

الفقه

Al-Fiqh

- **الفقه**-Fiqh literally means to understand **الفهم**. An example of this is found in the Qur'aan in the Dua of Prophet Musaa (as) when he asked Allaah to remove the impediment from his speech so Firaun and his people could understand him.

{ واحلل عقدة من لساني يفقهوا قولي }.

“And loosen the knot from my tongue. That they may understand my speech.”

Chapter 20 verses 27-28.

الفقه

Al-Fiqh

- This usage is also found in the hadeeth of the Prophet (صلى الله عليه وسلم) who said, “Whoever Allaah intends good for. He gives him understanding of the Deen.” Related by Muslim.

”من يرد الله به خيرا يفقهه في الدين“.
رواه مسلم.

الفقه في الإصطلاح

Al-Fiqh According to the Scholars

- Fiqh according to the scholars has the following meaning: “The collection of rulings or laws, (taken from) Shariah, dealing with actions, by which every Muslim is required to live. It is important to know that these rulings deal with the individual as well as the society.”

Fiqh-ul-Ebadaat Sh. Faisal Mawlawi

شمولية الفقه

The Comprehensiveness of Fiqh

1. **Worship**- this aspect of Fiqh is dealing with salah, Zakaah, Siyaam, and hajj.
2. **Family issues**- this aspect of fiqh is dealing with the family from the beginning to the end. Such as the conditions for a sound marriage divorce and so forth.
3. **Transactions**- this aspect of fiqh is related to how we cooperate with each other in society. An example would be buying and selling goods.
4. **Politics**- this aspect of fiqh deals with the organization of government and governmental organizations in regards to the Muslim nation.
5. **Peace and war**- this aspect of fiqh deals with foreign relations with other countries depending on the current condition that exist between the Islamic state and those countries.

الشريعة

Al-Shar'eeah

- الشريعة Comes from the word شرع which literally means to prescribe or ordain, law, and a straight road or path. The Qur'aan provides usages of all three meanings.
 - The First meaning, ordained or prescribed.
{شرع لكم من الدين ما وصى به نوحا و الذى او حيناً اليك}.
- “Allaah has ordained for you the same religion which He ordained for Nuuh and what we have revealed to you.”

Surah 42 verse 13.



الشريعة Al-Shar'eeah

- The Second Meaning Law.

{لكل جعلنا منكم شريعة و منهاجا}.

“To each among you We have prescribed a law and a clear way.”

Surah 5 verse 48.

الشريعة

Al-Shar'eeah

- The Third meaning, a straight path.

{ثم جعلناك على شريعة من الأمر فاتبعها و لا تتبع أهواء الذين لا يعلمون}.

“Then We put you on a straight path in your affairs, so follow it and do not follow the desires of those who have no knowledge.”

Surah 45 Verse 18.

الشريعة في الإصطلاح

Al-Shar'eeah in Islamic Terminology

“It refers to the sum total of Islamic Laws which were revealed to the Prophet Muhammad {صلى الله عليه و} which are recorded in the Qur’aan as well as deducible from the Prophet’s divinely guided lifestyle (called the Sunnah).”

محمد شلبي المدخل في التعريف بالفقه الإسلامي.

الشريعة

Al-Shar'eeah in the Arabic Language

- **شريعة** “A watering place; a resort of drinkers (both men and beasts); a place to which men come to drink there-from and draw water.”

Lanes Lexicon volume 4 pg. 1535.

Group Exercise:

With a friend, someone that you don't know.

Write, in the shade of this meaning, what role Shar'eeah should play in the life of a Muslim.

الفرق بين الفقه و الشريعة

The Differences Between Fiqh and Shar'eeah

Fiqh.

1. A body of laws deduced from the Shar'eeah to cover specific situations not covered in the Shar'eeah.
2. Fiqh changes according to the circumstances surrounding it.
3. Fiqh laws tend to be specific: they demonstrate how the basic principles of Shar'eeah should be applied in given circumstances.

Shar'eeah.

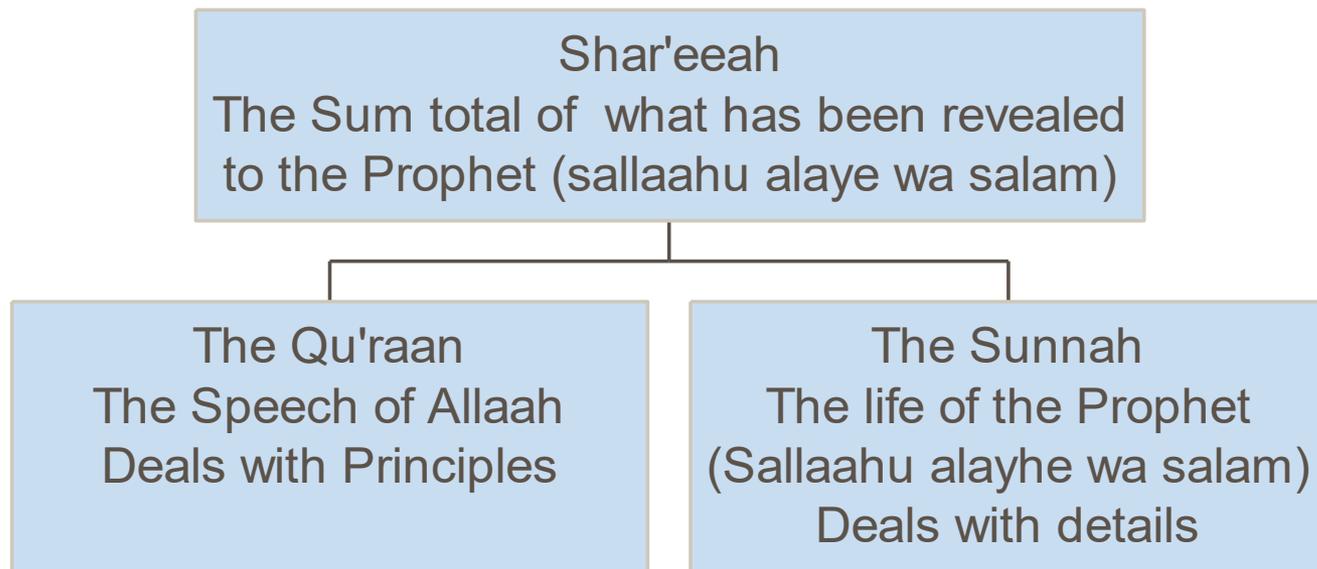
1. Shar'eeah is the body of laws found both in the Qur'aan and Sunnah.
2. Shar'eeah is fixed and unchangeable.
3. The laws of Shar'eeah are, for the most part, general: they lay down basic principles.

The evolution of Fiqh (Islamic law & and the Madh-habs) Dr. Bilal Phillips pg. 1.

مصادر التشريع الإسلامي

The Sources of Islaamic Shar'eeah

The Sources of Shar'eeah





The First Source of Shar'eeah The Qur'aan

- **“The word Qur’aan comes from the Arabic root قرأ which literally means (to read or recite), Qur’aan literally means reading or recitation. It may be defined as ‘the book containing the speech of Allaah, revealed to Prophet Muhammad in Arabic and transmitted to us by continuous testimony, or tawatur. It is the proof of the prophecy of Muhammad, the most authoritative guide fro the Muslims, and the first source of Shar’eeah.”**

Principles of Islamic Jurisprudence pg. 15

Mohammad Hashim Kamali



The First Source of Shar'eeah

The Qur'aan

- Close to 350 legal Ayât (verses) in the Qur'aan.
- 140 verses deal with devotional issues such as: Salaah, Zakaat, Siyaam, hajj, jihad, repentance, the taking of oaths, and charities.
- 70 verses deal with marriage, divorce, the waiting period, revocation, mahar, maintenance, custody, fosterage, paternity, inheritance and bequest.
- Another 70 verses deal with commercial transactions.
- 30 verses deal with crimes and penalties.
- Another 30 deal with rights and obligations of citizens.
- Ten verses dealing with economic matters.

Method of Qur'aanic Legislation

- A number of Qur'aanic verse were direct answers to question that were asked.

{يسئلونك عن الخمر و الميسر قل فيهما إثم كبير و منافع للناس و إثمهما أكبر من نفعهما}.

“They ask you about wine and gambling. Say, ‘There is great evil in them as well as benefit to man. But the evil is greater than the benefit.’”

Surah Al-Baqarah verse 219.



Method of Qur'aanic Legislation

- Sometimes verse were revealed due to particular incidents which took place during the life of the prophet. An example can be found in the case of Hilaal ibn Umayyah.

“And for those who launch a charge against their spouses, and have (in support) no evidence but their own, - their solitary evidence (can be received) if - they bear witness four times (with an oath) by Allah that they are solemnly telling the truth. And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie. But it would avert the punishment from the wife, if she bears witness four times (with an oath) by Allah, that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth.”

Surah al-Nuur verses 6-9.



Qur'aanic Periods of Revelation

The Mekkan period (609-622 C.E)

1. Tawheed
2. Allaah's existence
3. The next life
4. The people of old
5. Salah (the only ruling sent in Mecca)
6. Challenges

The Madeenan period (622-632 C.E)

1. Laws
2. The people of the book
3. Hypocrites
4. Jihad



The Divisions of Qur'aanic Legislation

- Man's relationship with his creator.
- Man's relationship with others.



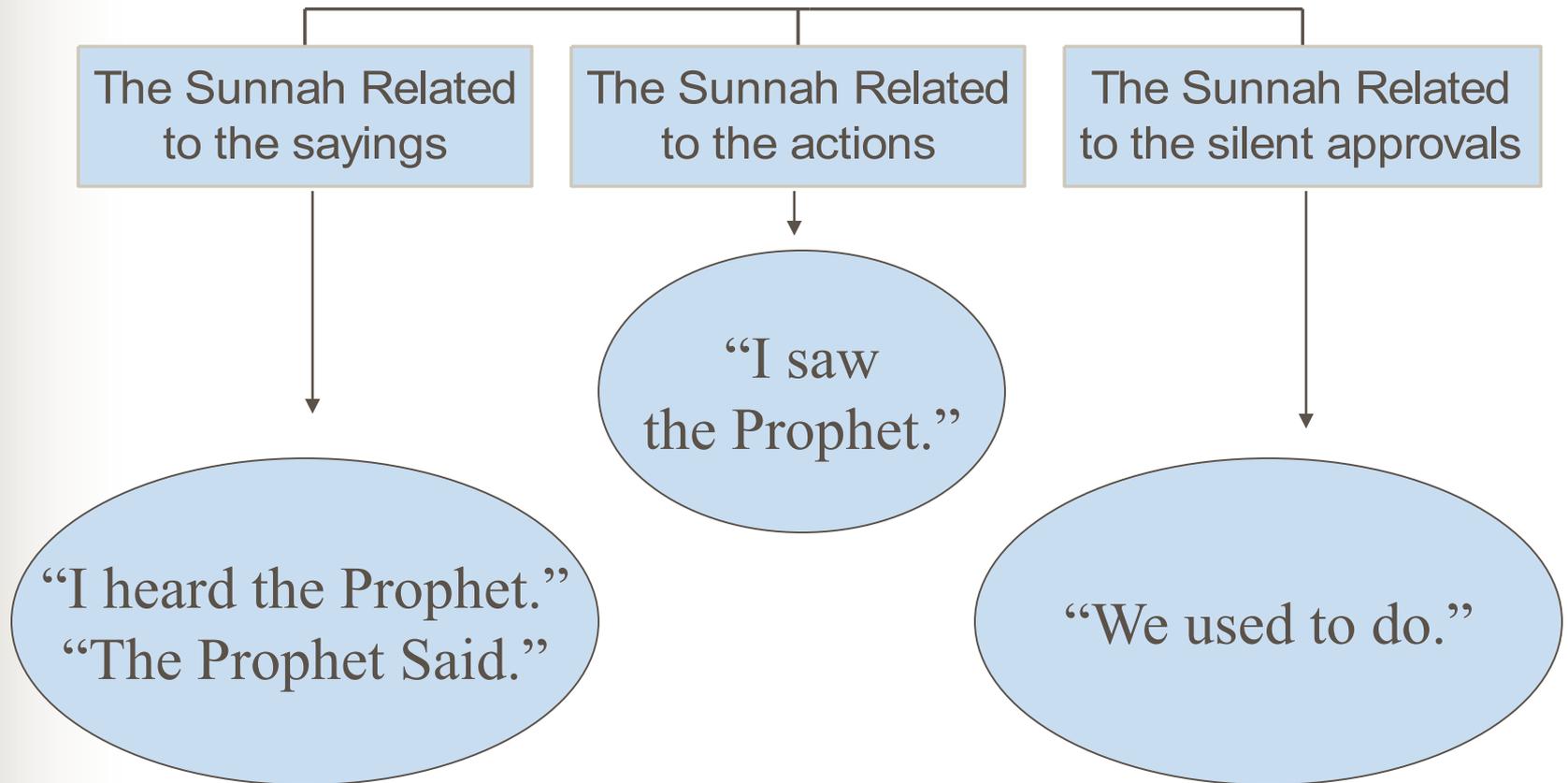
The Second Source of Islaamic Legislation the Sunnah

- According to Arabic lexicographers it means: “A way, course, rule, mode, or manner of acting or conduct of life.”

Lanes Lexicon volume 6 pg. 1438.

- In Islamic terminology the sunnah is defined as: “what has been (authentically) related to us on behalf of the prophet {صلى الله عليه و سلم} from his sayings, actions, and silent approvals. It is the second source of reference in Islamic law for the Faqi, with the condition that it is authentically reported on the prophet’s behalf.”

The Divisions of the Sunnah



Is the Sunnah Part of Revelation?

The Qur'aan on the Role of the Prophet.

1. Expounder of the Qur'aan.

وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ
يَتَفَكَّرُونَ.

“We have sent down unto thee the Remembrance; so you can explain clearly to men what is sent for them, and that they may give thought.”

Surah Al-Nahl Verse 44.

Is the Sunnah Part of Revelation?

2. Legislator.

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِي مَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي
أَنفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا.

“But no, by thy Lord, they can have no (real) Faith, until they make thee judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest conviction.”

Surah Nisaa Verse 65.



Is the Sunnah Part of Revelation?

- Allaah has equated obedience to the Messenger with obedience to Himself.

مَنْ يُطِيعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ.

“Whoever obeys the Messenger, in fact, obeys Allah.”

Surah Nisaa Verse 80.

Is the Sunnah Part of Revelation?

3. As a Model?

لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِمَن كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ
اللَّهَ كَثِيرًا

“You have indeed in the Messenger of Allah a beautiful pattern (of conduct) for any one whose hope is in Allah and the Final Day, and who engages much in the praise of Allah.”

Surah Al-Ahzaab Verse 21.

Is the Sunnah Part of Revelation?

4. Total Obedience to the Prophet {صلى الله عليه و سلم}.

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنفُسِهِمْ
حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا.

“But no, by thy Lord, they can have no (real) Faith, until they make thee judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest conviction.”

Surah Nisaa Verse 65.

Is the Sunnah Part of Revelation?

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمُ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ.

“So take what the Messenger assigns to you, and deny yourselves that which he withholds from you. And fear Allah; for Allah is strict in Punishment.”

Surah Al-Hashr Verse 7.

Is the Sunnah Part of Revelation

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَرَسُولَهُ وَلَا تَوَلَّوْا عَنْهُ وَأَنْتُمْ تَسْمَعُونَ

“O ye who believe! obey Allah and His Messenger, and turn not away from him when ye hear (him speak).”

Surah Al-Anfaal Verse 20.

There is an interesting point pertaining to this verse. Allaah says, “And turn not away from him.” Although the verse began by saying, “Obey Allah and His Messenger.” It ends by saying, “And turn not away from him.” Think hard and see if you can understand why.



Is the Sunnah Part of Revelation?

- [1] O prophet! Why do you make forbidden that which Allah has made lawful to you? You seek to please your wives but Allah is oft-forgiving, most merciful.
- [2] Allah has already ordained for you, (O men), the dissolution of your oaths (in some cases): and Allah is your protector, and he is full of knowledge and wisdom.
- [3] when the prophet disclosed a matter of confidence to one of his consorts, and she then divulged it (to another), and Allah made it known to him, he confirmed part thereof and repudiated a part. Then when he told her about it, she said, "who told you this?" He said, "He told me who knows and is well-acquainted (with all things)."

Surah Tahreem verse 1-3.

Is the Sunnah Part of Revelation?

'A'ishah, may Allah be pleased with her, narrated:

Allah's messenger (may peace be upon him) used to spend time with Zainab bint Jahsh and drank honey at her house. She ('A'ishah) further said: I and Hafsaah agreed that one whom Allah's messenger (may peace be upon him) would visit first should say: I notice that you have an odor of the Maghafir (gum of mimosa). He (the holy prophet) visited one of them and she said this to him, whereupon he said: I have taken honey in the house of Zainab bint Jahsh and I will never do it again. It was at this (that the following verse was revealed): why do you forbid (for yourself) that which Allâh has made lawful to you... (Up to) if you two ('A'ishah and Hafsaah) turn in repentance to Allâh, up to: and (remember) when the prophet (saw) disclosed a matter in confidence to one of his wives (Hafsaah) this refers to his saying: but i have taken honey.

Sahih Muslim 2694.



The Word Hadeeth and its Meanings

- The Arabic word Hadeeth literally means communication, story, conversation: religious or secular, historical or recent.

1. **Religious communication, message or the Qur'aan:**

{فذرني و من يكذب بهذا الحديث}.

“Then leave Me alone with such as reject this hadeeth (The Qur'aan).”

Surah Al-Qalam Verse 44.

The Word Hadeeth and its Meanings

2. Story of a general nature:

{وَإِذْ أَسَرَّ النَّبِيُّ إِلَىٰ بَعْضِ أَزْوَاجِهِ حَدِيثًا}.

“When the prophet disclosed a matter of confidence(Hadeethaan/Secret) to one of his consorts.”

Surah Tahreem Verse 3.



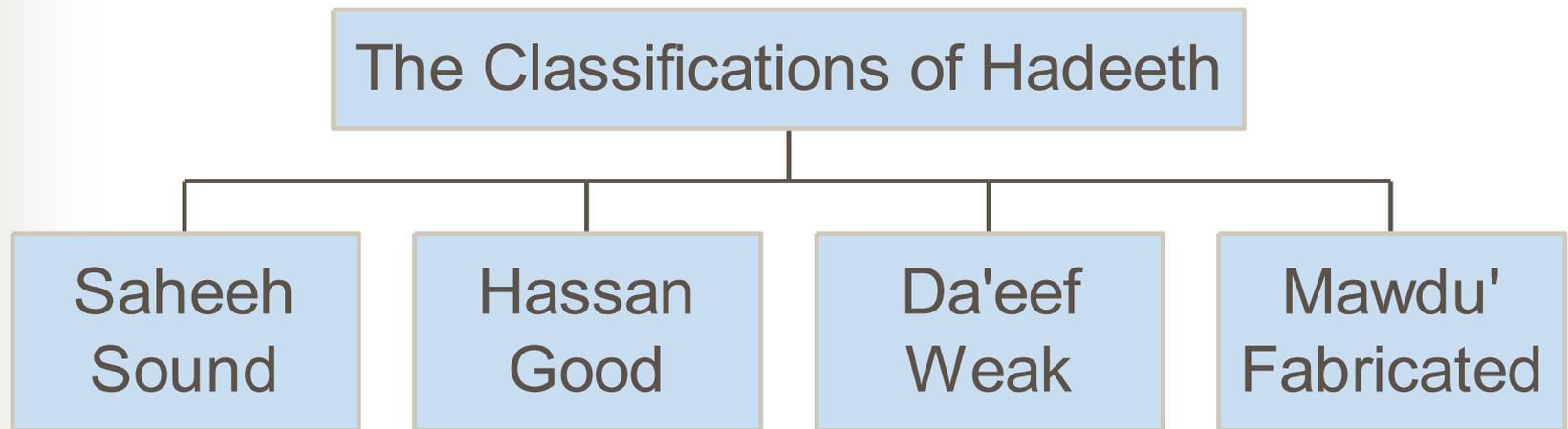
The Definition of Hadeeth

According to the scholars of Hadeeth (Muhaddithin):

“What was transmitted on the authority of the Prophet. {صلى الله عليه و سلم}, his deeds, sayings, and silent approvals, or description of his sifaat (features).”

M.M AZAMI Studies in Hadith Methodology And Literature pg. 3.

The Different Types of Hadeeth





Requirments for a Sound (Saheeh) Hadeeth

1. Each reporter should be trustworthy in his/her religion
2. He/She should be known to be truthful in his narrating, to understand what he narrates
3. He should have met the person he narrates from
4. He/she should know how a different expression can alter the meaning
5. He should know how to report the hadeeth verbatim not just its meaning

Imaam Al-Shafi'I



Hadeeth Hassan (Good)

1. Its source is known
2. Its reporters are unambiguous



Hadeeth Da'eef (Weak)

- A hadeeth that fails to meet the status of Hassan
- Could be a break in its chain
- One of the narrators has bad character such as: lying, excessive mistakes, opposition to a more reliable narration, involvement in innovation, or ambiguity surrounding his person
- It is not allowed to use Da'eef hadeeth for points of law or to base fatwaa (religious ruling) upon
- Scholars have differed over their validity pertaining to the encouragement of doing good works



Hadeeth Maudu' (Fabricated or Forged)

- The text goes against the established norms of the Prophet's {صلى الله عليه و سلم} sayings.
- Its reporters include a known liar.
- They are also known by their discrepancies related to time and historical events.
- It is not allowed to narrate from these hadeeth without telling the people that the hadeeth quoted is Maudu'.
- It is not allowed to use Maudu' hadeeth for points of law or to base fatwaa (religious ruling) upon.
- The scholars agree that they must not be used.



Ijma

- Ijma is the verbal noun of the Arabic word Ajma'a which has two meanings:
 - To determine
 - To agree upon something
- According to the scholars Ijma is defined as the unanimous agreement of the mujtahidun of the Muslim community of any period following the death of the prophet (SAW) on any matter.



Qiyas

- Literally Qiyas means measuring or determining the length, weight, or quality of something.
- Qiyas also means comparison to establish equality or similarity between two things.
- According to the scholars Qiyas is the extension of Shar'iah ruling from an original case (Asl) to a new case (far') because the new case has the same effective cause (Illah) as the original case.



Qiyas

- The essential requirements of Qiyas which are indicated in these definitions are as follows:
 - The original case (Asl) on which a ruling is given in the text and which analogy seeks to extend to a new case.
 - The new case (Far') on which a ruling is wanted.
 - The effective cause ('illah) which is an attribute of the Asl and is found to be in common between the original and the new case.
 - The rule (hukm) governing the original case which is to be extended to the new case.



Qiyas

- To illustrate Qiyas we use the example of the verse: “O you who believe! Intoxicants and gambling and Al-Ansab and Al-Azlam are an abomination of Satan’s handiwork, so avoid (strictly all) that in order that you may be successful.”, which forbids wine drinking.
- If these prohibition is to be extended by analogy to drugs, the four pillar of analogy would be:

ASL	Far	Illah	Hukm
Wine drinking	Taking Drugs	The intoxicating effect	Prohibition



Istihsan and Maslaha

- Istihsan: literally means to approve, or to deem something preferable.
- It is a derivation from Hasuna, which means being good or beautiful.
- According to the Scholars Istihsan is a method of exercising personal opinion (Ray) in order to avoid any rigidity and unfairness that might result from literal application of law.
- Example of Istihsan is the decision of Umar Bin Khattab (RAA) not to enforce the Hadd penalty of the amputation of the hand for the theft during a widespread famine.



Istihsan and Maslaha

- Maslaha literally means benefit or interest when it is qualified as Maslaha Mursalah, it refers to unrestricted public interest.
- It is synonymous with Istihsan, which is also called Maslaha Mutlaqah on account of its being undefined by the established rules of the shar'iah.
- Example: the Caliph Abu Bakr collected and compiled the scattered records of the Qur'an in a single volume, he also waged war on those who refused to pay the Zakat.



Urf and Istishab

Urf

- Urf as a noun is derived from its Arabic root ‘arafa (to know), ‘urf literally means ‘that which is known.’ In its primary sense, it is the known as opposed to the unknown, the familiar and customary as opposed to the unfamiliar and strange.
- Urf according to the scholars is: recurring practices which are acceptable to people of sound nature.



Urf

■ Types of urf:

- Urf Qawli (verbal): consists of agreement of people on the usage and meaning of words deployed for purpose other than their literal meaning. As the words of Salah and Zakat.
- Urf Fi'li (actual): consists of commonly recurrent practices which are accepted by the people. As the give-take sale.



Urf

Urf Qwali and urf Fi'li are both sub-divided into two types:

- Al-Urf-al Amm (general): practices of all people everywhere. As bay al-ta'ati.
- As-Urf-al Khass (special): practices of a particular country or some places.



Istishab

- Istishab literally means courtship or companionship.
- Istishab according to the scholars means presumption of existence or non-existence of facts. It can be used in the absence of other proofs (dalil).



Sadd al-dharai and Hukm Sharii

Sadd al-dharai (blocking the means):

- dharai is a word synonymous with wasilah, which signifies the means to obtaining a certain end, while Sadd literally means blocking.
- The concept of Sadd al-dharai is founded on the idea of prevention of evil before it materializes.



Sadd al-dharai (blocking the means):

- Sadd al-dharai according to the scholars means blocking the means to evil.
- Example of Sadd al-dharai:
 - Allah (SWT) said: “And insult not those whom they (disbelievers) worship beside Allah, lest they insult Allah wrongfully without knowledge.”

Al-Ahkaam Sharii (The Rulings)

- The Arabic word **الأحكام** comes from the root **حكم** which means the following: “To pass judgment, express an opinion, judge, to decide, or give an opinion.”

Hans Wehr Dictionary Pg. 195

It is used in the Qur’aan in many places.

{فَاللّٰهُ يَحْكُمُ بَيْنَكُمْ يَوْمَ الْقِيَامَةِ}

“Then Allaah will judge between you on the day of judgment.”

Surah Nisaa Verse 141

الأحكام

Al-Ahkaam (The Rulings)

{أفحكم الجاهلية يبغون و من أحسن من الله حكما لقوم يوقنون}

“Do they then seek the judgment of the days of ignorance? And who is better in judgment than Allaah for a people who have faith.”

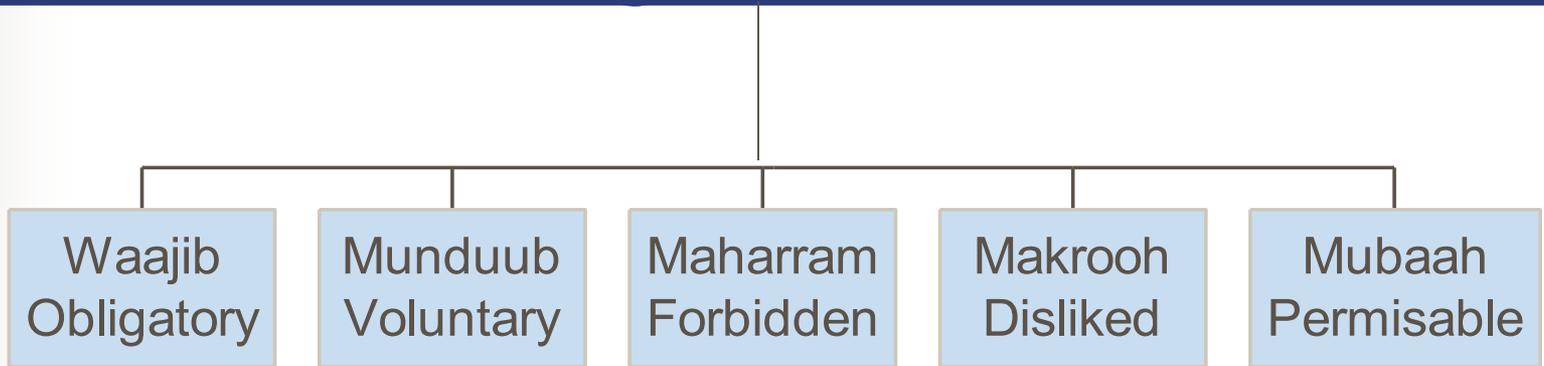
Surah Al-Maaidah Verse 50

الأحكام في إصطلاح العلماء

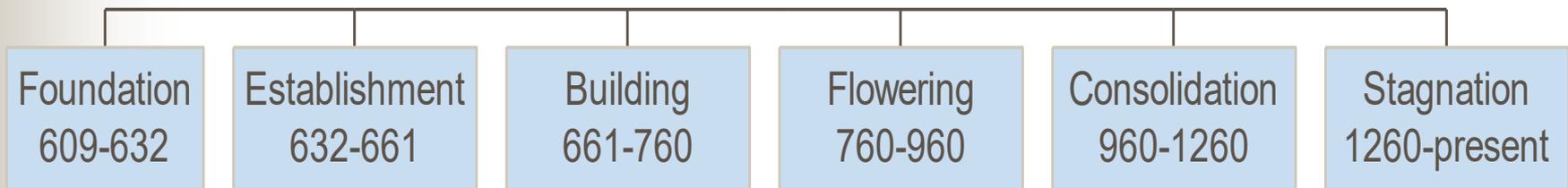
Al-Ahkaam according to the Scholars

- **The scholars have defined the Hukum Shari as: “A communication from the lawgiver concerning the conduct of the Mukallaf which consists of a demand, an option or an enactment.”**

The Five Rulings Related to Shar'eeah



The Six Historical Periods of Fiqh





The Foundation 609-632

- 1. Era of Prophet hood.**
- 2. Differences existed but were limited.**
- 3. The ideological foundations of Islaam were laid down.**
- 4. The basis for Qur'aanic legislation is laid down: namely, the reformation of people.**
- 5. The evolution of fiqh and the foundations of its methodology were taught by the prophet (sa) to his companions.**



The Establishment 632-661

- The basis of deductive Fiqh principles were laid down during the reign of the Righteous Caliphs.
- The sudden addition of vast new territories brought Muslims into sudden contact with many different cultures, and this produced a host of new issues which were not specifically covered in the Shariah
- Legal rulings became increasingly necessary, and the Righteous Caliphs developed certain procedures for arriving at a Fiqh decision
- The Sahaabah, in general, followed decision making procedures which helped them to avoid hard and fast rulings
- The Presence of the Righteous Caliphs and the companions provided a safe guard in legal rulings. This promoted unity and there was no factionalism within the Islamic Nation



Building 661-750 C.E

- The First attempts to compile Fiqh
- Two main interpretational trends developed amongst scholars (Ahl-Rai and Ahl-Hadeeth)
- Muslim government was lost as a source or reliance by the scholars
- Due to the corruption of the Muslim leadership, scholars relied on frequent narration of hadeeths and compiled the legal rulings of the most prominent jurist among the Sahaabah.
- Social unrest and turmoil
- Fabrication of hadeeth



The Flowering 750-950 C.E

- Fiqh took on a definite shape as an independent Islaamic science
- Centers of learning increased and so did the different Madh-habs of earlier scholars
- Fiqh became organized and divided into two parts. Usool and the Furoo
- The entire Sunnah was collected and recorded in books
- With regards to the issue of the Madh-habs two distinct periods took place during this time.
- Exchange of ideas and sharing of ideas/first half of this period
- Factionalism, intolerability, rigidity, and argumentation.



Consolidation 960-1260

- **The major madh-habs of the earlier period vanished and only four remained**
- **The Madh-habs reached their final form of systemization and organization**
- **Ijtihaad beyond the structure of the madh-had was dropped and Ijtihaad-Madh-habee took over**
- **Comparative Fiqh is born**



Stagnation & Decline 960-present

- Ijtihad was put aside and the blind following of a madh-hab took over
- The four madh-habs became more intolerable with each other and eventually broke into four sects
- Scholarly activity became polarized
- Revivers continued to work to bring the dynamics of Fiqh back
- The fanaticism of the Madh-habs lessened do to the Islamic Movement and the teaching of comparative Fiqh.