

Historical Developments in the Fiqh of Medicine

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What Is Fiqh (Islamic Jurisprudence)?

- Linguistically, “**fiqh**” is an Arabic word that means understanding; deep understanding.
- The word “**faqih**” means a person of knowledge and understanding.
- The Qur’an uses the term to signify deep understanding of matters especially those related to religion.
- For religious matters, It is used to mean the **understanding of the words of Allah and His Messenger.**

Meaning of Fiqh

The Prophet (peace and blessings be upon him) said,

“

“Whomever Allah wants good for, He will grant him fiqh (deep understanding) of the religion.” (Bukhari and others)

وَعَنْ مُعَاوِيَةَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ
وَسَلَّمَ - { مَنْ يُرِدِ اللَّهُ بِهِ خَيْرًا، يُفَقِّهْهُ فِي الدِّينِ } مُتَّفَقٌ عَلَيْهِ .1.

Narrated Ibn `Abbas:

Once the Prophet entered a lavatory and I placed water for his ablution. He asked, "Who placed it?" He was informed accordingly and so he said, "O Allah! Make him (Ibn `Abbas) a learned scholar in religion (Islam).

Reference : Sahih al-Bukhari 143
In-book reference : Book 4, Hadith 9
USC-MSA web (English) reference : Vol. 1, Book 4, Hadith 145
(*deprecated numbering scheme*)

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ، قَالَ حَدَّثَنَا هَاشِمُ بْنُ الْقَاسِمِ، قَالَ حَدَّثَنَا
وَرَقَاءُ، عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ، عَنِ ابْنِ عَبَّاسٍ، أَنَّ النَّبِيَّ صَلَّى اللَّهُ
عَلَيْهِ وَسَلَّمَ دَخَلَ الْحُلَاءَ، فَوَضَعَتْ لَهُ وَضُوءًا قَالَ " مَنْ وَضَعَ هَذَا ".
فَأُخْبِرَ فَقَالَ " اللَّهُمَّ فَقِّهْهُ فِي الدِّينِ ".

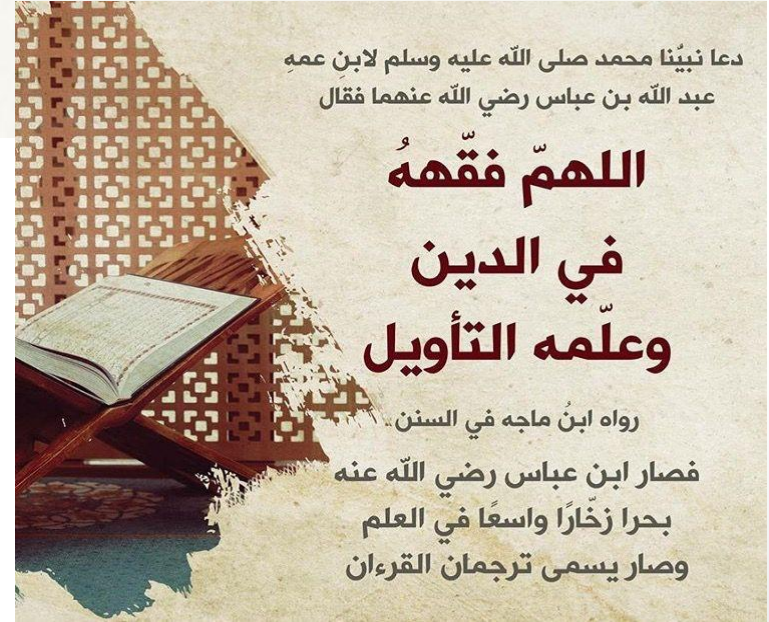
Abdullah Ibn Abas RA

The Young Companion of Rasulullah SAW

"O Lord, make him
acquire a deep
understanding of the
religion of Islam and
instruct him in the
meaning and
interpretation of
things."

:Rasulullah SAW

(Supplication of Rasulullah SAW - For the young Abdullah Ibn Abas RA)



The Messenger of Allah ﷺ said:

"May Allah gladden a man who hears a Hadith from us, so he memorizes it until he conveys it to someone else. Perhaps he carries Fiqh to one who is more understanding than him, and perhaps the one who carries the Fiqh is not a Faqih."

Jami` at-Tirmidhi 2656 - Saheeh



Islamic Law (shariah)

- **Islamic Law (shariah):** is a religious law of Islam derived from the Qur'an and the Sunna (The Tradition of Prophet Muhammad including his sayings, acts and approvals).
- **Islamic jurisprudence (al-fiqh)** is a formulation of rules covering all human activity.
- **Fiqh of Medicine** is the jurisprudence and legal rules related to medical profession.



Medicine

- **Medicine is a respectable profession, and its field is one of the most important areas that affect the life of society.**
- **Learning medicine is a Sufficiency duty or fard alkifāya فرض الكفاية; There must be someone from the Muslim ummah who performs this duty, otherwise the Muslims will be sinned for this shortcoming.**
- **Muslim doctor must learn the legal rulings, and the observed ethics and etiquette related to his work.**

Abdullah ibn Amr reported:

**The Messenger of Allah,
peace and blessings be upon him, said:
Whoever practices medicine
without any prior knowledge
of medicine will be held liable.**

Sunan Ibn Majah 3466



Sahih Bukhari
Kitab al-Tibb



**Health And Medicine In The Islamic Tradition Based
On The Book Of Medicine (*Kitab Al-Tibb*) Of
*Sahih Al-Bukhari***

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The book of medicine (*kitab al-tibb*) in *Sahih al-Bukhari* consists of 58 chapters with 105 traditions (hadiths). The titles of each chapter reflect the content of traditions regarding the medicine and what is related to it.

The Sources of Islamic Law

(a) The Qur'an: contains the revelation that the Prophet Muhammad received directly from God. It is the most authentic source of religious and moral directives that can be extrapolated to formulate judicial decisions touching all practical matters in everyday life of the community.

(b) The Sunna: consists of all the sayings, deeds and approved directives and prescriptions provided by the Prophet Muhammad, known as the “Tradition”

The Sources of Islamic Law(Cont)

(c) The Ijma': is the **consensus** of the companions of the Prophet after his death on certain issues not found in the Qur'an and the Sunna.

(d) The Qiya's: is **analogical reasoning** that allows the jurists to extrapolate fresh decisions from a case already known through the Qur'an or the Sunna.

(e) Maslaha: (unrestricted **public interest and benefit**): formulated by Maliki jurists on the basis of public and personal interests of the people. It was also accepted by other religious schools of Sunni jurisprudence.

The Sources of Islamic Law (Cont)

(f) The principle of 'Urf or 'A' da:

This is a major source of problem resolution that embodies considerations based on **custom, tradition or local habits.**

This category includes all the professional codes and practices pursued by specialists in the field.

- There are other minor sources.

Types of ruling

- ❑ Fard / Wajib (**Obligatory**)
- ❑ Mustahab / Mandoob
(**recommended**)
- ❑ Mubah (**permissible**)
- ❑ Makrooh (**reprehensible**)
- ❑ **Haram (forbidden)**

Halal

Examples of Types of ruling

- ❑ **Fard / Wajib** – Salah, Fasting, Hajj, Zakah
- ❑ **Mustahab** – Nafil prayers, Fasting Monday and Thursday.
- ❑ **Mubah** – Vacations
- ❑ **Makrooh** – Sleeping before Isha and talking after it (except for beneficial purposes or travel)
- ❑ **Haram** – Alcohol ,Pork , etc..

How to reach a ruling (Fatwa)

- If the ruling is clearly available from **Quran and hadith**, there is no need for any Ijtihad.(e.g. Fasting).
- If the answer is not clearly available, the scholars have to do **IJTIHAD** according to the methodology driven from Quran and Sunnah, utilizing the tools such as **Ijma, Qiyas, practice of the early generations, Maslahah, Urf, Sad ud Darayah** etc.
- The above tools are dealt by **Mujtahids**.

Before the the Prophet (PBUH) sent Mu'adh to Yemen he asked him:
How will you judge? كَيْفَ تَقْضِي

Mu'adh said, "I will judge according to what is in the **Book of Allah.**"

The Prophet said: What if it is not in the Book of Allah? فَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ

Mu'adh said: "Then with the **tradition (sunnah)** of the Messenger of Allah."

The Prophet said: What if it is not in the tradition of the Messenger of Allah? فَإِنْ لَمْ يَكُنْ فِي سُنَّةِ رَسُولِ اللَّهِ

Mu'adh said: "**Then I will strive to form an opinion (ijtihad).**" The Prophet said: All praise is due to Allah who has made suitable the messenger of the Messenger of Allah. الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ

Sunan At-Tirmidhi 1327, Grade: Sahih

- Omar Ibn Al-Khattab said, “A woman who gave birth for six months was brought up to him, as she was accused of possible adultery, so this reached Ali, and he said: She does not have to be stoned. God Almighty says, “**And mothers breastfeed their children for two full years.**” He also said: “**pregnancy and weaning are thirty months**”, so the pregnancy is six months, and the breast feeding is twenty-four months.”
“So Omar gave her way...”

Minimum length of normal pregnancy is six months. Note the following verses:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ (البقرة 233)

The mothers shall give breastfeeding to their off springs for two whole years, for those who desire to complete the breastfeeding.

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ إِحْسَانًا حَمَلَتْهُ أُمُّهُ كُرْهًا
وَوَضَعَتْهُ كُرْهًا وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا
(الأحقاف 15)

We have advised man to be kind to his parents: in pain did his mother bear him, and in pain did she give him birth. The carrying of the (child) to his weaning is (a period of) thirty months.

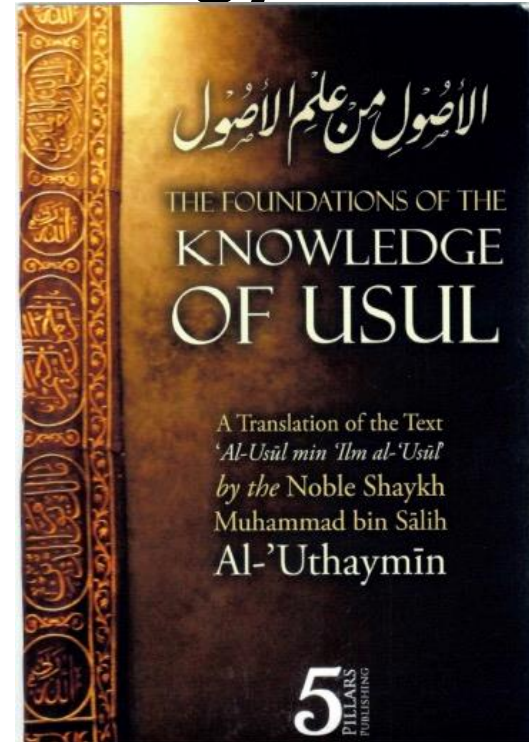
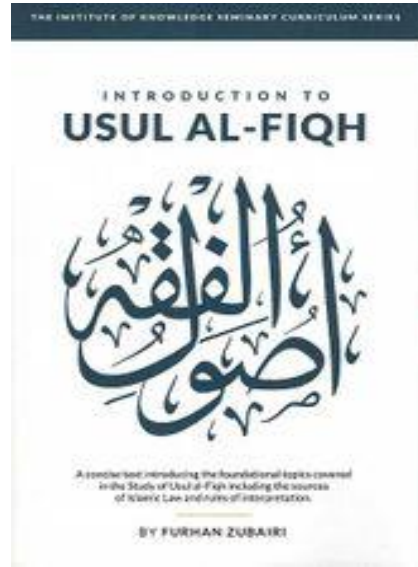
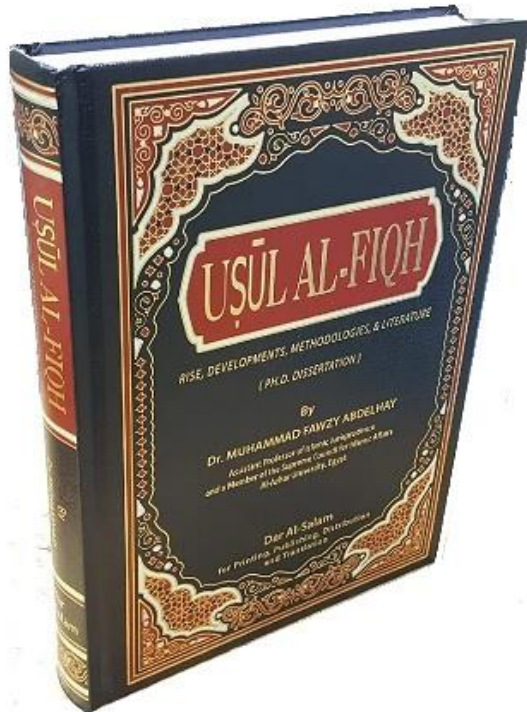
- A woman gave birth at six months was brought to **Othman** - may God be pleased with him - and he said: I do not see but came with a problem.

Ibn Abbas said: “ pregnancy and weaning are thirty months, and if the breastfeeding is completed for 2 years , the pregnancy is six months.”



USUL AL-FIQH

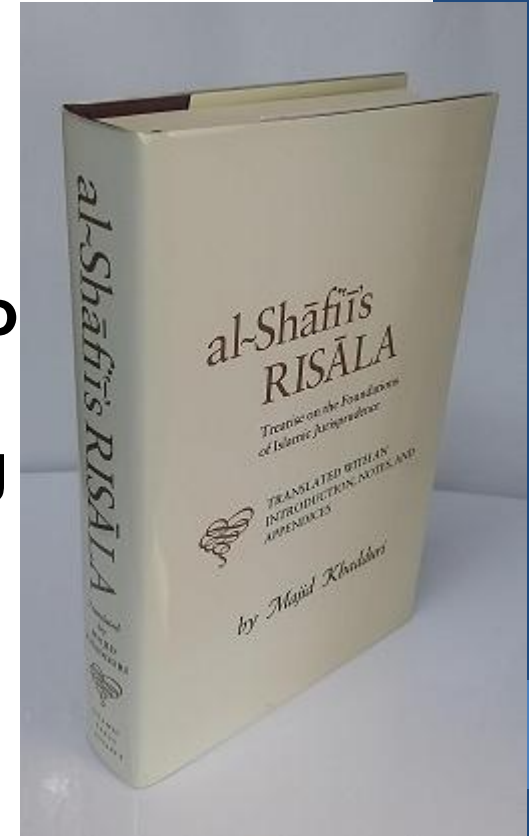
Formulating a 'methodology'



Imam al-Shafi'i – the Father of Usul al-Fiqh

Imam Muhammad al-Shafi'i:

Having studied both schools of fiqh, as well as having a vast knowledge of authentic hadith, Imam al-Shafi'i sought to reconcile the two philosophies “the **people of Hadith**” and ahl al-ra'i, meaning “**the people of reason**” and introduce a clear methodology for fiqh – known as usul al-fiqh. His efforts towards this end resulted in his seminal work, Al-Risala.



Incorrect ruling or fatwa?

- Amr ibn al-'As reported: The Messenger of Allah (PBUH) said, "If a judge makes a ruling, striving to apply his reasoning and he is **correct**, he will have **two rewards**. If a judge makes a ruling, striving to apply his reasoning and he is **mistaken**, he will have **one reward**."

Ṣaḥīḥ al-Bukhārī, Ṣaḥīḥ Muslim

عَنْ عَمْرِو بْنِ الْعَاصِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا حَكَمَ
الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ

رواه البخاري ومسلم



The Aims of Islamic Law (Al maqasid)

- **Al-Juwayni** (d 478/1085) said: “The aims of Shari’ah are the interests of the entire humanity.”
- **AlGhazali** (d 505/1111) discussed al-maqasid under the public interest.
- **Al-Tufi** (d 716/1316) : public good fulfills the objectives of the teachings of God and His Prophet. Public interest is more important than what we might understand from original texts.
- **Ibn Qayyim** (d 751H/1350) : “Al-Shari’ah is built on keeping the interests (masalih) of the people during this life and hereafter, built on justice, mercy, wisdom and interest of the creatures”.

Protection of al-din

Protection of life (al-nafs)

Protection of dignity (al-'ird)

Protection of intellect (al-'aql)

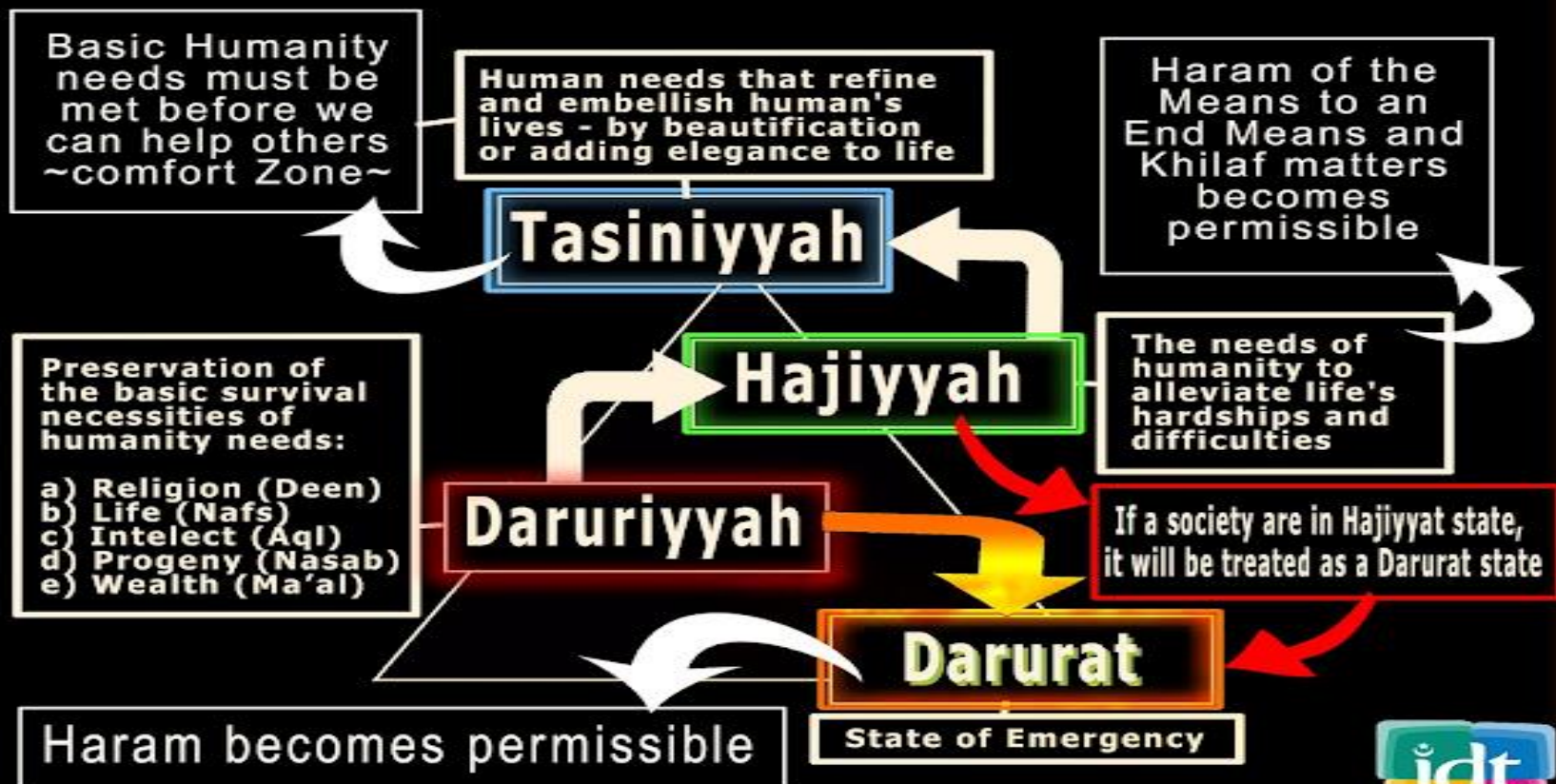
Protection of property (al-mal)

The Aims of Islamic Religious Law

The cardinal essentials of Islamic teachings are:

- (1) Preservation of **Faith (din)**
 - (2) Preservation of **Life (al-nafs)**
 - (3) Preservation of **Mind (al-'aql)**
 - (4) Preservation of **Progeny (al-nasl)**
 - (5) Preservation of **Honor (al-'irdh)**
 - (6) Preservation of **Property (al-mal)**
- Anything that is **deleterious** to the above should be avoided, and anything that will **preserve** the above is meritorious and should be done.

Maqasid Syariah



PURPOSES OF MEDICINE

مقاصد الشريعة في الطبّ

1. Protection of religion – حفظ الدين

- Involves Ibadah in the wide context
- **Every human endeavor** is a form of Ibadah
- Medical treatment should be a direct contribution to Ibadah.

2. Protection of life – حفظ النفس

- Primary purpose of medicine
- It tries to maintain high quality of life, not to prevent or postpone death.

PURPOSES OF MEDICINE

مقاصد الشريعة في الطبّ

3. Protection of progeny – حفظ النسل

- Treatment of male and female **infertility** ensures successful reproduction.
- The care for **pregnant** women and child to ensure that **children** are born and grow healthy.

PURPOSES OF MEDICINE

مقاصد الشريعة في الطبّ

4. Protection of the mind – حفظ العقل

- Medical treatment plays important role in protection of mind and **intellect**.
- Treatment of physical illnesses removes **stress** that affects the mental state.
- Medical treatment of **alcohol and drug abuse** prevents deterioration of the intellect.

5. Protection of wealth – حفظ المال

- Medicine contributes to saving wealth **by prevention of disease**.
- promotion of health, and treatment of any diseases

IBN ASHUR

Treatise on *Maqāṣid al-Sharī'ah*

MUHAMMAD AL-TAHIR IBN ASHUR



THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT

Origin, history and doctrines of Maqasid al-Shariah.

Dr. SLM RIFAI

MAQĀṢID AL-SHARĪ'AH AS PHILOSOPHY OF ISLAMIC LAW

A Systems Approach

Isser Auda



Common principles

Acts Are Judged By The Intention Behind Them
Certainty Is Not Dispelled By Doubt
Hardship Begets Facility
Harm Must Be Removed
Custom Is The Basis Of Judgement

Jurists have formulated a number of other principles. Examples of additional principles could be ‘Something that **brings more harm than good**, has to be prohibited despite the good it brings).

PRINCIPLES OF FIQH

القواعد الفقهية

Principles Of Medicine Should Also Be Based On:

1. PRINCIPLE OF **INTENTION** – الأُمُورُ بِمَقَاصِدِهَا
2. PRINCIPLE OF **CERTAINTY** – اليَقِينُ لَا يَزُولُ بِالشَّكِّ
3. PRINCIPLE OF **INJURY** – الضَّرَرُ يُزَالُ
4. PRINCIPLE OF **HARDSHIP** - المَشَقَّةُ تَجْلِبُ التَّيْسِيرَ
5. PRINCIPLE OF **CUSTOM** – العَادَةُ مُحَكَّمَةٌ

PRINCIPLES OF FIQH applied to Medicine

القواعد الفقهية في الطب

PRINCIPLE OF INTENTION – الأُمُورُ بِمَقَاصِدِهَا

- Each action is judged by the intention behind it.
- What matters are the intentions and not the literal meaning. (العِبْرَةُ بِالمَقَاصِدِ وَالمَعَانِي لَا بِالأَلْفَافِ وَالمَبَانِي).

Practical examples:

- **Use of morphine**, for pain relief or to end life?
- The interpretation of hadith on embryological development to justify **abortion** before ensoulment.

PRINCIPLE OF CERTAINTY – اليَقِينُ لَا يَزُولُ بِالشَّكِّ

- Everything in medicine is probabilistic and relative
- Treatment decisions are based on a **balance of probabilities**. When a diagnosis is made, it should be treated as a **working diagnosis** until new information is obtained to change it.
- All medical procedures are considered **permissible** unless there is evidence to prove their prohibition **الأصل في الأشياء (الإباحة)**
- except for matters related to the **sexual and reproductive functions** which are presumed forbidden unless there is evidence to prove permissibility

الأصل في الأبخاع التحريم

PRINCIPLE OF INJURY – الضَّرَرُ يُزَالُ

- **Medical intervention** is justified on the basic principle that injury, if it occurs, should be relieved.
- Injury should be **prevented or mitigated** as much as possible
(الضَّرَرُ يُدْفَعُ بِقَدْرِ الْإِمْكَانِ)
- An injury should not be relieved by a medical procedure that leads to an injury of the **same magnitude as a side effect**
(الضَّرَرُ لَا يُزَالُ بِمِثْلِهِ)
- prevention of a harm has **priority** over pursuit of a benefit of equal worth
(دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ)

PRINCIPLE OF INJURY – الضَّرَرُ يُزَالُ

- If confronted with two medical situations both of which are harmful and there is no way but to choose one of them, **the lesser harm is committed**

يُرْتَكَبُ أَخْفَ الضَّرَرَيْنِ

- A lesser harm is committed in order to prevent a bigger harm الضَّرَرُ الْأَشَدُّ يُدْفَعُ بِالضَّرَرِ الْأَخْفِ

- Medical interventions that are in **public interest** have priority over consideration of **individual**

interest الْمَصْلَحَةُ الْعَامَّةُ مُقَدَّمَةٌ عَلَى الْمَصْلَحَةِ الْخَاصَّةِ

PRINCIPLE OF HARDSHIP - الْمَشَقَّةُ تَجْلِبُ التَّيْسِيرَ

- Medical interventions that would otherwise be prohibited actions are permitted under the principle of hardship **مَشَقَّة** if there is a necessity (ضرورة)
- Necessity legalizes the prohibited **الضَّرُورَاتُ تُبِيحُ الْمَحْظُورَاتِ**
- **Hardship** is defined as any condition that will seriously impair physical and mental health if not relieved promptly.
- General principle of Islam as an easy religion that **cannot be made difficult** and a burden for its followers **الإسلام يُسَّرُ فَلَئِنْ يَشَادَ الدِّينَ أَحَدٌ إِلَّا غَلَبَهُ**
- Application of the principle of hardship is **of limited duration** (**الضَّرُورَاتُ تَقْدَرُ بِقَدْرِهَا** for example: usage of materials derived from pig (khinzir) etc...

PRINCIPLE OF CUSTOM – العَادَةُ مُحَكَّمَةٌ

- The generally accepted standard of medical care is defined by custom.
- The basic principle is that **custom or precedent** has legal force العَادَةُ مُحَكَّمَةٌ
- What is considered customary is what **is uniform, widespread, and predominant** العِبْرَةُ لِلْغَالِبِ لَا لِلنَّادِرِ
- The customary **must also be old and not a recent** phenomenon to give chance for a medical consensus to be formed.

Legal Maxims: (Qawaed Alfih)

Examples:

“That who practice medicine without due knowledge is liable”.

“The person who inflict harm is liable even if he doesn't intend to do it”.

“confession brings liability”

“ Rules of customs are similar to rules of agreement”

Al- Qawā'id al-Fiqhiyyah (Islamic Legal Maxims):
Concept, Functions, History, Classifications and
Application to Contemporary Medical Issues.

Submitted by Fawzy Shaban Elgariani to the University of
Exeter

as a thesis for the degree of

Doctor of Philosophy in Arab and Islamic Studies,

In February 2012.

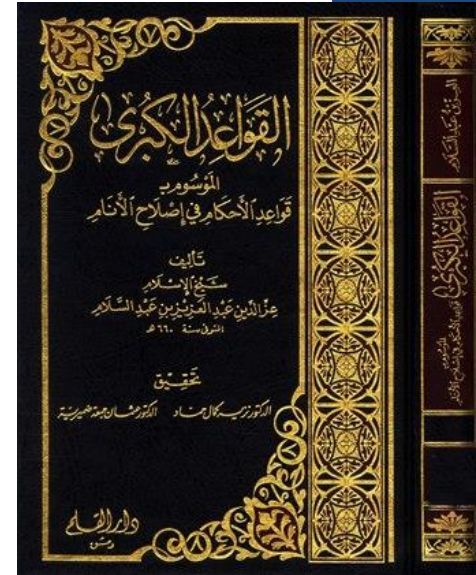


Aim of medicine

“Basics of Rulings” By Al Izz ibn Abdulsalam

“The aim of medicine is to **preserve health, restore it** when it is lost, **remove ailment or reduce its effects.**

To reach that goal it may be essential to **accept lesser harm**, in order to ward off the greater one, **or lose a certain benefit** to procure a greater one”.



- **“O Servants of Allah seek remedy for that who has put malady has already created its cure and remedy”** **Al-Bukhari**
- **The prophet Mohammed P.B.U.H. told his cousin Saad ibn Abi Waggas:
“Seek the advice of AlHarith ibn Keldah, the brother of Thaqif, for he is a man who practices medicine”**
Abu Da’ood, AlTabarani

- **There are more than 16 Hadiths in the same tone.**
- **There are hundreds of Hadiths that he personally seek Remedy, and ordered his family, relatives and companions to seek remedy.**

Seeking Remedy

1. Obligatory (mandatory):

- a) **Life-saving** situations.
- b) **Infectious diseases** that will endanger the community health e.g. T.B.
- c) If abstaining from therapy may **endanger** the life or health of the recipient e.g acute appendicitis.
- d) Mandatory **immunization** schemes for infants and children (proved benefit).

2. Remedy Encouraged and Preferred

a) In all cases where therapy is **likely successful**, and harm from that mode of therapy is most unlikely.

The Prophet Mohammed (PBUH) said:

“O servants of Allah seek remedy, for Allah has not put an ailment except that he puts its remedy except one ailment”. They asked: what ailment? He said: “old age”.

In another Hadith he said: “death”.

Tirmizi & Abu Da'ood

3. Seeking Remedy not Preferred

- Many companions (صحابة) refused therapy in their last illness, as they felt it would be futile e.g:
Abubaker Assidiq, Muath ibn Jabal, Abu Darda'a
- There are few Hadiths that encourage abstaining from therapy (in such situations).

Narrated Ibn `Abbas:

Allah's Messenger (ﷺ) said, "Seventy thousand people of my followers will enter Paradise without accounts, and they are those who do not practice Ar-Ruqya and do not see an evil omen in things, and put their trust in their Lord.

حَدَّثَنِي إِسْحَاقُ، حَدَّثَنَا رَوْحُ بْنُ عُبَادَةَ، حَدَّثَنَا شُعْبَةُ، قَالَ سَمِعْتُ
حُصَيْنَ بْنَ عَبْدِ الرَّحْمَنِ، قَالَ كُنْتُ قَاعِدًا عِنْدَ سَعِيدِ بْنِ جُبَيْرٍ فَقَالَ
عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " يَدْخُلُ الْجَنَّةَ
مِنْ أُمَّتِي سَبْعُونَ أَلْفًا بِغَيْرِ حِسَابٍ، هُمُ الَّذِينَ لَا يَسْتَرْقُونَ، وَلَا
يَتَطَيَّرُونَ، وَعَلَى رَبِّهِمْ يَتَوَكَّلُونَ "

4. Seeking Remedy is Prohibited

- a) If it involves **amulets** (التمام)، (الرقية) (other than Quran), **sorcery** (السحر ، الشعوذة)، divination (الكهانة)، or talismans (الطلسمات). It encroaches on creed.
- b) Any medication made of **liquor**, or any intoxicating drink.
- c) Use of **Pork** or Porcine material.
- d) Killing animals e.g. frogs etc.. and using them as medicine.

In life saving condition It will be allowed to use these substances and if there is no alternative medication.

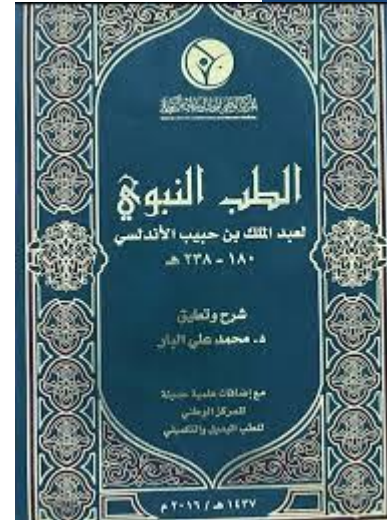
It should be prescribed by competent Muslim physician.

Consent & Liability

- Islamic jurists since the time of Abdulmalik Ibn Habib (died 236H/853 C.E.) who wrote a book on (Tibbi Nabawi) declared that:

“ to practice medicine **the Practitioner:**

- 1) should be **licensed** by the Muhtasib that he has sufficient knowledge of his practice;
- 2) should obtain the **consent** of the patient or his guardian if not competent. If he has not fulfilled one or both then he is liable.”



Liability

- If the Practitioner has fulfilled both of these criteria, and the patient died due to no mistake or negligence of the Practitioner, then the Practitioner is **not liable**.

(Imam Shafi in his book Al Om vol.6/186)

Liability

- “**Legal permission negates tortious liability**”
(المسؤولية التقصيرية) is an Islamic Jurisprudence axiom, provided that the practitioner was **not accused of negligence or departure from the standard care**.
- This is stated by all Muslim jurists throughout history e.g. Shafi, Maalki, Abu Hanifa, Ahmed Ibn hanbal and their followers.

Liability

- If the practicing Physician is well known and has all the required license, but on that occasion he made **an unintentional mistake**, which resulted in harm to the patient, then he should compensate the patient.



Recent Fatwa's

- A number of issues in the field of bioethics which include questions regarding **abortion, organ transplantation, brain death, in vitro fertilization, end of life issues, advanced directives, stem cell research, genetic engineering, genetic finger printing** and so forth.
- Leading juridical authorities in different centers of Islamic learning participated in formulating religious responses to the growing problems created by **phenomenal advancement** in biotechnology and medical practice.

- The contemporary scientific and technology development give impacts on the development of Islamic law.
- **Multilateral approach (ijtihad jama'i)** is needed on handling fiqh issues.
- **Expert opinions** are important in describing those issues. Without those opinions, Islamic law scholar could not give appropriate legal decision.

Collective ijtihad (ijtihad jama'i)

- Most of contemporary ulamas accepted this **multilateral approach** and practiced it.
- The result can be seen on the work of some law studies institutions such as:
 - **Majma' al-Fiqh al-Islami** (Jeddah and Mekkah)
 - **Majma' al-Buhuth al-Islamiyah** li al-Azhar al-Sharif (Egypt),
 - **Majma' Fuqaha' al-Shari'ah** (USA),
 - **Lajnah al-Da'imah** (KSA ,UAE).
 - Almost every Islamic country has their own fatwa institution.

- The Prophet PBUH himself ordered sahabat discussed and deliberated if any problem appears.
- Generally, ijtihad jama'i has been practiced since Khulafa' al-Rashidin era, more over at Khilafah Abu Bakr and 'Umar bin Khattab
- Narrated by Maymun bin Mahran if Abu Bakr al-Siddiq faced a certain problem, he would find the answer on al-Qur'an and alSunnah. If he could not find the answer on both of them, he would ask anybody who know the answer. If there were no one who knew the answer, so he would gather scientiests and discussed before make a decision. The same way also has been done by 'Umar al-Khattab.
- It's compatible with Allah SWT decree: **وشاورهم في الأمر:**
“ And deliberation on every problem” (Ale Imran: 159)

Recent Fatwa's

- In 1959 fatwas appeared from Grand Mufti of Egypt and Grand Mufti of Tunisia on **corneal transplantation** and blood transfusion.
- A number of rulings were issued on **organ transplantation** that continued until 1990.



المجمع الفقهي الإسلامي
The Islamic Fiqh Council



Majma' al-Fiqh al-Islami (Makkah)

- Discussed many critical issues in medical ethics, published fatwas since (1980 /1400 AH) on many subjects e.g. **Contraception, the use of alcohol, porcine material and blood in medicine, organ transplantation and brain death, inter-sex and trans-sex** was discussed. In 1990, the Juridical Council studied the subject of abortion with specific reference to congenital anomalies.

Majma' al-Fiqh al-Islami (Makkah)

- In 1992, the Council discussed the use of **umbilical cord blood and placenta** for medical purposes and research.
- In 1998, the **DNA fingerprinting**, the paternity disputes, the **genetic engineering** were discussed to allow for pre-natal genetic testing and related issues.
- In 2003 the Council discussed the legality of **stem cell** research.
- The **gender selection** was studied in 2007. It was not allowed to perform gender selection unless it is medically indicated e.g. hemophilia.

مجمع الفقه الإسلامي الدولي

International Islamic Fiqh Academy
Académie internationale du Fiqh islamique



Islamic Juridical Council OIC

- The organization has studied medical issues and ethical problems since its inception in 1985 when they studied **assisted reproduction**, in vitro fertilization, milk-banks for babies.
- In October 1986 it issued ruling on **brain death**, and equated brain death with cardiac and respiratory death. It opened the door for cadaver transplants.

Islamic Juridical Council OIC

- In 1990, the Council discussed **transplantation of nerve tissues, anencephalics, aborted fetuses,** left over pre-embryos from IVF projects, transplantation of internal and external sexual organs.
- The Council allowed **transplantation of uterus,** it refused transplantation of gonads (ovaries and testes) as they carry all the genetic materials from the donor. It rejected the permission for external sex organs transplantation.

Islamic Juridical Council OIC

- In 1993, it discussed **confidentiality** in health services, the liability of the medical and healthcare professionals, **HIV**. It also discussed problems of **fasting during illness** and the drugs that may affect fasting.
- **Cloning** was discussed in 1997, and was not allowed.
- In 2007 plastic and **cosmetic surgery** were discussed. In 2009, the **emergency medicine** and consent of minors was discussed.
- The Council (November 2013), studied the **human genome**, genetic engineering, genetic counseling, genetic surveys, premarital genetic testing during pregnancy and after delivery and passed important Fatwas.

Islamic Organization for Medical Sciences of Kuwait.

- **The organization held numerous symposia on selected topics related to the medical advancement and the moral dilemma.**
- **The attendants included Islamic scholars (Ulama), physicians and scientists. Topics discussed in these symposia, include: the legality of milk-banks, gender selection, technically assisted reproduction, surrogacy, sterilization, abortion, brain death, DNR, trans and intersex.**

Islamic Organization for Medical Sciences of Kuwait

- The organization published the proceedings of these conferences and symposia, a **book on Islamic Code of Ethics**, a large volume on alternative medicine, a volume on **ethics of research** and a number of studies on history of Islamic medicine.
- The work of the Organization was recognized by the international health organizations WHO, ISSCO, UNESCO and the International Islamic Juridical Council OIC and the Islamic Jurisprudence Council of Makkah (Islamic World League) and the World Medical Association, with whom the organizers collaborated in holding several joint sessions and meetings.

Grand Muftis

- The rulings of the **Grand Muftis of Egypt** which have been collected and published in many volumes along with subjects including medical and health issues.
- Some authors have collected the rulings on medical and health issues and published them.
- Abdulaziz Abdulmohsin published the rulings of Saudi scholars on medical issues.
- There are numerous books and booklets authored by different medical and legal scholars on specific issues dealing with organ transplantation, methods of assisted reproduction (in vitro fertilization), plastic and cosmetic surgery, etc..

- **Masters and Ph.D. thesis** in many Universities about these subjects, mainly in Arabic, some in Persian, Urdu and Turkish languages; few in English and other languages.
- There is an increasing interest in Islamic medical ethics in the West.
- Muslims and non-Muslim healthcare providers have shown sustained interest in Islamic viewpoints in medical practice and research.

- There is a European council for Muslim scholars and a North American Council, **IMANA** (Islamic medical Association of North America) and Federation of Islamic Medical Associations (**FIMA**).
- There is a lot of work in Malaysia, Indonesia & South Africa.
- Cooperation between different scholars, councils, medical associations and different ethical groups is essential.

Conclusion

- **Ijtihad jama'i has been practiced since Khulafa' al-Rashidin era.**
- **Fuqaha generated rules and Maxims facilitating the process of deriving Fatwa.**
- **Islamic religious authorities played an important role in formulating Fatwa's (religious decisions) in the last four decades regarding unprecedented medical therapies and research.**
- **Many Islamic religious authorities in different Islamic countries are diligently working with health providers and scientists to resolve many ethical and religious thorny issues.**



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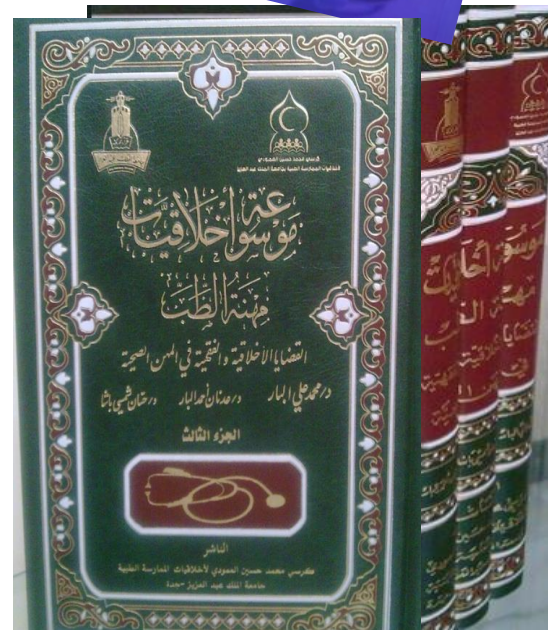
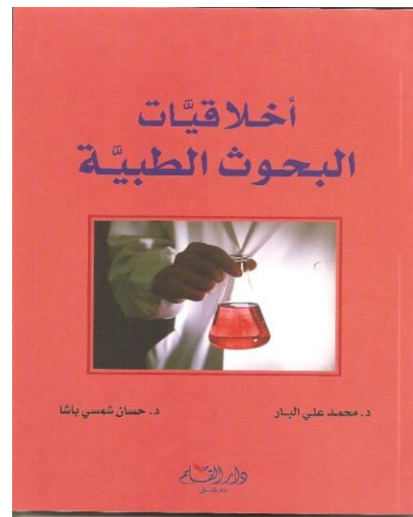
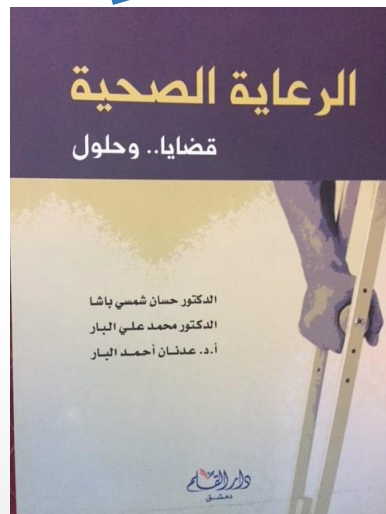
Contemporary Bioethics

Islamic Perspective

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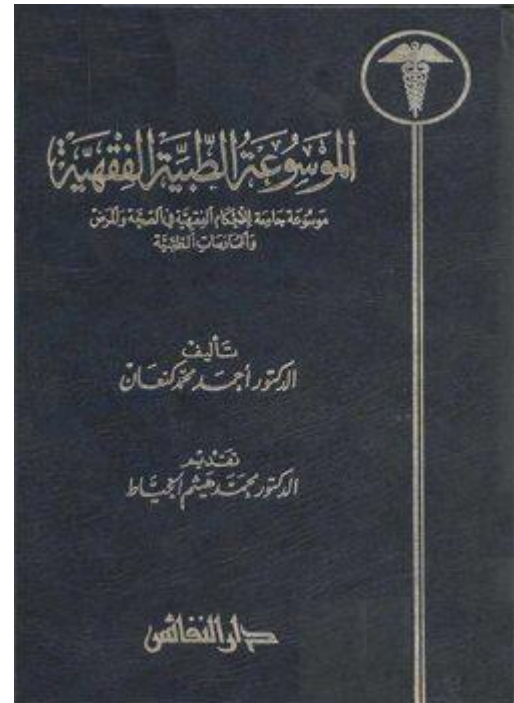
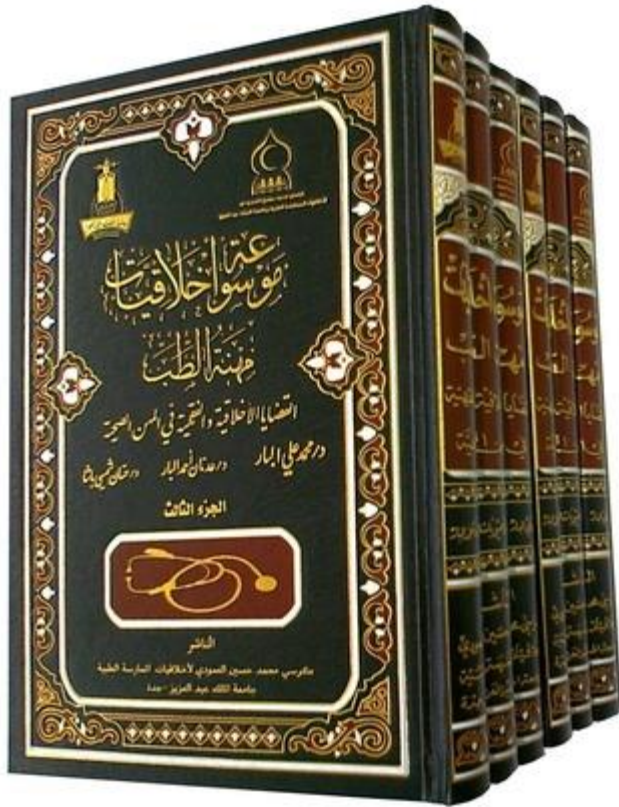


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