benefits in the kind of the Sharī'ah verdicts; because He didn't make them (the benefits) *'illah* for legislating the Sharī'ah, neither did He make them *'illah* of the Sharī'ah verdicts in general, so the Evidence-free Benefits (*al-Maṣāliḥ al-Mursalah*) don't have any Sharī'ah consideration.

The second direction: the Sharī'ah texts of the *Kitāb* and the Sunnah are relevant to a specific action of the servant, so they are the Sharī'ah evidence of the Sharī'ah verdict of this action, and they are not related to the benefit or to the

[425] Surah al-Anbiyā':107
[426] Surah al-Anfāl:8

evil, and neither did they come as evidence for the benefit and the evil. So when Allah ﷻ says:

{وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ}

"And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging) ..."[427],

and when He ﷻ says:

{يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ}

"O you who have believed When you contract a debt for a fixed period, write it down..."[428],

and when He says:

{وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ}

"...and take witnesses whenever you make a commercial contract...",

He only clarified the verdict of the guaranty mortgage, the verdict of writing the loan and the verdict of witnesses at the sale contract, and He ﷻ didn't clarify whether this is a benefit or not a benefit, not explicitly and neither by denotation, and the text doesn't give a meaning that this is a benefit or not, neither directly or indirectly at all, then how do they say that these are benefits the Sharī'ah denoted them so that these benefits should be considered as Sharī'ah evidence?!. Also the Sharī'ah reasons are like the texts of the Sharī'ah, they came relevant to the action of the servant and indications on the reason of the Sharī'ah

[427] Surah al-Baqarah:283

[428] Surah al-Baqarah:282

verdict of this action, and they did not clarify the benefit and the evil, but they clarified a specific meaning and made it an *'illah* for the verdict, and never said that it is a benefit or an evil at all. For instance when Allah ﷻ says:

{كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ}

"...in order that it may not become a fortune used by the rich among you..."[429]

and when He says:

{لِكَيْ لا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ}

"so that (in future) there may be no difficulty to the believers in respect of (the marriage of) the wives of their adopted sons..."[430]

and when He says:

{وَالْمُؤَلَّفَةِ قُلُوبُهُمْ}

"...and to those whose hearts are attracted (to make them incline to Islam)..."[431],

He only clarifies the *'illah* of distributing the wealth over the poor people that it is to prevent the circulation of it among the rich people, and He clarified the *'illah* of marrying off Zainab to the Messenger that it is for the clarification of the permissibility of marrying the ex-wife of the adopted son, and He clarified the *'illah* of giving money to those whose hearts are attracted because the state needed them. So He ﷻ did not clarify that this reason is a benefit

[429] Surah al-Hashr:7
[430] Surah al-Aḥzāb:37
[431] Surah al-Tawbah:60

or an evil, but He ﷻ only clarified that a specific thing is a reason of a specific verdict without any consideration of the benefit and the evil, and without any regard to them, then how do they say that the Sharī'ah have denoted these benefits so that they are considered Sharī'ah evidence?! Indeed the Sharī'ah texts which denote both the reasoned and the unreasoned Sharī'ah verdicts denote only specific meanings that clarify the verdict of Allah concerning the action of the servant, and they did not come to bring benefits and avoid evils, so there is no place for the benefit and the evil in them; because that is not denoted by these texts, so it shouldn't be said that the forbiddance of the sale at the time of the Jumu'ah prayer is a benefit, and being the oil fields public property is a benefit, and the equality in the punishment is a benefit, also it shouldn't be said that the forbiddance of adultery is avoidance of an evil, and the forbiddance of spying is avoidance of an evil, and the forbiddance of (*riba*) usury is avoidance of evil, that shouldn't be said; because Allah didn't say it, and there is no evidence on it, and because these verdicts Allah legislated them in the Sharī'ah texts, some of them are reasoned by an *'illah* dictated by the Sharī'ah, and some of them are not reasoned. And the verdicts that came reasoned, bringing the benefit and avoiding the evil is not the *'illah* of any verdict of them. The *'illah* of the forbiddance of the sale at the call of the Jumu'ah prayer is understood from the Sharī'ah text, and it is the diversion from the prayer. This diversion is *'illah* because it came in the Sharī'ah text, not because it brought a benefit or it wards off an evil, so there is no place for the benefit and the evil here and not even for the discussion of them. And the petroleum is a public property for the reason understood from the Sharī'ah text and that is because it is an unceasing

mineral like the unceasing water, so being unceasing mineral is the *'illah*; because the Sharī'ah text brought it, not because it brought a benefit and or it wards off an evil, so there is no place for the benefit and evil here, and not even for their discussion. And the infliction of the equal punishment (*al-Qiṣāṣ*) is for an *'illah* understood from the Sharī'ah text and that is being there is life in it, so being there is life in the *qiṣāṣ* is the reason; because the Sharī'ah text brought it, not because it brings a benefit and wards off an evil, and there is no place for the benefit and evil here, and no place for discussing them, and thus are all the reasons that came in the Sharī'ah, and all the reasoned verdicts, they are only specific reasons considered because the Sharī'ah brought them, not because they are benefits or evils; therefore bringing benefits and avoiding evils don't exist in the reasoned verdicts, nor do they exist in their reasons at all. This is concerning the reasoned verdicts, and as for the verdicts that came unreasoned, also there is nothing in them denotes bringing the benefit and avoiding the evil at all. The forbiddance of the adultery, the spying and the usury (*riba*), nothing came in their evidences to denote the benefits and the evils at all, so it shouldn't be said that the *zina* is forbidden for warding off the evil, and the spying is forbidden for warding off the evil, and the *riba* is forbidden for warding off the evil; because it is not as such and nothing denotes that at all by any means, hence the allegation that the Sharī'ah had considered the kind of the benefits in the kind of the verdicts is a null allegation and nothing denotes it in the Sharī'ah verdicts,—both the unreasoned and the reasoned—and neither in their reasons, hence it is not permissible to say the import should be permissible for people because it is a benefit, or it should be prevented because it is an evil. Thus it shouldn't be said

that the zina is forbidden for warding off the evil, and the leasing at the call of the Jumu'ah prayer is forbidden for pushing away the evil, and the rivers have been made a public property because it is a benefit, and the *jihād* is obligated because it is a benefit; that should not be said because the Sharī'ah text didn't say it at all, and it is not understood from it, not literally nor by connotation, so that allegation is fabrication of lie on Allah ﷻ, and it is contrary to the reality. So if the Sharī'ah texts don't denote that they came for the benefit not in their denotation on the verdict and nor in their denotation on the *'illah* of the verdict then it is not permissible to say that the texts have denoted benefits either specifically or by their kinds; because nothing of that came in the Shari'sh texts at all, hence the invalidity of the saying that the Sharī'ah texts came as evidence on some benefits either specifically or by their kinds becomes apparent, so these benefits are not considered Sharī'ah evidences. If this invalidity is regarding what they say that they are benefits the Sharī'ah texts considered specifically or by their kinds, then it is with greater reason not to consider the benefits which no Sharī'ah text denotes them as a Sharī'ah evidence, i.e. considering them a Sharī'ah evidence is invalid with greater reason, this is in addition to that "*al-Maṣāliḥ al-Mursalah*" are established on that, and when the first one is invalid then that which is established on it is invalid. I.e. if the existence of the benefit in the Sharī'ah texts is annulled, and the "evidence-free benefits" are established on the opinion that the Sharī'ah has dictated the kind of benefit in the kind of verdicts, and then verily whatever is based on that opinion is invalid, i.e. the consideration of the "evidence-free benefits" as Sharī'ah evidence is invalid. So these two points show the invalidity of their first evidence, that is

since the Sharī'ah has considered the kinds of benefits in the kinds of verdicts, so the benefit which is not denoted by an evidence is one of the benefits which the Sharī'ah has considered their kinds, so it is included in the consideration of the Legislator. This evidence is invalid; because the Legislator never made the benefit an *'illah* for legislating the Sharī'ah as a whole, and because He never made it an *'illah* for any one of the Sharī'ah verdicts, i.e. because He never considered the kind of benefits in the kind of verdicts. As for the verdict being itself brings a benefit, like the obligation to work upon the able and needy person, or it wards off an evil, like the forbiddance of bribery. And as for the *'illah* being itself a benefit, like whatever is of the community's utilities is a public property, or it wards off an evil, like the killing of the inheritor prevents him from the inheritance, all this is inappropriate to be a proof that the Legislator considered the kind of benefits in the kind of verdicts; because the Sharī'ah verdict itself is inappropriate to be an evidence; because it is itself inferred from an evidence, and thus the *'illah* is inappropriate to be an evidence; because it is itself inferred from an evidence; therefore supposing that the Sharī'ah verdict itself denotes something that is a benefit or warding off an evil, indeed its meaning is not considered Sharī'ah evidence; because the Sharī'ah evidence is not the verdict itself, but the text that came as an evidence on the verdict. And thus supposing the Sharī'ah *'illah* denotes something that is a benefit or warding off an evil, indeed its meaning is not considered Sharī'ah evidence; because the Sharī'ah evidence is not the *'illah* itself, but the text that came as an evidence on the *'illah*; accordingly, the denotation of the verdict or the *'illah* on the benefit or on warding off the evil is not the evidence on the benefit or on warding off the evil, so the denotation

of their meaning is not Sharī'ah denotation, hence it is not a proof that the Sharī'ah considered the kind of benefits in the kind of verdicts. However considering that which the verdict signifies a benefit or warding off an evil, and considering that which the *'illah* signifies a benefit or warding off an evil, it is only in the view of the Muslim, and in the Islamic society, but the non-Muslim doesn't view that; because viewing something as benefit or evil depends on the person's view point of life, that is because when the thoughts become concepts; they influence and condition the behaviour of mankind in accordance with them, so his view point of life changes, and accordingly his view to the benefits changes. So the human consideration of the thing whether it is a benefit or not depends on his view point of life; therefore they are benefits according to the view point of the Muslim, but they are not benefits according to the view point of the non-Muslim. And the Sharī'ah verily came to the human, and whatever it says that it is a benefit it is a benefit with respect to its reality with the human, not only with respect to the view point of the Muslim, so if it says this is a benefit then it should be a benefit for all the human; and therefore it never said that this verdict is a benefit or it is a ward off of an evil, but it says the verdict is as such; clarifying what it is only, without mentioning whether it is a benefit or not a benefit, so the verdict itself didn't denote a benefit or warding of an evil, but it is only the Muslim who explained it and said that about it, and this also proves that the verdicts and the reasons never said that the verdicts are benefits or warding off of an evil. However, even the Muslim in the non-Islamic society doesn't see a worldly benefit in some verdicts; because they bring benefit to him, for instance the *riba* in the capitalist society is considered an important part of all the trade and the

economic, so when he adheres himself to deal not with *riba*, it causes him a loss, or at least it decreases his profits, so he doesn't see that a worldly benefit for himself, but he acts upon the verdict just because it is a Sharī'ah verdict. Thereby the Sharī'ah verdict and the Sharī'ah *'illah* never denoted a benefit. And thereby the allegation that the Legislator had considered the kind of benefits in the kind of verdicts is completely banished. And since that is banished the "evidence-free benefits" are banished too; because they are based on it.

As for their second proof, it is corrupted from two directions:

The first direction: The alleged '*Ijmā'* of *Ṣaḥābah* by which they inferred the validity of "the *Maṣāliḥ al-Mursalah*" is not an '*Ijmā'* of the *Ṣaḥābah*, but it is an action of individuals of them, they inferred by the actions of several individuals of the *Ṣaḥābah*, and they narrated actions of them saying that they performed them according to "*al-Maṣāliḥ al-Mursalah*", and this is not considered *Ijmā'*, it is not even a "silence *Ijmā'*" (*Ijmā'* Sukooty); because although they were actions of several *Ṣaḥābah*, they separated actions performed by separated *Ṣaḥābah*, they are not one action or one saying on which the *Ṣaḥābah* consented, or kept silent on it; therefore it is not considered *Ijmā'*, but it is only considered an action of individuals, and the action of the individuals of the *Ṣaḥābah* is not considered Sharī'ah evidence at all, and they themselves have adduced them as actions of individuals of the *Ṣaḥābah*, not as *Ijmā'* of the *Ṣaḥābah*; accordingly it is not considered Sharī'ah evidence, on the assumption that some individuals of the *Ṣaḥābah* have considered "*al-Maṣāliḥ al-Mursalah*" a Sharī'ah evidence and acted upon it.

The second direction: it is not true that the *Ṣaḥābah* had considered the "Evidence-free Benefits" Sharī'ah evidence, and it wasn't transmitted from any of them in any authentic or weak narration that they have considered "*al-Maṣāliḥ al-Mursalah*" evidence. And as for what they who advocate "*al-Maṣāliḥ al-Mursalah*" understood that the actions of the *Ṣaḥābah* denote their consideration of "*al-Maṣāliḥ al-Mursalah*" as evidence, on the assumption that their understanding is true, it doesn't mean that the *Ṣaḥābah* have considered "*al-Maṣāliḥ al-Mursalah*" Sharī'ah evidence, but the *Ṣaḥābah* were well acquainted with the Sharī'ah evidences and very skilled in them when the principles and the conditions were not made yet, nor was the science of the Fiqh Principles existing, so they used to issue verdicts on matters without looking at the conditions which were considered by the jurisprudents of the later eras in the analogy, and the original and the branch, and without considering the rules that were set after them, like *"the harm must be removed"*, and *"the means which leads to the forbidden is forbidden"*, and the likes, but they used to derive the verdict from the evidence according to their sound intuition in knowing the language and understanding the Sharī'ah, so some of those who were unaware of that have imagined that the *Ṣaḥābah* have observed the benefits, and the reality is not like that, but the *Ṣaḥābah* have complied with the *Kitāb* and the Sunnah and never went beyond them, and there isn't any action or saying of them that is not based on a Sharī'ah evidence. However all the examples they brought don't denote the mental benefit, but every example of them is based on a Sharī'ah evidence. The command of Abū Bakr to collect the Qur'ān, and the command of 'Uthmān to make copies of the *Kitāb* and to burn all other *Masāhif*, their incidents indicate that they

were a removal of severe damages, when the killing increased in the memorizers of the Qur'ān, and they feared the loss of the Qur'ān if the killing of the memorizers continued to increase, so they decided to collect the Qur'ān. And when the disagreement occurred in reciting the Qur'ān for the difference in the copies of the *Masāhif*, they feared the disagreement among the Muslims in the Qur'ān; therefore Huzthaifah Ibn al-Yammaan said to 'Uthmān: beware of the Muslims before they defer among themselves, then he commanded to copy the *Mushaf* in one copy and they burnt the others, all that is a damage the Khailah of the Muslims removed it, and this is not a benefit of his own mind and he acted in according to it, but because the Messenger of Allah ﷺ commanded to remove the damage. It is narrated that Ibn Abbaas ﷺ said: the Messenger of Allah ﷺ said:

" لا ضَرَرَ، وَلا ضِرَارَ "

"The harm and the harmful are not allowed" compiled by al-Hākim. So what Abū Bakr and 'Uthmān did is removing a damage, and every one of them did it according to the Sunnah, not because he saw it a benefit. And as for the penalty of the intoxicant drinker, it is indeed proven by the Sunnah, and the Messenger ﷺ did punish the intoxicant drinker, Anas had narrated:

" أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أُتِيَ بِرَجُلٍ قَدْ شَرِبَ الخَمْرَ, فَجَلَدَهُ بِجَرِيدَتَيْنِ نَحْوَ أَرْبَعِينَ "

"That an intoxicant drinker was brought to the Prophet ﷺ, then he flogged him with two palm branches around forty" compiled by Muslim. And with Ibn Abi Shaibah:

"أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ ضَرَبَ فِي الخَمْرِ بِنَعْلَيْنِ أَرْبَعِينَ "

"The Messenger of Allah ﷺ had flogged for drinking the intoxicant forty flogs with two shoes" and in a narration of Aḥmad:

"فَأَمَرَ قَرِيبًا مِنْ عِشْرِينَ رَجُلاً, فَجَلَدَهُ كُلُّ رَجُلٍ جَلْدَتَيْنِ بِالجَرِيدِ وَالنِّعَالِ "

"So the Prophet ﷺ commanded around twenty men, then every one of them flogged him (the intoxicant drinker) two flogs with palm branches and shoes", and as for what is narrated that Ali ﷺ said:

"جَلَدَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَرْبَعِينَ, وَجَلَدَ أَبُو بَكْرٍ أَرْبَعِينَ, وَعُمَرُ ثَمَانِينَ "

"the Prophet ﷺ flogged forty flogs, and Abū Bakr flogged forty flogs, and 'Umar flogged eighty flogs" compiled by Muslim. It denotes that the Messenger ﷺ had flogged forty flogs, and *Ṣaḥābah* flogged forty and eighty, it means that the minimum of it is forty, and the maximum is eighty, and the matter is left to the Imam. Accordingly that is not from the "Evidence-free benefits" so the eighty flogs are not legislated for the benefit, but it is left to the *Khalīfah* to impose it either forty or eighty. And as for what 'Umar did it is out of taking care of the affairs, and it is of that which is left to the *Khalīfah* to perform according to his opinion and diligence, so the *Khalīfah* calls the provinces' governors to account according to his opinion and diligence, and everything the Sharī'ah charged the *Khalīfah* with to perform according to his opinion and diligence, like appointing the governors of provinces (*al-Wulaat*) and calling them to account, and spending the money of the treasury (Bait-ul-maal), and concluding the treaties, and other than that, indeed his performance in all this is with respect to the authority that the Sharī'ah gave him, so he

performs that according to a Sharī'ah verdict and not for the benefit. And what he sees is out of his diligence and out of giving the advice to the Muslims, and the action of the *Khalīfah* is not a Sharī'ah verdict based on the benefit, but it is of the permissible verdicts from which he can choose what he wants. And as for spilling the cheated milk, that out of the weights and measures and the market control (al-*Hisbah*), so he inspects the market as the Messenger ﷺ did when he saw a heap of wheat then he extended his hand in it and found wetness, then he said to the owner of it:

"مَا هَذَا يَا صَاحِبَ الطَّعَامِ؟ قَالَ: أَصَابَتْهُ السَّمَاءُ يَا رَسُولَ اللهِ؛ قَالَ: أَفَلا جَعَلْتَــهُ فَوْقَ الطَّعَامِ كَيْ يَرَاهُ النَّاسُ, مَنْ غَشَّ فَلَيْسَ مِنِّي "

"What is this O owner of the food? He said: the sky (the rain) befell it O Messenger of Allah, he said: then would you make on top so that people can see it, whoever cheats it is not of me" compiled by Muslim. And 'Umar used to perform the *hisbah* to inspect the sellers and when he found that the milk is cheated he punished the cheater, and his punishment by spilling the milk was a matter of the *ta'zīr* (punishment of offences other than crimes), and its estimation is left to the imam or to the judge, and it is up to him to estimate it as he sees, and it is not a Sharī'ah verdict based on the benefit. And as for killing 'Umar the group for killing of one person if they participate in killing him, he analogized it on the theft as it came in the text of the incident's narration, so it is a kind of the *Qiyās* and not kind of the Evidence-free Benefits. Thus all the incidents of the *Ṣaḥābah* that they narrated, the benefit is not in any one of them, but they are established on Sharī'ah evidences; and thereby their inference by the action of the individuals of

the *Ṣaḥābah* is refuted, if it is supposed to be considered as a Sharī'ah evidence.

Hence it becomes apparent that the evidences they brought to infer that *al-Maṣāliḥ al-Mursalah* is a Sharī'ah evidence are invalid and the inference by them is invalid from their basis, and thereby the inference by them is null. Hence "*al-Maṣāliḥ al-Mursalah*" is not a Sharī'ah proof; because there is no evidence to prove its validity, and this only is sufficient for the inconsideration of it as a Shariah evidence. And in addition to that, indeed the reality of the "Evidence-free Benefits" with regard to their definition shows its invalidity as a proof, indeed the scrutiny of it clarifies that the consideration of it as a Sharī'ah evidence is corrupted from several directions:

The first direction: It contradicts the definition of the Sharī'ah verdict, i.e. it contradicts the reality of the Sharī'ah verdict, so the consideration of it as an evidence for the Sharī'ah verdict is invalid from its basis. That is because the Sharī'ah verdict is the address of the Legislator, whether we say that it is: "the address of the Legislator concerning the actions of the assigned people" or "the address of the Legislator concerning the actions of the servants" or "the address of the Legislator that signifies a Sharī'ah benefit" or "the address of Allah", indeed which ever of these definitions we say, and in any case it has been consented that the Sharī'ah verdict is the address of Allah, or the address of the Legislator, i.e. Allah ﷻ. And the verdict which they established on a benefit that has no evidence from the address of the Legislator should not be considered a Sharī'ah verdict at all; because the reality of the Sharī'ah verdict, as the address of the Legislator is not applicable to it, hence the consideration of the benefit which no evidence

from the Sharī'ah denotes it to be a Sharī'ah evidence is invalid; because that which it is established on (the benefit), the reality of the Sharī'ah verdict is inapplicable to it. And it is incorrect to say that the Sharī'ah as a whole denotes it; because the whole Sharī'ah is not called a Sharī'ah verdict. And it is incorrect to say that the whole Sharī'ah denotes a partial; for the impossibility of that in the reality, since the whole does not denote a partial; therefore the whole Sharī'ah does not denote an address that specifies this partial.

The second direction: Indeed Allah ﷻ said:

{وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا}

"...So take what the Messenger assigns to you, and abstain from that which He withholds you from..."[432],

and the evidence-free benefit is brought by the mind, the Messenger never brought it, but the mind brought it from itself, not understanding it from a specific text; and therefore those who consider the *Maṣāliḥ al-Mursalah* evidence say: the Legislator allows not except that which is a benefit, and prohibits not except that which is an evil, so they consider the mind able to understand the benefit and the evil, on the basis that the Sharī'ah beings only the benefit. So their mind brought it, and that which the mind brings is not permissible to be taken as Sharī'ah verdict; because the Messenger did not bring it; and because the connotation (*mafhūm*) of :

{وَمَا آتَاكُمُ الرَّسُولُ}

[432] Surah al-Hashr:7

"So take what the Messenger assigns to you"

is take not that which is given to you from other than the Messenger, and the word {the Messenger} is a description that has a connotation, it is not defective, i.e. it is not a nickname, so it has a connotation of incompatibility, which means anything the Messenger did not give you it is not permissible to take it, so whatever the mind gives you of verdicts don't take.

The third direction: Verily Allah ﷻ says:

{فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ}

"But no, by your Lord, they can have no Faith, until they make you (O Muhammad) judge in all disputes between them..." [433]

and He ﷻ says:

{وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ}،{الظَّالِمُونَ}، {الفَاسِقُونَ}

"...And whosoever does not judge by what Allah has revealed, such are the Kāfirūn (disbelievers)", "...the Ẓālimūn (wrong-doers)", "...the Fāsiqūn (the rebellious i.e. disobedient to Allah"[434],

and He says:

ٱلْكَٰفِرُونَ ﴿٤٤﴾، ﴿ٱلظَّٰلِمُونَ ﴿٤٥﴾﴾، ﴿ٱلْفَٰسِقُونَ ﴿٤٧﴾﴾ ويقول: ﴿وَأَنَّ هَٰذَا صِرَٰطِى مُسْتَقِيمًا فَٱتَّبِعُوهُ﴾ وجعل المصالح المرسلة دليلاً شرعياً هو

[433] Surah al-Nisā':65

[434] Surah al-Mā'idah:44, 45 and 47.

and making the *Maṣāliḥ al-Mursalah* a Sharī'ah evidence is arbitration of other than what the Messenger of Allah ﷺ brought of *Kitāb* and Sunnah, and it is judgment by other than what Allah sent down, but by that which the mind brought, it is also following other than the Sharī'ah; because it is following the mind, and this is contrary to text of the verses; therefore it is impermissible to make the "Evidence-free Benefits" Sharī'ah evidence.

The forth direction: We are certainly commanded to follow the Messenger of Allah ﷺ alone, Allah ﷻ said:

{قُلْ إِنْ كُنْتُمْ تُحِبُّونَ اللَّهَ فَاتَّبِعُونِي يُحْبِبْكُمُ اللَّهُ}

"Say: (O Muhammad) If you do love Allah, then follow me Allah will love you..."[435]

and the Messenger doesn't bring anything except from the revelation:

{وما يَنطِقُ عن الهَوى} {إن هُوَ إلاَّ وَحْيٌ يوحَى}

"Nor does he say speak of (his own) Desire} {It is but a revelation sent down to him"[436],

and He Ta'ala said:

{قُل إِنَّما أُنذِرُكُم بِالوَحْيِ}

"Say: I do but warn you according to revelation..."[437],

so we are commanded to follow what is brought by the revelation, and the comprehension of it is, it is prohibited

[435] Surah Āli Imrān:31
[436] Surah al-Najm:3-4
[437] Surah al-Anbia':45

for us to following other than what is brought by the revelation, i.e. to follow other than the Messenger ﷺ. And making the "*Maṣāliḥ al-Mursalah*" Sharī'ah evidence is following the mind, it is following other than the Messenger, i.e. following other what is brought by the revelation, so that which it denotes cannot be Sharī'ah verdict, so it is not permissible to take the "*Maṣāliḥ al-Mursalah*" as Sharī'ah evidence.

The fifth direction: Indeed Allah ﷻ says:

{الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الإِسْلامَ دِينًا}

"...This day, I have perfected your religion for you, completed My Favour upon you, and have chosen for you Islam as your religion..."[438]

this verse is explicit that Allah had certainly completed the religion. So making "*al-Maṣāliḥ al-Mursalah*" an evidence, and they are the benefits showed by the mind without a Sharī'ah evidence; because there is no evidence that denotes them, it means that the Islamic Sharī'ah is incomplete, for the evidence that some actions exist and there is no evidence for them in the Sharī'ah, then the mind came and clarified evidences for them by clarifying the benefits in them, hence the "Evidence-free Benefits" have completed the Sharī'ah after its shortage is proven, and this is contradictory to the explicit text of the Verse, and contradictory to the reality of the Sharī'ah, since no existing incident but it has a Sharī'ah verdict, and no

[438] Surah al-Mā'idah:3

existing problem but it has a place of a Sharī'ah verdict, so considering the "*Maṣāliḥ al-Mursalah*" Sharī'ah evidence is contradictory to the Qur'ān and to the reality of the Sharī'ah.

The sixth direction: they made a condition for the "Evidence-free Benefits" in order to consider something as "evidence-free" is that there shouldn't be any Sharī'ah text that denotes the consideration of it, neither its reality and nor its kind, so the condition they put that there shouldn't be any specific evidence from the Sharī'ah that denotes it, it is sufficient to reject the "*Maṣāliḥ al-Mursalah*"; because the verdict which is wanted to be taken is the Sharī'ah verdict not the mental verdict, hence to consider the verdict a Sharī'ah verdict it is inevitable that an evidence from the Sharī'ah denotes it, so making a condition that no text from the Sharī'ah should denote it is enough to disprove it as Sharī'ah, and to consider the "*Maṣāliḥ al-Mursalah*" as not a Sharī'ah evidence. As for the allegation that the "*Maṣāliḥ al-Mursalah*" as an evidence is understood from the objectives of the Sharī'ah, indeed the objectives of the Sharī'ah are not a text that can be understood so that what is understood from it can be considered an evidence, so what is understood from them in the inference of the Sharī'ah verdict has no value. Moreover, if what is called the objectives of the Sharī'ah mean what the texts denote like the forbiddance of: zina, theft, the soul killing, the intoxicant and the apostasy from Islam, these are not objectives of the Sharī'ah, but they are verdicts for the actions of the servants, so the actions must be restricted to the meanings of their texts. And if what is called objectives of the Sharī'ah mean the wisdom of the whole Sharī'ah, i.e. the wisdom of sending the Messenger as mercy for the

servants, then it is a wisdom not an *'illah*, and the wisdom may occur and may not, so it cannot be taken as an origin for the inference; because it is possible that it may not occur; therefore what is understood from the so called objectives of the Sharī'ah is inappropriate to be considered Sahri'ah evidence.

From all that the invalidity of considering the "*Maṣāliḥ al-Mursalah*" "Evidence-free Benefits" Sharī'ah evidence became apparent, so they are inappropriate to be one of the Sharī'ah evidences. However, if a *Mujtahid* like the Imām Mālik ﷺ infers by it, then the verdict which is derived according to is considered a Sharī'ah verdict; for the existence of what is suspected to be evidence (*shubhat dalīl*) on it, even if it is an imagined evidence (*dalīl mawhūm*).

القَوَاعِدُ الكُلِّيَّةُ

The Universal Principles (of the Sharī'ah) [*al-Qawā'id al-Kulliyyah*]

Since we finished the talk about the Sharī'ah evidences that are established by decisive proofs, and about the imagined evidences, it is inevitable to talk about the inference by the universal (comprehensive) rules of the Sharī'ah to clarify that they are not Sharī'ah evidences, but they are Sharī'ah verdicts derived from the Sharī'ah evidences like any other verdict. It is very much noticed that verdicts have been inferred by a universal rule, or by a Sharī'ah definition, or by a Sharī'ah verdict, then the listener thinks that the universal rule is the Sharī'ah evidence of the verdict, or he thinks that the Sharī'ah definition is the Sharī'ah evidence of the verdict, or he thinks that the verdict by which the inference was made is the evidence of the new verdict, and he may imagine that these things are from the Sharī'ah evidences, although the reality is not as such. Indeed the universal rules of the Sharī'ah, the definitions of the Sharī'ah and the verdicts of the Sharī'ah are all Sharī'ah verdicts even though their names are different. And inferring the verdict by a universal rule or by a Sharī'ah definition or by a Sharī'ah verdict is a matter of making branches of the verdict, and it is not a matter of infering by the evidence, however the inference of the verdict by a Sharī'ah universal rule and by a Sharī'ah definition is different to the inference by a Sharī'ah verdict. The inference of the verdict by a universal rule or by a definition takes the form of inference by the evidence with

respect to their conformity with the verdict, and the conformity of the verdict with the reality for which it came, so they get dealt with like the text, and they are also thought taken as basis for the treatment not a direct treatment. In contrast with the inference of the verdict by a Sharī'ah verdict, it doesn't take the form of inference by the evidence, but it takes a form of the application, so the conformity of the verdict with the reality would be noticed to find out whether it is compatible with the reality for which it came or not, and the verdict (by which the inference is made) is not a thought taken as basis for the treatment, but it is a verdict, i.e. it is a direct treatment. Apart from that, indeed the universal rules, the Sharī'ah definitions and the Sharī'ah verdicts are all alike; they are derived from Sharī'ah evidences. The universal rules and the Sharī'ah definitions are general verdicts, and the Sharī'ah verdict is a partial verdict; therefore none of them is considered one of the Sharī'ah evidences, but they are Sharī'ah verdicts derived from the Sharī'ah evidences. And in order to perceive the generality and the partiality in the Sharī'ah verdict, it is inevitable to point out that this naming is a matter of the metaphor and not of the reality; because the generality and the partiality are from the denotations of the singular noun and not from the denotations of the assembled phrase, so there is no place for them in the denotation of the assembled phrases. And the Sharī'ah verdict is an assembled phrase and not a singular noun, and your saying: the lease is an agreement on a benefit for a compensation, is an assembled phrase, and your saying: the means to what is forbidden is forbidden, is an assembled phrase, so the generality and the partiality are not included in it; because they are from the denotations of the singular noun. But since the common noun is the noun

that many can share its meaning, like: the animal, the human and the author, and the definition is able to be shared by many, as the definition of the lease (Ijaarah) is applicable on hiring out the private employee and the common employee, and it is applicable on leasing the house, the car and the land ...etc. they are called general verdicts as metaphor, and thus is the universal rule, and since the partial noun is unable to be shared by many, like Zaid as a proper noun for a man, and Fāṭimah as a proper noun of a woman, and like the pronouns like he and she, and the Sharī'ah verdict is unable to be shared by many, like dead (un-slaughtered) meat is forbidden, and drinking the intoxicant is forbidden, and the likes, they are not applicable except on the dead meat and on the intoxicant, so it has been called partial verdict as a metaphor, so it is called general or partial metaphorically with respect to whether it includes other individual matters or it doesn't include, but with respect to its reality it is a Sharī'ah verdict derived from a Sharī'ah evidence. No difference between the universal rule, the definition and the verdict.

The Sharī'ah universal rule is the general verdict which is applicable on its partials. And it is a verdict because it is derived from the address of the Legislator, so it is the meaning of the address of the Legislator. And as for its being universal, that is because it is not attributing a verdict to a common expression so that it can be called common verdict like the saying of Allah ﷻ:

{وَأَحَلَّ اللهُ البيعَ}

"And Allah has permitted the sale..."[439],

it is applicable to all kinds of sales so it is a common verdict, and like His ﷻ saying:

{حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ}

"Forbidden for you (of food) are: dead meat..."[440]

it is applicable on every dead meat so it is a common verdict, but the general verdict that can be a universal rule occurs by attributing the verdict to one of the universal expressions; therefore it is called universal (*kully*); and therefore every verdict included in the meaning of this expression is one of the partials of this universal verdict, not one of its individuals. It is like the rule: *"The means to what is forbidden is forbidden"* and the rule: *"That which the obligation can not be completed without it; it is an obligation"* and the likes. So in these rules the Sharī'ah verdict, which is the forbiddance, is not attributed to a general expression, like the sale is permissible, but it is attributed to a universal expression which is *"the means to what is forbidden ..."*, and the Sharī'ah verdict which is the obligation is not attributed to a general expression, like "the dead meat is forbidden", but it is attributed to a universal expression, which is: *"That which the obligation can not be completed without it..."*; and therefore it is universal.

As for the definition, it is the reality of the verdict, and it is universal; therefore it is like the universal rule, i.e. it is the universal verdict which denotes its partials, for instance the definition of the Sharī'ah verdict that it is "the address of

[439] Surah al-Baqarah:275
[440] Surah al-Mā'idah:3

the Legislator concerning the servants' actions", and the definition of the contract that it is "the correlation between an (obligated) offer and an acceptance in a legitimate manner so that its consequence is established in accordance with its subject", each one of them is a universal (comprehensive) verdict; because in the definition of the Sharī'ah verdict it tells about the matter defined by a universal expression, that is the term "the address of the Legislator...", it is indeed capable for many to share its meaning, it is applicable to the request of acting, and to the request of abstention, and to giving the choice, therefore it is a universal definition. And definition of the contract it tells about the defined matter by a universal expression, it is the term "the correlation between an (obligated) offer and an acceptance..." it is capable for many to share its meaning, it is applicable to the sale, to the marriage, to the leasing, and to the partnership; therefore it is a universal definition.

However the rule can be general but in most cases it is universal, so if the verdict is attributed to a universal expression then the rule is universal, but if it is attributed to a general expression then the rule is general, and thus if it tells about the defined matter by a universal expression then the definition is universal, and if it tells about it by a general expression then the definition is general, and the effect of that appears in the branching. The branching on the basis of the universal definition occurs on its partials not on its individuals, and so is the universal rule. And the branching on the basis of the general definition occurs on the basis of its individuals not on its partials, and so is the general rule. The difference between the general rule and the universal rule must be noticed, and the difference

between the universal verdict and the general verdict must be noticed. So the word general and generality means that the expressions are linguistically composed to denote by their tenses or by their meanings many (unlimited) individuals as a way of entirety, like the believers, the people, and their likes. And it is noticed that word universal beside that it is capable that many partials can share its meaning; the verdict is attributed to it, so the word "universal" here denotes the verdict of the universal meaning, for example the saying of Allah ﷻ:

{إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ}

"The believers are nothing else than brothers..."[441]

it is a general rule, and a general verdict, it is not a universal rule, nor is it a universal verdict; because it is a verdict upon the believers that they are brothers, and this verdict is upon the general in the capacity of a specific quality, it is not a verdict upon the universal in the capacity of a specific quality, in contrast with the saying of the Prophet ﷺ:

" العَجْمَاءُ جَرْحُهَا جُبَارٌ "

"The wound of the beast is of no compensation" compiled by al-Bukhārī. It is a universal rule; because it is a verdict upon the assault of the beast that it is not blamed for it, and the word the assault of the beast is a universal expression, so the universality is in the expression only and not in the assembled text; therefore it is incorrect to say this text is a universal text; because the universality cannot be in the assembled text, so there is no universal texts in the texts,

[441] Surah al-Hujuraat:10

but it can be said; this is a universal verdict because it is derived from the attribution of the verdict to a universal expression.

The universal rules are derived from the Sharī'ah text same like the derivation of any Sharī'ah verdict either from one evidence or from several evidences, but the evidence of them includes a meaning similar to an *'illah*, or it includes an *'illah*. And this is what makes it applicable to all its partials, for instance the rule: "الوَسِيلَةُ إِلَى الحَرَامِ حَرَامٌ" "The means which leads to the forbidden is forbidden" and the rule: "مَا لاَ يَتِمُّ الوَاجِبُ إِلاَّ بِهِ فَهُوَ وَاجِبٌ" "That which the obligation cannot be completed without it is an obligation" and the rule: "كُلُّ مَا كَانَ مِنْ مَرَافِقِ الجَمَاعَةِ كَانَ مُلْكِيَّةً عَامَّةً" "All that which is from the public utilities is a public property" every one of them is a universal rule, by looking at their evidences, it becomes apparent that the evidence denotes the verdict and something else originated by it or resulted from it, hence it becomes apparent that it is similar to the *'illah*, for instance the saying of Allah ﷻ:

{وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ}

"And insult not those whom they (disbelievers) worship besides Allah, then they insult Allah wrongfully without knowledge..."[442]

the (consequence) particle "فَ" in the word {فَيَسُبُّوا} *"then they insult"* denotes that your insult to their idols leads to their insult to Allah, and this is forbidden, so it necessitates that your insult to their idols in this situation is forbidden, so it is like an *'illah*. So the forbiddance of insulting the

[442] Surah al-An'ām:108

disbelievers is the evidence of the verdict, and beside its denotation of the verdict it denotes something else originated by it, which is His saying:

{فَيَسُبُّوا اللَّهَ}

"then they insult Allah"

so from this Verse derived the rule: *"The means which leads to what is forbidden is forbidden"*. And for example His ﷻ saying:

{فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ}

"O you who believe! When you intend to offer al-ṣalāh (the prayer), wash your faces and your hands (forearms) up to the elbows..."[443]

and His saying:

{ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ}

"...then complete the Sawm (fast) till the night..."[444]

the particle "إِلَى" which means "up to" in His saying: {إِلَى الْمَرَافِقِ} *"up to the elbows"* and it means "till" in His saying: {إِلَى اللَّيْلِ} *"till the night"* it denotes that unless a part of the elbow is washed, the wash of the hand up to the elbow would not be completed, so it is inevitable to achieve the occurrence of the aim, not that the aim is immerged into the action linked to it, and unless a part of the night begins even one minute, the completeness of the fast (*Sawm*) doesn't occur; accordingly it is an obligation to wash a part

[443] Surah al-Mā'idah:6
[444] Surah al-Baqarah:187

of the elbow regardless how little it is, and fast a part of the night regardless how little it is for the denotation of the two Verses; because that which He ﷻ obliged which is washing the hands and fasting the whole day cannot be completed without it. So this aim signifies the obligation of that which completes the wash of the hands, and the fast of the day which are obligations, so it is like an *'illah*. So the Verse has denoted the verdict and something else complementary for it when it says: {إِلَى اللَّيْلِ} {till the night} so from these two Verses derived the rule: *"That which the obligation cannot be completed without it is an obligation"*. And for example the Messenger ﷺ said:

"الْمُسْلِمُونَ شُرَكَاءُ فِي ثلاثٍ: فِي الكَلإِ وَالماءِ وَالنَّارِ "

"The Muslims are partners in three: in the pasture, the water and the fire" compiled by Abū Dāwud, and it is proven that he approved people in *al-Madīnah* and in al-Dtaa'if on their private ownership of the water, and it is understood from the situation of the water which he allowed to be owned privately that the public had no need in it, hence the *'illah* which made the people partners in those three is because they are from the utilities of the public, so the evidence denoted the verdict and the *'illah*, i.e. it denoted the verdict and something else that was the reason of legislating the verdict, so the rule: *"All that which is from the public utilities is a public property"* got derived from it, and thus are all the universal rules. And from that it became apparent that the universal rule makes the verdict like an *'illah* for a universal verdict; because it is a cause for it, i.e. because it is resulted from it or originated by it, or it makes it a real *'illah* for a universal verdict, so it is a universal verdict which is applicable on its partials; therefore it should be applied on every verdict on which it

is applicable, the way the evidence is applied on the verdict it brought, so it is not proven by *Qiyās*, but they are partials of that universal rule and classified under it, so they are included in its connotation or in its literal meaning exactly as they are included in the denotation of the evidence, and the inference by it (the rule) is like the inference by the evidence. Hence the universal rule should be dealt with like the (*'illah*) in the *Qiyās*, and everything falls under it takes its verdict, unless there is a text in contrast with the rule, then the verdict should be according to the text not according to the rule, like the situation in the *Qiyās*, if a Sharī'ah text comes, the text should be taken and the *Qiyās* should be cancelled. However the universal rules are not a Sharī'ah evidence like the *Qiyās*, nor are they one of the principles of the Sharī'ah, but the rule is a Sharī'ah verdict derived like all the derived Sharī'ah verdicts, so it is not a Sharī'ah evidence; therefore that which falls under it is considered a branch or like the branch of it. And similar to the universal rule is the universal definition, everything on which it is applicable takes its verdict, unless a Sharī'ah text exists then the text should be followed.

And as for the general rules, like: " الصُلْحُ جَائِزٌ بَيْنَ المُسْلِمِينَ, إلاَّ صُلْحًا أَحَلَّ حَرَامًا وَحَرَّمَ حَلاَلاً" *"Peacemaking is permissible between the Muslims, except a peacemaking that allows a forbidden and forbids an allowed matter"* and like: "لا ضَرَرَ، وَلا ضِرَارَ" *"Forbidden is the harm and the harmful"* it can only be applied on its individuals, so it includes them as the general includes all its individuals unless there is a Sharī'ah text, then the text should be taken and the rule should be cancelled, and thus is the general definition. However, if the rule is itself a Sharī'ah text like these two rules then it is

considered Sharī'ah evidence because it is a text, but if it is not a text it is not considered Sharī'ah evidence, but it is considered a Sharī'ah verdict and branches can made out of it. And similar to the general rule is the general definition.

The considered rules are the rules derived from a Sharī'ah evidence by Sharī'ah derivation, but the rules that are not derived from a Sharī'ah evidence, or not derived by Sharī'ah derivation are not considered and have no value; therefore it is not of the Sharī'ah rules their saying: " العِبْرَةُ فِي العُقُودِ بِالمَقَاصِدِ وَالمَعَانِي, لاَ بِالأَلفَاظِ وَالمَبَانِي" *"The consideration in the contracts is in their objectives and meanings, not in their expressions and structures"* that is because this saying is not derived from a Sharī'ah evidence, but it is taken from the old French civil law, since this rule means that the intention and the circumstance are considered in the contracts, and this is what they call the spirit of the text, they say: "نَصًا وَرُوحًا" *"Text and spirit"* they mean by the text the written speech and what it denotes literally or by connotation, and they mean by the spirit of the of the text what the circumstances and the situations surrounding the issue denote, even if the speech doesn't denote it. And this is what the western jurisprudents call it self inclination, it is opposite to the materialistic inclination which is the adherence to the literal denotation and the connotation of the text with inconsideration of the circumstances and situations. Hence this rule is almost literally translated from the old civil French law; therefore it-self and its counterpart are not considered from the Sharī'ah, nor are they from the Sharī'ah rules; because they are not Sharī'ah verdicts as well as they are not universal verdicts, and they are not taken from a Sharī'ah evidence, but they are taken from a jurisprudence of *kufr* (disbelief). And as for their

attempt to work out an evidence for it from the saying of the Prophet ﷺ:

" إِنَّمَا الأَعْمَالُ بِالنِّيَّاتِ "

"Actions are but by the intentions" (compiled by al-Bukhārī and Muslim). Indeed it is irrelevant to it; because he said: **"Actions are but..."** and didn't say: contracts are but, and disposals are but. And the Sharī'ah made the consideration of the contracts in their tenses not in the intention of the contracting parties or the circumstances of the contract, and it made the consideration of the disposals in their Sharī'ah conditions not in the intention of the disposing person and his situations, and what is meant by the actions is different to what is meant by the sayings; therefore contracts are sayings, and saying disposals. And the interdiction (*al-hajr*) (limiting someone's legal competence) falls only on the saying disposals and the contracts, and it doesn't fall not on absolute actions. So there is a big difference between the actions and the contracts and disposals, for instance the *ṣalāh*, the Hajj and the *Zakāh* are actions in which the intention is considered, and the sale, the entailment and the will are contracts and disposals in which there is no value for the intention, hence the contradiction of this rule to Islam and its farness from the Sharī'ah verdicts became apparent. And thus are all the rules that are not derived from the Sharī'ah.

Some jurisprudents considered some rules as Sharī'ah evidences, some of them are derived from the Sharī'ah and some are not, so what is derived from the Sharī'ah like *"al-Istiṣḥāb"* rule, and *"al-Dharar"* the harm rule are considered from the Sharī'ah rules; because they have Sharī'ah evidences, but those which are not derived from the

Sharī'ah like *"al-'urf"* the custom rule, and *"Ma'ālāt al-Af'āl"* the outcomes of the actions rule are not considered from the Sharī'ah rules; because they don't have Sharī'ah evidences. However some Mujtahids consider the custom not only a Sharī'ah rule, but one of the legislations principles, although the reality is, it is not one of the principles and it is not even a Sharī'ah rule.

قَاعِدَةُ الاسْتِصْحَاب

The Principle of Accompanying the Continuity of the State (*al-Istiṣḥāb*)

The *Istiṣḥāb* means accompanying the continuity of the state of a matter, and the scholars of the principles (*al-Uṣūl*) have defined it that it is the judgment of the permanence of a matter at the second time on the basis of its existence at the first time, i.e. it is the permanence of a matter at the present time on the basis of its existence previously. So every matter whose previously existence is confirmed then doubt about its nonexistence occurs then primarily its existence remains, and the matter whose nonexistence was known then doubt of its existence occurs, then primarily it remains in the state of the nonexistence, it is as if its previous existence is like an *'illah* for its existence at the present time. So if someone marries a girl that she is virgin, and then after he consummated the marriage with her he alleged that she wasn't virgin, he will not be believed without a proof; because primarily the virginity exists, and the existence of the virginity is confirmed since it is initiated, so her previous state as virgin should be considered and a judgment should be issued that she was virgin until the present time (until she got married). And whoever buys a dog provided that it knows how to hunt, and he alleged later that it is not trained to hunt he should be believed; because primarily the dog doesn't know how to hunt until it gets trained; therefore the nonexistence remains considered, and thus are all matters, the original

state should be considered until a different situation is proved.

The *Istiṣḥāb* is not a Sharī'ah evidence, otherwise a decisive evidence is needed to prove it, and there is no decisive evidence established for it, but it is a Sharī'ah rule, i.e. a Sharī'ah verdict, so an indecisive evidence is sufficient for it, and the evidence which proves that the *Istiṣḥāb* is a Sharī'ah rule is three matters:

The first: the saying of the Messenger of Allah ﷺ as al-Bukhārī compiled:

" إِنَّمَا أَنَا بَشَرٌ, وَإِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ، وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ أَلْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ، فَأَقْضِي لَهُ عَلَى نَحْوِ مَا أَسْمَعُ "

"I am indeed a human, and you sue one another to me, and perhaps one of you is more eloquent in his proof than the others, and then I judge according to what I hear...", so the Messenger ﷺ judges according to what appears to him, that means establishing the verdict according to the apparent, and the apparent matter is the verdict confirmed for something at the previous time, whether it was the existence or the nonexistence, and whether it was the lawfulness or the forbiddance. And it is still apparent in it, and there is no dispute about it, so the verdict must be according to what is apparent, otherwise the situation on which the thing was at the previous time remains the place of the verdict, i.e. in execution of the *ḥadīth* what is apparent remains the place of the verdict.

The second: the consensus is convened that if a person has doubt in the primarily existence of the purity (*wuḍū'*); he is not permitted to pray, but if he has doubt in the remaining of it; he is permitted to pray. And this is the essence of the

Istiṣḥāb, since the decisively proved non-purity situation was considered (at the point of the decision) so this situation removed the doubt about the existence or the nonexistence of it, and the decisively proved purity situation was accompanied (taken in account) so this situation ended the doubt about the removal or non-removal of the purity, that means accompanying the situation, so from that came the derivation (of the rule) that whatever is decisively proved for a matter; the constancy of it should be decided until the evidence of a different situation is established; because the verdict on which the consensus occurred had denoted that.

The third: the existence or the nonexistence of a matter that was proved at the first time, and its removal never appeared decisively or indecisively, it necessitates the probability that it remains as it was, and acting according to that probability is obligatory, so that which the existence or the nonexistence of it was proven in a situation; it necessitates the probability of its remaining, and the probable is a followed proof in the Sharī'ah verdicts since they are based on the most probable, and this rule itself is a Sharī'ah verdict, so the most probability is sufficient for it.

So these three matters are evidence that *al-Istiṣḥāb* is Sharī'ah rule that actions can be based on it, i.e. it is permissible to make branches on the basis of it like any Sharī'ah rule and like any Sharī'ah verdict; accordingly that which the existence the existence of it was proven and its removal never appeared its remaining is most probable, and it take the same verdict because this is what is apparent in it. However, if that which is proved to be -as mentioned- at the first time is not the most probable at the second time, it would necessitate inconstency in the verdicts that were

consistent at the time of the time of the Prophet ﷺ concerning us for the possibility of the abrogation, so if the most probability doesn't occur from *al-Istiṣḥāb* (continuity) the constancy of the verdicts would equal the possibility of their abrogation, and then it will be impossible to prove their constancy, otherwise there would be a need for overweighing without a proof. So the confirmation and non-abrogation of the verdicts that were confirmed at the time of the Prophet ﷺ occurred only by the *Istiṣḥāb*; therefore the original state is the non abrogation, and the abrogation allegation needs an evidence to denote it. Also if that which is proved to be — as mentioned — at the first time is not the most probable at the second time then it would necessitates that the doubt in the divorce is like the doubt in the marriage for their equality in the non-occurrence of the most probability by the previous situation; whereupon it necessitates to permit the sexual intercourse in both situations or forbids it in both situations, and this is unanimously invalid, but it is permissible for the doubter in the divorce without the doubter in the marriage; because the original status is the non-marriage, so this original status would be considered, and the non-marriage would be decided, so the intercourse would not be permitted until there is a proof of marriage, and the original status of the married woman is the existence of the marriage, so this original status would be considered, and a judgment of the confirmation of the marriage and non-divorce would be issued then he will be allowed to do an intercourse, even if he has doubt that divorce may had occurred until the evidence of the occurrence of the divorce is established. All these denote that "the accompanying of state" (*Istiṣḥāb al-Hāl*) is brought

by the Sharī'ah concerning all the Sharī'ah verdicts and the Sharī'ah evidences; therefore it is a Sharī'ah rule.

Accordingly, in all matters the original state should be accompanied until the evidence of a different state is established, so if the evidence is established for a verdict of obligation, preference, permissibility, forbiddance or dislike-ness, the verdict remains confirmed for the matter it came for, and if a verdict other than that which the evidence was established is alleged, it is inevitable to have an evidence that denotes it, and if there is no evidence on it; the original confirmed verdict remains as the evidence determined.

The *Istiṣḥāb* is necessary for the jurisprudent and for the *mujtahid*, and with it many verdicts appear, the Imam al-Qurṭubī said: "Adopting the *Istiṣḥāb* is necessary for every one; because it is an origin on which the Prophet-Hood and the Sharī'ah are established, so if we don't adopt the continuity of the state of the evidences, no certainty would occur in any of those matters, and the continuity of the state of the Prophet-Hood and the Sharī'ah is from the *Istiṣḥāb* that rational people have no dispute on its validity, and there is no doubt in it in any circumstance".

قَاعِدَةُ الضَّرَرِ

The Principle of Harm *(qā'idah al-ḍarar)*

The rule of harm *(qā'idah al-ḍarar)* consists of two matters:

One of them: if the matter itself is harmful and nothing in the address of the Legislator denotes the request to do it, or to leave it, or to have the choice in it, but being harmful is an evidence for the forbiddance of it; because the Legislator forbade the harm. And the rule of it is: " الأَصْلُ فِي المَضَارِّ التَّحْرِيم" *"The principle in the harmful matters is the forbiddance".*

The second matter: if the Legislator had permitted something in general, but one of the individuals of that permitted found harmful, so that individual being harmful or it leads to harm is an evidence for its forbiddance; because the Legislator forbade the individual of the permitted general matter if that individual is harmful or it leads to harm. And the rule of it is: " إِذَا كُلُّ فَرْدٍ مِنْ أَفْرَادِ المُبَاحِ, كَانَ ضَارًا أَوْ مُؤَدِّيًا إِلَى ضَرَرٍ, حَرُمَ ذَلِكَ الفَرْدُ وَظَلَّ الأَمْرُ مُبَاحًا" *"if any one of the individuals of the permitted general matter is harmful or leads to harm, that individual is forbidden and the permitted matter remains permitted".*

The evidence of the first rule is the saying of the Prophet ﷺ:

" لاَ ضَرَرَ وَلاَ ضِرَارَ فِي الإِسْلاَمِ "

"No harm and no harming in Islam" compiled by al-Ṭabarānī, and Abū Dāwud had compiled from Abū Sirmah

Mālik Ibn Qays al-Anṣārī that the Messenger of Allah ﷺ said:

" مَنْ ضَارَّ أَضَرَّ اللهُ بِهِ, وَمَنْ شَاقَّ شَاقَّ اللهُ عَلَيْهِ "

"Whoever harms; Allah harms him, and whoever defies and disobeys Allah; Allah inflicts him with hardships", these two *Ḥadīths* are evidences that the Legislator forbade the harm. As for the second *ḥadīth* the inference by it is apparent that the Legislator forbade the harm. And as for the first *ḥadīth* the negation in it means the prohibition for the evidence that the origin of the harm exists, so the meaning is: they shall not harm, and this is of the denotation of the requirement (*Delaalat al-Iqtidhaa'*) which is one of the connotation's parts, and it is also of the necessitation denotation (*Delaalat al-Iltizaam*). And Abū Dāwud had compiled from Abū Ja'far Muhammad Ibn Ali from Samurah Ibn Jundub:

"أَنَّهُ كَانَتْ لَهُ عَضُدٌ مِنْ نَخْلٍ فِي حَائِطِ رَجُلٍ مِنْ الْأَنْصَارِ, قَالَ: وَمَعَ الرَّجُلِ أَهْلُهُ, قَالَ: فَكَانَ سَمُرَةُ يَدْخُلُ إِلَى نَخْلِهِ فَيَتَأَذَّى بِهِ وَيَشُقُّ عَلَيْهِ, فَطَلَبَ إِلَيْهِ أَنْ يَبِيعَهُ فَأَبَى, فَطَلَبَ إِلَيْهِ أَنْ يُنَاقِلَهُ فَأَبَى. فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَ ذَلِكَ لَهُ, فَطَلَبَ إِلَيْهِ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يَبِيعَهُ فَأَبَى, فَطَلَبَ إِلَيْهِ أَنْ يُنَاقِلَهُ فَأَبَى, قَالَ: فَهِبْهُ لَهُ وَلَكَ كَذَا وَكَذَا أَمْرًا رَغَّبَهُ فِيهِ, فَأَبَى, فَقَالَ: أَنْتَ مُضَارٌّ, فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِلْأَنْصَارِيِّ: اذْهَبْ فَاقْلَعْ نَخْلَهُ "

"That he had some palm trees in the land of a man of the *Anṣār*, and the man used to live there with his family, he said: Samurah used to come in to his palm trees and the man used to get harmed and it was unbearable to him, so he asked him to sell his palm trees to him, but he refused, then he offered him to exchange them with other trees, but he refused, then he went to the Prophet ﷺ and mentioned

that to him, and then the Prophet ﷺ asked him to sell his palms to the man, but he refused, then he asked him to accept an exchange, but he refused, the Prophet said: give them to him and you will get so and so (something to encourage him to accept), but he refused, then the Prophet said: you are harmful, and he ﷺ said to the *Anṣārī* go and pull out his palms", this also denotes that the harm is forbidden, and in addition to that it denotes that it must be removed; because the order of the Messenger to pull out the palms is an order to remove the harm; accordingly, the harm is forbidden, the Imam al-Shawkānī said in his book (*Nayl al-Awdtār*) in the explanation of the *ḥadīth* compiled by al-Hākim:

"لاَ ضَرَرَ وَلاَ ضِرَارَ "

"No harm and no harming", he said: "This *ḥadīth* is an evidence for the forbiddance of the harm in any case regardless if it is to neighbour or others, so it is not permitted in any figure without an evidence that specifies this general evidence, so you must ask whoever permits it in some cases to provide an evidence, otherwise you through this *ḥadīth* at his face, indeed it is one of the religion's rules certified by the universal and partial (evidences)" accordingly, the rule of harm is proven by texts from the Sunnah, and these *Ḥadīths* are evidences that the rule: "الأَصْلُ فِي المَضَارِّ التَّحْرِيم" *"Forbiddance is the basic rule for the harms"* it is from the rules of the Sharī'ah.

As for the evidence of the second rule that is:

"قَدْ كَانَ رَسُولُ اللّهِ صَلّى اللّهُ عَلَيْهِ وَسَلّمَ حِينَ مَرّ بِالْحِجْرِ, نَزَلَهَا ، وَاسْتَقَى النّاسُ مِنْ بِئْرِهَا، فَلَمّا رَاحُوا قَالَ رَسُولُ اللّهِ صَلّى اللّهُ عَلَيْهِ وَسَلّمَ: لا تَشْرَبُوا مِنْ مَائِهَـــا شَيْئًا، وَلا تَتَوَضّئُوا مِنْهُ لِلصّلَاةِ وَمَا كَانَ مِنْ عَجِينٍ عَجَنْتُمُوهُ فَاعْلِفُوهُ الإِبِـــلَ, وَلا

تَأْكُلُوا مِنْهُ شَيْئًا، وَلَا يَخْرُجَنّ أَحَدٌ مِنْكُمْ اللّيْلَةَ إلّا وَمَعَهُ صَاحِبٌ لَهُ. فَفَعَلَ النّاسُ مَا أَمَرَهُمْ بِهِ رَسُولُ اللّهِ صَلّى اللّهُ عَلَيْهِ وَسَلّمَ إلّا أَنّ رَجُلَيْنِ مِنْ بَنِي سَاعِدَةَ, خَرَجَ أَحَدُهُمَا لِحَاجَتِهِ, وَخَرَجَ الْآخَرُ فِي طَلَبِ بَعِيرٍ لَهُ, فَأَمّا الّذِي ذَهَبَ لِحَاجَتِهِ فَإِنّهُ خُنِقَ عَلَى مَذْهَبِهِ, وَأَمّا الّذِي ذَهَبَ فِي طَلَبِ بَعِيرِهِ فَاحْتَمَلَتْهُ الرّيحُ حَتّى طَرَحَتْهُ بِجَبَلَيْ طَيّئٍ. فَأُخْبِرَ بِذَلِكَ رَسُولُ اللّهِ صَلّى اللّهُ عَلَيْهِ وَسَلّمَ فَقَالَ: أَلَمْ أَنْهَكُمْ أَنْ يَخْرُجَ مِنْكُمْ أَحَدٌ إلّا وَمَعَهُ صَاحِبُهُ. ثُمّ دَعَا رَسُولُ اللّهِ صَلّى اللّهُ عَلَيْهِ وَسَلّمَ لِلّذِي أُصِيبَ عَلَى مَذْهَبِهِ فَشُفِيَ وَأَمّا الْآخَرُ الّذِي وَقَعَ بِجَبَلَيْ طَيّئٍ فَإِنّ طَيّئًا أَهْدَتْهُ لِرَسُولِ اللّهِ صَلّى اللّهُ عَلَيْهِ وَسَلّمَ حِينَ قَدِمَ الْمَدِينَةَ "

"When the Messenger of Allah ﷺ went by al-Hijr (the rocky tract, the area of Thamoud, the people of Prophet Sālih) he lodged in it, and people seek water from its well, when they had some rest at night the Messenger of Allah ﷺ said: do not drink from its water at all, and do not make ablution from it for the prayer, and any dough you made with it feed it to the camels and do not anything from it, and no one of you should go out this night unless he has a companion to him. So people did what the Messenger of Allah ﷺ commanded them except two men from Bany Saa'idah, one of them went out for his nature need, and the other went out looking for his camel. As for the one who went for his need; he got stifled while in his way, and the one who went looking for his camel the wind flew him away and threw him on the mountain of Dtai', then the Messenger of Allah ﷺ was told about that, so he said: didn't I prohibit any one of you go out except with his companion. And he supplicated for the one who got stifled on his way then he got cured, and as for the one who fell on the mountain of Dtai', the people of Dtai' gifted him to the Messenger ﷺ when he went to *al-Madīnah*" narrated by Ibn Hishām in his *sīrah*. It is seen in this narration how the

Messenger forbade one individual of the permissible, drinking water is permissible, but the Messenger ﷺ forbade for them that water from the well of Hijr, and forbade for them to make ablution with it. And it is permissible for the person to go out alone at night, but the Messenger forbade for them at that night to go out except with a companion, then it became apparent that he only forbade that water for the harm he knew in it, and he forbade going out alone for the harm he knew in it, so the harm in that specific thing was the cause of forbidding it, so it is like an *'illah*, so the existence of the harm in the well of Thamoud made only the water of it forbidden, but the water remained permissible, and the existence of the harm in going out alone that night and in that place, made it forbidden for the person to go out alone at that night, but going out alone in a different place and other than that night remained permissible, so the existence of the harm did not forbid what the Sharī'ah permitted, but the existence of the harm in an individual of the permissible forbids only that individual, and the matter remains permissible whether it is an action or a thing.

That is if that individual of the permissible is harmful, but if it leads to harm, the evidence for it is what is narrated that:

"أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَقَامَ بِتَبُوكَ بِضْعَ عَشْرَةَ لَيْلَةً لَمْ يُجَاوِزْهَا, ثُـــمَّ انْصَرَفَ قَافِلاً إِلَى الْمَدِينَةِ, وَكَانَ فِي الطَّرِيقِ مَاءٌ يَخْرُجُ مِنْ وَشَلٍ، مَا يَرْوِي الرَّاكِبَ وَالرَّاكِبَيْنِ وَالثَّلاثَةَ بِوَادٍ يُقَالُ لَهُ وَادِي الْمُشَقَّقِ, فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْـــهِ وَسَلَّمَ: مَنْ سَبَقَنَا إِلَى ذَلِكَ الْوَادِي فَلا يَسْتَقِيَنَّ مِنْهُ شَيْئًا حَتَّى نَأْتِيَهُ, قَالَ: فَسَبَقَهُ إِلَيْهِ نَفَرٌ مِنْ الْمُنَافِقِينَ فَاسْتَقَوْا مَا فِيهِ, فَلَمَّا أَتَاهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَقَـــفَ عَلَيْهِ, فَلَمْ يَرَ فِيهِ شَيْئًا, فَقَالَ: مَنْ سَبَقَنَا إِلَى هَذَا الْمَاءِ؟ فَقِيلَ لَهُ: يَا رَسُـــولَ اللَّـــهِ

فُلانٌ وَفُلانٌ فَقَالَ أَوَ لَمْ أَنْهَهُمْ أَنْ يَسْتَقُوا مِنْهُ شَيْئًا حَتّى آتِيَهُ, ثُمّ لَعَنَهُمْ رَسُولُ اللّهِ صَلّى اللّهُ عَلَيْهِ وَسَلّمَ وَدَعَا عَلَيْهِمْ "

"The Messenger of Allah ﷺ had resided in Tabook almost twenty days, then he left returning to *al-Madīnah*, and on the way in al-Mushaqqaq valley there was water dripping from a thin stream just enough to quench the thirst of one or two or three riders, so the Messenger of Allah ﷺ said: whoever reaches that valley before us should not drink any of its water until we come to it, he said: then a band of hypocrites reached there before him and drank the water therein, then when the Messenger of Allah ﷺ arrived he stood at it but could not see any water in it, he said: who preceded before us to this water? They said: O Messenger of Allah so and so did, he said: didn't I prohibit them from drinking any water of it until I come? Then he cursed them and invoked Allah against them" Ibn Hishām narrated it in the *sīrah* book. So in this *ḥadīth* the Messenger forbade drinking that little water; because it leads to the thirst of the army, so he said: **"whoever reaches that valley before us should not drink any of its water until we come to it"**, and he cursed the two who drank from it, so it is an evidence that he forbade the drink from it until he comes to it. Drinking water is permissible, and drinking water from that valley is not harmful, but drinking from that water before the Messenger arrives and divides it among the soldiers leads to depriving them from it, i.e. it leads to a harm, so he forbade the drinking from that valley until he comes; because that drinking leads to a harm, so being the drinking from that valley leads to a harm is what made it forbidden, so it is as if it is an *'illah*, it is similar to the *'illah*. So because the drinking from that valley leads to a harm; the drinking from it only became forbidden, but drinking

from other than that valley remained permissible, and drinking from that same valley in other than that situation which led to a harm remained permissible, so if something leads to a harm it doesn't forbid what the Sharī'ah made permissible, but if one individual of it leads to a harm, only that individual becomes forbidden and the matter remains permissible whether it is an action or a thing.

So from these *Ḥadīths* in the two situations: In the situation if something is harmful and in the situation if something leads to a harm the second Sharī'ah rule got derived, and that is: *"If any individual of the permissible matter is harmful or it leads to a harm, that individual becomes forbidden and the matter remains permissible"* and this is the second matter of the rule of harm. And it is inevitable to know the big difference between the two matters so that a person would not be confused in them, so the first matter is that which no text came for it in the address of the Legislator, so because it is harmful it becomes like the text; because the text brought the forbiddance of the harm. And as for the second matter; its permissibility came in the address of the Legislator; therefore making it forbidden for the harm in it is impermissible; because its permissibility is confirmed by the text, so the allegation that it is harmful cannot be made for the existence of the text that clarifies its verdict, but if it has been alleged that one of its individuals is harmful, or it leads to a harm then only that individual becomes forbidden; because the text came and forbade the individual which leads to a harm; therefore it shouldn't be said that the permissibility of buying foreign currencies and importing them into the countries leads to a harm so it should be forbidden; because verily the permissibility of buying and selling them and importing them into the

country is confirmed by the text, so the allegation of harm in them to make them forbidden is invalid for the existence of the text in the address of the Legislator which permits that, but if it is proven that there is a harm in buying and importing a specific currency, like the sterling pound, then only that currency becomes forbidden as long as the harm exists; because it is one individual of the currencies, but the foreign currencies remain permissible to buy and sell and import them into the countries. So there is a difference between the two rules inevitable to be noticed.

الاصْطِلاَحُ وَالتَّقْدِيرُ وَالعُرْفُ

The Convention *(Iṣṭilāḥ),* the Estimation *(taqdīr)* and the Tradition *(ʻurf)*

The tradition *(al-'urf)* in the language means the knowledge, and it means the known thing, i.e. the familiar and the advisable, and from that is the saying of Allah ﷻ:

{خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ}

"Show forgiveness, enjoin what is good..."[445]

that means enjoin the good deeds. And the *ʻurf* is called for the habit widespread among a specific community, in other word they are the actions repeated by individuals of a specific community. Since the habit is the action a person repeats with satisfaction, then if this habit becomes widespread among the community of which most of the individuals or all of them perform it, it becomes a tradition. So the tradition is really the habit of the community; therefore issuing a judgment on something would be according to the tradition if the issued verdict is based on something the mass of the community are accustomed to it; hence the tradition is in the actions, it is not in the expressions, nor is it in the estimations of the things.

As for the convention (*al-Iṣṭilāḥ*), it is the agreement of a community to call a specific thing by a specific name, and from that are the languages and the special conventions, like the conventions: the Grammarians (*Ahl al-Nahu*), the

[445] Surah al-A'rāf:199

physicists (*Ahl al-Dtabi'yaat*), the village (*al-Qaryah*) or country (*Qudtr*) or the likes, all these are conventions. And that which they call "Traditional reality" *(al-Haqīqah al-'urfiyyah)* is from the convention, and not from the tradition, since it is the agreement of the people on calling a specific meaning by a specific name, so it is same like the linguistic convention with respect that it is a convention, but not with respect of considering it from the language, so it is just a convention, and it is not a kind of a habit or a tradition, since it pertains to using some expressions for some meanings people have agreed on using them, and this is the reality of the convention (*Iṣṭilāḥ*).

As for the estimations that people agree on considering them, like the prices, the salaries, the quantity of expenditures, the dowries and the likes, they are not from the tradition; because they are not a habit of the people, but they are a specific estimation for something determined by the market and by the situation in the society, and they are not resulted from the people's frequent performance of them, and not even from the people's agreement on calling them, but they are determined by a situation beyond the community, then the community decides them according to these situations; therefore their it is referred to experts when estimating them, not to the witnesses, and nor to the public, hence these estimations are not considered as a matter of the tradition.

The difference between the tradition and the convention and the estimation is that the tradition *(al-'urf)* is a treatment for the actions, it is (a source of) verdicts on actions or things; therefore some manmade constitutions considered it an evidence on some laws, and those who advocate the tradition as an evidence on some Sharī'ah

verdicts consider it, so the *'urf* is a treatment of a problem, so they take it to make the treatment in accordance with it, so the law according to one opinion, or the Sharī'ah verdict according to the other opinion is based on this *'urf*. In contrast with the convention which is a name of something, regardless of any treatment for that named thing, whether the treatment is a manmade law or a Sharī'ah verdict or other than that. So the convention is related to a specific thing named by composing a specific name for it, so the *Iṣṭilāḥ* is related to name for the action or the thing, and not to the treatment. And as for the estimation (*al-taqdīr*), it different to the tradition (*'urf*) and the convention (*Iṣṭilāḥ*); because it is special for specific things found by the circumstance of the market, or the circumstance of the society, like the estimation of: prices, salaries, and dowries. So the verdict obliges the expenditure, or the dowry, or the compensation of the divorced woman, or the rent of the house, and the experts estimate it that it is what the market or the circumstance have made, so it is that which exists among the people. Hence the estimation is not related to the verdict, since it doesn't decide the verdict, but it determines the amount on which the verdict is applied.

Accordingly, those who mix up between the tradition, the convention and the estimation are mistaken; because the reality of every one of them is different to the others. Hence considering them all as a matter of tradition contradicts the reality, and over and above it contradicts the Sharī'ah; because the Sharī'ah had considered the linguistic and the traditional conventions and made the verdicts in accordance with them, and it considered the estimations and made the Sharī'ah verdicts in accordance

with them. They are in contrast with the tradition for verily the Sharī'ah brought treatments for the actions and things, and never considered the tradition at all, and it never allowed any arbitration for it in the actions of the servants nor in the things, but restricted the treatments to the address of the Legislator alone.

لا اعْتِبَارَ لِلْعُرْفِ شَرْعًا

Tradition *('urf)* has no Sharī'ah Consideration

Some mujtahids consider the tradition one of the legislation sources, and one of the Sharī'ah evidences. And they infer by it on many Sharī'ah verdicts, and they divide the tradition into two divisions: A general tradition, and a special tradition, and they represent the general tradition by the manufacturing request. And that is because people are used to order the manufacturing of what they need of shoes, clothing, devices and other things, so they permit that deal although it is a matter of dealing on something nonexistent; because the tradition permits it, and they consider it evidence on the permissibility of this deal. And they represent the special tradition by the custom of some dealers that the term of the instalments sale should not exceed some months, for instance six months, so they arbitrate this custom for the payment even if it is not mentioned in the contract. And they say that the Sharī'ah considers the *'urf* in several issues; therefore they consider the verdict based on the tradition a Sharī'ah verdict based on a Sharī'ah evidence, and they inferred that by the saying of Allah ﷻ:

{خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ}

"Show forgiveness, enjoin what is good, and turn away from the foolish (i.e. don't punish them)"[446],

and they say that the Sharī'ah commands us to take the tradition into consideration. And they brought out many verdicts on the basis of their consideration that the tradition is a Sharī'ah evidence, some of them:

1- If a person makes an oath that he doesn't put his foot in the house of so and so, the oath gets directed to the meaning of entering the house, not only putting his foot; because it is the traditional meaning, so if he enters the house riding without touching the floor by his foot, he violates his oath according to the Sharī'ah for the evidence of the tradition; because the meaning of putting his foot is his entry, so the arbitration of the tradition is what is considered in this verdict.

2- If a person buys the fruits of the trees while still on the trees using the expression of guarantee (*ḍamān*) not the expression of sale, it is considered sale; because the tradition goes like so, for indeed by the guarantee of the olives and the oranges and others the sale of the fruits of the trees occurs by the expression guarantee, so it is valid for the evidence of the tradition; accordingly the *'urf* is Sharī'ah evidence on a Sharī'ah verdict.

3- It is permissible for the friend who is in the house of his friend to eat from that which he finds in front of himself, and to use some utensils for drinking and so on; because the

[446] Surah al-A'rāf:199

tradition permits that, so the tradition is an evidence for the Sharī'ah verdict.

4- It is permissible for the person to eat from the fruits fallen under the trees without the permission of the owner if they are from the kinds which get ruined quickly; because the *'urf* permits that; accordingly the tradition is a Sharī'ah evidence.

5- Indeed the consideration of the silence of the virgin girl as an acceptance to marry only occurs because of the tradition that the girl feels shy to speak about this issue, so the Sharī'ah permits the consideration of her silence, hence the tradition is an evidence that the silence is considered a permission.

6- Verily the sale of the house includes its keys and doors and that which traditionally belongs to it, and so is the sale of the cow in which her breast feeding calf is included, and thus everything the tradition considers as supplementary is included in the sale, even if it is not mentioned, this is in accordance with the tradition.

7- If a person authorizes other person to buy meat for him then he bought him beef, then he told him: I want lamb meat, so they dispute, it will be looked at as, if the tradition of the people of the country is that the meat means beef if it is uttered unrestricted, he will be obliged to accept the meat, and if the meat is uttered for the lamb meat, the authorized person will be obliged to bring him lamb meat, so in this the tradition is arbitrated hence it is a Sharī'ah evidence.

8- If a tailor sewed a dress for a customer for a known fee, then the tailor told him that the cost of the accessories like the lining and other thing is on the the customer, and the

customer said; it is on the tailor, then indeed the arbitration will be for the favour of whoever the tradition (*'urf*) certifies his right, if it certifies for the favour of the tailor, the cost will be on the customer, and if it certifies for the favour of the customer, the cost will be on the tailor.

9- If the sale is finalized at an amount of *dirhams* or *dīnārs*, and the two parties did not clarify their kinds, and there is a several kinds of *dirham* and *dīnār* in the country with different values and salability, then the tradition will be arbitrated to determine the kind of *dirham* and *dīnār* at which the sale went on.

10- If a wife whose marriage is consummated alleges that her husband did not pay her any of the advance portion of her dowry, and she requests all the advance portion of her dowry, indeed her allege will not be listened to, but the judge dismisses her case if the people in that country are on a tradition that the bride would not be carried home in procession unless she receives some of the advance portion of her dowry. So in this case the tradition was arbitrated, and it was the evidence on the Sharī'ah verdict which is the dismissal of her case by the judge.

And thus they adduced a big number of issues and verdicts on which they made the tradition Sharī'ah evidence, and they considered it from the Sharī'ah evidences, and they inferred their consideration by the saying of Allah ﷻ:

{خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ}

"Show forgiveness, enjoin what is good...",

and by issues and verdicts they brought, and some of them said that the Messenger ﷺ had approved some traditions and customs, and that was an evidence for the consideration

that the tradition is a Sharī'ah evidence on the Sharī'ah verdict. And they also inferred on that by the narration of Abdullah Ibn Mas'ūd that the Messenger of Allah ﷺ said:

"فَمَا رَأَى الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللهِ حَسَنٌ"

"Whatever the Muslims see as good, it is good in the sight of Allah".

This is the summary of the opinion of those who advocate the *'urf* as a Sharī'ah evidence. And it is an incorrect opinion, and no Sharī'ah evidence is established to prove it, and its invalidity is summarized in the following matters:

First: verily the Verse by which they inferred on the tradition was badly interjected in the issue and it is irrelevant to it, and it is really a Makki Verse (revealed in Makka), it is in Surah al-A'rāf, and the meaning of it is: take the forgiveness of Allah that He made for you concerning the actions and morals and what people commit, and be lenient with them, and burden them not with hardships lest they turn away, it is like the saying of the Prophet ﷺ:

" يَسِّرُوا وَلا تُعَسِّرُوا "

"Do facilitate for people and make it not difficult for them" compiled by al-Bukhārī. And he was commanded to command the *'urf*, i.e. the kind of actions, and the expressions *'urf* and *Ma'rūf* are the good action. And as for that which they said that it is a *ḥadīth*, it is a saying of Ibn Mas'ūd, not a *ḥadīth*; therefore it is not an evidence, beside that it is irrelevant to the *'urf* (tradition); because it mentions what the Muslims see as good, not what they have as tradition and what they used to do. And as for the actions which the Messenger ﷺ approved and they were traditions and habits; acting in accordance with them is

considered acting according to the Sharī'ah evidence, that is the approval of the Messenger which is a Sharī'ah evidence and it is not acting in accordance with the tradition or the habit, and that cannot be taken as *Qiyās*; because the approval of the Messenger only is considered Sharī'ah evidence, and there is no consideration for the approval of anyone else, so it shouldn't be said that the Sharī'ah approves the tradition *('urf)*. And as for what some scholars have considered as Sharī'ah verdicts on the basis of the *'urf*, some of them are of the convention, and some are of the estimation of things. As for what is related to the convention, there is no doubt about that it is considered by those who have agreed on it, and it is related to calling names for meanings, it is not related to (issuing verdicts for) the actions of human or things. And as for what is related to the estimation, the reference in it should be to the experts, whether it is about the alimony (*Nafaqah*), or the dowry of the similar one, or the wage of the similar one, or other than that, and the consideration of this came from only the Sharī'ah not from the tradition, indeed some Sharī'ah texts made the estimation of something in accordance with what is known among people, but the Sharī'ah doesn't legalize the arbitration of the tradition in everything, so when Allah ﷻ says:

{وَلَهُنَّ مِثْلُ الَّذِى عَلَيْهِنَّ بِالْمَعْرُوفِ}

"...And they (women) have rights (over their husbands as regards living expenses) similar (to those of their husbands) over

them (as regards obedience and respect) to what is reasonable..."[447],

He meant that it is duties on men as they have rights on their wives in accordance with the known situation of the couple and the people similar to them, and the word

{بِٱلۡمَعۡرُوفِ}

"to what is reasonable"

means what is known with regard to the situation of the woman, is she of those who are (usually) served by others, or she is of those who serve their husbands, and what is meant by the similarity is the similarity of their rights, not the similarity in the details of the actions, i.e. she has rights over him as he has rights over her, but there is no similarity in the details of the rights, so it is not a must on him to wash the clothes and knead the dough (whenever she does so), and it is not a must on her to do the shopping and earn money for the family (whenever he does so). So the estimation of what is reasonable here, despite that it is a matter of naming some specific meanings, still it is estimation, and a Sharī'ah text came and denoted it, so it is considered for the existence of the Sharī'ah text, not because it is a tradition. And Allah ﷻ said:

{فَلَا تَعۡضُلُوهُنَّ أَن يَنكِحۡنَ أَزۡوَٰجَهُنَّ إِذَا تَرَٰضَوۡاْ بَيۡنَهُم بِٱلۡمَعۡرُوفِ}

"And if you have divorced women and they have fulfilled the term of their prescribed period, do not prevent them from

[447] Surah al-Baqarah:228

marrying their (former) husbands, if they mutually agree on reasonable basis..."[448]

that means if the man who proposes to the divorced woman comes to an agreement with her on what is (reasonable) known of dowry of the similar woman and the conditions, i.e. if the man who proposes agrees with the women on what is known of the dowry and conditions and other things, do not prevent them from marrying, so the mutual agreement between the person who proposes and the woman he proposes to on what is known to people to be reasonable is permissible; because the text considers it in this situation, so it is considered for the existence of the text. And Allah ﷻ said:

{وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ}

"... but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis..."

what is meant is the provision and the clothing should be as it is known among people to be the provision and clothing of the similar one, and this is explained by what comes next in the Verse, He ﷻ said:

{لا تُكَلَّفُ نَفْسٌ إِلا وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ}

"No person shall have a burden laid on him greater than he can bear. No mother shall be treated unfairly on account of her child, and nor a father on account of his child..."[449]

so this part of the Verse explains the meaning of the reasonable provision and clothing.

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[448] Surah al-Baqarah:232
[449] Surah al-Baqarah:233

And Allah ﷻ said:

{وَمَتِّعُوهُنَّ عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ}

"There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed unto them their dowry. But bestow on them the mut'ah (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty upon the doers of good"[450],

the *mut'ah* is the compensation given to the woman who is divorced before consummating the marriage and her dowry is not mentioned yet, and her *mut'ah* should be what is suitable for the similar to her according to the estimation known by people. And Allah ﷻ said:

{وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ}

"... and live with them within the ma'rūf (honourably) ..."[451]

that means justly in spending the nights with them and in spending money. And Allah ﷻ said:

{وَآتُوهُنَّ أُجُورَهُنَّ بِالْمَعْرُوفِ}

"...and give them their dowry according to what is reasonable..."[452]

that means give it to them kindly without delay and without harming them and without any need to a judiciary order. And it was narrated that 'Abdullah Ibn Mas'ūd:

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[450] Surah al-Baqarah:236
[451] Surah al-Nisā':19
[452] Surah al-Nisā':25

"Had passed a judgment for a woman whose husband did not determine a dowry for her, and he died before consummating the marriage with her, he said: she is eligible to a dowry like that of her similar women with no decrease or increase, and she must not remarry in the period of her 'iddah, and she is eligible to inherit, then Ma'qil Ibn Sinaan al-Ashja'ie stood up and said: the Messenger of Allah ﷺ had passed a judgment like that you have passed in favour of Buroo' Ibnat Waashiq a woman from our people" (compiled by al-Tirmidhī). And thus a text came in the estimation according to the similar dowry, so he applied this estimation following the text not the tradition, and similar to that are the salary of the like, and the price of the like, by analogy on the dowry of the like, and thereby it became clear that the estimation of matters like the dowry, the salary, the alimony (*Nafaqah*), and living equally with the wives, and the similar matters, despite that it is not from the tradition, but it is from something else, it is brought by the Sharī'ah texts, and a special evidence came for every incident, and nothing can be analogized on it unless there is an *'illah* exists, so it is not a matter of *'urf*. And thereby all their citation by that which some scholars considered Sharī'ah verdict established on the *'urf* is refuted by clarifying that it is from the convention or the estimation, and both of them are not from the *'urf*, and beside that the text came explicitly with the validation of the estimation of things. And thereby their inference on the assumption that these issues and verdicts are valid evidences is refuted, especially that the tradition is a considered principle or one of the Sharī'ah evidences.

Second: Verily the tradition which is the repeated actions, must be directed by the Sharī'ah in order that the human

actions will be in accordance with the Sharī'ah verdicts, whether these actions are repeated by the individual like the habit, or they are repeated by the community like the tradition, or if they are not repeated by anyone but performed even for one time; because it is certain that the Muslim directs his actions in accordance with commands and prohibitions of Allah ﷻ, whether they are repeated or not; accordingly the Sharī'ah must be the arbitrator of the traditions and habits, and it is not permissible to consider the tradition and the habit evidences on the validity or the invalidity of the action, but what is considered is the Shari'sh only, and it is not permissible to consider the *'urf* as Sharī'ah evidence or Sharī'ah rule at all.

Third: the *'urf* is either in contrast with the Sharī'ah or not in contrast with it, if it is in contrast with the Sharī'ah, the Sharī'ah came to remove it and change it; because changing the bad traditions and habits is one of the duties of the Sharī'ah. And if it is not in contrast with the Sharī'ah, the verdict is established by its Sharī'ah evidence and reason, not by this tradition, even if it doesn't contradict the Sharī'ah. Accordingly the tradition must not be taken as an arbitrator over the Sharī'ah, but the Sharī'ah must be taken as an arbitrator over the traditions and habits.

Fourth: verily the Qur'ān and the Sunnah are the basis of the Sharī'ah evidences, they are the two principle evidences, and whatever they prove and certify as Sharī'ah evidence like the consensus (of the *Ṣaḥābah*) and the *Qiyās*, it is considered Sharī'ah evidence, and whatever is not proven in them, it is not considered Sharī'ah evidence, and since the tradition and habit have no origin in the *Kitāb*, nor in the Sunnah, and neither in the consensus of the *Ṣaḥābah* then the *'urf* has no consideration at all. Since there is no

Sharī'ah consideration for any evidence unless it is mentioned in the *Kitāb* or the Sunnah. As for the incidents by which they inferred the validity of the *'urf*, that is special in those incidents, and not a general certification for the *'urf* in general, and that is an evidence on specific incidents, and not evidence that the *'urf* is a Sharī'ah evidence.

Fifth: verily some of the traditions and habits are good and some of them are bad, and undoubtedly the bad habits and traditions are unanimously not considered by the Sharī'ah, so what distinguish between the bad and the good? Is it the mind or the Sharī'ah? As for the mind, it is not considered a sufficient distinguisher between the good and the bad; because the mind is limited and it gets influenced by the environment and circumstances, and it may see something as good today, but it sees it bad tomorrow, so if the assessment of the good tradition and the bad tradition is left to the mind, it causes confusion in the verdicts of Allah and this is impermissible; therefore it is inevitable to have a text in the (traditional) incident in order to be considered by the Sharī'ah, hence the Sharī'ah text is the evidence and not the *'urf* (tradition).

Sixth: Verily the examples they adduced are one of two matters: it is either correct in respect with the verdict but the mistake had occurred in the interpretation, or it is wrong in respect with the verdict and interpretation. If the verdict is correct, then the mistake in it had occurred by considering the tradition as evidence for it; because it has got an evidence other then the tradition. And if the verdict is wrong the mistake had occurred by establishing it on the tradition and this is impermissible, and the examples they adduced are altogether not moor than that. For instance the

oath of a person that he will not put his foot in the house means that he will not enter it by the convention of the expression not by the tradition. And the guarantee of olives refers to the convention of calling the sale of fruits while on trees guarantee (*ḍamān*), and it doesn't refer to the tradition. And the verdict of the friend eats from the house of his friend is established on the Qur'ān in the saying of Allah ﷻ:

{أَوْ صَدِيقِكُمْ}

"...or from your friend's (house)"

in the Verse:

{أَنْ تَأْكُلُوا مِنْ بُيُوتِكُمْ أَوْ بُيُوتِ ءَابَائِكُمْ}

"There is no restriction on the blind...nor on yourselves, if you eat from your houses, or the houses of your fathers..."[453]

And eating the fruits of trees refers to the *ḥadīth* that permits the person to eat from the fruits of trees providing that he doesn't carry any of it, and that is his ﷺ saying:

"لاَ قَطْعَ فِي ثَمَرٍ وَلاَ كَثَرٍ "

"There is no amputation for (stealing to eat) fruits or palm tree core (wet food)" Compiled by Aḥmad), and his saying:

"يَأْكُلُ غَيْرَ مُتَّخِذٍ خُبْنَةً "

"One can eat without hiding any of it in his cloth" (compiled by Aḥmad), so eating what falls down is permissible with greater reason. And considering the

[453] Surah al-Nūr:61

silence of the virgin woman acceptance (when she is proposed to) is permissible for the saying of the Prophet ﷺ about the virgin woman:

"إِذْنُهَا صُمَاتُهَا "

"Her silence is her permission" (compiled by Muslim), it is not for the tradition. And the issues of selling the house and buying the meat each one of them refers to the convention of calling the word house and the word meat for specific meanings, so it refers to the convention not to the tradition. And the issue of the *dirham* and the *dīnār* is as such. And as for the issue of sewing the garment, it refers to price of the similarity not to the tradition. And the issue of the wife (who claims that she didn't receive her dowry) is wrong in its verdict and in its evidence, for the right (of someone) doesn't become cancelled by the tradition, and the tradition is not an adequate evidence to cancel it, but her claim must be listened to, and if she proves it a judgment will be issued that her dowry must be paid to her regardless of the *'urf*. Accordingly the habits and traditions certainly exist, and they occur by the repetition of the deeds, but they are not valid as Sharī'ah evidence, nor are they a Sharī'ah justification for the continuance or non continuance of the action, but they must be submitted to the Sharī'ah like all other actions, then if the Sharī'ah evidence validates them they will be considered for the evidence, and if it doesn't validate them their *'illah* (reason) will be quested, then if they have a Sharī'ah *'illah*, then the Sharī'ah *'illah* of those actions will be considered and they will go under the *Qiyās* (analogy). As for the conventions of calling meanings by names, they are considered for there came in the Sharī'ah what considers them. And as for the estimations, whatever of them is considered by the Sharī'ah

text will be considered, and that which is not considered by a text, it is not considered. However, the convention and the estimation are not from the traditions.

Thereby the invalidity of the consideration of the tradition as a Sharī'ah evidence became clear. And there is no Sharī'ah evidence proven by the Sharī'ah text except: the Qur'ān, the Sunnah, the Consesus of the *Ṣaḥābah* and the *Qiyās*, and anything other than that has no value in the inference over the Sharī'ah verdicts.

This is with respect to the invalidity of the tradition as a Sharī'ah evidence. As for the invalidity of the tradition as a Sharī'ah rule, verily the rule is a universal verdict or a general verdict, and the tradition is not a universal verdict; because it has no partials, and because it is not coupled with any kind of *'illah* for it. And it is not a general verdict since no individuals can be categorized under it, and moreover it is not derived from a Sharī'ah text, not from the Qur'ān and nor from the Sunnah, and the *Ṣaḥābah* did not consent on it; therefore it is not considered Sharī'ah rule.

مَآلَاتُ الأَفْعَالِ

Consequences of the Deeds (*Mālāt al-Af'āl*)

Some of the scholars advocate the "consequences of the deeds" (*Mālāt al-Af'āl*) as a rule, and they establish on it many rules and numerous of verdicts, and they consider them basis of inferring that a particular verdict is a Sharī'ah verdict, so according to them the rule "consequences of the deeds" is similar to the Sharī'ah evidences. They say that the scrutiny in the consequences of the deeds is a considered Sharī'ah objective, whether the deeds are compatible or incompatible (with their objectives). They say that a scholar does not judge any of the servants' actions whether to perform it or not until he thinks about the consequence of that action; because it could be legalized for a benefit sought in it, or for an evil in it should be avoided, but it has an consequence contrary to the objective of it. And the action could be illegal for an evil arises from it or for a benefit that can be missed out if it gets performed, but it has a consequence contrary to that, thereupon it is inevitable to consider the consequence of the action, whether it is legalized i.e. commanded for a benefit, or it is illegal for an evil arises from it, i.e. it is prohibited; because the legal action which is legalized for a benefit sought in it or for an evil in it should be avoided, if it remains unrestrictedly legalized, then perhaps seeking its benefit leads to an evil equal to the benefit or greater than it, and this should prevent it from being unrestrictedly legalized, so the action becomes forbidden even if it is initially legislated as allowed. And thus if the illegal action remains unrestrictedly illegal for an evil arises from it, then

perhaps pushing the evil away leads to similar or greater evil, so keeping the action unrestrictedly illegal is improper, so the action becomes allowed even if it is initially legislated as forbidden. And they inferred this rule "Consequences of deeds" (*Mālāt al-Af'āl*) by the following three evidences:

The first: The Sharī'ah assignments are legislated for the benefits of the servants, and the worldly benefits of the servants are the results of their actions; because if you scrutinize the servants' actions you find that they are forewords for the results of the benefits, indeed they are causes for what is caused by them and they are the objective of the legislator. So the caused matters are the consequences of the causes, hence they should be considered in the course of the causes, and this is the meaning of scrutinizing the consequences, hence it is inevitable for the scholar to consider the caused matter, i.e. the consequence of the cause.

The second: The consequences of the deeds are either considered by the Sharī'ah or not considered. If they are considered this is what is requested, and if they are not considered it is possible that the action have consequences contrary to the objectives of those actions, and that is incorrect; because the Sharī'ah assignments are set only for the benefits of the servants, and no benefit can be expected at all when there is a possibility of an evil to occur equivalent to it or even greater than it. And that also leads us to seek not a benefit by an allowed action, and expect not an evil by a prohibited action, and this is contrary to the setting of the Sharī'ah.

The third: The comprehensive study of the Sharī'ah evidences denotes the consideration of the "consequences of

the deeds" (*Mālāt al-Af'āl*) originally in the legislation, like the saying of Allah ﷻ:

{يَا أَيُّهَا النَّاسُ ا عْبُدُوا رَبَّكُمُ الَّذِى خَلَقَكُمْ وَالَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ}

"O ye people! worship your Guardian Lord, Who created you and those who came before you so that you may become pious"[454]

and His ﷻ saying:

{كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ}

"O you who have believed, Fasting (al-Siyām) is prescribed for you as it was prescribed for those before you, that you may become pious"[455]

and His saying:

{وَلاَ تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالبَاطِلِ وَتُدْلُوا بِهَا إِلَى الحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالإِثْمِ وَأَنْتُمْ تَعْلَمُونَ}

"And eat not one another's property unjustly, nor give bribery to the judges that you may sinfully eat up a part of the property of others while you know"[456]

and He ﷻ said:

{وَلاَ تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللهِ فَيَسُبُّوا اللهَ عَدْوًا بِغَيْرِ عِلْمٍ}

[454] Surah al-Baqarah:21
[455] Surah al-Baqarah:183
[456] Surah al-Baqarah:188

"Revile not you those whom they call upon other than Allah, lest they out of spite revile Allah in their ignorance"[457]

{كُتِبَ عَلَيْكُمُ القِتَالُ وَهُوَ كُرْهٌ لَكُمْ ۖ وَعَسَىٰ أَنْ تَكْرَهُوا شَيْئًا وَهُوَ خَيْرٌ لَكُمْ}

"Fighting is prescribed upon you, and you dislike it. But it is possible that you dislike a thing which is good for you, and that you love a thing which is bad for you..."[458]

and His ﷻ saying:

{وَلَكُمْ فِي القِصَاصِ حَيَاةٌ}

"In the law of equality there is (saving of) Life to you, O men of understanding..."[459]

and when the Messenger ﷺ got advised to kill the hypocrite whose hypocrisy was apparent he said:

"دَعْهُ، لاَ يَتَحَدَّثُ النَّاسُ أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ "

"...leave him lest people speak that Muhammad kills his companions" (compiled by al-Bukhārī), and his ﷺ saying:

"لَوْلاَ حَدَاثَةُ قَوْمِكَ بِالكُفْرِ لَنَقَضْتُ البَيْتَ، ثُمَّ لَبَنَيْتُهُ عَلَى أَسَاسِ إِبْرَاهِيمَ عَلَيْهِ السَّلاَمُ "

"Had it not been for your people's short period in Islam, I would pull down the Ka'bah and rebuild it on the foundation of Ibrāhīm عليه السلام**"** (compiled by al-Bukhārī), and in the *ḥadīth* of the Bedouin who urinated in the Masjid,

[457] Surah al-An'ām:108
[458] Surah al-Baqarah:216
[459] Surah al-Baqarah:179

the Prophet ﷺ commanded to leave him until he finishes, and he said: "لاَ تُزْرِمُوهُ" **"Don't interrupt his urine"** (compile by al-Bukhārī), and the *ḥadīth* in which the Prophet ﷺ prohibited the severity on one's self in the worship for fear of the withdrawal, and other than that which has this meaning, where the action is originally allowed but it becomes prohibited for the evil consequence it leads to. Or where the action is originally prohibited but the prohibition becomes abandoned for what it has of a benefit.

According to these three evidences they advocated the rule of *"the Consequences of the deeds"*, and they built on this rule: *"The obstruction of pretenses"* "سَدُّ الذَّرَائِعِ", and the rule: *"The removal of hardships"* "رَفعُ الحَرَج", which is allowing an action originally illegitimate because it leads to a legitimate leniency, and they built on it the rule of *"the tricks"* "الحِيَل" which is forwarding an action apparently permissible to invalidate a Sharī'ah verdict and transfer it outwardly to another verdict, and the rule of *"the evidence free benefits"*, which is taking a partial benefit in comparison with a universal Sharī'ah evidence.

Those who advocate *"the closure of the pretences"* rule build on it many verdicts, so they allow the forbidden and forbid the allowed according to it. And according to them it is a means used to achieve what seems to be benefit in their sight. Accordingly every benefit leads to an evil the benefit becomes forbidden even if the text says that it is allowed. And every evil leads to a stronger evil it becomes allowed even if the text says that it is forbidden, they say: the initial sale of a goods for ten (units) postponed is apparently permissible from the direction of the benefits the sale causes in general. If (the consequence of) this sale results in buying (the goods) for five (units) in cash after selling it for ten

postponed, as if the seller buys his goods for five in cash from the buyer who bought it of him for ten postponed, and the goods becomes meaningless in this action; because the benefits for which the sale was allowed non of them exists, and therefore this permissible sale becomes forbidden, with regard to the consequence of it, but they said: providing an aim for that appears, and the use of it habitually increases. And those who fanatically advocate covering the face of the woman say: the Sharī'ah permitted the woman to uncover her face and excluded it from the '*awrah* by the saying of Allah ﷻ:

{وَلاَ يُبْدِينَ زِينَتَهُنَّ إِلاَّ مَا ظَهَرَ مِنْهَا}

"...and that they should not display their beauty and ornaments except what (must ordinarily) appear thereof..."[460],

and by the saying of the Prophet ﷺ:

"إِنَّ المَرْأَةَ إِذَا بَلَغَتِ المَحِيضَ لَمْ يَصْلُحْ أَنْ يَظْهَرَ مِنْهَا إِلاَّ هَذَا وَهَذَا، وَأَشَارَ إِلَى وَجْهِهِ وَكَفَّيهِ "

"When the woman reaches the age of menstruation she is not allowed to show (of her body) except this and this, and he pointed out to his face and his hands". (Compiled by Abū Dāwud), but they said that uncovering the face leads to a *fitnah*, so fearing the *fitnah* is the consequence of uncovering the face, so they forbade uncovering the face although the evidences allow it, and that is out of *"closing the pretences"*. And thus every benefit leads to an evil becomes forbidden, and every evil deed quitting it leads to more severe evil becomes allowed.

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[460] Surah al-Nūr:31

As for *"The removal of hardships"*, it means if there is an illegitimate action and there is difficulty for people in leaving it, it becomes allowed out of the legitimate kindness; because Allah ﷻ says:

{يُرِيدُ اللهُ بِكُمُ اليُسْرَ وَلاَ يُرِيدُ بِكُمُ العُسْرَ}

"Allah intends every facility for you; He does not want to put you to difficulties"[461],

and His saying:

{وَمَا جَعَلَ عَلَيْكُمْ فِى الدِّينِ مِنْ حَرَجٍ}

"...And He has not impose any difficulty on you in the religion..."[462],

and the saying of the Prophet ﷺ:

" وَلَكِنَّنِي بُعِثْتُ بِالحَنِيفِيَّةِ السَّمْحَةِ "

"...but I am sent with the straight and lenient religion" (compiled by Aḥmad), and all that contradicts the legislation of the difficult and oppressive; therefore the action takes the verdict of what it leads to, not the verdict that Allah ﷻ sent down for it.

As for the rule of "the tricks" "الحِيَل", the well-known reality of it is offering a clearly permissible action to nullify a Sharī'ah verdict and apparently transfer the action to another verdict. Like the donor who donates his money (as hibah) just before the end of year to escape the *Zakāh*, the donation is primarily permissible, but since it prevents the

[461] Surah al-Baqarah:185
[462] Surah al-Hajj:78

Zakāh it leads to a corruption; therefore the donation should be prevented in this situation. Indeed the person whose *zakāh* is due had offered a clearly permissible deed which is the donation to nullify a Sharī'ah verdict which is the obligatory of the *Zakāh*, and changed his situation to a situation in which the *Zakāh* is not obligatory.

This is the summary of the rule *"The consequences of deeds"* and the summary of the rules based on it. And the examiner of this finds that it is correct from one direction and invalid from three directions. As for the rules that are based on it, they are absolutely invalid. And as for its validity from one direction, that is because some of the texts that came in its subject denote the rule: " الوَسِيلَةُ إِلَى الحَرَامِ" *"The means that leads to what is forbidden is forbidden"* and that is for the denotation of the saying of Allah ﷻ:

{وَلاَ تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللهِ فَيَسُبُّوا اللهَ عَدْوًا بِغَيْرِ عِلْمٍ}

"Revile not you those whom they call upon other than Allah, lest they out of spite revile Allah in their ignorance."[463],

although swearing at the idols is permitted, Allah ﷻ forbade it; because it leads to swearing at Allah and it is forbidden. And because there is a clear Sharī'ah text came with an explicit denotation on this situation. So only this kind of the *"consequences of the deeds"* is valid. That is preventing the permitted cause if it leads to a prohibited consequence as the Verse has denoted, but it is not valid in other than that.

[463] Surah al-An'ām:108

And as for the point of invalidity of the remainder of the *"consequences of deeds"*, it is clear from three points, and they are the points they adduced to prove them:

The first points: verily bringing benefits and preventing evils are not reasons for the Sharī'ah verdicts nor are they evidences for them, also they are not a reason for the Islamic Sharī'ah as a whole. (We say) that because the text they adduced as an evidence that the Sharī'ah came to provide benefits and prevent evils is clear that it is concerning the Sharī'ah as a whole, not concerning its detailed verdicts, and it is the wisdom of the Sharī'ah, i.e. the required result from it, not the reason of legislating the Sharī'ah. Verily the saying of Allah ﷻ:

{وَمَا أَرْسَلْنَاكَ إِلاَّ رَحْمَةً لِلْعَالَمِينَ}

"And We have sent you (O Muhammad) not but as a mercy the 'Aalameen (mankind, jinn and all that exists)"[464]

it is clear that being the Messenger a mercy is with regard to the message, i.e. the whole Sharī'ah, not with regard to the detailed verdicts, and the text denotes only this and nothing else:

{وَمَا أَرْسَلْنَاكَ}

"And We have sent you not but a mercy..."

i.e. the Prophet's mission, and it is clear that being the Prophet a mercy is the result of implementing the Sharī'ah, and not the motive of legislating the Sharī'ah, i.e. it is clear

[464] Surah al-Anbiyā':107

that it is the wisdom of legislating the Sharī'ah, and not the reason of legislating the Sharī'ah, it is like His ﷻ saying:

{وَمَا جَعَلَهُ اللهُ إِلاَّ بُشْرَى}

"And Allah made it only as glad tidings..."[465],

and like His ﷻ saying:

{وَنَزَّلْنَا عَلَيْكَ الكِتَابَ تِبْيَانًا لِكُلِّ شَيءٍ وَهُدًى وَرَحْمَةً وبُشْرَى لِلْمُسْلِمِينَ}

"...and We have sent down to you the Book (the Qur'ān) as an exposition for everything, a guidance, a mercy and a glad tidings for those who submitted themselves to Allah"[466],

so the *Āyah* doesn't signify the reasoning but it signifies the aim; therefore there isn't any point of considering bringing the benefits and preventing the evils a reason for every detailed Sharī'ah verdict or for the Sharī'ah as a whole; because they are the wisdom of the Sharī'ah and not the reason of its legislation.

However, the evidences of the detailed verdicts came either as texts in the *Kitāb* and the Sunnah (Verse or *ḥadīth*), or as meanings brought by the texts of the *Kitāb* and the Sunnah and made as signs that indicate the verdict, and motive for its legislation, and this is the Sharī'ah reason (*'illah*). And the Sharī'ah made this *'illah* the selfsame of the wanted meaning, not bringing the benefit or preventing the evil. So when the Messenger ﷺ prohibited the sacrifice meats was for the "*daaffah*" (the needy comers to *al-Madīnah*) not for

[465] Surah al-Anfāl:10
[466] Surah al-Nahl:89

the benefit, so the *'illah* was the daaffah not the benefit. And Allah ﷻ made the *'illah* of giving the money to the *Muhājirīn* without the *Anṣār* was like that so its circulation doesn't remain only between the rich, so the *'illah* was the non-circulation of the money by the rich, not the benefit. Hence making the benefit an evidence of the detailed verdict whether it is total or partial contradicts the Sharī'ah reasons that came in the texts of the Qur'ān and the Sunnah, and it contradicts the reality of the reasoning. Accordingly it is not permissible to consider the benefit as basis for the detailed verdicts and carry out the detailed verdicts in accordance with this benefit. By that the Sharī'ah verdict remains in accordance with the denotation of the evidence unless other evidence nullifies it, or its existence or nonexistence orbits with a Sharī'ah *'illah*.

The second point: verily the "consequence of the deed" is only considered if the evidence denotes it either by the text or when it leads to a textually proven nullification of a verdict, then the consequence of the deed would be considered for the existence of the text or for the verdict proven by the text, not for the benefit that the mind decides and makes it an *'illah* for the verdict and a nullifier for the text. Like the impermissibility of swearing at idols, it was legislated for swearing at them leads to swearing at Allah ﷻ and the consequence of the action is denoted by the text, and it is considered for the denotation of the text not because the mind said that it is evil. And like the impermissibility for the *khalīfah* to depose the judge of injustice when there is a court case against the *khalīfah* because it annuls his authority of issuing a judgment to depose the *khalīfah* that Allah gave the judge of injustice. So the *"consequence of the action"* is denoted by the annulment

of a verdict established by the text so it is considered for that, not because the mind says that it is evil. But if the consequence of the action is not denoted by a text, or its annulment of the verdict is not denoted by the text, then it is not considered at all. So saying that the consideration of the actions' consequences is for the purpose that: if they are not considered the actions may have consequences contrary to their objectives has no point in the Sharī'ah. And there is not even a doubtful evidence from the Sharī'ah permits the consideration of it, and that is a pure arbitration of the mind in logical issues far from the Sharī'ah but far from (the method of) the legislation for the events.

The third point: the Verses and the *aḥādīth* they adduced as evidences on the "consequences of the deeds" have no denotation that the consequence should have a considered influence over the Sharī'ah verdict which leads to it. The saying of Allah ﷻ:

{يَا أَيُّهَا النَّاسُ ا عْبُدُوا رَبَّكُمُ الَّذِى خَلَقَكُمْ وَالَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ}

"O mankind! Worship your Lord (Allah), Who created you and those who were before you so that you may become pious (Muttaqeen)"[467],

and His ﷻ saying:

{كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ}

[467] Surah al-Baqarah:21

"O you who have believed, Fasting (al-Siyām) has been prescribed for you as it was prescribed for those before you, so that you may become pious"[468],

they don't include any denotation on the "consequence of the deed", but His saying in the two Verses: *"...so that you may become pious"* denotes the wisdom of the worship or wisdom of the fasting which is achieving the piety (*Taqwa*), and the *taqwa* may occur by the worship and the fasting and may not; because the wisdom means this matter may result that thing, and it is similar to His ﷻ saying:

{إِنَّ الصَّلاَةَ تَنْهَى عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ}

"Verily, al-ṣalāh (the prayer) prevents from al-Fahshā' (i.e. great sins of every kind, unlawful sexual intercourse) and al-Munkar (i.e. disbelief, polytheism, and every kind of evil wicked deed)..."[469]

so there is no point of inference by these two Verses and there is no place for the "consequence" rule in them. And as for His ﷻ saying: Baqarah), and His saying:

{وَلاَ تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالإِثْمِ وَأَنْتُمْ تَعْلَمُونَ}

"And eat not one another's property unjustly, nor give bribery to the judges that you sinfully eat up a part of the property of the people..."[470],

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[468] Surah al-Baqarah:183
[469] Surah al-'Ankabūt:45
[470] Surah al-Baqarah:188

this is a prohibition for people from forwarding the matter of their money to the judges to eat up through their arbitration some of the peoples' money sinfully, by falsehood testimony or by perjury. So it is a prohibition from the false arbitration and there is no place in it for the "consequence" rule, so there is no point of inference by it. And His ﷻ saying:

{كُتِبَ عَلَيْكُمُ القِتَالُ وَهُوَ كُرْهٌ لَكُمْ ۖ وَعَسَىٰ أَنْ تَكْرَهُوا شَيْئًا وَهُوَ خَيْرٌ لَكُمْ}

"Fighting is prescribed upon you, and you dislike it. But it is possible that you dislike a thing which is good for you, and that you love a thing which is bad for you..."[471],

it hasn't got a prohibition from something for its consequence, nor has it got a command of something for its consequence, but it is a clarification for them that there may be something good for them in what they hate, and they don't know that; because the rest of the Verse says:

{وَاللهُ يَعْلَمُ وَأَنْتُمْ لاَ تَعْلَمُونَ}

"...and Allah knows and you don't know",

so there is no place in it for the "consequence" rule. And as for the Verse:

{وَلَكُمْ فِي القِصَاصِ حَيَاةٌ}

"In the law of equality there is (saving of) Life to you, O men of understanding..."[472],

[471] Surah al-Baqarah:216

and the saying of the Messenger ﷺ:

"دَعْهُ، لاَ يَتَحَدَّثُ النَّاسُ أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ "

"...leave him lest people speak that Muhammad kills his companions" (compiled by al-Bukhārī), and his ﷺ saying:

"لَوْلاَ حَدَاثَةُ قَوْمِكَ بِالكُفْرِ لَنَقَضْتُ البَيْتَ، ثُمَّ لَبَنَيْتُهُ عَلَى أَسَاسِ إِبْرَاهِيمَ عَلَيْهِ السَّلاَمُ "

"Had it not been for your people's short period in Islam, I would pull down the Ka'bah and rebuild it on the foundation of Ibrāhīm عليه السلام**"** (compiled by al-Bukhārī), these are clarifications of the reasons of the verdicts, and they are not evidence on the *"consequence of the deeds"* rule, and although the consequence appears in them as it appears in the prohibition from swearing at the idols, this consequence is not Sharī'ah verdict so only the motive of the legislation is considered and not the consequence; because taken the verdict is not stemmed from this consequence. And there are many texts denote reasoning (*ta'līl*), they come under the *'illah* as a matter of analogy (*Qiyās*) not under the consequence of the deed. And as for the *ḥadīth* of the Bedouin who urinated in the Masjid, what the Prophet ﷺ did was out of kindness with the Bedouin who ignored the verdict, and out of giving him an excuse for his ignorance, and there is no consequence (*ma'aal*) in it. And as for the *ḥadīth*:

"...فَإِنَّ المُنْبَتَّ لاَ أَرْضًا قَطَعَ، وَلاَ ظَهْرًا أَبْقَى "

[472] Surah al-Baqarah:179

"...verily the *munbatt* (the extremely fast traveler who marshes his ride days and nights without resting until his ride collapses before reaching his destination) doesn't cut a land, nor does he preserve the back (of his riding animal)" (compiled by Aḥmad, al-Bayhaqī and al-Bazzaar), it is a clarification of the reality that may occur to him and it is not taking the verdict of the consequence. And thus all the evidences they adduced don't have what they claim of actions were originally allowed but got prohibited for the evil they lead to, nor do they have any action that was originally prohibited then its prohibition got forsaken to prevent a more severe evil. And by that the fall of their inference by the Verses became apparent, so the issue of the *"consequence of the deeds"* is invalid, except the rule *"The means to what is forbidden is forbidden"*, and since the rule *"consequences of the deeds"* fell from the consideration verily all the rules that are stemmed from it are invalid.

However, there are some evidences that prove with details the invalidity of the rule *"the obstruction of pretenses"* "سَدُّ الذَّرَائِعِ" , that is other than its invalidity for the invalidity of that on which it is based. That is when the text allows an action, and the mind says that the consequence of this action is evil then what the mind says has no value in the presence of the text. Also if the text forbids an action, and the mind says that the consequence of this action is beneficial then what the mind says has no value in the presence of the text; because the Legislator is Allah ﷻ and the text is a revelation from Allah, and the mind only understands the text and does not put the verdict by itself, especially if it is contrary to the text, so what the mind says is null and what comes in the text remains; therefore the rule "the obstruction of pretenses" is void from its basis;

because it is established on: if the mind sees a contradiction between the verdict of the action that is clarified by the text and the consequence of that action; the text becomes void and the verdict of the mind remains, and that is undoubtedly invalid. And the invalidity of the examples they brought is apparent, it is permissible to sell a good at the price of ten postponed to a period of time, and it is permissible for the buyer to sell it back at the price of five to its seller, and it is not wrong if the two sellers and the sold item are the same so long as the first deal is completed and finished, and the second deal occurred separated from the first one, and each deal of them is different to the other one. Also the face of the woman is not '*awrah* for the text evidence, so the mental illusion of fearing the *fitnah*, or fearing the *fitnah* for the reality of a specific woman, has no certain evidence that it is the consequence of uncovering the face of the woman as a woman, neither from the text nor from the reality, so the existence of it is not considered at all plus it cannot nullify the text, and all the examples of the rule of "the obstruction of pretenses" are as such. And if we exclude the rule: "the means to what is forbidden is forbidden" which is doubted to be a matter of the rule: "the obstruction of pretenses", indeed all the evidences and the examples of "the obstruction of pretenses" are invalid and contradict the Sharī'ah.

Also the rule: *"The removal of hardships"* "رَفْعُ الحَرَجِ" it is invalid from its basis, that is because the saying of Allah ﷻ:

{يُرِيدُ اللهُ بِكُمُ اليُسْرَ وَلاَ يُرِيدُ بِكُمُ العُسْرَ}

"Allah intends every facility for you; He does not want to make things difficult for you"

came after His ﷻ saying:

{وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ}

"...and whoever is ill or on a journey, the same number (of days which one did not observe Sawm (fasts) must be made up) from other days..."[473],

it is evidence on the concessions the Legislator made for Muslims, like the permissibility of breaking the fast in the situations of travel and illness, and thus are all the Sharī'ah concessions, so this is special in the issue of the Sharī'ah concessions, and it is the issue for which it came as evidence. And as for His ﷻ saying:

{وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ}

"...And He has not impose any difficulty on you in the religion..."

it comes after His ﷻ saying:

{يَا أَيُّهَا الَّذِينَ آمَنُوا ارْكَعُوا وَاسْجُدُوا وَاعْبُدُوا رَبَّكُمْ وَافْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ} 77 {وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ}

"O you who have believed! Bow down, and prostrate yourselves, and worship your Lord and do the good that you may become successful. And strive hard in Allah's Cause as you ought to strive (with sincerity and with all your efforts that His word should be superior). He has chosen you (to convey His Message of Islamic Monotheism to mankind by inviting them

[473] Surah al-Baqarah:185

to Islam), and has not laid upon you in religion any hardship..."[474]

so the hardship is the difficulty, and it is removed from them by the worship and the good He commanded to perform, and by the invasion in the cause of Allah ﷻ to please Him, verily it is He who had selected you O believers to stand up for His religion, and He didn't make it too hard on you, but within your ability, it is like His ﷻ saying:

{لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا}

"Allah burdens not a person beyond his scope..."[475]

So He ﷻ made the religion not too difficult for them so that they can't stand it. And moreover He opened the repentance door for the criminals, and He made in the religion concessions and expiations that facilitate it. And as for the saying of the Prophet ﷺ:

"وَلَكِنَّنِي بُعِثْتُ بِالحَنِيفِيَّةِ السَّمْحَةِ "

"...but I am sent with the straight and lenient (*Samhah*) religion" (compiled by Aḥmad), what is meant is that he brought a Sharī'ah straight and easy for people to practice, not for the aim of imposing hardship on the servants, so it is (*Samhah*) lenient, and the lenient is generous. al-Fairūz-Abādī said in *al-Qāmūs* (the Arabic thesaurus): "the *samhah* a feminine singular: the suitable bow, and the religion in which there is no suffering". And in the straight and lenient (in Islam) leniency came restricted to what is permissible

[474] Surah al-Hajj:77-78
[475] Surah al-Baqarah:286

according to its principles and evidences, not according to the desires and tendencies and the mind's dictations. This is the meaning of the Verses, and there is no denotation in them on the permissibility of what is forbidden and neither on the consequences rule. However, taking what the advocates of the rule of hardship understand leads to the necessity of dropping off the Sharī'ah assignments altogether, indeed all the assignments *(al-Takālīf)* are heavy and have some hardship; and therefore they are called *taklīf* which is a verbal noun of the infinitive word: *al-kulfah* which means the hardship. So if the existence of the hardship in the assignments necessitates the removal of it by the evidences (criterions) of the hardship rule then this necessitates dropping off the Sharī'ah assignments. And since dropping off the hard assignments that are confirmed by the Sharī'ah is contradictory to the Sharī'ah, then taking these evidences in accordance with the understanding of the rule *"the removal of hardships"* is contrary to the Sharī'ah; taking this rule is impermissible, but it is inevitable to adhere to the limits of the detailing evidences brought by the Sharī'ah for all the detailed verdicts, and amply them on the new incidents and problems, regardless of any hardships or facilities in them, especially that the Messenger ﷺ says:

"حُفَّتِ النَّارُ بِالشَّهَوَاتِ، وَحُفَّتِ الجَنَّةُ بِالمَكَارِهِ "

"Hellfire is encompassed by the desires, and paradise is encompassed by the constraints" (compiled by Ibn Hibbān).

And the same as the invalidity of the rule: *"the removal of hardships"*, the invalidity of the rule: " الـضَّرُورَاتُ تُبِـيحُ المَحْظُورَاتِ" *"The necessities allow what is forbidden"* with

regard to how some scholars and some belated understand it. It is so often that some of them permit themselves to allow what is forbidden for the argument that there is a necessity in it and for the compelling of the need, establishing this on: *"the necessities allow what is forbidden"*. And the point of invalidity of this is that the necessities are only the necessities known from the Sharī'ah which is the compelling necessity from which perishing is feared, i.e. death, and that is what came in the saying of Allah ﷻ:

{فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ فَلا إِثْمَ عَلَيْهِ}

"He (Allah) has forbidden you only the Maitah (dead animals), and blood, and the flesh of pig, and that which is slaughtered as a sacrifice for others than Allah. But if one is forced by necessity without willful disobedience or transgressing due limits, then there is no sin on him..."[476]

So these are the necessities which allow the forbidden, and they are the necessities in which a Sharī'ah text came or a Sharī'ah text denoted a specific denotation on it itself or on its kind. But the necessities the mind had decided are not considered of the necessities by which the forbidden matter becomes permissible.

And as for the nullification of *"the trick rule"* on the basis of the rule *"the consequences of deeds"*, it is pointless from this direction. If the trick permits a forbidden or forbids an allowed matter, then it is not permitted to perform the action if there is a denotation on the trick in it or in the contract. But if there is no specific denotation in the action or the contract then it is not considered a trick, even if the

[476] Surah al-Baqarah:173

trick is aimed from the action; because the contracts are considered by their denotations not by the intentions of their owners. Indeed gifting the money before the turn of the year is like spending it, and like paying the debt from it, and like buying goods with it, and there is no difference in them, so it is a kind of the disposals that has no specific denotation on the trick. But if there is a denotation on the trick, like a person sells someone a watch that doesn't worth one *dirham* for a thousand *dirham*, then he gives it to him and writes a bill for him for the price of the watch, in this action there is a denotation on the trick, so it is invalid because it has what denotes its invalidity, and as such ... so the invalidation of the tricks on the basis of the rule: *"the consequences of deeds"* is incorrect; because it is either judging by the intention which has no consideration in the contracts, or it is making the mind arbitrate in the invalidation of a verdict, and this is not permissible.

From all of that the invalidity of the rule *"the consequences of deeds"* and all the rules established on it became apparent, hence it is apparent that they are not of the principles of inference nor are they of the Sharī'ah evidences.

ءَارَاءُ الصَّحَابَةِ، وَأَقْضِيَتُهُمْ، وَاجْتِهَادَاتُهُمْ

The Opinions of the *Ṣaḥābah*, Their Judgments and Their Jurisprudences

The "*Mawqūf*" *Ḥadīths* and the judgments of the *Ṣaḥābah* are not Sharī'ah evidences, so they are not proof that the verdict (which is derived from them) is a Sharī'ah verdict. As for *Mawqūf Ḥadīths*, that is because they are not attributed to the Messenger ﷺ neither literally and nor by denotation, so they are not considered from the Sunnah not even by probability, so it is not most probably that the Messenger had said them, but it is possible that he said them, and the Companion did not attribute them to him. And since the saying, the action and the approval are not most probably said or performed or approved by the Messenger they are not considered from the Sunnah; therefore they are called *"Athar"* (remnants). And since they are not considered from the Sunnah, they are considered opinions of the Companion from whom they are narrated, so they are a matter of his jurisprudence and judgments, so they cannot be taken as proofs and they are not Sharī'ah evidences. As for the inconsideration of the opinions, the jurisprudences and the judgments of the *Ṣaḥābah* to be of the Sharī'ah evidences; that is because Allah ﷻ says:

{وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا}

"...And whatsoever the Messenger gave you, take it; and whatsoever he forbids you, abstain (from it)..."[477]

and the contradictory connotation of it is: what comes to you from other than the Messenger do not take it; because the word Messenger is a quality that has a connotation must be put in effect (it denotes the absence of the verdict of the matter at the absence of its quality connotation), and for His ﷻ saying:

{فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ}

"... And if you differ in anything amongst yourselves, refer it to Allah and His Messenger..."[478]

it obliges the reference to Allah and the Messenger at the dispute, for the indication of other Verses like:

{فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ}

"... And let those who oppose the Messenger's commandment (i.e. his Sunnah - legal ways, orders, acts of worship, statements) beware, lest some Fitnah (disbelief, trials, afflictions) should befall them..."[479]

and like:

{وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ}

[477] Surah al-Hashr:7
[478] Surah al-Nisā':59
[479] Surah al-Nūr:63

"It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision..."[480]

so the reference to the Companion's opinion or *ijtihād* or judgment means leaving the obligation; because it is reference to other than Allah and His Messenger. However, the *Ṣaḥābah* have consented on the permissibility for their individuals to have different opinion to the other *Ṣaḥābah* in their jurisprudence (*Ijtihād*), and if their opinions and jurisprudences and judgments are proof it wouldn't be as such, and then it would be obligatory upon each one of them to follow the other and this is impossible by the Sharī'ah. Moreover, the Companions had differed in some issues, and every one of them had different opinion to the other, as in the issue of the grandfather with the brothers and in other issues. Hence if the opinion of the Companion is a proof then the proofs of Allah would be different contradicting each other, and it is impossible to say that on Allah ﷻ. From all this it becomes apparent that the opinions of the *Ṣaḥābah* and their jurisprudences and their judgments are not considered from the Sharī'ah evidences.

However, the Companions ﷺ have the highest rank for a human being in Islam after the Prophets. And they have highest degree in the mind of the Muslims, and praising them came clearly in the Qur'ān and the *aḥādīth*, Allah ﷻ said:

{وَالسَّابِقُونَ الأَوَّلُونَ مِنَ الْمُهَاجِرِينَ وَالأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ}

[480] Surah al-Aḥzāb:36

"And the foremost to embrace Islam of the Muhājirīn[481] and the Anṣār[482] and also those who followed them righteously. Allah is well-pleased with them as they are well-pleased with Him..."[483],

and the Prophet ﷺ said:

"أَصْحَابِي كَالنُّجُومِ, بِأَيِّهِمُ اقْتَدَيْتُمُ اهْتَدَيْتُمْ "

"My *Ṣaḥābah* are like the stars whichever of them you follow you will be guided" compiled by Ruzayn. Therefore the Muslims looked after their opinions and judgments and collected them and narrated them as they narrated the Prophetic *ḥadīth*, and had different opinions in the *Mawqūf* whether it is considered from the *ḥadīth* and must be taken as a proof or not, and there is no *ḥadīth* book that doesn't have *Mawqūf aḥādīth* and opinions of the *Ṣaḥābah* in it. In the books of: al-Bukhārī, Muslim, Ibn Mājah, al-Tirmidhī and other *ḥadīth* books there are many of that, and in the book of Imam Mālik (*al-Muwaṭṭa'*) one would find many of the Companion's jurisprudences (*fatwa*) that Mālik had narrated and wrote down and took in consideration, which shows the Muslims' consideration of the saying and opinions of the *Ṣaḥābah*, and that shows the rank of their opinions and jurisprudences. And the reality is that the opinions of the *Ṣaḥābah*, and their jurisprudences and judgments are closer to the religion and the authentic Sunnah than the opinions and jurisprudences of the others who came after them, indeed it is possible that when the Companion used to give an opinion he gave what he heard verbally from the Prophet ﷺ, or from an other Companion

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[481] Those who migrated from Makkah to al-Madīnah.
[482] The citizens of *al-Madīnah* who helped and gave aid to the *Muhājirīn*.
[483] Surah al-Tawbah:100

from the Prophet ﷺ, so he brought the verdict without narrating the evidence, either because it was obvious to him, and the transfer of the obvious matters is not usually of much concern, or for the purpose of what is known of the situations of the Companions that they used to fear and revere and minimize the narration from the Messenger of Allah ﷺ to avoid the increase or the decrease, so they used to speak repeatedly about what they heard from the Prophet ﷺ without stating their hearing, and without saying that the Messenger of Allah ﷺ said. Therefore it is possible that they took the verdict and transferred it refrained from narrating the *dalīl*, and it is possible that the Companion understood from a text of a Verse or a *ḥadīth* what the people who came after him did not understand. And this possibility is out of his perfection in the language knowledge, and the denotation of the expression the way he understood it, or his opinion came out of circumstantial indication, like the cause of descending the Verse or the *ḥadīth*, the way he witnessed it or heard it, like the saying of the Messenger ﷺ:

"إِنَّمَا الرِّبَا فِي النَّسِيئَةِ "

"Usury is only in the (*nasī'ah*) postponed transaction" (compiled by Muslim), it was an answer for a question about the sale in cash. And it must be noticed that the Companion had witnessed the descending of the revelation, and perceived its objectives, so he understood what those who came after him in every era and generation can't understand. All this makes for their opinions and jurisprudences and judgments a rank distinct from those who came after them. Although they don't reach the evidence's level, they are definitely considered higher than the rank of the jurisprudences of all other scholars;

therefore they are considered Sharī'ah verdicts, and their opinions, jurisprudences and judgments should be followed when there is a lack of evidence, and they are absolutely worthier to imitate than the jurisprudences of all other scholars unless there is a stronger evidence. Therefore when a Sharī'ah verdict is given supported by a *mawqūf ḥadīth* or by an opinion of a Companion or by one of his judgments, it should not be said: we don't consider this because it is not a Sharī'ah evidence, but what should be said is: we don't consider it as a Sharī'ah evidence, but we consider it a Sharī'ah verdict which we imitate when lacking the evidence after searching for it. However, at the citation by a *mawqūf ḥadīth* it must be brought as a quotation that this opinion is said by the so and so Companion, like Ibn 'Abbaas for instance, and it shouldn't be adduced as a source of inference. Accordingly we find that it is worthy that Muslims in every era observe the opinions of the Companions, their jurisprudences and their judgments with their narrations, and record them, and imitate them at the lack the evidence. And the *Mawqūf Ḥadīths*, the judgments of the Companions, their opinions and their jurisprudences are considered of the greatest legislation heritage after the Sharī'ah texts and the consensus of the *Ṣaḥābah*, may Allah be pleased with them all.

التَّعَادُلُ وَالتَّرَاجِيحُ

Conflict and Out-weighing (Evidences) [*al-Ta'ādul wa'l-Tarājiḥ*]

When the evidences conflict each other and none of them is distinct over the others, this is called equality (*al-Ta'ādul*), and when some evidences have special characteristics over each other it is called the outweighing. The equality doesn't occur between two decisive evidences at all, and thus it doesn't occur between the decisive and the indecisive evidences; because the decisive evidence is worthier than the indecisive evidence. And as for the equality between two indecisive evidences, i.e. between two individual reports, indeed the logical analogy denotes the possibility of it, but the reality of the (Sharī'ah) evidences denotes the nonexistence of the equality in the individual reports, and that the equality never occurred in the indecisive evidences at all, moreover, saying it is permissible contradicts the use of the evidences. According to the logical assumption, it is not impossible that one of the just reporters reports the existence of something and the other reports the nonexistence of it, accordingly the occurrence of the equality is possible. But the Sharī'ah reality is different to that, it really never happened that a just person reported the existence of something and the other reported the nonexistence of it in a manner that both reports are equal in all their circumstances, conditions and occasions, except in one situation and that is the abrogation, and the abrogation is not a kind of the equality. Accordingly, the equality doesn't occur in the indecisive evidences. And the

proof that the equality in the indecisive evidences is not permitted is: if the two contradictory indecisive evidences are equal so that the *mujtahid* becomes necessitated to either use them both, or to leave them both, or to use one of them, then if he uses both of them it necessitates the contradictories to get-together. And if he doesn't use any of them it necessitates the uselessness of their establishment, and it is impossible on Allah Ta'ala (to send down useless evidences), and if he uses one of them we see: if we determine for him which evidence to use, then it is mind arbitration and giving a say in the religion by the desire, and if we determine it as an optional evidence (*dalīl al-takhyīr*) then it would be outweighing the permissibility sign over the sign of the forbiddance and the invalidity of this has been proven; therefore the equality between two indecisive evidences never occurs, and it is impermissible in the Sharī'ah, so there is no equality between the evidences at all.

As for the outweighing (*al-Tarjīḥ*), linguistically it means outbalancing and overcoming, and in the terminology of the principles' scholars it is finding strength for one of the two evidences over the other to act in accordance with it, as the Companions made the report of 'Ā'ishah رضي الله عنها and that is the saying of the Prophet ﷺ:

"إِذَا التَقَى الخِتَانَانِ وَجَبَ الغُسْلُ "

"If the two circumcision points meet, the ritual wash (*al-Ghusl*) becomes obligatory" (compiled by Aḥmad), they made it outweigh the report of Abū Sa'īd al-Khudrī and that is the saying of the Prophet ﷺ:

"إِنَّمَا المَاءُ مِنَ المَاءِ "

"The water (*al-Ghusl*) is but because of the water (ejaculation)" (compiled by Aḥmad), (it means ritual wash is obligatory only if the spermatic fluid is ejaculated), they made the report of ʻĀ'ishah outweigh on the basis that the Prophet's wives are more knowledgeable about his deed in these issues than men, so this is a consensus on the permissibility of the adherence to the outweighing.

The outweighing is special in the indecisive evidences, i.e. in the individual reports, it doesn't occur in the decisive evidences. And the main points of the outweighing between the indecisive evidences are summed up in the followings:

The first point: if two texts contradict each other one of them should outweigh the other only if it is impossible to act according to each one of them, but if it is possible to get them together even in one aspect without the other, then it mustn't result in outweighing; because using both evidences is worthier than disusing one of them. An example for that is the saying of the Prophet ﷺ:

"أَلاَ أُخْبِرُكُمْ بِخَيْرِ الشُّهَدَاءِ؟ الَّذِي يَأْتِي بِشَهَادَتِهِ قَبْلَ أَنْ يُسْأَلَهَا "

"Shall I tell you who is the best of witnesses? It is he who presents the testimony before he is asked for it" (compiled by Muslim), it contradicts his ﷺ saying:

"ثُمَّ يَفْشُو الكَذِبُ، حَتَّى يَشْهَدَ الرَّجُلُ وَمَا يُسْتَشْهَدُ "

"...and then lying spreads so that the man testifies without being asked to testify" (compiled by Ibn Mājah), so the first one is regarded to be for the right of Allah ﷻ, and the second is for the right of the human.

The second point: if two texts contradict each other, but they are equal in their authenticity and generality, and the belated one of them is known, then the belated abrogates the earlier, but if it is not known which one is the belated and which one is the earlier, then one of them will outweigh the other if they are indecisive, but if they are decisive then no contradiction occurs between them; because the equality never occurs in the decisive evidences.

But if the two contradictory texts are not equal in their authenticity and generality, like if one of them is decisive and the other is indecisive, or one of them is general and the other is special, here the outweighing occurs. Then if they are not equal in the strength, like if one of them is decisive and the other is indecisive then the decisive outweighs and the action must be performed according to it, and the indecisive report should be left, whether they are general or special or the decisive one is special and the indecisive is general. But if the decisive report is general and the indecisive is special then the indecisive will be used (to specify the general). And if they are unequal in the generality and specialty so that one of them is absolutely more special than the other, then the special one outweighs the general and it will be used for the purpose of gathering between the two evidences. And if they are unequal in the generality so that the generality and specialty between them are from one direction without the other, then the outweighing between them will sought from a different direction so that the report that outweighs will be in use; because the specialty necessitates the outweighing, and the specialty here is proven in each one of them from a different direction to the other, so every one of them

outweighs the other from a different direction. An example for that is the saying of the Prophet ﷺ:

"مَنْ نَسِيَ صَلاَةً، أَوْ نَامَ عَنْهَا، فَلْيُصَلِّهَا إِذَا ذَكَرَهَا "

"Whoever forgets a prayer, or he is asleep while it is due, let him pray it when he remembers it" (compiled by al-Dārimī), between this *ḥadīth* and his ﷺ forbiddance to pray at the dislike-ness times there is generality and specialty from one direction; because the first report is general concerning the times and special concerning some prayers like the *Qaḍā'* of the prayer, and the second one is general in the prayer and special in the dislike-ness times, so it should end up in outweighing the way it is mentioned previously.

The third point: outweighing by the verdict. And that occurs in some matters:

One of them: the report that preserves the original verdict outweighs the report that removes that verdict, like the saying of the Prophet ﷺ:

"مَنْ مَسَّ ذَكَرَهُ فَلْيَتَوَضَّأْ "

"Whoever touches his genital organ should take ablution (wuḍū')" (compiled by Aḥmad), and the *Marfū' ḥadīth* in which the Prophet ﷺ was asked:

"أَيَتَوَضَّأُ أَحَدُنَا إِذَا مَسَّ ذَكَرَهُ؟ قَالَ: إِنَّمَا هُوَ بِضْعَةٌ مِنْكَ أَوْ جَسَدِكَ "

"Should any of us who touches his genital organ take *wuḍū'*? He said: it is but a part of you or of your body" (compiled by Aḥmad), the report in which the *wuḍū'* is abolished outweighs; because the preserver of the verdict outweighs the remover of it, and that is for two reasons: one of them is: acting in accordance with the verdict

remover means abrogating the verdict, and that is not permissible without an indication that clarifies the abrogation, and there is no indication denotes the abrogation here. The second is: acting in accordance with the verdict preserver makes the validity of the prayer certain by not doing what is though to be abolishment, and this is in contrast with acting in accordance with verdict remover that makes the validity of the prayer uncertain for the existence of what is though to abolish (the *wuḍū'*), and what makes the validity of the prayer certain is preferred to what makes it uncertain. The Prophet ﷺ said:

"دَعْ مَا يُرِيبُكَ إِلَى مَا لا يُرِيبُكَ "

"Leave that which makes you in doubt and take what doesn't make you in doubt" (compiled by Aḥmad).

The second: the report that denotes forbiddance outweighs the report that denotes permissibility, as being on the safe side necessitates the adherence to the forbiddance; because if the action is forbidden there is harm in doing it, but if it is permissible there is no harm in abstaining from it, and for the saying of the Prophet ﷺ:

"دَعْ مَا يُرِيبُكَ إِلَى مَا لا يُرِيبُكَ "

"Leave that which makes you in doubt and take what doesn't make you in doubt".

The third: the report that denotes forbiddance is equal to the report that denotes obligation, so if there are two evidences, one of them necessitates the forbiddance of something and the other necessitates the obligation of it they become equal to each other, so the action cannot be according to any of them without making one of them outweigh the other; because the report of the forbiddance

necessitates punishment for doing the action, and the report of the obligation necessitates punishment for not doing the action, so they are equal, and they need something to make one of them outweigh the other, so if there is absolutely nothing that make one of them outweigh, then the forbiddance outweighs the obligation.

The fourth: the report that denotes obligation outweighs the report that denotes permissibility, i.e. if there are two evidences, one of them necessitates obligation and the other necessitates permissibility, the evidence which denotes the obligation will be preferred to the report which denotes the permissibility; because the evidence that denotes the obligation is equal to the evidence that denotes the forbiddance, and since the forbiddance outweighs the permissibility, the obligation outweighs the permissibility.

The fifth: the report that denotes forbiddance outweighs the report that denotes dislike-ness; because the dislike-ness is an indecisive abstention request, but the forbiddance is a decisive abstention request. And the decisiveness is preferred over the indecisiveness.

The sixth: the evidence that denotes the obligation outweighs the evidence that denotes the preferable; because the obligation is a decisive request to do, but the preferable is an indecisive request to do, and the decisive is preferred over the indecisive.

The seventh: the evidence that verifies something outweighs the evidence that denies it, so if there is a verification evidence and a denial evidence, the verifier outweighs the denier because it includes additional knowledge, and that is like the report of Bilāl that the Prophet ﷺ went into the Ka'bah and prayed, and the report

of 'Usaamah that he ﷺ went in it but didn't pray, indeed the report of Bilāl outweighs.

The eighth: the evidence that denies the punishment outweighs the evidence that verifies it, and this is proved by three matters: one of them is what al-Tirmidhī compiled that the Messenger of Allah ﷺ said:

"ادْرَءُوا الحُدُودَ عَنِ المُسْلِمِينَ مَا اسْتَطَعْتُمْ "

"Ward off the punishments from the Muslims to your best ability", also what came in the predicate (al-Musnad) of Abū Hanīfah:

"ادْرَءُوا الحُدُودَ بِالشُّبُهَاتِ "

"Ward off the punishments by the suspicions". The second matter is that the punishment is harm, and the Messenger ﷺ says:

"لا ضَرَرَ، وَلا ضِرَارَ "

"The harm and the harmful are not allowed" compiled by al-Hākim. The third matter is his ﷺ saying:

"فَإِنَّ الإِمَامَ أَنْ يُخْطِئَ فِي العَفْوِ خَيْرٌ مِنْ أَنْ يُخْطِئَ فِي العُقُوبَةِ "

"It is indeed better for the Imam to mistake in pardoning than in punishing" (compiled by al-Tirmidhī).

The fourth point of outweighing: the individual report outweighs the analogy (*Qiyās*) whose *'illah* is taken by either denotation, derivation or by analogy; because the report is a revelation that clearly denotes the verdict by expressing it in its literal expression, but the *'illah* which is taken by denotation or by derivation or by analogy; it is taken by comprehension, and from the indications which

indicate this is from the revelation, and the literal denotation of the text is preferred over the comprehension from its denotation. But if the *'illah* is explicit, it takes the rank of the text in which it came.

The end

By this the third part of the book *The Islamic Personality* is finished, and it is the part special in the discussions of the *Principles of Jurisprudence*, and by this the whole book is finished by the support of Allah Ta'ala.

Index

A

Abū Dāwud 31, 50, 65, 85, 87, 126, 129, 133, 141, 176, 188, 192, 299, 311, 343, 364, 408, 418, 425, 431, 436, 458, 486, 488, 491, 592, 600, 648, 672, 688, 755, 765, 796

Abū Hanīfah.....825

Abū Hurayrah....35, 129, 130, 188, 514, 594, 598, 603, 687

adillah sam'iyah..... 14

āḥād .33, 34, 64, 107, 113, 135, 139, 140, 145, 148, 149, 205, 207, 235

Āḥād aḥādīth..... 33

Āḥād ḥadīth..... 33

*aḥādīth*33, 34, 50, 73, 122, 137, 140, 143, 144, 146, 147, 178, 181, 182, 185, 187, 189, 190, 194, 195, 323, 361, 364, 369, 457, 476, 478, 504, 513, 515, 516, 517, 518, 519, 538, 544, 549, 608, 660, 666, 667, 669, 705, 802, 815, 816

aḥkām 20, 26, 106, 107

Aḥmad, Imām...35, 72, 79, 87, 126, 129, 131, 133, 141, 153, 157, 158, 159, 172, 176, 182, 183, 184, 188, 189, 192, 194, 291, 298, 299, 304, 305, 322, 324, 325, 343, 345, 357, 366, 367, 368, 369, 371, 381, 385, 388, 389, 397, 400, 401, 407, 408, 409, 413, 417, 418, 420,灞424, 427, 436, 442, 444, 459, 469, 471, 477, 481, 486, 487, 488, 492, 493, 514, 515, 525, 526, 528, 529, 535, 543, 545, 548, 556, 570, 571, 590, 592, 593, 597, 603, 624, 628, 640, 648, 671, 672, 689, 708, 713, 719, 737, 788, 797, 805, 809, 820, 823

azimāh 26

B

Bukhārī, al-... 50, 53, 56, 70, 83, 84, 86, 125, 126, 128, 132, 137, 140, 141, 142, 143, 144, 146, 153, 158, 159, 168, 171, 182, 184, 185, 188, 220, 242, 310, 311, 323, 324, 345, 347, 349, 357, 358, 371, 409, 414, 418, 436, 441, 444, 457, 459, 468, 469, 488, 491, 493, 494, 502, 515, 518, 519, 523, 526, 544, 548, 556, 566, 571, 587, 589, 593, 594, 597, 598, 609, 648, 655, 670, 683, 684, 689, 692, 693, 696, 699, 700, 721, 752, 757, 760, 780, 794, 804, 816

bulūgh..... 55, 76

buṭlān 89, 90, 91

D

dalīl..11, 50, 80, 83, 95, 96, 99, 103, 104, 105, 107, 129, 147, 163, 165, 169, 170, 174, 194, 204, 443, 457, 458, 500, 516, 572, 576, 577, 581, 587, 601, 609, 634, 659, 704, 817, 820

Dārimī, al-. 526, 528, 683, 699, 700, 822

Dīn. 32, 59, 106, 192, 236, 237, 238, 378

F

faqīh 12

farḍ 60, 63, 64, 65, 66, 99, 163, 164, 168, 259, 343, 359

Farḍ al-Kifāyah 690

fasād 75, 91

ḥ

ḥadīth .31, 32, 35, 53, 55, 64, 65, 72, 84, 86, 100, 103, 104, 114, 122, 127, 135, 137, 138, 139, 140, 142, 144, 145, 146, 147, 148, 149, 153, 177, 179, 182, 183, 186, 187, 189, 190, 193, 194, 290, 296, 311, 312, 323, 332, 356, 358, 361, 364, 369, 371, 387, 400, 409, 412, 414, 424, 431, 444, 457, 476, 477, 486, 488, 492, 499, 500, 502, 504, 518, 521, 524, 526, 528, 530, 538, 548, 556, 570, 582, 588, 605, 607, 624, 640, 644, 659, 668, 690, 693, 699, 701, 707, 717, 718, 719, 721, 760, 766, 769, 780, 788, 794, 800, 805, 816, 822, 823

Ḥakim 15, 19, 20, 21, 25, 26

H

Hākim, al- ...86, 458, 463, 469, 481, 486, 525, 645, 737, 767, 825

ḥ

ḥalāl..... 20, 26, 33, 72, 87, 90

Ḥaqīqah 223, 233, 234, 253

ḥarām 20, 26, 71, 87, 90, 94, 100, 122, 131, 132, 142, 162, 166, 259, 345, 362, 430, 452, 459, 468, 472, 479, 579, 707

ḥukm . 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 31, 78, 79, 80, 81, 83, 87, 99, 564

I

Ibn Mājah 33, 57, 96, 122, 141, 159, 295, 298, 308, 343, 435, 454, 488, 499, 514, 527, 548, 555, 816, 821

Ijmā' of the *Ṣaḥābah* . 104, 439, 483, 485, 500, 543, 587, 609, 708, 715, 726, 735

ijtihād .. 13, 104, 335, 488, 527, 534, 581, 639, 688, 703, 706, 709, 714, 815

ilal

pl. of 'illah 96, 105, 555, 584, 628, 629, 634, 656, 672, 675

illah ... 56, 80, 81, 96, 104, 105, 108, 149, 157, 194, 231, 298, 310, 374, 438, 443, 484, 541, 542, 547, 549, 550, 551, 553, 555,

560, 562, 563, 565, 566, 567, 569, 570, 572, 573, 575, 576, 577, 579, 580, 583, 584, 585, 586, 587, 588, 591, 594, 596, 598, 599, 601, 604, 607, 609, 612, 617, 618, 628, 634, 641, 644, 646, 648, 649, 650, 653, 655, 656, 657, 661, 663, 664, 665, 666, 668, 669, 674, 676, 677, 678, 714, 717, 727, 728, 729, 745, 753, 755, 759, 768, 770, 785, 789, 790, 800, 801, 805, 825

imān.....17, 23

Isnawī, al-.....107, 238, 239, 241

*Istiḥsān*709, 710, 712, 717, 718, 719, 720

Iṣṭilāḥ, al-..... 773, 774, 775

Istiṣḥāb, al.....759, 760, 762, 763

J

jihād 49, 77, 95, 96, 343, 669, 731

K

khalīfah 48, 49, 53, 69, 801

kufr 17, 23, 47, 77, 165, 171, 656, 686

M

madhhab al-Ṣaḥābī.....703

makrūh.. 20, 26, 63, 72, 73, 94, 162, 182, 189, 491

māni'.....60, 75, 87, 88, 89

Maṣāliḥ al-Mursalah, al-.....721, 722, 723, 725, 726, 727, 732, 735, 736, 739, 740, 742, 743, 744, 745

mawqūf ḥadīth 818

mubāh..... 20, 26, 64

mujtahid 130, 147, 332, 523, 527, 561, 581, 583, 584, 708, 709, 713, 717, 763, 820

mukallaf...14, 32, 36, 65, 67, 68, 79, 88, 574

mutawātir....64, 103, 109, 110, 112, 113, 114, 135, 137, 138, 140, 148, 149, 205, 235, 434, 441, 449, 472, 477, 480, 481, 482, 489, 515

Muwaṭṭa', al- 816

N

naskh.....174, 179, 467

Q

qaḍa'.....90, 91, 169, 699

qawā'id 11, 12

Qiyās.. 104, 105, 108, 149, 150, 483, 484, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, 553, 554, 556, 559, 561, 562, 563, 564, 565, 566, 567, 572, 575, 583, 587, 601, 604, 607, 609, 628, 629, 649, 656, 674, 709, 710, 713, 717, 718, 721, 739, 755, 781, 786, 789, 790, 805, 825

Qur'ān.....32, 34, 72, 103, 104, 107, 109, 110, 111, 112, 114, 117, 118, 119, 120, 122, 124, 125, 126, 127, 128, 133, 134, 144, 149, 154, 179, 203, 220, 222, 227, 235, 241, 242, 244, 245, 246, 283, 284, 287, 288, 317, 326, 332, 340, 417, 428, 432, 434, 437, 438, 439, 440, 442,

448, 463, 465, 466, 470, 473, 474, 476, 477, 479, 482, 500, 504, 506, 507, 508, 530, 535, 539, 563, 611, 613, 615, 616, 617, 618, 619, 644, 646, 647, 650, 677, 685, 686, 687, 690, 691, 696, 701, 725, 736, 744, 786, 788, 790, 800, 815
Qurṭubī, al-.....763

R

rukhṣah..... 20, 75, 92, 95, 97, 98, 99

S

sabab ..60, 70, 75, 79, 81, 82, 87, 88, 169, 209, 224, 553, 567, 572, 573, 575

Ṣ

Ṣaḥābah ... 49, 59, 63, 104, 108, 111, 114, 135, 137, 139, 140, 142, 144, 154, 157, 159, 163, 165, 233, 314, 315, 324, 378, 387, 388, 399, 400, 407, 417, 420, 428, 435, 437, 439, 442, 449, 464, 467, 470, 478, 483, 484, 500, 502, 504, 506, 507, 508, 510, 511, 514, 519, 525, 528, 530, 531, 532, 533, 534, 535, 536, 538, 543, 545, 548, 563, 565, 572, 583, 585, 586, 587, 609, 650, 679, 684, 690, 703, 704, 705, 706, 715, 718, 725, 726, 735, 786, 790, 813, 815, 816
ṣalāh ...65, 67, 78, 79, 80, 82, 88, 89, 91, 94, 96, 217, 233, 236, 238, 240, 243, 258, 265, 266, 522, 683, 699, 754, 758, 803

S

shar' man qablana 681
sharṭ...68, 70, 75, 81, 83, 84, 86, 87, 209, 306, 312
Shāṭibī, al-.....34
Shawkānī, al- 767
Sunnah 59, 63, 85, 104, 108, 119, 120, 121, 122, 124, 125, 126, 127, 130, 131, 132, 133, 134, 135, 137, 140, 144, 154, 157, 170, 176, 197, 233, 283, 326, 329, 332, 333, 334, 335, 336, 337, 339, 340, 364, 375, 423, 428, 434, 435, 437, 438, 439, 440, 441, 442, 448, 464, 470, 471, 474, 476, 477, 479, 480, 482, 483, 484, 489, 505, 513, 524, 528, 535, 539, 542, 543, 545, 546, 549, 563, 565, 572, 581, 583, 585, 586, 587, 609, 613, 618, 632, 636, 650, 666, 677, 679, 681, 683, 684, 687, 688, 693, 699, 703, 706, 710, 712, 718, 721, 723, 726, 727, 736, 742, 767, 786, 790, 800, 813, 814, 816

T

ta'līl 96, 547, 549, 554, 579, 588, 593, 636, 805

Ṭ

Ṭabarī, al- 34

T

taklīf..... 36, 40, 56, 809
taqdīr, al-.....775
tawātur 111, 112, 113, 135, 136, 137, 139, 140, 206, 207, 235, 518, 535
Tirmidhī, al- ...33, 72, 87, 130, 142, 146, 159, 189, 190, 192, 325, 367, 381, 408, 487, 488, 489, 491, 499, 505, 514, 519, 520, 521, 524, 526, 528, 529, 538, 571, 598, 603, 605, 704, 785, 816, 825

U

urf, al-.773, 774, 775, 776, 777, 778, 780
uṣūl.....11, 12, 13, 14, 59, 103, 106, 137, 140, 147, 148, 197, 541
uṣūl al-fiqh ...11, 12, 13, 14, 59, 107, 197

W

wājib..20, 26, 60, 63, 64, 65, 67, 68, 70, 72, 73, 81, 94, 100, 154, 155, 156, 157, 159, 161, 162, 163, 166, 167, 168, 172, 184, 186, 187, 193, 259, 343, 359, 574
wuḍū'.70, 75, 81, 93, 177, 178, 182, 409, 553, 578, 760, 823

Z

zakāh 46, 47, 60, 76, 79, 81, 88, 236, 237, 240, 263, 310, 315, 343, 371, 648, 797

Ẓ

ẓanni.....64