

# MARK — OF A — JURIST

THE AMAZING  
RULES OF FIQH



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## Course objectives

1. Appreciation of the goals and purposes of the Shariah.
2. In depth understanding of 3 of the 5 Universal Rules of Fiqh.
3. Practical examples of real life application of these rules.
4. Understanding the difficulty of applying the Rules of Fiqh and the reality and complexity of giving legal verdicts (fatwa).

## Introduction to the Rules of Fiqh

<b>Definition</b>	<p>حُكْمٌ أَغْلَبِيٌّ يُتَعَرَفُ مِنْهُ أَحْكَامُ الْجُزْئِيَّاتِ الْفَقْهِيَّةِ مُبَاشَرَةً.</p> <p>A rule that applies in the majority of issues from which rulings for specific issues may be deduced directly.</p>
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### Explanation of the definition

<b>Rule</b> [حُكْمٌ]	Similar to a short one line summary of the ruling in a particular matter.
<b>Applies in the majority of issues</b> [أَغْلَبِيٌّ]	This is an important point. Rules of Fiqh do not apply to all situations. There are exceptions to them. By the extent of its application, is the universality of the rule established and graded.
<b>Rulings for specific issues</b> [أَحْكَامُ الْجُزْئِيَّاتِ الْفَقْهِيَّةِ]	This is the direct benefit from the Rules of Fiqh – it allows the person to work out the rulings for specific issues, in the absence of specific proofs.
<b>Deduced directly</b> [مُبَاشَرَةً]	Thus the Rules of Fiqh do not require the application of the rules upon specific proofs to deduce the rulings – as in Usul-ul-Fiqh. Rather, the ruling can be directly deduced.

<b>Remember</b>	The Rules of Fiqh are different from the principles of Fiqh.
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<b>Example 1</b>	A person finishes praying the Isha prayer. He had said all the prayers that day, with the Wuduu that he had made at Fajr time. Thereafter, he remembers that he broke his Wuduu and didn't remake it for the prayers. However, he doesn't remember exactly when he broke it. How many prayers does he need to repeat?
<b>Rule</b>	Certainty is not removed by doubt.
<b>Application of the rule</b>	What is certain is that he didn't have Wuduu for Isha, however uncertain if he had it for the prayers before that. So we oblige him to make up Isha only and every other prayer is considered correct and doesn't need to be made up.

<b>Example 2</b>	Ahmed buys a car from Ibrahim. Ahmed uses the car for a week and then realizes that there is a fault with the engine. He takes it back to Ibrahim and asks for his money back. Ibrahim agrees to give the money back, however asks for the rent for the days that he used the car. They come to you for advice. What do you say?
<b>Rule</b>	Profit is only with the risk of loss.
<b>Application of the rule</b>	If something had happened to the car in the week that Ahmed had the car, then Ahmed would have been at loss. So, he stands to profit from the time that he had it. Therefore, Ibrahim's request is invalid and Ahmed does not need to pay Ibrahim for the time that he had the car.

## The importance of the Rules of Fiqh in the Shariah

1. **Fiqh becomes easy:** It makes learning Fiqh easy upon the learner because it summarizes and condenses numerous issues under one simple rule.



Understanding the benefits of studying the Rules of Fiqh is important for understanding how to use and apply them.

### Example:

When you know about the rule: All matters are by their intention, then you can work out the answers to a lot of different issues, such as:

- If someone says to his friend: "I give my daughter as a gift to you", that means that he is giving her away in marriage, because that is what he intended by the word 'gift'.

### Example:

When you know about the rule: The command is for the custom in a matter in which the Shariah has not defined limits, then you can work out answers to many different issues, such as:

- You want to give Zakat to the poor, but who is considered poor? What is the definition of poor? Knowing the above rule, you say that the poor is who ever the customs of the people of the land consider to be poor, even though the poor of this land could be equal to the middle class in another land.

2. **Good for revision:** It is an excellent means to revise and recall that which has already been learnt.

### Example:

When you know that all affairs are by their intention, then you can easily recall the rulings of numerous specific issues whether it is to do with acts of worship or human interactions.

3. **Builds scholarship and confidence:** It increases and strengthens one's understanding and makes the learning of Fiqh easy for him. It also relieves him from learning repetitive issues or new matters that are similar to those before it.
4. **Helps in understanding differences:** Since the Rules of Fiqh are generally agreed upon by all the scholars of the four madhabs, learning the rules is similar to learning all the things that all the madhabs agree upon. Therefore, we are able to appreciate other matters about which they disagree.
5. **Allows for an appreciation of the greatness of this religion:** Learning the Rules of Fiqh clarifies to the student the great wisdom of the Shariah and its comprehensiveness in its legislation and builds an appreciation of the beauty of this religion. It helps in countering the arguments of those who accuse Islam of being built upon individual rulings, not universal goals and purposes. Ultimately, it helps the learner to understand the goals and purposes of Shariah.



## Statements from scholars about the Rules of Fiqh

AlQarafi rahimahullah, the great scholar of the Maliki madhab said: "These rules are immensely beneficial and by the degree of comprehension of these rules does the ability and greatness of the faqeeh show, and the methodology of giving verdicts become clear to him. As for he who takes to learning the specific issues of Fiqh without learning the Rules of Fiqh, then his rulings becomes self contradictory and he becomes hesitant and he is in need of memorizing specifics of which there is no end. As for he who understands and learns Fiqh through its rules, then he is free from memorizing and learning many of the specific issues and rulings due to its falling under the general rules. He is firm and clear in those in which others are hesitant and unclear." [AlFurooq (1/2)]



Important quote from Imam alQarafi rahimahullah

Taqiuddin As-Subki rahimahullah, the great scholar of the Shafi madhab said: "It is a duty upon the student of the truth and the one who wishes to reach the highest position in understanding and deduction, to deeply study the Rules of Fiqh; to return to it when matters are unclear, so as to ease the burden of Ijtihaad. Thereafter, he should follow it up by increasing study of the individual issues, so that it may be established in his mind with its complete benefits. As for limiting oneself and putting great effort in only learning the specifics without understanding its original basis, and taking in the specifics without recourse of clarifying its source, then the astute person will never want this upon himself, nor the people of knowledge who truly understand the benefit of this knowledge." [AlAsbah wan Nadhair of Ibnus Subki (1/10)] He also said in the same reference: "Study of the Rules of Fiqh is more important than the study of its specifics, if the time is not enough for the study of both."

Az-Zarkashi rahimahullah said: "Truly the knowledge of those matters that summarizes all affairs, and the rules upon which the original and specific issues are based, is the most beneficial and complete type of Fiqh. Through it, a faqeeh reaches the level of Ijtihaad. In reality, this is the real basis of Fiqh." [AlManthoor fil Qawaid of AzZarkashi (1/71)]

It is because of all of this that a number of scholars have said: Learning the Rules of Fiqh is incumbent on each and every individual scholar of Fiqh and judge of the Shariah, whilst being a communal obligation on the rest.



So by studying the Rules of Fiqh, you are helping to elevate the obligation upon the rest of the people

## Differences between the Principles of Fiqh and Rules of Fiqh



Many people do not understand the difference between the two. Understanding the difference is central to understanding how to apply the two correctly in their own respective spheres.

1. The principles of fiqh pertain to the understanding of the texts of the proofs and how that can be used to deduce the ruling most of the time, whereas the rules of fiqh pertain to the rulings themselves.
2. The principles of fiqh define the manner of research and methodology for deducing the rulings from the texts, whereas the rules of fiqh are intended to join between different issues in different chapters of fiqh by a single ruling that is defined by the rule itself.
3. The principles of fiqh require specific proofs in order to derive rulings. As for the rules of fiqh - many a time, it can be used as the basis for a ruling.
4. The principles of fiqh - if agreed upon, have no exceptions to them. As for the rules of fiqh, even if they are agreed upon, there still may be exceptions.

## Note

There are many reasons why a Rule of Fiqh may be agreed upon, however still be applied differently by various scholars for the same issue:

- a. Due to the presence of a specific text of the Quran or Sunnah.
- b. Due to a consensus [إجماع] on the topic.
- c. Due to the applicability of different rules at the same time, and so another rule is given precedence.
- d. Due to a specific need (such as when the need is strong enough, then ease comes in).

## Evolution of the Rules of Fiqh

### The era of revelation

<b>Quran:</b>	<p>﴿وَأَنْ لَّيْسَ لِلْإِنْسَانِ إِلَّا مَا سَعَى﴾</p> <p>There is not for any man except that which he has striven for. [An-Najm: 39]</p>
	<p>﴿إِنَّ مَعَ الْعُسْرِ يُسْرًا﴾</p> <p>Verily with difficulty comes ease. [As-Sharh: 6]</p>
<b>Hadeeth:</b>	<p>الخَرَجُ بِالْضَّمَانِ</p> <p>Profit is only with the risk of loss. [Abu Dawud, Tirmidhi, Nasai, Ibn Majah – Authentic]</p>
	<p>لَا ضَرَرَ وَلَا ضِرَارَ</p> <p>No harm done, no harm received. [Ahmed (1/313), Ibn Majah (2/784) and declared authentic by AlAlbani in As-Saheehah (1/99)]</p>

### The era of the Companions

<b>Umar bin AlKhattab:</b>	<p>مَقَاطِعُ الْحُقُوقِ عِنْدَ الشُّرُوطِ</p> <p>The perimeter of rights is upon the conditions that are set.</p>
	<p>ذَلِكَ عَلَى مَا قَضَيْنَا وَهَذَا عَلَى مَا نَقْضِي</p> <p>That is upon what we judged previously and this is upon what we judge now.</p>

### The era of the Tabieen

<b>Imam Ash-Shafi:</b>	<p>إِذَا ضَاقَ الْأَمْرُ اتَّسَعَ</p> <p>If a matter becomes constricted, it widens.</p>
<b>Imam Ahmed:</b>	<p>أَيُّ شَيْءٍ جَازَ بَيْعُهُ، جَازَ هِبَتُهُ وَصَدَقَتُهُ وَرَهْنُهُ</p> <p>If a commodity is allowed to be traded, then it is permissible to give it as a gift, in charity, or as a security deposit.</p>

## Using the Rules of Fiqh to deduce rulings

**Are the Rules of Fiqh a source of rulings in Islam, such that they may be used in the absence of a text of the Quran, Sunnah, Ijmaa or Qiyas in an issue?**

**Can they be used individually as proofs by themselves?**

The answer to this question is based on an understanding of:

1. The source from which the rule has been deduced.
2. Presence or absence of specific proofs to the issue being discussed.

### I. Source from which the rule has been deduced

Rules can be divided into two types with reference to the source from which the rule has been deduced:

- a. The rule is deduced from a text of the Quran and Sunnah about which no one differs. In this case, the rule can be used independently as a proof on its own.

#### Example:

- The rule that says: All business transactions are permissible except that which has expressly been prohibited. This rule is deduced directly from the verse of the Quran:

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

Allah has permitted trade but forbidden Riba.

[AlBaqarah: 275]

- b. The rule is based on a text of the Quran and Sunnah about which people have different interpretations. In this case, the rule cannot be used independently as a proof on its own.

## II. Presence or absence of specific proofs to the issue

In the case where there is a specific proof present, then a person must take the specific proof into account and the Rule of Fiqh should only be used as a general proof.

In the case where there is no specific proof present, then it is permissible to use the rule as a proof in general.

Dr Muhammad Siddeq AlBorno hafidahullah, says in his encyclopaedia of the Rules of Fiqh: "As I said previously: The jurisprudential Rules of Fiqh have been deduced by the scholars from the understanding of the texts and general principles upon which this religion is based, or upon a benefit that they perceived in the Shariah, or a custom of the people that they took into account, or upon deep investigation of the texts. So whoever is obliged into looking into the issues that have arisen, need to be very strongly acquainted and possess strong understanding and vast knowledge of the Rules of Fiqh and of that upon which each rule is based and how it has been deduced. He should also be aware of what, if any, issues may be excluded from each rule such that he does not make the mistake of excluding an issue from falling under a rule, whilst in reality it is within its boundaries.

As for the saying of some of the scholars that since the Rules of Fiqh are fruits of deduction from the rulings of the Shariah and so they cannot be used as proofs in order to deduce rulings, then I say to that: Truly, the rules and principles in every science are based upon the specifics of that science and were deduced from them. The best example of that, are the rules of Usul-ul-fiqh and especially with the Hanafi scholars who deduced their rules of Usul-ul-fiqh from the rulings in specific issues from their early Imams. No one ever said to them that it is not permissible to use those rules that have been deduced in that way to extract the ruling of Islam in specific issues.

Similarly, the rules upon which the Arabic language is based have been deduced by the scholars of the Arabic language, from the statements uttered by the Arabs of the desert who still spoke the pure form of Arabic before their language became corrupted with foreign influence and grammatical errors. These rules thus deduced, are now used to understand the language and extend it. No one has ever said that these rules are not suitable for understanding Arabic, just because they are fruits of deduction." [Mawsuwwah alQawaid alFiqhiyyah (1/49)]



## Giving fatwa on the basis of the Rules of Fiqh

There are important matters that must be looked into before a scholar gives a fatwa based on a Rule of Fiqh.



Many people incorrectly assume that passing a fatwa is a purely scientific process. Rather, it is 50% Science (of the Shariah) and 50% Art!

<b>Firstly</b>	Knowledge of the hukum of the Shariah in the matter and each and every rule that may apply to that situation.
<b>Secondly</b>	The person asking the question and his intention, circumstances and ability.
<b>Thirdly</b>	Those related to him and the greater community that may be affected by the fatwa.

### Example:

A scholar is giving a talk and a sister asks a question: Is contraception permissible?	
<b>The hukum of the Shariah</b>	The ruling of the Shariah regarding abortion needs to be known. Also a person would need to look at the application of the following rules amongst others: <ul style="list-style-type: none"> <li>▪ All affairs are by their intentions.</li> <li>▪ Difficulty gives rise to ease.</li> <li>▪ Whoever hurries up an affair before its time is punished by being forbidden from it.</li> </ul>
<b>Personal circumstances of the questioner</b>	Is the sister someone who is really asking the question for herself or someone else? What does she really want from the answer – to increase in her knowledge or to open up the door to haram? Is she asking the question in order to prove her knowledge to someone else? Is she fatwa shopping? What is her emotional disposition?
<b>The affect on the rest of the people</b>	How will the rest of the sisters and brothers who will hear the answer react? Will the answer open up a door to fitnah for them? Will it encourage promiscuity? Who else will be affected by answering that question? Is there another Sheikh in the area who answered this question previously in a different manner such that your answer might confuse the audience? Is the gathering, a gathering of students of knowledge or general laymen?



It is for this reason that the scholars of the past used to be very careful about giving fatwa.

## Importance of understanding the lofty Goals and Purposes of the Shariah

The goals and purposes of Shariah are the secret of legislation. Through it, the scholar is able to understand how to apply and implement the rulings of the Shariah. Indeed, conforming to the goals and purposes of Shariah is the target of every fatwa and every judgement. This is because the goals and purposes of Shariah are an indication of what Allah wants in any issue.

This knowledge is required by every scholar of Fiqh, Hadeeth and Tafsir. It is the point of convergence of logic and the texts of the Shariah.

Understanding the goals and purposes of the Shariah in its legislations allows the scholar to:

- Use them as general rules to derive rulings for specific issues.
- Work out which opinion is closer to the goals of the Shariah in a particular matter and thus is stronger than another.
- Grasp the vastness of the Shariah in a few rules and summarize it concisely.
- Appreciate the legality of Qiyaas and where to use it.
- Appreciate the universality of Islam and its applicability for all ages.
- Appreciate the mercy of the Shariah and its consideration for the needs and rights of creation.

**Examples:**

<p>﴿يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمْ الْعُسْرَ﴾</p> <p>Allah desires for you ease and does not desire difficulty over you. [AlBaqarah: 185]</p>
<p>يَسِّرُوا وَلَا تُعَسِّرُوا</p> <p>Make affairs easy for people and do not make it difficult upon them. [AlBukhari (10/525)]</p>
<p>لَوْلَا أَنَّ قَوْمَكَ حَدِيثُوا عَهْدٍ بِالشِّرْكِ، لَبَنَيْتُ الْكَعْبَةَ عَلَى قَوَاعِدِ إِبْرَاهِيمَ</p> <p>Were it not that your people only recently reverted from Shirk, then I would have rebuilt the Ka'bah on the foundations of Ibrahim. [AlBukhari (3/439)] and [Muslim (2/968)]</p>
<p>أَرَادَ أَنْ لَا يُخْرِجَ أُمَّتَهُ</p> <p>The saying of Ibn Abbas when asked about why Rasulullah used to join between his prayers: "He wished to remove difficulty from his Ummah." [Muslim (1/490)]</p>

## Some of the Goals and Purposes of Shariah

1. The universal matters which the Shariah came down to preserve are five:

- a. Religion,
- b. Life,
- c. Intellect,
- d. Progeny and
- e. Wealth.

These matters are preserved by every Shariah revealed by Allah, even though the manner of its preservation may have differed. [AlMuwafiqat of Imam Ash-Shaatibi (3/46, 3/210)]

### How does Allah preserve these matters?

He preserves:

- Religion: by prescribing death upon the one who changes his religion.
  - Life: by prescribing death upon the one who kills wilfully without reason.
  - Intellect: Lashing for the one who drinks alcohol and for the one addicted to substance abuse.
  - Progeny: Stoning for the non-virgin adulterer and adulteress.
  - Wealth: Cutting the hand of the thief.
2. Anything that preserves the five universal matters is considered good and a benefit, and anything that aids in its demise is an evil and removing this evil is good. [AlMustawsaf of Imam AlGhazzali (p.251)]

3. Every perceived good that does not protect the five universal matters, nor brings on any perceived good according to the texts, nor in the actions of the Shariah, then it is in reality harm. [AlMustawsaf of Imam AlGhazzali (p.258)]
4. The Shariah divides people's needs and aspirations into three different levels:
  - a. Essential matters necessary for life [الضَّرُورِيَّات].
  - b. Needs of life that are necessary in order to remove difficulty, but not necessary for life itself [الْحَاجِيَّات].
  - c. Luxuries of life that do not cause difficulty in its absence [التَّحْسِينِيَّات].

The Shariah endeavours to preserve them all, except in the case when a need arises. In such a circumstance, the lesser is sacrificed whilst the higher is preserved. [AlMuwafiqat of Imam Ash-Shaatibi (3/7-50)]



5. If the preservation of an item of luxury leads to the loss of a need of life or essential matter of life, then it is not to be preserved. [AlMuwafiqat of Imam Ash-Shaatibi (4/210)]
6. Difficulty is always to be removed and anything that leads to it is undesirable, except by an express requirement from the Shariah. [AlQawaid of Imam AlMuqri'ee (2/432)]
7. The Shariah gives precedence to removal of the harm before attainment of the good. [AlQawaid of Imam AlMuqri'ee (2/443)]
8. The general good is given precedence over the specific good. [AlMuwafiqat of Imam Ash-Shaatibi (3/210)]
9. The greater evil is to be removed by doing a lesser one. [Qawaidul Ahkaam of Imam Alizz ibn Abdis Salam (1/93)]
10. Stopping a person from a permissible act in order to prevent him from falling into sin is an important goal of the Shariah. [AlMuwafiqat of Imam Ash-Shaatibi (3/257-258)]

## ***Notes***