

THE HAKAMI GIFT IN THE PRINCIPLES OF ISLAMIC JURISPRUDENCE



WRITTEN BY:

**ABU USAMAH MUHAMMAD BIN AHMAD AL-HAKAMI
AS-SALAFI**

TRANSLATED BY:

**FAISAL BIN ABDUL QAADIR BIN HASSAN
ABU SULAYMAAN**

التحفة الحكيمة في أصول الفقه الشرعية

*The Hakami Gift in the Principles of Islamic
Jurisprudence*

An Abridged Text on the Principles of Jurisprudence

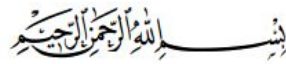
Written by the Poor One to the Pardon of His Lord:

*Abu Usamah Muhammad bin Ahmad al-Hakami
as-Salafi*

Translated by:

*Faisal bin Abdul Qadir bin Hassan
Abu Sulaymaan*

Introduction from Shaikh Yahya bin Ali al-Hajuri



Allah praise is due to Allah - praise which He is pleased with - and I bear witness that there is no Deity worthy of worship except Allah alone without any partners. There is none who can give what He prevents and there is none who can prevent what He gives. And I bear witness that Muhammad is His slave and Messenger, upon him be blessings and upon his family, Companions, and those who follow.

As for what follows:

I have read these definitions which our Brother, the Caller to Allah Abu Usamah Muhammad bin Ahmad al-Hakami (may Allah preserve him)¹ gathered in the form of a matn (abridged text). It is easy to memorize and comprehend its meaning. He was successful in this summarization and has done well. By explaining [the text] and attributing [the issues] to the various sources, [this work] will be more beneficial and clear inshaa Allah. May Allah reward him.

Written by

Yahya bin Ali al-Hajuri
29 Muharram 1432 H

¹ May Allah have mercy upon him. The Shaikh passed away in 1435 H.

Introduction of the Author

All praise is due to Allah and may peace and blessings be upon the Messenger of Allah (ﷺ).

As for what follows:

So this is a summarized text on the Principles of Islamic Jurisprudence. I eagerly tried to avoid the philosophical issues in it and what opposes the sound Aqeedah. I called it: *The Hakami Gift in the Principles of Islamic Jurisprudence*. I tried to include in the text the subjects which are missing from the book of Shaikh Ibn Uthaymeen, such as the remaining types of (الأحكام الوضعية) and the remaining types of evidences. Likewise what Imam al-Juwaayni missed in *al-Waraqaat*. So I ask Allah to benefit the writer and reader by it.

May Allah reward the one who was the cause for its authorship, the one who assisted in reviewing it, or writing it, or other than that.

Written by:

The Poor one to the Pardon of His Lord

Abu Usamah Muhammad bin Ahmad al-Hakami as-Salafi

The Imam and Khateeb of Jami' al-Istiqamah as-Salafi in Hudaydah

Yemen- Hudaydah, at-Tijaari Neighborhood behind the Higher Institute for Teachers

Definition of the Foundations of Fiqh (تعريف أصول الفقه)

al-Usool (الأصول): is the plural of the word *Asl*. It is a foundation which built upon it are other things, whether they are tangible or intangible.

Fiqh (الفقه): is knowing the Legislated, action-based rulings with their detailed evidences.

Usool ul-Fiqh (أصول الفقه): is the knowledge which discusses the comprehensive Fiqh evidences and how to benefit from them and the condition of the one who benefits [from them].

Knowledge, Opinion, and Doubt (العلم والظن والشك)

Comprehending the reality of something with a comprehension that is certain is called *knowledge* (علم).

The lack of comprehension [regarding something] is called *plain ignorance* (جهل بسيط).

Comprehending something in opposition to its reality is called *compounded ignorance* (جهل مركب).

Comprehending something with the possibility of the weaker opinion [also being correct] is called *opinion* (ظن).

Comprehending something with the possibility [of the opposite view] being more correct is called *wahm* (وهم).

Comprehending something with the possibility [that both views] are equally [correct] is called *doubt* (شك).

Legal Responsibility (التكليف)

(التكليف): is the command [for something] which has hardship in it. Its conditions are:

- Maturity
- Intellect
- Capability

The disbeliever is legally responsible; however, his good deeds will not be accepted from him except with Islam.

The preventatives for legal responsibility is the absence of maturity (puberty), insanity and whatever takes its ruling, forgetfulness, sleep, mistake, and duress.

The Rulings (الأحكام)

(الأحكام): is the plural of the word *ruling*. It is the affirmation of a command for an affair or its denial. It can be rational, tangible, customary, and Legislated.

(حكم شرعي): is the speech of the Legislation which is connected to the actions of the legally responsible people, in terms of a command or a choice or leaving off [an action].

It is of two categories: (تكليفي) and (وضعي)

(التكليفي): is what the speech of the Legislation necessitates in terms of command or choice.

(الأحكام التكليفية) are five:

1. Obligatory (الواجب)
2. Recommended (المندوب)
3. Prohibited (المحرم)
4. Disliked (المكروه)
5. Permissible (المباح)

Obligatory (الواجب): is what the Legislator commands in the form of an obligation, such that the one who performs the action is rewarded for adhering to the command and deserves punishment for leaving it off. Obligatory (الواجب) divides into two types:

1. Individual [obligation] (عيني)
2. Communal [obligation] (كفائي)

Recommended (المندوب): is what the Legislator ordered not in the form of an obligation, such that the one who performs the action is rewarded for adhering to the command and is not punished for leaving it off.

It can be general (مطلق) and specific (مقيد)

Prohibited (المحرم): is what the Legislator prohibited in the form of an obligation and that should be left off, such as the one who leaves it off is rewarded due to adhering to the prohibition and the one who

commits it deserves punishment. It can be something that expels one from the religion or does not expel one from the religion. It can be a major sin or a minor sin.

Disliked (**المكروه**): is what the Legislator prohibited not in the form of an obligation that should be left off, such as the one who leaves it off is rewarded due to adhering to the prohibition and is not punished for performing it.

Permissible (**المباح**): is what is not connected to a command or prohibition in and of itself. If it is a means [to something], then it takes the ruling of its purpose.

(**وضعي**): What the Legislator established for a ruling in terms of characteristics, signs, affirmation or denial.

(**الأحكام الوضعية**) are six:

1. The cause (**السبب**): What necessitates the presence of something due to its presence, and the absence of that thing in and of itself due to its absence.

It is of two types: that which enters under capability and that which does not enter into capability.

2. The condition (**الشرط**): What necessitates the absence of something due to its absence, and does not necessitate the presence or the absence of that very thing in and of itself due to its presence.
3. The preventative (**المانع**): What necessitates due to its presence the absence of something and does not necessitate due to its absence, the presence or absence of that very thing in and of itself.
4. The juristic reason (**العلة**): what necessitates the presence of something due to its presence, and the absence of that thing in and of itself due to its absence.
5. Validity (**الصحة**)/Valid (**الصحيح**): What produces its effects upon a person, whether it is an act of worship or mutual dealing. The effects of worship are being free of guilt and the dropping of the command [from a person]. The effects of mutual dealing are [for example] the permissibility of having intimate relations or the permissibility of transferring property [to another person] or providing benefit or the likes.
6. Corruption (**الفساد**): it is the opposite of the above.
7. The allowance (**الرخصة**): What is established in contrary to the Legislated evidence due to an opposition which is given preference [in that situation].

8. Determination (**العزيمة**): An established ruling due to a Legislated evidence, which is free from an opposition which is given preference [in that situation].

Speech (الكلام)

Speech (**الكلام**) is: a beneficial utterance/expression. The singular term, technically, is (**كلمة**), which is a noun, verb, or particle. The discussion regarding speech here is to learn its implications in terms of [something being] general, specific, absolute, restricted, a command [or] prohibition, and other than that.

The Command (الأمر)

(**الأمر**) is a command that is directed to the lowest [of people]. Its origin is that it is obligatory to be performed, immediately and without repetition. Its wordings include: a command verb, a present tense verb along with the Lam of command, the root word of a derivative (**المصدر المشتق**), *Ism Fi'l* (**اسم الفعل**), and reports about Him, the Exalted, like He said:

{ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ . . . } [الآية]

“Verily! Allah commands that you should render back the trusts to those . . .” [An Ayah]²

A command can occur through speech, signal, and writing. The command of something is the command for it and what cannot be completed except by it. A prohibition necessitates its opposite.

The Prohibition (النهي)

A prohibition is the command to leave off [something] addressed to the lowest [of people]. The origin is prohibition. Its wordings are: “Do not do” (**لا تفعل**), “Beware” (**إياك**), and reports about Him like the statement of the Prophet (صلى الله عليه وسلم):

{ إِنَّ اللَّهَ يَنْهَاهُمْ أَنْ تَحْلِفُوا بِآبَائِكُمْ . . . } [الحديث]

“Verily Allah prohibits you from swearing by your fathers . . .” [A Hadith]³

And the statement of the Exalted:

{ حُرِّمَتْ عَلَيْكُمْ . . . } [الآية]

² [4:58]

³ Agreed upon from Ibn Umar (may Allah be pleased with him)

"Forbidden to you (for marriage) are . . ." [An Ayah]⁴

A prohibition can occur through speech, signal, and writing. The prohibition of something is a prohibition for it and for whatever must be left off in order to leave it. A command necessitates its opposite.

General (العام)

(العام) is an encompassing [wording] which includes all the individual parts of a category without restriction. Its wordings are: "Every" (كل) "All" (جميع), *Al al-Istighbraaqiyah* (أل الاستغراقية), an indefinite word in the context of denial, a prohibition, a condition, and question.

The origin is that something remains in generality until something is reported to specify it or remove some of its parts [from that generality]. It can be either:

1. (عام مخصوص) [A generality which does not have a context/reason which indicates specification]
2. (عام أريد به الخصوص) [A generality which is actually intended to be a specification]
3. General which remains in generality

Specific (الخاص)

Specific (الخاص): is an utterance which indicates restriction. Specification is the restriction of some parts of a generality. Its wordings are of two types:

1. Connected, like an exception or a characteristic
2. Separate, like a verbal, independent evidence

Absolute (المطلق)

(المطلق): is whatever [wording] that can accept one or more [things] without specifying its category/type by way of substitution. From its types are: verbs and indefinite words in the context of affirmation. The origin is that something remains in absolute form until something comes to restrict it.

Restricted (المقيد)

(المقيد): is whatever [wording] that is specific or is described with an additional description over the reality of its category/type. It is of two types:

⁴ [4:23]

1. Connected, like a characteristics and an addition
2. Separate, like like a verbal, independent evidence

The absolute is carried upon the restricted as long as they do not differ in both cause and ruling, or if they do not differ in the ruling without the cause, according to the more correct opinion.

The Obscure (المجمل) and The Clarifying (المبين)

(المجمل): is what is not independent in terms of its intent/meaning until its explanation is clarified. There is no (المجمل) in the Book and Sunnah except that it is clarified. Form its forms:

- Repetition of a word which has more than one meaning
- A command which does not clarify the manner of performing it

(المبين) is of two types:

- (المبين ابتداء): it is what is sufficient in and of itself from needing clarification.
- (المبين بعد إجمال): is wording which becomes obscure after the intent is clarified.

The obscure is carried upon the clarifying. The clarification can occur from speech and action, connected or separate. It is not permissible to delay clarification from the time of need. It is permissible to delay clarification from the time it is reported towards the time of need.

The Abrogator (الناسخ) and the Abrogated (المنسوخ)

Abrogation is the removal of a Legislated ruling with a Legislated evidence that came later.

The Abrogator (الناسخ) is used for Allah informing of an action, an evidence, and a later ruling.

The Abrogated (المنسوخ) is used to refer to the the evidence and the ruling. It is not a condition that what is being abrogated was acted upon before abrogation.

Abrogation is established Legislatively and rationally. It can occur through substituting a ruling for another which is less than it, equal to it, more severe than it, or other than that.

The Qur'an can abrogate the Qur'an and the Sunnah can abrogate the Sunnah. There is no preventative from the Qur'an being abrogated by the Sunnah; however, I could not find an upright example for it.

The abrogation of a Verse in the Qur'an can occur in different forms:

- In terms of its recitation and its ruling
- In terms of its recitation only
- In terms of its ruling only

The Characteristic of the Legislated Evidence (أوصاف الدليل الشرعي)

The Legislated evidence is either:

- A text (نص) and it provides a ruling without any possibilities [of a different view].
- Apparent (ظاهر): it provides a [clear] meaning with the possibility of a weaker [opinion].
- Interpretative (مؤول): it is what is changed from its apparent meaning to another possible meaning due to a considerable Legislative evidence. The origin is to carry speech upon its apparent meaning until there comes [a text] which obligates it to be turned away from its apparent meaning. The apparent meaning of a text is carried over the interpretative meaning in relation to the two sources of revelation specifically.
- Literal meaning (منطوق): the benefited meaning derived from the wording when it was articulated.
- The understood meaning (مفهوم): the meaning which is benefited [from the text] due to the absence of the necessary meaning from the wordings. It is of two types:
 1. (مفهوم موافقة): it is the understood meaning which agrees with the literal meaning with the addition [of other words].
 2. (مفهوم مخالفة): it is what opposes the literal meaning.

The Evidences for Rulings (أدلة الأحكام)

The evidences for rulings are of three types:

1. Agreed upon and they are the Qur'an and Sunnah
2. An evidence which is differed over and the more preferred opinion is given consideration. It is a consensus (الإجماع), analogy (القياس), and the statement of a Companion (may Allah be pleased with him)
3. An evidence which is differed over and the more preferred opinion is not to give it consideration. From it is what is called *preference* (الاستحسان)

The Qur'an (القرآن)

It is the speech of Allah with sound and letter, revealed upon Muhammad (ﷺ), beginning with al-Fatiha and ending with an-Naas. It is not created. From Him it came and to Him it shall return. All of it is *mutawatir* and it has both clear-cut Verses (محكم) and ambiguous Verses (متشابه).

(محكم): [are Verses] which do not carry except one interpretation

(متشابه): [are Verses] which can carry different [meanings]

It is obligatory to carry the ambiguous Verses upon the clear-cut Verses

The Sunnah (السنة)

The Sunnah is that which its ascription to the Prophet (ﷺ) is established, in terms of statement, action, approval, characteristic, or other than that. Everything from the narrations which are authentic from him (ﷺ), provides knowledge whether it is *Mutawatir* or *Abaad*. It is a proof and revelation like the Qur'an.

In terms of acceptance, then it divides into:

1. Authentic (صحيح)
2. Good/Acceptable (حسن)
3. Weak (ضعيف)

In terms of its essence, then it divides into:

1. Statements
2. Actions
3. Approvals
4. Characteristics

The origin of an action that was done by the Prophet (ﷺ) is recommendation and that it should be followed except what is from his natural disposition. There is no ruling for this in and of itself. Whatever is from customs, then the most it benefits [us] is that this action is permissible in and of itself. Whatever is a clarification for an obscure [issue], then its ruling is like the ruling of the clarification.

Consensus (الإجماع)

Consensus (الإجماع): is the agreement of the Mujtahids of the Ummah in a time period in regards to a matter, even regarding an action after the [death] of the Prophet (ﷺ).

It is of two types:

1. Clear-Cut (قطعي)
2. Silent (سكوتي)

Analogy (القياس)

Analogy (القياس): is to connect a secondary issue to an established origin in the Legislation in terms of its ruling; the meaning is to combine them. It is proof if the similarity between the two things is sound, and the difference between them disappears, and if it does not collide with another evidence.

It is of different types:

1. Analogy of reason (قياس العلة)
2. Analogy of resemblance (قياس الشبه)
3. Analogy of Higher order (قياس الأولى)
4. Analogy of the opposite (قياس العكس)

The Statement of a Companion (الصحابي)

A Companion (الصحابي) is one who met the Prophet (ﷺ), believed in him, and died upon that, even if [his Islam] was interrupted by apostasy [before accepting it again]. Their (the Companions') consensus is proof. If they differ, then a person prefers one of the statements in accordance to the evidence and he does not discuss a statement other than it. If one of the Companions (may Allah be pleased with them) is singled out with a statement or action, then it is [considered] proof as long as it was not opposed [by others].

Order of the Evidences (ترتيب الأدلة)

The strongest of evidences are the Qur'an, then the *Mutawatir* Sunnah, then what is agreed upon by al-Bukhari and Muslim, then what is only reported by al-Bukhari, then what is only reported by Muslim, then what is agreed upon their conditions, then Saheeh al-Bukhari, then Saheeh Muslim, then what is Saheeh in and of itself of the Hadith outside of al-Bukhari and Muslim, then what is Saheeh due to corroborating reports, then what is Hasan in and of itself, then what is Hasan due to corroborating reports, then consensus, then the statement of a Companion.

Contradiction of the Evidences (تعارض الأدلة)

The contradiction between the evidences is a relative issue. It is only due to the examination of the one who is examines [the evidences], not in the affair itself. This is because all of it [the evidences] are from One (Allah), Who is All-Wise and Well-Acquainted (with all things).

The sound intellect does not contradict the authentic text. So whenever that occurs, then either it is due to the consensus not being established, or the weakness of the narration, or due to the false assumption of there being a contradiction. The sound analogy is similar. Whenever it becomes apparent to the one examining the evidences that there is a contradiction, then it is obligatory to combine between the evidences. If this is not possible, then it is reconciled through abrogation if the history is known [regarding the evidences at hand]. If the history is not known, then one opinion is preferred over the other. If a person is not capable of that, then the issue is returned to one who is more knowledgeable than him.

Blind Following (التقليد)

Blind following (التقليد): is taking the opinion of another without knowing its evidence. It is prohibited except for one who is in necessity. The blind follower is not considered a Scholar, nor is it allowed for him to pass verdicts.

The Mufti (المفتي) and the One Asking for Verdict (المستفتي)

The Mufti (المفتي): is the one reporting the Legislated ruling on something. It is not allowed [to pass a verdict] except from one who is qualified in Knowledge and Religion. It is a communal obligation and an individual responsibility when there is none besides such a [qualified] person. It is disliked to pass a verdict when there is the presence of something which distracts [the Mufti], such as severe anger, severe hunger, congestion, and the likes.

The one asking for a verdict (المستفتي): is the one who asks for a ruling on a Legislated issue. Seeking a verdict is obligatory for a person in regards to what he needs from the Legislation. Its manners are:

- Choosing a qualified person
- [Choosing] an appropriate situation/circumstance and time
- [Asking] a good question

The Treatise is Complete, all praise is due to Allah
Thursday Night 15 Muharram 1432 H

* * *



دارالصافي