

Islamic Legal Maxims Part 1

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Course Outline

Course Topics:

1. Definition of terms
2. Usoolul Fiqh vs Qawa'id Fiqhiyyah
3. The five major maxims
4. Full understanding before judgement
5. Maxim one: Affairs are judged by their objectives
6. Maxim two: Certainty is not replaced by doubt
7. Corollaries of this maxim
8. More corollaries of the maxim
9. Maxim three: Al Mashaqqah tajlibut tayseer
10. Relaxation of rules

Course Objectives:

1. To know the meaning of three of the major legal maxims and their applications
2. To get to know a number of juristic terms
3. To have such knowledge that make one able to explain the tolerance of Islam

QUESTION & ANSWER BUCKET

TRANSCRIPTS

ASSESSMENT

Multiple Choice Questions

Match the Columns

True or False

COURSE DURATION

Video	–	2:40 min
Study Guide	–	35 min
Assessment	–	15 min
Total Duration	–	3 hours 30 mins

Lesson 1: Islamic Legal Maxims Part 1

1. Definitions of terms

Usoolul Fiqh

It is composed of two words:

- i. Usool (plural of Asl) meaning origin or root. The Asl of a tree is its trunk, as opposed to what sprouts off that such as the branches, which are called Furoo' (pl. of Far')
- ii. Fiqh linguistically means understanding. And in technical terminology, it means knowledge of the rules of the Sharia that are related to people's action. And this knowledge is derived from the detailed evidence.

Al Qawa'id Al Fiqhiyyah, is composed of two words:

- i. Qawa'id, plural of Qa'adah, which refers to the 'base' that other things are built upon.
- ii. Fiqhiyyah (related to Fiqh). Fiqh linguistically means understanding. And in technical terminology, it means knowledge of the rules of the Sharia that are related to people's action. And this knowledge is derived from the detailed evidence.

So Al Qawa'id Al Fiqhiyyah are the rules related to Fiqh, translated into English as 'Islamic legal Maxims'. A maxim is a statement that sums up a lot of meaning with very few words.

So, each one of Al Qawa'id Al Fiqhiyyah is an Islamic legal Maxim, a statement that sums up a comprehensive principle of Islamic law in a few words. Under each maxim there can come many corollaries or subsidiaries.

And what these principles offer the jurist was:

- i. ease of memorisation
- ii. consistency of rulings, because they saw the same principle is manifested in various situations. And the capability of detecting the similarities between issues that distinguishes the real jurist. This renders his Fatwas consistent.
- iii. And another thing that we get from Qawa'id Fiqhiyyah is the subtlety. It is the genius endeavour of those scholars required to have encyclopaedic reading of Fiqh, analysis and deduction of such concise and comprehensive rules from such massive Fiqh literature.

2. Usoolul Fiqh vs Qawa'id Fiqhiyyah

The subject matter of Usoolul Fiqh is the evidence; and Usoolul Fiqh answers the questions: what are the rules of evidence? What is proper evidence? What is a proper legal argument or properly constructed legal argument? What is an improper legal argument? What forms of deduction are valid? Which forms of deduction are invalid? When there is an apparent conflict between items of evidence, how do you join them together?

The rules of Usoolul Fiqh are strictly speaking, to be used by a Mujtahid. A Mujtahid is a person who has achieved the requisite level of knowledge that he can or she can derive the ruling directly from the evidence.

The subject matter of Qawa'id Fiqhiyyah is the same subject as Fiqh, which is the actions of people who are already Mukallaf (reached an age and condition that make them legally responsible for their actions).

Qawa'id Fiqhiyyah are the rules that an ordinary jurist can make use of.

So Usoolul Fiqh is actually a deductive process whereas Qawa'id Fiqhiyyah is an inductive process.

Al Ashbaah and Naza'ir

Linguistically these two terms mean almost the same thing, "things which are similar to each other".

But in the technical terms of Fiqh, they actually mean something very different:

- i. Ashbah, things which are similar in many ways. And because of their multiple similarities, they take the same ruling and the same principle applies to them.
- ii. Naza'ir are things that seems similar to other cases. But the similarity is only in a few points. And in the key issue, that determines the ruling, there's actually a difference.

3. The five major maxims

These are agreed-upon maxims, and each one has its own sub-categories. They are:

- i. Al Umooru bi maqaasidiha (Matters are judged according to their intentions),
- ii. Al Yaqeenu la yuzaalu bish shakk, (Certainty is not displaced by doubt)
- iii. Al Mashaqqatu tajlibut tayseer, (hardship begets facility)
- iv. Ad Dararu yuzal (harm is to be eliminated); and
- v. Al Urfu muhakkam (Custom is an arbiter)

Lesson 2: Islamic Legal Maxims Part 2

4. Full Understanding before Judgement

One of the most important maxims in Islamic jurisprudence is Al Hukmu alash shay'i far'un an tasawwurihi (judgment on anything is to be based upon understanding it.)

Al Hukm linguistically means judgment. Technically, it means nisbatu amrin ila amrin nafyan aw ithbata (to relate one thing to another, either to negate it or to affirm it). So actually, any kind of a declarative sentence is a Hukm. If you say, "I feel hot", you're attributing the feeling of heat to yourself. And if you say that, in fact, the sun is not 93 million miles away from the earth, then you're negating the proposition.

Ash Shay' in Arabic means thing, linguistically. And a more technical definition is anything existent outside the mind. And the reason for going into this is that things exist outside our minds, but we develop a mental picture of them inside our minds.

Far', is the opposite of Asl. It means branch whereas Asl means base, origin or the trunk in the context of a tree. Hence, we have Furoo' as the plural of Far' and Usool as the plural of Asl. The source principle is the Asl and whatever is derived from it is the Far'.

Tasawwur comes from the word Soorah (picture, image, mental picture). So, Sawwara means to form an image or to create a statue or a picture of something Tasawwur means to do the same thing but inside the mind.

So, the maxim as a whole (Al Hukmu alash shay far'un an tasawwurih) means to pass judgment on anything, you'll have to first develop an accurate mental model of what it is that you're passing judgment on. So, before judging anything (person, object, action, idea, philosophy, concept, etc.,) comprehensive knowledge about it should be obtained.

The application of the maxim in Fiqh

The attribution of one thing to another in a Fiqh context is the assignment of a Sharia value to people's acts. That is what a Hukm is in Fiqh.

The application of this maxim makes one able to decide the positions of action, objects, dealings in Sharia. There's a five-part classification scheme, which is:

- i. **Wajib**, that which is obligatory; if you do it, you have a promise of reward, if you don't do it, you have a threat of punishment.

- ii. And the opposite of that is **Haram**. If you do it, you have a threat of punishment. And if you don't do it consciously because it's Haram, then you get a reward.
- iii. And then you have the Mandoob, which is that which if you do it, you have a promise of reward. And if you don't do it, there's no threat of punishment.
- iv. And the opposite of that is Makrooh. If you don't do it, because it's Makrooh, then you are promised a reward for your abstention. And if you choose to do it, then there's no penalty.
- v. Mubah is neutral. It's permissible, and there's no reward or punishment per se attached to the act.

Lesson 3: Islamic Legal Maxims Part 3

5. Maxim one: Affairs are Judged by Their Objectives

The first of the five major legal Maxims, which is "Alumooru bi maqasidiha (affairs are [judged] by their objectives). The word "judged" is added here in the translation, because it's understood.

And this maxim is derived from the famous statement of the prophet (pbuh): Deeds are judged based on the intention, and no deed can be judged without taking the intention into consideration.

Furthermore, the prophet (pbuh) was asked about a man who fights for the sake of partisan fervour (meaning, he fights because it's his group that's involved in the fight), a person who fights because he is brave or a person who fights to show people that he's brave, or various reasons, people ask the prophet (pbuh) who among those is fighting in the path of Allah? And he said, the one who fights in order that the word of Allah be uppermost, he is in the path of Allah.

The reward and punishment of actions

The prophet (pbuh) said, "Allah has excused my Ummah regarding their thoughts (Hadithun Nafs) as long as they don't verbally say them, or act upon them."

And then in another Hadith, he said Whoever intends to do a good act and actually does it, he will get tenfold reward or 700-fold reward or more than that, as Allah wills. And if the person intends to do a good deed, but then he does not do it, he will get a single reward, for having that thought of doing it.

On the other hand, if a person has made up his mind to do an evil deed, but he doesn't do it out of fear of Allah, then Allah will write a single reward for not doing it. And if he does it, then he gets a single black mark in his account.

Intention determines the acceptance of good deeds

There are two conditions for acts to be accepted:

- i. The intention should be purely for Allah's sake
- ii. The act should be in conformity with the Sharia.

So, if someone digs a well for people to get water for themselves and their animals but he digs it on the way causing people and children to fall into it, this act is not acceptable in Sharia, although the intention of the person is purely to please Allah, since it is not in conformity with Sharia.

Intention distinguishes between acts of worship

If the Imam is performing Asr Salaah. And another man made the intention that he is performing the Maghrib Salaah, confusing the times because of accidental darkness. In this case, he has to repeat his Asr Salaah, and perform Maghrib in its time. This is because each act of worship should have a separate intention.

Similarly, one cannot start making the Sunnah and end up doing the Fard, for example.

The intention is a key factor in determining issues in the court

If a man made an ambivalent statement that could be construed as divorce, and it comes before a judge, he would ask him now, what did you intend?

Also, there are cases where a person may commit an offence, and you can't tell by clues whether there was intentional or unintentional. So, they should be questioned about their intention.

Lesson 4: Islamic Legal Maxims Part 4

6. Maxim two: certainty is not displaced by doubt

The maxim is "Al yaqeen laa yuzaalu bish shukk (certainty is not replaced by doubt). Al Yaqeen means certainty and Shukk is the 50-50 degree of certainty. If the balance tilts a little bit to one side, that's called Zann. And if the balance increases, because there is very strong evidence for one of the possibilities, while not completely ruling out the other one, that is called Ghalabatuz Zann or Az Zannur Raajih. And then the opposite of that is Wahm. Wahm is a weak possibility.

You should adopt what you are sure of. If you have the default position with you, then you don't have to provide extra evidence to defend the default position.

For instance, Allah said that water is pure. So, that is the starting rule with water. Now, you can assume that water that you come upon is pure, unless you have evidence to the contrary.

Allah said, "Verily, Zann is of no avail against Haqq". So, Haqq is what is firmly established. And Zann is something which you have to believe in for some reason, but it's not strong enough as a proof.

Proof supporting the maxim from the Hadeeth

- i. Abu Hurairah, and Abu Sa'eed Al Khudri and others narrated from the Prophet (pbuh) that when the person is not sure how many Rakaats he prayed (for example, two or three), then he should adopt the less (and the sure) number (two Rak'aats).
- ii. Abu Hurayrah mentioned that a man asked the Prophet (pbuh) that while in Salaah, he sometimes felt that something moving around in my guts, making him think that he might have released gas. The Prophet (pbuh) said, he should not pay it any mind, unless he hears a sound or smells a smell.

The certainty here is that he performed Wudu'; and the doubt is that he is not sure whether he released any gas. This certainty should not be overridden by this doubt, according to the maxim.

If a person goes missing, with no way to communicate with him or know about him, shall we assume he is dead, and divide his property to his heirs?

When an entrepreneur fails in a business, his partner should not demand to be compensated, unless there is clear evidence that the entrepreneur was neglectful, and that that caused the loss. Otherwise, the default ruling is in favour of the entrepreneur, the Mudarib because this is a trust-based contract

7. Corollaries to the maxim

- i. "Al aslu fil ashya' al ibaahah. This means that the basic ruling is that everything is lawful unless there is a scriptural text proving the contrary. Generally speaking, anyone challenges the lawfulness of eating a particular food, conducting a particular transaction, or doing anything, unless there is a proof from the Qur'an or the Sunnah that it is Haraam, it is lawful.
- ii. Allah said, wa ahallal laahul bai'a wa harramar riba. So, this is a sweeping statement. Allah has made trade lawful, and He has prohibited Riba. So, exchange contracts, the basic rule for them is that they're lawful, if somebody wants to say that a given kind of a contract is unlawful, they have to show a proof for that.

Lesson 5: Islamic Legal Maxims Part 5

8. More Corollaries of the maxim

iii. Al aslu baraa'atuzammah

The word that keeps coming up in the corollaries of this maxim is the word Asl. So, it has many meanings in Fiqh and Usoolul Fiqh. The one that's intended here is the basic rule, the starting assumption, or the default rule.

So, the basic starting rule is Baraa'atuzimmah. Baraa'ah means 'to be free from', or 'to be exonerated from'. So, the word Baree' means being innocent. The word Zimmah means responsibility. And, as a technical term, it is liability. So, the overall meaning of this maxim is that the starting rule is that people are not liable for anything.

Based on this, when a person is born into this life, they don't owe debts.

So, people are born free of liability. And when a legal case comes up, this principle takes effect across a wide range of issues. One of the famous ones which is also the principle that we share with Western law, is that you are innocent until proven guilty. And actually, from what I've read, Napoleonic law actually didn't accept that principle. According to it, if a person was brought up on trial, on some charge, the burden of proof was on the defendant to prove that he was innocent.

Once there was a mother who slept while nursing her child and when she woke up, she found the baby dead. The case was brought before the judge who invoked this principle, since no one knows what was the cause of the baby's death.

vi. Another corollary of the maxim

One of these corollaries is al aslu baqaa'u ma kaana ala maa kaan, the basic rule is that things stay as they are.

If a wife claims that her husband has divorced her but her husband does not admit that, the marriage should remain as it was, unless the wife proves otherwise. Retaining the thing as it has been from the beginning is called Istishaab.

If one thinks that he has made his clothes impure, he should consider them as pure unless he is sure it was made impure.

vii. There is another corollary of this, al aslu fis sifaatil aaridah al adam (the basic rule with regard to transitory attributes is that they don't exist).

So, an example of that is a person who engaged in a business transaction, ended up losing money. And then, his heirs, or his children, his sons, say at the time that he was doing that business deal, he was

actually insane. So, the guy who took his money should be given the money back, unless, it can be proved that he was insane at that time.

Then that claim would be rejected based on this Qaa'idah. And there's also another Qaa'idah that says when you have an opinion that is based on some evidence, and then it becomes clear that that evidence was false, then that opinion must be just dropped. No legal consideration is given to it.

An example of that from the Sunnah is that a man came to the Prophet, Sallallahu Alaihi Wasallam, as he'd gotten married to a woman, and somebody came to him and said, I nursed you both when you were children. So, you really shouldn't be married.

And so, he came to the Prophet (pbuh) and told him what happened, asking for his opinion. The Prophet said that such marriage should be dissolved.

Lesson 6: Islamic Legal Maxims Part 6

9. Maxim three: Al Mashaqqah tajlibut tayseer

This can be translated as "Hardship begets facility".

Mashaqqah is a general term for hardship. And in technical Fiqh terms, it is divided into two categories, one is called Daroorah, and one is called Haajah.

So, the maxim hardship begets facility, and this facility relates to the relaxation of rules that are normally strict; and strict rules are of two types:

- i. There are commands to do things which are Waajibaat, and
- ii. There are prohibitions: things which are not allowed to be done (Mahzoor).

10. Relaxation of rules

So, facility comes in either reducing an obligation, or in allowing something which is normally prohibited. And these are due to unusual circumstances. Examples of this is the shortening of Salaah in travel, praying while sitting when unable to pray standing, leaving obligations or committing sin due to ignorance. All these trigger relaxations of rules.

However, the effort that one has to exert to do acts of worship such as getting up for Fajr, making Wudu' in cold weather, walking in the sun, and the like, do not lead to relaxation of rules.

The hardships that invoke relaxation are those which are unbearable, such as pains, illnesses, and the like.

An important parameter for using this rule is that relaxation cannot be at the expense of other people's rights. So, for instance, if a person is hungry, and he takes somebody else's property, and eats their food to survive, the rule 'Al idtiraar la yubtilu haqqal ghair' (a severe need does not eliminate other people's rights) is applied.

Relaxation due to shift of timing:

You are travelling in Ramadan, and you break your fast. You're allowed to do that. But then you have to make up that day later.

Relaxation due to a change of the format of an action: for instance, a person is unable to stand due to illness. So, in that case, they should pray while sitting.

Relaxation due to urgent need: When someone is dying of thirst or starving, and there is no lawful drink or food and they find something which usually prohibited, they can have of it an amount enough to help them survive.

Relaxation due to general need: for instance, the Salam transaction where a person pays today for a good which will be delivered after six months or whatever, at a fixed date in a specific amount.

This kind of a contract conflicts with the statement of the Prophet (pbuh): "Don't sell that which you do not possess". So, the person who's doing the selling there doesn't necessarily and probably, in most cases wouldn't be possessing that good that he has promised to sell at the time that the contract is enacted.

But because there was a general need for it, the Prophet (pbuh) permitted it. He found people doing it, and he permitted it. But he gave those rules to regulate it so that it doesn't become a cause for people falling into disputes.

Question and Answer Bucket

1. Is the linguistic meaning enough to determine the legality of something?

Ans. Definitely not. The linguistic meaning can never be the standard to judge whether something is lawful or not.

When Qahwah (coffee) was first used as a drink, there was somebody who looked at it linguistically and passed his judgement accordingly. He said since Qahwah is used to refer to wine, then drinking Qahwah is not allowed.

Such judgement which is based on the linguistic meaning forgetting about the reality of the thing, can never take one to the right conclusion.

By the same token, what the Arabs call as Khinzeer Al Bahr (literally translated as pig of the sea) caused a dispute, since in Arabic it refers to some kind of an animal called 'pig' that lives in the ocean. This way of passing judgement without understanding the reality of things is totally invalid.

2. What were the Prophet's criteria of deciding the legal position of anything?

Ans. The approach followed by the Prophet was to look at the reality of things not their names. Here are two instances to illustrate this:

- i. Once some people from Yemen asked him about some drink that they used to make. His only question was "does it intoxicate?" they said, 'yes'. He then gave them the yardstick "every intoxicant is Haraam".

- ii. Similarly, people asked him about exchanging dried dates for fresh dates. And he asked them, "Does the fresh date decrease in volume and weight, when it dries out?" They said, yes. He said, in that case, you can't exchange dry dates for fresh.

So, this whole process of identifying the effective factors for the ruling is a key issue in Fiqh and Ijtihad and one of the names for this process called Takyeeef Fiqhi, which means is deciding what a thing is? What is the essence of it?

3. Can we find in the Qur'an what proves that the intention behind the action determines whether it is to be rewarded or punished?

Ans. Yes. Allah said in Surah At Tawbah:

And from the Quran in Suratut Tawbah "And of the Bedouins there are some who look upon what they spend in Allah's cause as a fine [meaning a penalty] and watch for calamities for you. [Meaning the Muslims in general]. On them be the calamity of evil.

The passage goes on "And of the Bedouins there are some who believe in Allah and the last day and look upon what they spend in Allah's cause as means of nearness to Allah and a cause for receiving the messenger's invocations. Indeed, these spendings in Allah's cause are a means of nearness for them, Allah will admit them to His mercy".