

متن نظم الورقات

"تسهيل الطرق بنظم الورقات"

يحيى بن موسى بن شرف العمرطي – رحمه الله

(المتوفى سنة 989 هـ)

Matn al-Waraqāt

Tashīl al-ṭuruqāt fī naẓm matn al-Waraqāt
Yaḥyá ibn Nūr al-Dīn al-‘Imriyī
(d. 989 h.)

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Introduction

Al-Waraqāt, a fifth century Islamic era text, was composed by *Imām al-Haramayn*¹ *al-Jūwaynī* (d. 478 H., 1085 CE), who, at his own time, was the foremost authority in *uṣūl al-fiqh* and *fiqh* in the *Shāfiʿī* school of law. *Imām al-Jūwaynī* was only two generations removed from *al-Imām al-Shāfiʿī* (d.208 H, 820 CE), which makes his contribution in the field of *uṣūl* very critical and comes at the initial stage of the codification process. Also, *al-Jūwaynī* is the primary *uṣūl* teacher of *al-Ghazālī* (d. 505 H, 1111 CE), who, at his own time, was considered to be the *Mūjadid* (the re-newer) of the faith and sciences and contributed works in various fields of Islamic learning. *Al-Ghazālī*, who is more known for his *Ṣūfī* works in the West, is one of the foremost authorities in the field of *uṣūl* and his book *al-Mustasfā* continues to be a foundational work for advanced students in Islamic jurisprudence.

Al-Waraqāt was intended as an introductory text on *uṣūl* for students of *fiqh*. Students were required to study the text with a scholar while in the process committing it to memory. The text is concise and brief by design to make it easier for memorization and

¹ *Al-Haramayn* is a title given to *ʿAbd al-Mālīk ibn ʿAbdullah ibn Yāsuf ibn Muḥammad*, which means the *Imām* of the Two Sanctuaries, *Mecca* and *Madīna*. *Al-Jūwaynī* spent four years teaching in the city of *Mecca*, then moved to *Madīna* engaging in teaching the formal Islamic sciences and issuing legal opinions, thus the title the *Imam of al-Haramayn*.

to compel the student to seek a scholar who can help in unlocking the meanings and providing essential commentary. *Al-Jūwaynī* wrote *al-Waraqāt* in prose style and it was *al-ʿImrīyī* who transformed it into verse in the 10th century Islamic era. *Al-ʿImrīyī* (d. 989 H., approximately 1600 CE)² born and educated in Egypt and an adherent of the *Shāfiʿī* school has to his credit a number of texts that he transformed into verse making it easy for memorization. The translated text of *al-Waraqāt* below is the verse version produced by *al-ʿImrīyī*, and thus it adheres to poetry meters making easy to memorize in the Arabic language, which gets lost in the English translation.

The text is very structured and covers, in a brief fashion, all the elements involved in the science of *uṣūl*. It consists of 215 lines of poetry divided into some 20 chapters with each chapter dealing with one aspect of *uṣūl*. Presently, the text is still used in many Islamic universities and institutions around the Muslim world to introduce students to the field of *uṣūl*. This has aroused my interest in translating it and then to begin work on an English translation of a complete commentary on the text, which will be forthcoming in the near future.

² *Al-ʿImrīyī*, *al-Imām Yāhīa bin Nūr al-dīn bin Mūsā al-Shāfiʿī al-ʿAnsari al-ʿAzhari*. Born in a small village in and educated in *al-ʿAzhar* in the *Shāfiʿī* school of law. He was a well known *Shāfiʿī* scholar and a grammarian and has to his credit a number of works including this poem in *uṣūl* which he composed from the original prose of *Imām al-Ḥaramayn*. In addition to this one in *uṣūl* he has composed another poem on Arabic grammar based on the text of *al-ʿAḡurūmīa*.

My hope in this undertaking is to provide the students of Islamic Studies and Islam in general an opportunity to study a text as it was and is being taught by those who adhere to this well-established tradition of learning. The goal behind this effort is not as much a critique or analysis; rather it is a basic level introduction to students in the West of a text that serves as foundational work for a living religious and legal tradition. In reading the text we first begin to appreciate the intellectual vigor pursued in the production process, the organizational structure followed, and the scope of issues contained within, which taken collectively might help in deepening our understanding of the field of uṣūl and those who are specialized in it.

مقدمة المتن

Introduction to the text

قَالَ الْفَقِيرُ الشَّرْفُ الْعِمْرِي
ذُو الْعَجْزِ وَالتَّقْصِيرِ وَالتَّفْرِيطِ

- 1) Says the poor in lineage *al-'Imriyī*, the one marked by impotence³, deficiency, and shortcomings:

الْحَمْدُ لِلَّهِ الَّذِي قَدْ أَظْهَرَ
عِلْمَ الْأُصُولِ لِلوَرَى وَأَشْهَرَ

- 2) Praise is to Allah who made apparent the science of *al-usūl* for humanity and made it famous.

ثُمَّ الصَّلَاةُ وَالسَّلَامُ سَرْمَدًا
عَلَى زَكِيِّ الْأَصْلِ طَهَ أَحْمَدًا

³ The term impotence in modern English usage has been narrowly defined and is exclusively used to convey a sexual 'disorder'. However, the term itself is far more inclusive and describes a general state of inability. Man's true relation to God is that of impotence, because God is the all-able_ while man is in a constant state of inability. Also, man's perceived ability is only that, a perception that has no independent reality on its own. All creations perceived ability is contingent upon the One, God, who is all-able and is the giver of all that can be considered ability in creation. I considered translating the term in Arabic to mean incompetence, but this option was limiting in its definition and has the further implication of man being able, but at the same time deficient, which represents a departure from the Islamic principles of theology. Language includes the indicators of a people epistemological constructs and translation from one language to another leads to the transformation, if not complete change of this epistemology. Translation places limits and restrictions on the transfer of epistemology and full meaning from one language to another.

3) Then, the blessings and peace in perpetuity on the one of pure origin, *Taha Ahmada*.⁴

أَصْلُ الْأَصُولِ أَشْرَفَ الْعِبَادِ وَآلِهِ وَصَحْبِهِ الْأَمْجَادِ

4) The foremost of all sources, the most honorable of all slaves, his family, and his companions, the glorious.

وَبَعْدُ فَالْعِلْمُ بِأَصْلِ الْفِقْهِ مُكْمَلٌ قَارِئُ عِلْمِ الْفِقْهِ

5) Then, the knowledge with *uṣūl al-fiqh* completes the students of the discipline of *fiqh*,

فَذَاكَ بِالْفَضْلِ الْجَلِيلِ أُخْرَى وَاللَّهُ ذُو النَّيْلِ الْجَزِيلِ أُجْرَى
عَلَى لِسَانِ الشَّافِعِيِّ وَهَوْنًا فَهُوَ الَّذِي لَهُ ابْتِدَاءٌ دُونًَا

6 & 7) The former is more worthy of splendor and excellence and Allah who gives generous attainment enabled the tongue of *Shāli'i* to express it, and made it easy for him and he (al-*Shāli'i*) is the first to have codified it;

وَتَابَعْتَهُ النَّاسَ حَتَّى صَارَا كُتِبَا صِغَارَ الْحَجْمِ أَوْ كِبَارَا

⁴ The author lists a number of names of the Prophet Muhammad (peace and blessings upon him), which *Ibn al-'Arabī* enumerated some 1000 names, titles and attributes for the Prophet. See *shamaa-il al-Tirmidhī*, with the commentary of *Khasaa 'il-e-Nabawi Sallallahu 'Alayhi Wasallam* by *Shaykhul Hadith Maulana Muhammad Zakariya Kandhelwi*, Translated by *Muhammad bin Abdur Ruhman Ebrahim*, Chapter on the Names of *Syridina Rasulallah Sallallahu 'Alayhi Wasallam*. pp. 406-410

⁵ *Imām al-Shāli'i* is *Muhammad ibn Idrīs ibn al-'Abbās ibn 'Uthmān ibn Shāli' ibn al-Sa'ib ibn 'Ubayd ibn 'Abd Yazīd ibn Hāshim ibn al-Muttalib ibn 'Abd Maāaf, Abu 'Abdullah al-Qurashī al-Makkī al-Shāli'i*, descended from the great-grandfather of the Prophet (peace and blessings upon him). Born in 150 *Hijri*/767 C.E. in Gaza, Palestine and died in Cairo at the age of 53 in 204 *Hijri*/820 C.E.

8) People succeeded him until they brought into being books small or great in volumes;

وَحَيْرُ كُتُبِهِ الصَّغَارِ مَا سُمِّي
بِالْوَرَقَاتِ لِلْإِمَامِ الْحَرَمِيِّ

9) And the best of the small books on al-uṣūl is that which is named *al-Waraqāt* by the *Imam al-Haramayn*.

وَقَدْ سَأَلْتُ مُدَّةً فِي نَظْمِهِ
مُسَهَّلًا لِحَفْظِهِ وَفَهْمِهِ

10) And I was asked for a long time to versify it, making it easy for memorization and understanding.

فَلَمْ أَجِدْ مِمَّا سَأَلْتُ بُدْأً
مِنْ رَبِّنَا التَّوْفِيقَ لِلصَّوَابِ
وَقَدْ شَرَعْتُ فِيهِ مُسْتَمْدًا
وَالنَّفْعَ فِي الدَّارَيْنِ بِالْكِتَابِ

11 & 12) I found myself obliged to do that which I was asked, I began, seeking from our Lord guidance to the truth (right, accuracy), and benefits in both realms from the book.

بَابُ أُصُولِ الْفِقْهِ

1. Chapter concerning Usul al-Fiqh.

هَآكَ أُصُولَ الْفِقْهِ لَفْظًا لِلْفَنِّ مِنْ جُزْأَيْنِ قَدْ تَرَكَبَا

- 13) Here you have *usūl al-fiqh*, an expression serving as a title for a discipline, compounded from two parts.

الأوَّلُ الأُصُولُ ثُمَّ الثَّانِي الْفِقْهُ وَالْجُزْءَانِ مُفْرَدَانِ

- 14) The first is *al-usūl*, and the second *al-fiqh* and the two parts are distinct.

فَالأَصْلُ مَا عَلَيْهِ غَيْرُهُ بُنِيَ وَالْفَرْعُ مَا عَلَى سِوَاهُ يَنْبَنِي

- 15) *Al-'Asl'* (the root) serves as a foundation for other than itself, and *al-Far'*⁶ (the branch) is that which is founded on other than itself.

وَالْفِقْهُ عِلْمٌ كُلُّ حُكْمٍ شَرْعِيٍّ جَاءَ إِجْتِهَادًا دُونَ حُكْمٍ قَطْعِيٍّ

- 16) *Fiqh* is the science of every *Shari'a* ordinance that came through *ijtihad*⁸, as

⁶ *Al-'Asl'* a singular noun, the plural of which is *usūl* is used to designate the science of *usūl al-fiqh* i.e. principles of jurisprudence.

⁷ *Al-Far'*-singular noun, the plural of which is *furū'* used to identify the science of *fiqh* that deals with the particular rulings.

⁸ *Ijtihad* is a noun derived from the trilateral root ja ha da, which means to exert effort. In this context it means a scholar of Islamic law (*mujtahid*) exerting his utmost effort to deduce a particular

opposed to categorical ordinance⁹.

وَالْحُكْمُ وَاجِبٌ وَمَنْدُوبٌ وَمَا
أَبِيحَ وَالْمَكْرُوهُ مَعَ مَا حُرِّمًا

- 17) The ordinances are either incumbent, recommended, permitted, disapproved, or forbidden.

مَعَ الصَّحِيحِ مُطْلَقًا وَالْفَاسِدِ
مِنْ قَاعِدِ هَذَا أَوْ مِنْ عَابِدِ

- 18) Together with that which is absolutely sound and that which is absolutely corrupt, whether it relates to one concluding a contract or performing an act of worship.

فَالْوَاجِبُ الْمَحْكُومُ بِالثَّوَابِ
فِي فِعْلِهِ وَالتَّرْكِ بِالْعِقَابِ

- 19) The incumbent is that for the performance of which reward is decreed and for omitting it punishment is decreed.

وَالنَّدْبُ مَا فِي فِعْلِهِ الثَّوَابُ
وَلَمْ يَكُنْ فِي تَرْكِهِ عِقَابٌ

- 20) The recommended is that for the performance of which, reward is decreed and for omitting which no punishment is decreed.

وَلَيْسَ فِي الْمُبَاحِ مِنْ ثَوَابٍ
فِعْلًا وَتَرْكًا بَلْ وَلَا عِقَابِ

- 21) And there is no reward or punishment for performing or omitting the permitted ordinance from the sources of law.

⁹ Ordinances in Islamic law cover both acts of worship and transactions and thus are ranked into five different categories, *incumbent* being at one end and *forbidden* at the other. However, two additional categories appear in line 23 and 24, *sound* and *corrupt*, which in essence are related to one of the five even though they are listed as two distinct terms.

وَضَابِطُ الْمَكْرُوهِ عَكْسُ مَا نُدِبُ كَذَلِكَ الْحَرَامُ عَكْسُ مَا يَجِبُ

- 22) The criterion for the disapproved is the opposite of the recommended and likewise the forbidden is the opposite of what is incumbent.

وَضَابِطُ التَّصْحِيحِ مَا تَعَلَّقَا بِهِ نَفُوذُ وَأَعْتِدَادُ مُطْلَقًا

- 23) The criterion for the sound is that to it is joined implementation and unconditional acceptance.

وَالْفَاسِدُ الَّذِي بِهِ لَمْ تَعْتَدِدْ وَكَمْ يَكُنْ بِنَافِذٍ إِذَا عَقِدْ

- 24) The corrupt is that which is not accepted and is not implemented if contracted.

وَالْعِلْمُ لَفْظٌ لِلْعُمُومِ لَمْ يُخْصَ لِلْفِقْهِ مَفْهُومًا بَلِ الْفِقْهُ أُخْصَ

- 25) *Al-ilmis* is a word of general meaning not restricted to *fiqh* in its meaning, rather *fiqh* is a more specific word.

وَعِلْمُنَا مَعْرِفَةُ الْمَعْلُومِ إِنَّ طَابَقَتْ لِيُوصِفُهُ الْمَحْتَمُومِ

- 26) And our knowledge is conjunction with the known when it corresponds to its firm characteristics.

وَالْجَهْلُ قُلُوبٌ تَصَوَّرُ الشَّيْءَ عَلَى خِلَافِ وَصْفِهِ الَّذِي بِهِ عَلَا

- 27) And ignorance is the imagining of a thing contrary to the attribute that through which it arose.

وَقِيلَ حَدُّ الْجَهْلِ فَقَدْ الْعِلْمِ بَسِيطًا أَوْ مُرَكَّبًا قَدْ سُمِّيَ

- 28) And it is said that the definition of ignorance is the lack of knowledge, which is called either simple or compound.

بَسِيطُهُ فِي كُلِّ مَا تَحْتَ الشَّرَى تَرْكِيبُهُ فِي كُلِّ مَا تُصَوِّرًا

- 29) Its simple form is in the pleiades¹⁰ and its compound form is in everything that you give a mental form to.

وَالْعِلْمُ إِمَّا بِاضْطِرَارٍ يَحْصُلُ أَوْ بِاِكْتِسَابٍ حَاصِلٌ فَالْأَوَّلُ

- 30) And knowledge is attained either involuntarily or through a deliberate acquisition.

كَالْمُسْفَادِ بِالْحَوَاسِ الْخَمْسِ بِالشَّمِّ أَوْ بِالذُّوقِ أَوْ بِاللَّمْسِ
وَالسَّمْعِ وَالْإِبْصَارِ ثُمَّ التَّالِي مَا كَانَ مَوْقُوفًا عَلَى إِسْتِدْلَالِ

- 31&32) And the first (involuntarily knowledge) is obtained through the five senses - smelling or tasting or touching, and hearing and seeing; and the second (deliberate acquisition) is that which depends on deduction.

وَحَدُّ الْإِسْتِدْلَالِ قُلُّ مَا يُجْتَلَبُ لَنَا دَلِيلًا مُرْشِدًا لِمَا طُلِبَ

- 33) Give as the definition of deduction that which is brought to us as a proof and a guide to that which is sought.

¹⁰ Everything in creation and encompassing the totality of the universe.

وَالظَّنُّ تَجْوِيزُ امْرِيٍّ أَمْرَيْنِ مُرَجِّحًا لِأَحَدِ الْأَمْرَيْنِ

- 34) Supposition is an individual regarding possible two things and one of them more likely than the other.

فَالرَّاجِحُ الْمَذْكُورُ ظَنًّا يُسْمَى وَالطَّرْفُ الْمَرْجُوحُ يُسْمَى وَهَمًا

- 35) That which was regarded as more likely is called supposition and the one less likely is called unsubstantiated.

وَالشُّكُّ تَحْرِيرٌ بِلا رُجْحَانِ لِوَأَحَدٍ حَيْثُ اسْتَوَى الْأَمْرَانِ

- 36) And doubt is a determination without regarding as more likely when they are both equal.

أَمَّا أُصُولُ الْفِقْهِ مَعْنَى بِالنَّظَرِ لِلْفَنِّ فِي تَعْرِيفِهِ فَالْمُعْتَبَرِ

- 37) As for the meaning of *usūl al-fiqh*, attention should be paid to examining the discipline in its definition.

فِي ذَاكَ طَرُقُ الْفِقْهِ أَعْنِي الْمَجْمَلَهُ كَالْأَمْرِ أَوْ النَّهْيِ لَا الْمَفْصَلَهُ

- 38) In that respect, what I have in mind is the general methods of *fiqh* like command and prohibition, not the detailed provisions,

وَكَيْفَ يُسْتَدَلُّ بِالْأُصُولِ وَالْعَالِمُ الَّذِي هُوَ الْأُصُولِي

- 39) And how deduction is to be made by the use of *usūl*/and who is the scholar who is an expert in *usūl*.

أَبْوَابُ أُصُولِ الْفِقْهِ

2. Chapter concerning Usul al-Fiqh

أَبْوَابُهَا عِشْرُونَ بَابًا تُسْرَدُ وَفِي الْكِتَابِ كُلُّهَا سَتُورَدُ

- 40) Its chapters are twenty in number to be brought in succession, and in the book all will be included.

وَتِلْكَ أَقْسَامُ الْكَلَامِ ثَمَّا أَمْرٌ وَنَهْيٌ ثُمَّ لَفْظٌ عَمَّا

- 41) And those chapters are parts of speech¹¹, then command and prohibition then words implying generality,

أَوْ خُصٌّ أَوْ مُبَيِّنٌ أَوْ مُجْمَلٌ أَوْ ظَاهِرٌ مَعْنَاهُ أَوْ مُؤَوَّلٌ

- 42) Or particular, specific, or comprehensive in scope; or having a meaning that is evident or one depending on interpretation.

وَمُطْلَقُ الْأَفْعَالِ ثُمَّ مَا نُسَخَ حُكْمًا سِوَاهُ مَا بِهِ قَدْ اِنْتَسَخَ

- 43) Unconditional acts, then that the legal force of which was superseded and that by means of which it was superseded.

¹¹ By parts of speech is meant language and its usage. Since every religious, legal or cultural tradition is based on language and its usage, the first incursion into the study of *usul* begins with defining the scope of language usage.

كَذَلِكَ الْإِجْمَاعُ وَالْإِخْبَارُ مَعَ

حَظْرٍ وَمَعَ إِبَاحَةٍ كُلُّ وَقَع

- 44) Likewise the consensus, and the transmission with or without any restriction, whenever they occur.

فِي الْأَصْلِ وَالترْتِيبُ لِلْأَدْلِهِ

كَذَا الْقِيَّاسُ مُطْلَقًا لِعَلِّهِ

- 45) Similarly, analogy unconditionally joined to a reason in the principle and then the arrangement of proofs.

وَالْوَصْفُ فِي مُفْتٍ وَمُسْتَفْتٍ عُهُدٍ

وَهَكَذَا أَحْكَامُ كُلِّ مُجْتَهِدٍ

- 46) And the conventional description of the issuer and seeker of a *fatwā* and likewise the conditions that must be met by each *mujtahid*.

بَابُ أَقْسَامِ الْكَلَامِ

3. Chapter Concerning Parts of Speech

أَقْلُ مَا مِنْهُ الْكَلَامُ رَكْبُوا إِسْمَانِ أَوْ إِسْمٍ وَفِعْلٍ كَارْكَبُوا

- 47) The smallest unit of speech is composed of two nouns, or a noun and a verb like: "you Ride!"

كَذَلِكَ مِنْ فِعْلٍ وَحَرْفٍ وَجِدَا وَجَاءَ مِنْ إِسْمٍ وَحَرْفٍ فِي النَّدَا

- 48) Similarly, it comes into existence from a verb and a particle and it comes in the form of a noun and a vocative particle as well.

وَقَسِمَ الْكَلَامُ لِلْإِخْبَارِ وَالْأَمْرِ وَالنَّهْيِ وَالِاسْتِخْبَارِ

- 49) And speech is divided into statements, commands, prohibitions, and interrogative.

ثُمَّ الْكَلَامُ ثَانِيًا قَدْ انْقَسَمَ إِلَى تَمَنٍّ وَلِعْرَضٍ وَقَسَمَ

- 50) Secondly, then speech is divided into a desire, a gentle request, and an oath.

وَتَالِيًا إِلَى مَجَازٍ وَإِلَى حَقِيقَةٍ وَحَدُّهَا مَا اسْتُعْمِلَا

- 51) And thirdly, into allegorical and real and the definition of the latter is that which is consistently used concerning its established meaning.

مِنْ ذَاكَ فِي مَوْضُوعِهِ وَقِيلَ مَا يَجْرِي خِطَابًا فِي اصْطِلَاحٍ قُدِّمًا

- 52) It has been said that it is the common mode of address conventionally agreed upon.

أَقْسَامُهَا ثَلَاثَةٌ شَرَعِيَّةٌ وَاللُّغَوِيَّةُ الْوَضْعُ وَالْعُرْفِيَّةُ

- 53) And its divisions are three; *shar'ī*, lexical, and customary.

ثُمَّ الْمَجَازُ مَا بِهِ تُجَوِّزُ فِي اللَّفْظِ عَن مَوْضُوعِهِ تَجَوُّزًا

- 54) Then the allegorical is that by means of which in your wording you go beyond the established meaning,

بِنَقْصٍ أَوْ زِيَادَةٍ أَوْ نَقْلِ أَوْ إِسْتِعَارَةٍ كَنَقْصِ أَهْلِ

- 55) By subtraction, or addition, or transformation or metaphor like the omission of 'ahl',

وَهُوَ الْمُرَادُ فِي سُؤَالِ الْقَرْيَةِ كَمَا أَتَى فِي الذِّكْرِ دُونَ مَرِيَّةٍ

- 56) Which is implied in the asking of the city as it occurs in the *Qur'an* without any ambiguity,

وَكَاذِبِيَادِ الْكَافِ فِي كَمِثْلِهِ وَالْغَائِطُ الْمَنْقُولُ عَن مَحَلِّهِ

82. ¹² This refers to the omission of 'ahl'(people) of the village from the *Qur'an* in chapter 12, verse

- 57) And the addition of the *ka* in the ka-mithlih¹³, and the field which is removed from its true location.

يُرِيدُ أَنْ يَنْقُضَ يَعْنِي مَا لَا

رَابِعُهَا كَقَوْلِهِ تَعَالَى

- 58) And the fourth example is the word of Allah: about to collapse¹⁴ i.e. is tilting.

¹³ See *Qur'an* chapter 42, verse 11.

¹⁴ See *Qur'an* chapter 18, verse 77.

بَابُ الْأَمْرِ

4. Chapter Concerning Commands

وَحَدُّهُ إِسْتِدْعَاءُ فِعْلٍ وَاجِبٍ بِالْقَوْلِ مِمَّنْ كَانَ دُونَ الطَّالِبِ

- 59) Its definition is verbally demanding a mandatory act from someone who has a lesser status than requester.

بِصِيغَةِ افْعَلْ فَأَلْجُوبُ حَقًّا حَيْثُ الْقَرِينَةُ انْتَفَتْ وَأُطْلِقًا

- 60) On the paradigm *Ilāal*¹⁵, incumbency is established when the context is severed and it is absolute.

لَا مَعَ دَلِيلٍ دَلَّنَا شَرْعًا عَلَيَّ إِبَاحَةٌ فِي الْفِعْلِ أَوْ نَدْبٍ فَلَا

- 61) It is not accompanied by any indication that in terms of the *Shari'a* the action is merely permissible or recommended.

بَلْ صَرَفُهُ عَنِ الْوَجُوبِ حُتْمًا بِحَمَلِهِ عَلَيَّ الْمُرَادِ مِنْهُمَا

- 62) Indeed, its removal from incumbency becomes certain when its interpreted to mean either of the two (permissible or recommended).

وَلَمْ يُفَدِ فَوْرًا وَلَا تَكَرَّرًا إِنَّ لَمْ يَرِدْ مَا يَقْتَضِي التَّكَرَّرًا

¹⁵ Arabic is a language based on a trilateral root system out of which comes a spectrum of verbs and nouns each belonging to a particular paradigm.

- 63) It does not indicate immediacy or repetition, as long as it does not contain what necessitates repetition.

وَالْأَمْرُ بِالْفِعْلِ الْمُنْتَهَمِ أَمْرٌ بِهِ وَيَالَّذِي بِهِ يَتِمُّ

- 64) The command for performing the important and definite act is a command both for it and for that by means of which it is completed.

كَالْأَمْرِ بِالصَّلَاةِ أَمْرٌ بِالْوَضُوءِ وَكُلُّ شَيْءٍ لِلصَّلَاةِ يُفْرَضُ

- 65) Like the command to pray which is also a command to ablution and everything else which is required for the performance of the prayer.

وَحَيْثُمَا إِنَّ جِيءَ بِالْمَطْلُوبِ يُخْرَجُ بِهِ عَنِ عَهْدَةِ الْوَجُوبِ

- 66) And whenever that which is commanded is performed thereby the relevant obligation is discharged.

بَابُ النَّهْيِ

5. Chapter Concerning Prohibition

تَعْرِيفُهُ إِسْتِدْعَاءُ تَرْكِ قَدْ وَجَبَ بِالْقَوْلِ مِمَّنْ كَانَ دُونَ مَنْ طَلَبَ

- 67) Its definition is verbally demanding an obligatory abandonment from someone who has a lesser status than the requester.

وَأَمْرُنَا بِالشَّيْءِ نَهْيٌ مَانِعٌ مِنْ ضِدِّهِ وَالْعَكْسُ أَيْضًا وَأَقْعُ

- 68) And our command of a thing is a prohibition negating its opposite, and the reverse also holds true.

وَصِيغَةُ الأَمْرِ الَّتِي مَضَتْ تَرِدُ وَالْقَصْدُ مِنْهَا أَنْ يُبَاحَ مَا وَجِدُ

- 69) And the paradigm of the command mentioned earlier sometimes occurs with the intention of making licit something that exists.

كَمَا أَتَتْ وَالْقَصْدُ مِنْهَا التَّسْوِيَةُ كَذَا لِتَهْدِيدٍ وَتَكْوِينِ هِيَه

- 70) Also, it came with the intention of making two alternatives equal, likewise it came for threat and creation.”

¹⁶ Language is contextual which means a command verb structure in Arabic can be used for a number of purposes. Some grammarians listed up to 13 different ways for the use of a command verb in Arabic.

وَالْمُؤْمِنُونَ فِي خِطَابِ اللَّهِ

قَدْ دَخَلُوا إِلَّا الصَّبِيَّ وَالسَّاهِيَّ

- 71) And the believers are included in the address of Allah with the exception of the child and the forgetful.

وَذُو الْجُنُونِ كُلُّهُمْ لَمْ يَدْخُلُوا
فِي سَائِرِ الْفُرُوعِ لِلشَّرِيعَةِ

وَالْكَافِرُونَ فِي الْخِطَابِ دَخَلُوا
وَفِي الَّذِي بَدُونَهُ مَمْنُوعَهُ

- 72&73) And the insane, all of them are not included. And the unbelievers are included in the address in all the branches of *Shari'a* and with respect to that without which the performances of the branches is impossible.

وَذَلِكَ الْإِسْلَامُ فَالْفُرُوعُ

تَصْحِيحُهَا بِدُونِهِ مَمْنُوعُ

- 74) And that is Islam (acceptance of Islam), for the correct performance of the branches without it is impossible.

بَابُ الْعَامِّ

6. Chapter Concerning the General

- وَحَدُّهُ لَفْظٌ يَعُمُّ أَكْثَرَ
مِنْ وَاحِدٍ مِنْ غَيْرِ مَا حَصَرَ يُرَى
- 75) Its definition is a word that embraces more than one without any visible restrictions.
- مِنْ قَوْلِهِمْ عَمَّمْتُهُمْ بِمَا مَعِيَ
وَلَتَنْحَصِرَ أَلْفَاظُهُ فِي أَرْبَعٍ
- 76) From their saying "I covered them with what I have"; and words of this type are limited to four:
- وَالْجَمْعُ وَالْفَرْدُ الْمَعْرِفَانِ
بِالْإِلَامِ كَالْكَافِرِ وَالْإِنْسَانِ
- 77) The plural, the singular, both of them made definite by the *alif lam*, like *al-kāfir* (the unbeliever), *al-Insān* (the human).
- وَكُلُّ مُبْهَمٍ مِنَ الْأَسْمَاءِ
مِنْ ذَلِكَ مَا لِلشَّرْطِ مِنْ جَزَاءٍ
- 78) And every form of indefinite noun including the conditional *ma* that serves as apodosis of the conditional,
- وَلَفْظٌ مَنْ فِي عَاقِلٍ وَلَفْظٌ مَا
فِي غَيْرِهِ وَلَفْظٌ أَيُّ فِيهِمَا
- 79) And the word *man* - (who) in the case of rational beings and the word *ma*- (what) in that of irrational beings and *ay*- (which) relating to either category,

كَذَا مَتَى الْمَوْضُوعُ لِلزَّمَانِ

وَلَفْظُ أَيْنَ وَهُوَ لِلْمَكَانِ

- 80) And the word *ayn* - (where) for the location, and likewise *mata* - (when) that is used for time,

فِي لَفْظِ مَنْ أَتَى بِهَا مُسْتَفْهِمًا

وَلَفْظُ لَا فِي النَّكِرَاتِ ثُمَّ مَا

- 81) And the word *la* in indefinite nouns, then *ma* used by someone posing a question.

فِي الْفِعْلِ بَلْ وَمَا جَرَى مَجْرَاهُ

ثُمَّ الْعُمُومُ أَبْطَلَتْ دَعْوَاهُ

- 82) However, the general force is invalidated through the occurrence of certain types of acts and whatever fulfills the same function.

بَابُ الْخَاصِّ

7. Chapter Concerning the Specific

وَالْخَاصُّ لِفُظٍّ لَا يَعْزُ أَكْثَرًا
مِنْ وَاحِدٍ أَوْ عَمٍّ مَعَ حَصْرِ جَرَى

- 83) And the specific is a word that does not include more than one, or includes more than one with visible restriction.

وَالْقَصْدُ بِالتَّخْصِصِ حَيْثُمَا حَصَلَ
تَمْيِيزُ بَعْضِ جُمْلَةٍ فِيهَا دَخَلَ

- 84) What is meant by making specific is, whenever it occurs, the singling out of a part from the whole which it is included.

وَمَا بِهِ التَّخْصِصُ إِمَّا مُتَّصِلٌ
كَمَا سَيَأْتِي أَنفَاءً أَوْ مُنْفَصِلٌ

- 85) And that by means of which specification takes place either is connected, as will come later or disconnected.

فَالشَّرْطُ وَالتَّقْيِيدُ بِالْوَصْفِ اتَّصَلَ
كَذَلِكَ الِاسْتِثْنَاءُ وَغَيْرُهَا إِنْ فَصَلَ

- 86) The conditional and the qualification by means of an adjective and likewise the exception are all connected, and other than those are disconnected.

وَاحِدُ الِاسْتِثْنَاءِ مَا بِهِ خَرَجَ
مِنَ الْكَلَامِ بَعْضُ مَا فِيهِ إِنْ دَرَجَ

- 87) The definition of the exception is that by means of which parts included in speech are removed.

وَشَرْطُهُ أَنْ لَا يُرَى مُنْفَصِلًا وَكَمْ يَكُنْ مُسْتَعْرِقًا لِمَا خَلَا

- 88) And its condition is not to be seen as disconnected, and it is not absorbed by that which is absent.

وَالنُّطْقُ مَعَ إِسْمَاعٍ مَنْ يَقْرِبُهُ وَقَصْدُهُ مِنْ قَبْلِ نُطْقِهِ بِهِ

- 89) Moreover, audible utterance has to be made, making those nearby hear and there must be an intention before the utterance of it.

وَالْأَصْلُ فِيهِ أَنْ مُسْتَثْنَاهُ مِنْ جِنْسِهِ وَجَازَ مِنْ سِوَاهُ

- 90) And the basis of that utterance is that which is excepted belongs to the same category, and it is permissible that it should be from other than it.

وَجَازَ أَنْ يُقَدَّمَ الْمُسْتَثْنَى وَالشَّرْطُ أَيْضًا لظُهُورِ الْمَعْنَى

- 91) And it is possible that the thing excepted be mentioned first and the conditional, as well, for the purpose of meaning.

وَيُحْمَلُ الْمَطْلُوقُ مَهْمَا وَجِدَا عَلَى الَّذِي بِالْوَصْفِ مِنْهُ قُبْدًا

- 92) Wherever the absolute is found together with an attribute then it is counted as restricted.

فَمُطْلَقُ التَّحْرِيرِ فِي الْإِيمَانِ مُقَيَّدٌ فِي الْقَتْلِ بِالْإِيمَانِ

- 93) The absolute command to emancipate a slave in fulfillment of an oath is in cases of murder conditional upon belief.

فِيُحْمَلُ الْمُطْلَقُ فِي التَّحْرِيرِ عَلَى الَّذِي قُبِدَ فِي التَّكْفِيرِ

- 94) The absolute in the case of emancipating of a slave counts as restricted when applied to an act of expiation.

ثُمَّ الْكِتَابُ بِالْكِتَابِ خَصُّوا وَسُنَّةُ بِسُنَّةٍ تُخَصُّ

- 95) Then the Book (the *Qur'an*) with the Book is made specific, and a *sunnah* with a *sunnah* is made specific.

وَحَصُّوا بِالسُّنَّةِ الْكِتَابَ وَعَكْسُهُ اسْتَعْمِلَ يَكُنْ صَوَابًا

- 96) And some scholars make specific the Book by means of the *sunnah* and the reverse if used is also correct.

وَالذِّكْرُ بِالْإِجْمَاعِ مَخْصُوصٌ كَمَا قَدْ خُصَّ بِالْقِيَاسِ كُلُّ مِنْهُمَا

- 97) The *Qur'an* can be made specific by means of consensus, likewise by means of analogy, each of them (*Qur'an* and *sunnah*) can be made specific.

بَابُ الْمُجْمَلِ وَالْمُبِينِ

8. Chapter Concerning the Summary and the Detailed

فَمُجْمَلٌ وَضَابِطُ الْبَيَانِ
إِلَى التَّجَلِّيِّ وَأَتْضَاحِ الْحَالِ

مَا كَانَ مُحْتَاجًا إِلَى بَيَانٍ
إِخْرَاجُهُ مِنْ حَالَةِ الْإِشْكَالِ

98&99) That which requires clarification is summary and the criterion of clarification is removing it from a state of ambiguity to a one of manifestness and clarity of condition.

فِي الْحَيْضِ وَالطُّهْرِ مِنَ النِّسَاءِ

كَالْقُرْءِ وَهُوَ وَاحِدُ الْأَقْرَاءِ

100) Like the *Qur'*¹⁷, and it is the singular of *al-Aqra'*, which relates to menstruation and purity for women.

¹⁷ *Qur'* is a single noun appears in the *Qur'an* and it refers to women's menstrual cycles. In the *Maliki* school of law, *Qur'* refers to the period of time a woman is in a state of ritual purity between two menstruation. In the *Hanafi* school, it is understood to mean the actual period of menstruation, where the flow of blood is present. The text of the *Qur'an* addresses the waiting period that a divorced woman have to go through before it is permissible for her to marry again. Also, during this period, the husband can be reconciled with his wife without any additional conditions. However, if the period of three menstrual cycles were completed then they can come back together but with the condition that a new contract with a dowry given to the woman. This is the case if the woman wants to remarry her husband, but if she does not, then she can marry someone else at that point. The case above is if the husband has divorced his wife according to the *sunnah*. The following are the restrictions stipulated on such a divorce: 1. It is only one *Talqa*, 2. The husband did not co-habit with his wife during the month of divorce; 3. The woman is not on her menstrual period.

وَالنَّصُّ عُرْفًا كُلُّ لَفْظٍ وَارِدٍ لَمْ يَحْتَمِلْ إِلَّا لِمَعْنَى وَاحِدٍ

- 101) The unambiguous word in general usage is every word occurs and does not accept more than one meaning,

كَقَدِّ رَأَيْتُ جَعْفَرًا وَقِيلَ مَا تَأْوِيلُهُ تَنْزِيلُهُ فَلْيَعْلَمَا

- 102) Like saying, "I saw Ja'far." And it is said that its interpretation is identical to its outer wording; let this be known.

وَالظَّاهِرُ الَّذِي يُفِيدُ مَا سُمِعَ مَعْنَى سِوَى الْمَعْنَى الَّتِي لَهُ وَضِعَ

- 103) And the apparent is that which when it is heard conveys a meaning other than that for which it was established.

كَالْأَسَدِ إِسْمٌ وَاحِدٍ السَّبَّاحِ وَقَدِّ يَرَى لِلرَّجُلِ الشُّجَاعِ

- 104) Like the lion, a name for one of the beasts, but which sometimes is used for a brave man.

وَالظَّاهِرُ الْمَذْكُورُ حَيْثُ أَشْكَلَا مَفْهُومُهُ فَبِالدَّلِيلِ أَوْلَا

- 105) And the apparent, when its meaning becomes problematic, is to be interpreted by means of a proof.

وَصَارَ بَعْدَ ذَلِكَ التَّأْوِيلِ مُقَيَّدًا فِي الْإِسْمِ بِالْدَّلِيلِ

- 106) And after this interpretation it becomes qualified in its name by means of a proof.

بَابُ الْأَفْعَالِ

9. Chapter Concerning Acts

أَفْعَالُ طَهَ صَاحِبِ الشَّرِيعَةِ جَمِيعُهَا مَرْضِيَةٌ بِدَيْعِهِ

- 107) The acts of *Taha*, the master of the *Shari'a*, are all of them pleasing and wondrous.

وَكُلُّهَا إِذَا تُسَمِّي قُرْبَهُ فَطَاعَةٌ أَوْ لَا فَفَعَلُ الْقُرْبِهِ

- 108) All of them are called acts of closeness (to God) and are therefore acts of worship, or they are not.

مِنَ الْخُصُوصِيَّاتِ حَيْثُ قَامَا دَلِيلُهَا كَوَصْلِهِ الصِّيَامَا

- 109) The acts of closeness include those that are particular to him, wherever its proof was established, like his uninterrupted fasting.

وَحَيْثُ لَمْ يَقُمْ دَلِيلُهَا وَجَبَ وَقِيلَ مَوْقُوفٌ وَقِيلَ مُسْتَحَبٌ

- 110) And where there is no such proof, then it is incumbent, or it is said suspended, or recommended,

فِي حَقِّهِ وَحَقِّنَا وَأَمَّا مَا لَمْ يَكُنْ بِقُرْبِهِ يُسَمَّى
فَإِنَّهُ فِي حَقِّهِ مَبَاحٌ وَفَعَلُهُ أَيْضًا لَنَا يُبَاحُ

- 111&112) With respect to him and to us. As for what cannot be called an act of closeness, then it is permissible for him and doing it for us is likewise permissible.

كَقَوْلِهِ كَذَلِكَ فِعْلٌ قَدْ فُعِلَ

وَإِنْ أَقْرَأَ قَوْلَ غَيْرِهِ جُعِلَ

- 113) And if he gave his consent to the saying of someone else then it becomes like his own statement. Likewise an act performed by someone else which he consented to becomes like his own act.

عَلَيْهِ إِنْ أَقْرَأَهُ فَلْيُتَّبَعِ

وَمَا جَرَى فِي عَصْرِهِ ثُمَّ إِطْلَعِ

- 114) And then that which happened at his time and he became aware of, if he gave his consent to it, then it is to be followed.

بَابُ النِّسْخِ

10. Chapter Concerning Supersession

النِّسْخُ نَقْلٌ أَوْ إِزَالَةٌ كَمَا حَكَوهُ عَنِ أَهْلِ اللِّسَانِ فِيهِمَا

- 115) Supersession is the transmittal or the removal, as the lexicographers have said.

وَحَدُّهُ رَفْعُ الْخِطَابِ الْوَالِدِ ثَبُوتُ حُكْمِ بِالْخِطَابِ السَّابِقِ

- 116) And its definition is the removal by a latter address of the firmness of an earlier address,

رَفَعًا عَلَى وَجْهِ أَتَى لَوْلَاهُ لَكَانَ ذَلِكَ ثَابِتًا كَمَا هُوَ

- 117) In a way that without it the earlier address would have remained fixed as it was.

إِذَا تَرَخَى عَنْهُ فِي الزَّمَانِ مَا بَعْدَهُ مِنَ الْخِطَابِ الثَّانِي

- 118) If time elapsed between it and the second address.¹⁸

وَجَازَ نَسْخُ الرَّسْمِ دُونَ الْحُكْمِ كَذَلِكَ نَسْخُ الْحُكْمِ دُونَ الرَّسْمِ

- 119) And it is possible for the wording to be superseded without the ordinance and likewise the ordinance may be superseded but not the wording.

¹⁸ It means that it is necessary for the second address to come after the first address.

وَدُونَهُ وَذَلِكَ تَخْفِيفٌ حَصَلَ وَنَسَخُ كُلِّ مِنْهُمَا إِلَى بَدَلٍ

- 120) Both together may be superseded with or without a substitution, which results in a lightening of the rule.¹⁹

وَجَازَ أَيْضًا كَوْنُ ذَلِكَ الْبَدَلِ أَخْفَى أَوْ أَشَدُّ مِمَّا قَدْ بَطَلَ

- 121) And it is possible for the substitute to be lighter or more severe than what is being voided.

ثُمَّ الْكِتَابُ بِالْكِتَابِ يُنْسَخُ كَسُنَّةٍ بِسُنَّةٍ فَتُنْسَخُ

- 122) Then the Book with the Book can be superseded, and likewise a *sunnah* by a *sunnah* is superseded.

وَلَمْ يَجْزُ أَنْ يُنْسَخَ الْكِتَابُ بِسُنَّةٍ بَلْ عَكْسُهُ صَوَابٌ

- 123) And it is not permissible for a *Sunnah* to supersede the Book, rather the opposite is correct.

وَذُو تَوَاتُرٍ بِمِثْلِهِ نُسِخَ وَغَيْرُهُ بِغَيْرِهِ فَلَيَنْتَسِخَ

- 124) And a *hadith*, with multiple chains, is superseded by one like it, and other *hadiths* are superseded by *hadiths* of the same category as themselves.

وَاخْتَارَ قَوْمٌ نَسَخَ مَا تَوَاتَرَ بِغَيْرِهِ وَعَكْسُهُ حَتْمًا يُرَى

¹⁹ That both the wording and the ordinance can be superceded by something substituting for them or reducing the severity of the ordinance.

- 125) And one group of scholars choose the possibility of superseding a *hadīth* with multiple chains by a *hadīth* of a lesser ranking, but certainly the opposite can be seen.

بَابُ فِي بَيَانِ مَا يُفْعَلُ فِي التَّعَارُضِ

بَيْنَ الْأَدَلَّةِ وَالتَّرْجِيحِ

11. Chapter Concerning What is to Be Done When Faced With Conflicting Proofs and How to Prefer One Over The Other.

تَعَارُضُ النُّطْقَيْنِ فِي الْأَحْكَامِ يَأْتِي عَلَى أَرْبَعَةِ أَقْسَامٍ

126) The contradiction of two utterances in decrees may occur in four ways.

إِمَّا عُمُومٌ أَوْ خُصُوصٌ فِيهِمَا أَوْ كُلُّ نُطْقٍ فِيهِ وَصْفٌ مِنْهُمَا

127) Either generality or specificity in both of them, or any wording containing either of these two attributes.

أَوْ فِيهِ كُلُّ مِنْهُمَا وَيُعْتَبَرُ كُلُّ مِنَ الْوَصْفَيْنِ فِي وَجْهِ ظَهَرِ

128) Or a speech that contains both of them and both of the attributes are to be considered as evident.

فَالْجَمْعُ بَيْنَ مَا تَعَارَضَا هُنَا فِي الْأَوَّلِينَ وَاجِبٌ إِنْ أَمْكَنَّا

- 129) Combining the contradictory elements in the first two cases is incumbent if possible.

وَحَيْثُ لَا إِمْكَانَ قَالَتْوَقُفُّ
مَا لَمْ يَكُنْ تَارِيخُ كُلِّ يُعْرَفُ

- 130) And whenever it is not possible to combine both of them, then suspension if the respective dates of the two are not known.

فَإِنْ عَلِمْنَا وَقْتَ كُلِّ مِنْهُمَا
فَالثَّانِ نَاسِخٌ لِمَا تَقَدَّمَ

- 131) And if we know the time of each of them, then the second supersedes that which comes earlier.

وَخَصَّصُوا فِي الثَّالِثِ الْمَعْلُومِ
بِذِي الْخُصُوصِ لَفْظَ ذِي الْعُمُومِ

- 132) And in the third well known case, a wording implying generality is made specific by one implying specificity.

وَفِي الْأَخِيرِ شَطْرُ كُلِّ نُطْقٍ
مِنْ كُلِّ شِقِّ حُكْمٍ ذَاكَ النُّطْقِ

- 133) And in the last case, the force of one part of speech is determined by another.

فَاخْصُصْ عُمُومَ كُلِّ نُطْقٍ مِنْهُمَا
بِالضَّدِّ مِنْ قِسْمِيهِ وَأَعْرِفْنَهُمَا

- 134) Regard as specific the general wording for each of them by means of their respective opposites and know of them.

بَابُ الْإِجْمَاعِ

12. Chapter Concerning Consensus

إِتِّفَاقُ كُلِّ أَهْلِ الْعَصْرِ أَيُّ عُلَمَاءِ الْفِقْهِ دُونَ نُكْرٍ

- 135) The agreement among all the people of the age, i.e. the scholars of jurisprudence, without the possibility of dissension,

عَلَىٰ اعْتِبَارِ حُكْمِ أَمْرٍ قَدْ حَدَثَ شَرْعًا كَحُرْمَةِ الصَّلَاةِ بِالْحَدَثِ

- 136) On consideration of a decree occurring in relation to the *Sharī'a*, like the prohibition of prayers in a state of pollution.

أَحْتُجُّ بِالْإِجْمَاعِ مِنْ ذِي الْأُمَّةِ لَا غَيْرُهَا إِذْ خُصِّصَتْ بِالْعِصْمَةِ

- 137) One may have recourse as a proof to consensus, as a proof of anyone within the *ummah*, not outside of it, because this *ummah* [collectively] has been given protection against error.²⁰

كُلُّ إِجْمَاعٍ فَحُجَّةٌ عَلَىٰ مَنْ بَعْدَهُ فِي كُلِّ عَصْرٍِ اقْبَلَا

- 138) Each consensus is a proof for those that come after it in every generation.

²⁰ This view is based on a well-known *hadīth* that spoke of the protection against collective error. "My community shall never agree on error." This *hadīth* appear in *Sunnan Ibn Mājah*, vol. II, 1303, no. 3950. A number of other *hadīths* having the same meaning appear in *al-Ghazālī usūl* work, *al-Mustaṣfā*, vol. 1, page 111; and in *Amīdī, Iḥkām*, vol. 1, pp. 220-221.

إِنْقِرَاضُ عَصْرِهِ لَمْ يُشْتَرَطْ أَي فِي إِنْعِقَادِهِ وَقِيلَ مُشْتَرَطٌ

- 139) The end of its generation was not made a condition, [i.e. in its validity] but it has also been said that it is a condition.

يَجْزُ لِأَهْلِهِ أَنْ يَرْجِعُوا إِلَّا عَلَى الثَّانِي فَلَيْسَ يُمْنَعُ

- 140) It is not possible for the people participating in a consensus to dissent from it, except in the case of the second opinion, according to which it is not forbidden.

يُعْتَبَرُ عَلَيْهِ قَوْلُ مَنْ وُلِدَ وَصَارَ مِثْلَهُمْ فَفِيهَا مُجْتَهِدٌ

- 141) It is also to be considered as the opinion of someone born within the same age and who became like them a *faqih mujathid*.

يَحْصُلُ الإِجْمَاعُ بِالأَقْوَالِ مِنْ كُلِّ أَهْلِهِ وَبِالأَفْعَالِ

- 142) The consensus results from the utterances of each of its members and from their actions,

وَقَوْلُ بَعْضٍ حَيْثُ بَاقِيهِمْ فَعَلَّ وَبِإِنْتِشَارِ مَع سُكُوتِهِمْ حَصَلَ

- 143) Or the utterance by some in accordance with which others act, or the spreading of either those utterances or acts combined with the silence of the others.

ثُمَّ الصَّحَابِيُّ قَوْلُهُ عَنِ مَذْهَبِهِ عَلَى الْجَدِيدِ فَهُوَ لَا يُحْتَجُّ بِهِ

- 144) Then, the opinion of the Companion concerning his own practice, according to the later view of *al-Shāli* cannot be used as a proof.

فِي حَقِّهِمْ وَضَعَّفُوهُ فَلْيُرَدِّ

وَفِي الْقَدِيمِ حُجَّةٌ لِمَا وَرَدَ

- 145) Whereas in accordance with his previous opinion it is to be taken as a proof, but it has been regarded as weak and rejected.

بَابُ بَيَانِ الْأَخْبَارِ وَحُكْمِهَا

13. Chapter Concerning Reports and Their Status

وَالْخَبْرُ اللَّفْظُ الْمَفِيدُ الْمُحْتَمَلُ
صِدْقًا وَكُذِبًا مِنْهُ نَوْعٌ قَدْ نُقِلَ

- 146) The report is a wording conveying a meaning that includes the possibility of veracity or falsehood, and one type of it was transmitted,

تَوَاتُرًا لِلْعِلْمِ قَدْ أَفَادَا
وَمَا عَدَا هَذَا اعْتَبِرَ آحَادًا

- 147) By multiple continuous chains conveying definite knowledge," other types than this being considered isolated.

فَأَوَّلِ النَّوْعَيْنِ مَا رَوَاهُ
جَمْعٌ لَنَا عَنْ مِثْلِهِ عَزَاهُ

- 148) The first of the two kinds is that which was narrated by a group to us from a similar group that traces it back to the Prophet (peace and blessings upon him)).

وَهَكَذَا إِلَى الَّذِي عَنْهُ الْخَبْرُ
لَا بِاجْتِهَادٍ بَلْ سَمَاعٍ أَوْ نَظَرٍ

- 149) And continually this way to the one with whom the report originated not by means of rational exertion rather by hearing or seeing.

²¹ One of the main conditions for a sound, correct, and authentic *hadith* is the presence of multiple continuous chains of transmission in every generation from the time of the Prophet to the present. Such a *hadith* is called *mutawatir*: The scholars differed on the minimum number of chains needed for such a *hadith*, but anything below the minimum moves it into a different class of *hadith*.

كُلُّ جَمْعٍ شَرْطُهُ أَنْ يَسْمَعُوا وَالْكَذِبُ مِنْهُمْ بِالتَّوَاطُّيِ يُمْنَعُ

- 150) And it is a condition that each group should have heard the report and their conspiring to lie together is impossible.

ثَانِيهِمَا الْآحَادُ يُوجِبُ الْعَمَلَ لَا الْعِلْمَ لَكِنْ عِنْدَهُ الظَّنُّ حَصَلَ

- 151) The second of them is the isolated which makes incumbent a deed but not definite knowledge, for supposition occurred with it.

لِمُرْسَلٍ وَمُسْنَدٍ قَدْ قُسِمَا وَسَوْفَ يَأْتِي ذِكْرُ كُلِّ مِنْهُمَا

- 152) It is divided into *mursal* and *musnad*, and each one will be mentioned in turn.

فَحَيْثُمَا بَعْضُ الرُّوَاةِ يُفْقَدُ فَمُرْسَلٌ وَمَا عَدَاهُ مُسْنَدٌ

- 153) Wherever some of the narrators are missing then, it is *mursal*, otherwise it is *musnad*.

لِلْإِحْتِجَاجِ صَالِحٍ لَا الْمُرْسَلُ لَكِنْ مَرَّاسِيلُ الصَّحَابِيِّ تُقْبَلُ

- 154) The *musnad* is fit to serve as a proof but not the *mursal*, however the *mursal* of the Companion is acceptable.

كَذَا سَعِيدُ بْنُ الْمُسَيَّبِ أَقْبَلَا فِي الْإِحْتِجَاجِ مَا رَوَاهُ مُرْسَلَا

- 155) Thus *Saïd ibn al-Musayyib*²² made it accepted as a proof that which he narrated as a *mursal*.

وَالْحَقُّوَا بِالْمُسْنَدِ الْمَعْنَعَنَا فِي حُكْمِهِ الَّذِي لَهُ تَبَيَّنَا

- 156) And joined with the *musnad* is the *mu'anan* in its status which has been clarified for it.

وَقَالَ مَنْ عَلَيْهِ شَيْخُهُ قَرَأَ حَدَّثَنِي كَمَا تَقُولُ أَخْبَرَا

- 157) And he who his *shaykh* read to him a report says, "he narrated to me," like saying "he informed me."

وَلَمْ يَقُلْ فِي عَكْسِهِ حَدَّثَنِي لَكِنْ يَقُولُ رَأَوِيَا أَخْبَرَنِي

- 158) And he does not say in the opposite cases "he narrated to me", rather he says "a transmitter informed me."

وَحَيْثُ لَمْ يَقْرَأْ وَقَدْ أَجَازَهُ يَقُولُ قَدْ أَخْبَرَنِي إِجَازَهُ

- 159) And wherever he did not read to the *shaykh*, but the *shaykh* authorized him to transmit, he says "he informed me with an authorization."

²² *Saïd ibn al-Musayyib* is not one of the Companions; rather he is a follower of the Companions i.e. he belongs to the second generation. His *Mursal hadith* was accepted as sound because all of what he transmitted was taken from *Abu Hurayra*, his father in law.

بَابُ الْقِيَاسِ

14. Chapter Concerning Analogy

أَمَّا الْقِيَاسُ فَهُوَ رَدُّ الْفَرْعِ
لِلْأَصْلِ فِي حُكْمٍ صَحِيحٍ شَرْعِيٍّ

- 160) As for analogy, it is the tracing back of the branch to the root in a sound *Shari'a* judgment,

لِعِلَّةٍ جَامِعَةٍ فِي الْحُكْمِ
وَلِيُعْتَبَرَ ثَلَاثَةً فِي الرَّسْمِ

- 161) Due to a unifying cause in the judgment, and it is to be considered threefold by convention.

لِعِلَّةٍ أَضْفَهُ أَوْ دَلَالَهُ
أَوْ شَبَهَهُ ثُمَّ اعْتَبِرَ أَحْوَالَهُ

- 162) Either for a cause that is added on, or for a textual indication²³ or similitude then consider its conditions.

أَوَّلُهَا مَا كَانَ فِيهِ الْعِلَّةُ
مُوجِبَةً لِلْحُكْمِ مُسْتَقْلَةً

- 163) The first of it is that where the cause independently produces a judgment.

فُضْرِبُهُ لِلْوَالِدَيْنِ مُمْتَنِعٍ
كَقَوْلِ أَفٍّ وَهُوَ لِلْإِيذَانِ مُنْعٍ

²³ The textual indicators fall generally into five areas: 1. *'ibārah al-naṣṣ* (explicit meaning); 2. *Ishārah al-naṣṣ* (alluded meaning), 3. *Dalālah al-naṣṣ* (inferred meaning); 4. *Iqtidā' al-naṣṣ* (required meaning); 5. *mathūm al-mukhālafah* (divergent meaning). See chapter five of Mohammad Hashim Kamali's work, *Principles of Islamic Jurisprudence*, Islamic Texts Society, Cambridge, 1991.

- 164) Like a person beating or striking his parents is forbidden, like expressing irritation to one's parents, which is forbidden because of the harm it causes.

وَالثَّانِ مَا لَمْ يَوْجِبِ التَّعْلِيلُ حُكْمًا بِهِ لَكِنَّهُ دَلِيلٌ

- 165) And the second is that where the sighting of the cause does not produce a judgment, but it is a textual indication.

فَيُسْتَدَلُّ بِالنَّظِيرِ الْمَعْتَبَرِ شَرْعًا عَلَى نَظِيرِهِ فَيُعْتَبَرُ

- 166) Proof may be drawn from a valid analogy resulting in a *Shari'a* judgment to be followed,

كَقَوْلِنَا مَا لُ الصَّبِيِّ تَلَزَمُ زَكَاتُهُ كَبَالِغِ أَيِّ لِلنَّمُو

- 167) Like our statement that the property of the boy necessitates the paying of the *zakāt* on it like that of the adult, for the purpose of growth.

وَالثَّالِثُ الْفَرْعُ الَّذِي تَرَدَّدَا مَا بَيْنَ أَصْلَيْنِ اعْتِبَارًا وَجِدَا

- 168) And the third type of analogy is that the status of which is intermediate between two entities:

فَيَلْتَحِقُ بِأَيِّ ذَيْنِ أَكْثَرًا مِنْ غَيْرِهِ فِي وَصْفِهِ الَّذِي يُرَى

- 169) It is to be assimilated to the one from the two it more resembles in its visible characteristics.

فَلْيَلْحَقِ الرَّقِيقُ فِي الْإِتْلَافِ بِالْمَالِ لَا بِالْحُرِّ فِي الْأَوْصَافِ

- 170) The slave is to be assimilated with property not with a free person in respect to his characteristics in case of damage.

وَالشَّرْطُ فِي القِيَّاسِ كَوْنُ الفِرْعِ مَنَاسِبًا لِأَصْلِهِ فِي الجَمْعِ

- 171) And the condition in analogy is that the branch should have affinity to the principle when they are joined,

بِأَنَّ يَكُونَ جَامِعَ الأَمْرَيْنِ مَنَاسِبًا لِلْحُكْمِ دُونَ مَيْنِ

- 172) Through the quality that joins the two together being appropriate for the judgment with no ambiguity,

وَكُونُ ذَلِكَ الأَصْلُ ثَابِتًا بِمَا يُوَافِقُ الحَصْمَيْنِ فِي رَأْيَيْهِمَا

- 173) And the principle being firm in such a way that two adversaries should agree upon it.

وَشَرْطُ كُلِّ عِلَّةٍ أَنْ تَطْرُدَ فِي كُلِّ مَعْلُولَاتِهَا الَّتِي تَرُدُ

- 174) And the condition of each case is that it is consistently present in all its effects that occur.

لَمْ يَنْتَقِضْ لَفْظًا وَلَا مَعْنَى فَلَا قِيَّاسَ فِي ذَاتِ انْتِقَاضِ مُسْجَلًا

- 175) Also, that it should not be invalid in word and in meaning, and there is no analogy whenever such deficiencies are recorded.

وَالْحُكْمُ مِنْ شُرُوطِهِ أَنْ يَتَّبَعًا عِلَّتُهُ نَفِيًّا وَإِثْبَاتًا مَعَا

- 176) A further condition is that the decree should conform to its cause, with either negation or affirmation, together.

فَهِيَ التِّي لَهُ حَقِيقاً تَجَلِبُ وَهُوَ الَّذِي لَهَا كَذَاكَ يُجَلِبُ

- 177) And the cause is that which in reality determines the judgment and the judgment is that which is determined by it.

فصل في الحظر والإباحة

15. Chapter Concerning Prohibition and Permissibility

لا حكم قبل بعثة الرسول بل بعدها بمقتضى الدليل

- 178) There is no decree before the sending of the Messenger (peace and blessings upon him), rather after the sending in accordance with the proof.

والأصل في الأشياء قبل الشرع تحريمها لا بعد حكم شرعي

- 179) And the original state of things before the occurrence of legislation is that they are forbidden, and not after a *Shari'a* judgment.

بل ما أحل الشرع حللناه وما نهانا عنه حرّمناه

- 180) Rather whatever the *Shari'a* made permissible, we make permissible and whatever it forbids to us we regard as forbidden.

وحيث لم نجد دليل حل شرعاً تمسكنا بحكم الأصل

- 181) And whenever we do not find an evidence of permissibility in the *Shari'a* we adhere to the judgment of the general principle.

مستصحبين الأصل لا سواه وقال قوم ضد ما قلناه

- 182) Conforming to the principle and none other than it; however a group of scholars have said the opposite of what we have said,

أَيُّ أَصْلُهَا التَّحْلِيلُ إِلَّا مَا وَرَدَ تَحْرِيمُهَا فِي شَرْعِنَا فَلَا يُرَدُّ

- 183) Meaning that the basic status of all things is permissibility except where prohibition has occurred in our *Shari'a*, then it is not to be refuted.

وَقِيلَ إِنَّ الْأَصْلَ فِيمَا يَنْفَعُ جَوَازُهُ وَ مَا يَضُرُّ يُمْنَعُ

- 184) And it was said that the basis with respect to what is beneficial is its permissibility and that which is harmful is prohibited.

وَحَدُّ الْإِسْتِصْحَابِ أَخْذُ الْمُجْتَهِدِ بِالْأَصْلِ عَنِ دَلِيلِ حُكْمٍ قَدْ فُقِدَ

- 185) The definition of *Istishāb* is that the *mujtahid* revert to the basic principle whenever there is no specific proof for a specific judgment.

بَابُ تَرْتِيبِ الْأَدْلَةِ

16. Chapter Concerning the Priority of Proofs

وَقَدِّمُوا مِنَ الْأَدْلَةِ الْجَلِيِّ عَلَى الْخَفِيِّ بِاعْتِبَارِ الْعَمَلِ

- 186) The clear proofs are given priority over obscure ones with respect to acts.

وَقَدِّمُوا مِنْهَا مُفِيدَ الْعِلْمِ عَلَى مُفِيدِ الظَّنِّ أَيْ لِلْحُكْمِ

- 187) From among them priority is given to proofs that result in knowledge over those that result in supposition, i.e., with respect to judgment,

إِلَّا مَعَ الْخُصُوصِ وَالْعُمُومِ فَلْيُؤْتِ بِالتَّخْصِيسِ لَا التَّقْدِيمِ

- 188) Except in the case of the specific and the general; the specific should always be taken without the question of priority arising.

وَالنُّطْقَ قَدَّمَ عَنِ قِيَاسِهِمْ تَفٍّ وَقَدِّمُوا جَلِيَّهُ عَلَى الْخَفِيِّ

- 189) Give priority to the authoritative text over analogy and that will suffice; the clear text is given priority over the obscure.

وَإِنْ يَكُنْ فِي النُّطْقِ مِنْ كِتَابٍ أَوْ سُنَّةٍ تَغْيِيرُ الاستِصْحَابِ

- 190) If there is in the authoritative text something from the *Qur'an* or the *sunnah*, then the *Istishāb* must be changed.

فَكُنْ بِالِاسْتِصْحَابِ مُسْتَدِلًّا

فَالنُّطْقُ حُجَّةٌ إِذَا وَإِلَّا

- 191) Then the text is decisive, otherwise continue to rely upon *Istishāb*.

بَابُ أَيِّ فِي الْمُفْتِيِّ وَالْمُسْتَفْتِيِّ وَالْتَّقْلِيدِ

17. Chapter Concerning the Mufti, Mustafti, and Muqalid

وَالشَّرْطُ فِي الْمُفْتِيِّ إِجْتِهَادٌ وَهُوَ أَنْ يَعْرِفَ مِنْ آيِ الْكِتَابِ وَالسُّنَنِ

- 192) The qualification of the *mufti* is to have reached the level of *ijtihād*, which is that he should know the *āyāt* (verses) of the Book and the *sunnah* of the Prophet (peace and blessings upon him).

وَالْفِقْهِ فِي فُرُوعِهِ الشُّوَارِدِ وَكُلِّ مَا لَهُ مِنَ الْقَوَاعِدِ

- 193) And the fiqh in its far-reaching branches and every rule that it has.

مَعَ مَا بِهِ مِنَ الْمَذَاهِبِ الَّتِي تَقَرَّرَتْ وَمِنْ خِلَافٍ مُثَبَّتِ

- 194) Together with the opinion of the *madhāhib*²⁴ that have come into existence and the differences established between them,

وَالنُّحُوِّ وَالْأُصُولِ مَعَ عِلْمِ الْأَدَبِ وَاللُّغَةِ الَّتِي أَتَتْ مِنَ الْعَرَبِ

- 195) Grammar, the principles of jurisprudence together with the knowledge of literature and the language which came from the Arabs,

²⁴ Arabic term meaning the four *sunni* schools of law that constitute the traditionally accepted legal fabric of the Muslim community.

قَدْرًا بِهِ يَسْتَنْبِطُ الْمَسَائِلَ بِنَفْسِهِ لِمَنْ يَكُونُ سَائِلًا

196) In sufficient quantity to be able to deduce matters by himself for whoever asks.

مَعَ عِلْمِهِ التَّفْسِيرَ فِي الْآيَاتِ وَفِي الْحَدِيثِ حَالَةَ الرُّوَاةِ

197) He should also have knowledge of *talsir*²⁶ of the *ayat* (Qur'anic verses), and in hadith of the status of the narrators,

وَمَوْضِعَ الْإِجْمَاعِ وَالْخِلَافِ فَعِلْمُ هَذَا الْقَدْرِ فِيهِ كَافِي

198) And the instances of consensus and disagreement. Knowledge of this amount is sufficient for him.

وَمِنْ شُرُوطِ السَّائِلِ الْمُسْتَفْتِي أَنْ لَا يَكُونَ عَالِمًا كَالْمَفْتِي

199) The condition of the *mustallī* is that he not be learned like the *Muftī*.

فَحَيْثُ كَانَ مِثْلَهُ مُجْتَهِدًا فَلَا يَجُوزُ كَوْنُهُ مُقَلِّدًا

200) Whenever he is like the *muftī* a *mujtahid*, then it is not permissible for him to be a *muqallid*.

²⁵ The science of Qur'anic interpretation and exegesis.

فَرْعٌ فِي التَّقْلِيدِ

18. SubChapter Concerning Taqlid

تَقْلِيدُنَا قَبُولُ قَوْلِ الْقَائِلِ مِنْ غَيْرِ ذِكْرِ حُجَّةٍ لِلسَّائِلِ

- 201) Our imitation consists of the acceptance of a statement by someone without mentioning the proof to the questioner.

وَقِيلَ بَلْ قَبُولُنَا مَقَالَهُ مَعَ جَهْلِنَا مِنْ أَيْنَ ذَلِكَ قَالَهُ

- 202) And it is said, it is our acceptance of his statement despite our ignorance of the basis on which he said it.

فَفِي قَبُولِ قَوْلِ طَهَ الْمُصْطَفَى بِالْحُكْمِ تَقْلِيدٌ لَهُ بِلا خَفَا

- 203) In our acceptance of the statement of *Taha al-Mustafā* (peace and blessings upon him) there is an imitation of him in the judgement without any doubt.

وَقِيلَ لَا لِإِنَّ مَا قَدْ قَالَهُ جَمِيعُهُ بِالْوَحْيِ قَدْ أَتَى لَهُ

- 204) And it is said, no, because everything that he said was by means of revelation (*wahi*).

بَابُ الْإِجْتِهَادِ

19. Chapter Concerning Ijtihad

- وَحَدُّهُ أَنْ يَبْذُلَ الَّذِي إِجْتَهَدَ مَجْهُودَهُ فِي نَيْلِ أَمْرٍ قَدْ قَصَدَ
- 205) Its definition is that the one who engages in *ijtihād* should exert his effort in attaining a matter he intended.
- وَلَيَنْقَسِمَ إِلَى صَوَابٍ وَخَطَأٍ وَقِيلَ فِي الْفُرُوعِ يُمْنَعُ الْخَطَأُ
- 206) And is divided into correct and erroneous, and error is forbidden in branches where certainty exists.
- وَفِي أَصُولِ الدِّينِ ذَا الْوَجْهِ إِمْتَنَعَ إِذْ فِيهِ تَصْوِيبٌ لِأَرْبَابِ الْبِدْعِ
- 207) And in the principles of *din* (principles of theology), then it is in the same way forbidden, because it would imply approval of the people of innovation,
- مِنَ النَّصَارَى حَيْثُ كُفِرَ تِلْثُوا وَالزَّاعِمُونَ أَنَّهُمْ لَمْ يُبْعَثُوا
- 208) Such as the Christians who committed *kufi* with their trinitarianism, those who claim that they will not be resurrected,
- أَوْ لَا يَرَوْنَ رَبَّهُمْ بِالْعَيْنِ كَذَا الْمَجُوسُ فِي إِدْعَا الْأَصْلِينَ
- 209) Or that they will not see their lord with their eyes, and the Zorastrians in their

claim of the two principles, i.e. dualism.

وَمَنْ أَصَابَ فِي الْفُرُوعِ يُعْطَى أُجْرَيْنِ وَجَعَلَ نِصْفَهُ مَنْ أَخْطَا

- 210) And whoever attained a correct result in the branches is given two rewards and make half of that for the one who is in error.

لِمَا رَوَوْا عَنِ النَّبِيِّ الْهَادِي فِي ذَاكَ مِنْ تَقْسِيمِ الْإِجْتِهَادِ

- 211) Because of what has been narrated from the guiding Prophet (peace and blessings upon him) concerning the two types of *ijtihād*.

وَتَمَّ نَظْمُ هَذِهِ الْمَقْدَمَةِ أَبِيَاتَهَا فِي الْعَدِّ دُرٌّ مُحْكَمَةٌ

- 212) And with this then the versification of this introduction has been completed. Its verses in number correspond to firm pearls.

فِي عَامِ (طَاءٍ) ثُمَّ (ظَاءٍ) ثُمَّ (فَاءٍ) ثَانِي رَبِيعِ شَهْرِ وَضَعِ الْمِصْطَفَى

- 213) This was completed in the year 989 *Hijra*, in the second day of the month *Rabi al-Thāni*, the month of birth of *Mustalā* (peace and blessings upon him).

فَالْحَمْدُ لِلَّهِ عَلَى إِمَامِهِ ثُمَّ صَلَاةُ اللَّهِ مَعَ سَلَامِهِ
عَلَى النَّبِيِّ وَآلِهِ وَصَحْبِهِ وَحَزْبِهِ وَكُلِّ مُؤْمِنٍ بِهِ

- 214 & 215) Praise to Allah for its completion, then blessings of Allah and his peace upon the Prophet and his family, his companions and his followers and every believer in him.