

## Qawaid Al Fiqhiyyah – Legal Maxims i.e. General Legal Principles of Fiqh

- Al Fiqh – Islamic Jurisprudence
- Usul Fiqh – Methodology the jurist employs to derive Islamic legal rulings, legal reasonings and rules for interpretation, meaning and implications.

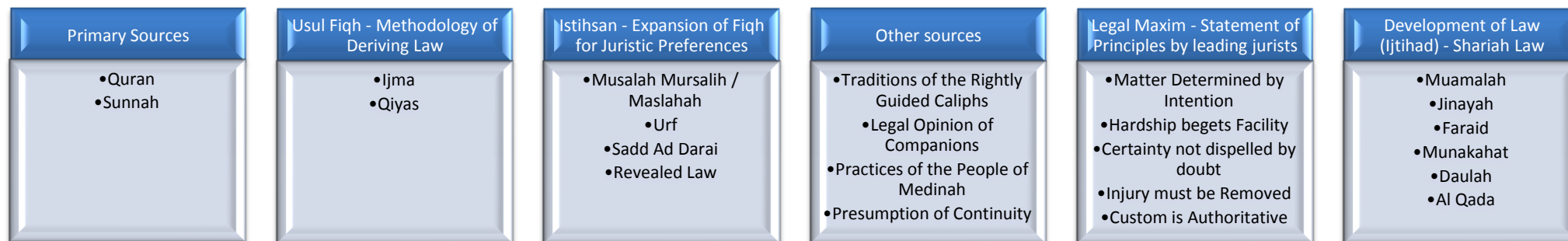
### Legal Maxims are based on the Fiqh itself. But what is the function of a Legal Maxim?

1. Create understanding of Fiqh
2. Open the conception and legal mind
3. Identify new issue and how to apply the rulings
4. Assist making the right decision
5. Understand the wisdom of existing teachings

### Legal Maxims = Precise in wordings but general in meaning

#### Categories:

1. Normative, or leading maxims – Encompassing; All schools agree over them; covers all aspects of Islamic law
2. Subsidiary maxims – Extension of the leading maxims into rules that are more specific to certain issues



#### History :

1. Hanafi jurist started it. Collated the first 17 Maxims
2. Followed by a) Shafie, b) Hanbali, c) Maliki
3. Notables:
  - a. Shafie Scholar : Izz alDin Abd Salam = Qawaid alAhkam
  - b. Hanbali Scholar : Abd Rahman ibn Rajab = Al Qawaid
  - c. Turkish Scholars : The Mejelle (Majallah al Ahkam Adliyya)

Maxim	Definition	Quranic Proof	Hadith	Conditions	Applicability	Related Maxims
<p><b>Matters are determined by Intentions</b></p> <p>(Inama A'mal Bin Niyah)</p> <p>Inama A'Mal = All Actions / Deeds</p> <p>Niyah = Intention</p>	Any act of human being must come from his will and intention	<ul style="list-style-type: none"> <li>Al Baqarah : And whoever desires, by his deeds, the rewards of this world, we will give it to him what has been allotted to him but he shall have no share in the Hereafter, and whoever desires the rewards of the Hereafter, we will give him of it of his rewards and We will requite the thankful.</li> <li>Al Maidah 3 : Anyone who is obliged to do so while starving, yet without deliberately sinning, Allah is forgiving and merciful</li> <li>Al Baqarah 275: But Allah has permitted trade and forbidden Riba'</li> <li>Al Baqarah 282: Oh You who believe, when you deal with each other, in transactions involving future obligations, in a fixed period, reduce them to writing, let a scribe write down as between the parties.</li> </ul>	<ul style="list-style-type: none"> <li>Deeds are judged by intentions and every person is judged according to his intentions</li> <li>Verily all deeds are based on intention</li> <li>A resolve to do well is registered as a good deed, while resolve to commit evil is not registered as an evil.</li> <li>There are 3 signs of a hypocrite; when he speaks, he lies, when he promises, he breaks it, when he is trusted, he breaches</li> </ul>	<ul style="list-style-type: none"> <li>The deed will be decided in accordance with intention, and judged as so.</li> <li>Intentions are judged in 5 categories: <ul style="list-style-type: none"> <li>a) Intention of the heart</li> <li>b) Intention that permeates/ grows in the heart</li> <li>c) Intention that grows in thoughts but refrains from it</li> <li>d) Intention to commit overshadows the thought of refraining from it</li> <li>e) Intention is solidified and determined to act on it</li> </ul> </li> <li>Intentions of the matters to cause Harm must be decided by determining the context i.e.: <ul style="list-style-type: none"> <li>a) Intentional Harm</li> <li>b) Unintentional Harm</li> <li>c) Accidental Harm</li> <li>d) Incidental Harm</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Intention is judged based on the Action undertaken, as it is impossible to assess what is in the heart and thoughts of man.</li> <li><u>Example</u> : Finding a lost property: to return or to keep the property is reflected in its actions</li> <li><u>Example</u>: Providing a gift: To please by gifting or to offer bribe, depending on the circumstances it was given</li> </ul>	<ul style="list-style-type: none"> <li>In contracts, effect is given to meanings and intention, not words and forms</li> </ul>

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<p><b>Hardship begets facility</b></p> <p>(Mashaqqah Tajlibu Al Taysir)</p> <p>Mashaqqah = Hardship where legal obligation to be lifted</p> <p>Taysir = Facility i.e. legal mitigation for an exception to the rule (Rukshah) where performing the rule results in hardship.</p>	<p>Necessity to lighten the burden and to disregard rules in exceptional circumstances if it will cause hardship</p>	<ul style="list-style-type: none"> <li>Al Baqarah 185: Allah intends for you ease, and He does not want to make things difficult for you</li> <li>Al Baqarah 220: Allah distinguishes the plunder from the improver</li> <li>Al Baqarah 286: Allah burdens not a person beyond his scope.</li> <li>Al Maidah 3: But if any is forced by hunger, with no inclination to transgress, Allah is indeed oft-forgiving, Most Merciful</li> <li>Al Maidah 6: Allah does not wish to place you in difficulty</li> </ul>	<ul style="list-style-type: none"> <li>The delay to pay debt by a rich person is unjust</li> <li>Whenever the Messenger of Allah was given choice between 2 things, he chose the easier one unless it was a sin</li> </ul>	<ul style="list-style-type: none"> <li>Any ruling which causes hardship or is unable to be performed based on acceptable reason, an alternative can be found to overcome the hardship</li> <li><u>Example</u>: A person in a rental contract can exit the contract if he is travelling (paying for unused benefits)</li> <li><b>Facility (Rukshah) can be given for:</b> <ol style="list-style-type: none"> <li>Omission (Exceptions)</li> <li>Reduction (Qasar)</li> <li>Combining (Jama')</li> <li>Delay (Ta'khir)</li> <li>Advance (Ta'dim)</li> <li>Lawful the unlawful (Dispensation)</li> </ol> </li> <li><b>Reasons for Rukshah:</b> <ol style="list-style-type: none"> <li>Travel</li> <li>Sickness</li> <li>Compulsion (permitted under duress)</li> <li>Forgetfulness</li> <li>Ignorance (with commitment to learning)</li> <li>Difficulty</li> <li>Incapacity (Children/ Women / Insane persons)</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>Does not apply to implementation of obligatory duties such as ibadah, fasting, haj, jihad or religious obligations</li> <li><b>Categories for consideration of Rukshah</b> <ol style="list-style-type: none"> <li>Obligatory</li> <li>Recommended,</li> <li>Permitted,</li> <li>Frowned,</li> <li>Prohibited</li> </ol> </li> <li>Preferred to refrain from rule of unlawfulness, although allowed. But not allowed to do great sins, which do not relieve the acts</li> <li><b>Rukshah Restrictions:</b> <ol style="list-style-type: none"> <li>Necessity are determined based on quantity</li> <li>An excuse become unlawful once excuse ceases to exist</li> <li>Prohibition faded away, forbidden returns</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li><b>Mejelle :</b> Latitude should be afforded in the case of difficulty; upon appearance of hardship in any particular matter, latitude and indulgence must be shown</li> <li>When the difficulty has been removed, the rule should revert to the original (for example, more time to settle debt during stress, but revert to original once stress is removed)</li> <li>Necessity renders all prohibited things permissible</li> <li>Necessity does not invalidate the right of another</li> </ul>

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<p><b><i>Certainty is not dispelled by doubt</i></b></p> <p>(Al Yaqin La Yuzalu bi al Syak)</p> <p>Al Yaqin = Certainty</p> <p>Al Syak = Doubt</p>	<p>Something that has been certain, cannot be replaced by mere doubt, but will be replaced by same certainty</p>	<ul style="list-style-type: none"> <li>Al Baqarah 29: Allah Most High has created all in the earth for your benefit</li> <li>Al Yunus 36: But most of them follow nothing but fancy, truly fancy can be no avail against truth. Verily God is well aware of all they do</li> <li>Al Maidah 3: Forbidden for you (for food) are dead meat, blood and the flesh of swine.</li> </ul>	<ul style="list-style-type: none"> <li>The security is not forfeited</li> <li>If someone feels something in his stomach, and he doubts whether something has come out, he should not go out from the mosque and stop praying until he listens or smells something</li> <li>If someone has doubt while praying whether he has performed three or four rakaah, set aside the doubt and continue on the number of rakaah he is certain</li> <li>Whatever Allah has made halal is halal and whatever rendered haram is haram and whatever concerning he has remained silent is forgiven.</li> </ul>	<ul style="list-style-type: none"> <li>Certainty, and its ruling based on certainty, cannot be set aside by doubt</li> <li>Takes into great consideration of the original “known” condition before the doubt.</li> </ul>	<ul style="list-style-type: none"> <li>Whenever there is a doubt on the state of being, the original known (certain) state must be taken into account, unless there is clear evidence that compromises the original state.</li> <li><u>Example</u>, if a person is certain he has taken wudhu, but now doubts over its state, he is considered still in wudhu or taharah – purification)</li> <li>All things are considered permissible unless they are prohibited (permissibility is the natural state)</li> <li><u>Example</u>: Innocent until proven guilty (being innocent is the natural state)</li> </ul>	<ul style="list-style-type: none"> <li>It is a fundamental principle that a thing shall remain as it was originally</li> <li>Originally, a man has no liability</li> <li>The norm in regard to things is that of permissibility</li> </ul>

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<p><b><i>Injury Must be Removed</i></b></p> <p>(Al Darar Yuzal)</p> <p>Al Darar = Injury Yuzal = Removed</p> <p>La Dirar = No retaliation of harm with harm</p>	<p>Darar means inflicting harm to other absolutely and dirar means inflicting harm to others not due to legally prescribe punishment.</p>	<ul style="list-style-type: none"> <li>Al Baqarah 188: Do not eat up property among yourself in vanities</li> <li>Al Baqarah 229: A divorce is only permissible twice, after that the parties should either hold together on equitable terms, or separate with kindness</li> <li>Al Baqarah 233: No mother shall be treated unfairly (with harm) on account of her child, nor father on account of his child</li> <li>An Nisa 29: Oh You who believe, eat not up your property amongst yourself in varieties, but let there be trade amongst you by mutual consent</li> </ul>	<ul style="list-style-type: none"> <li>Harm should not be inflicted nor reciprocated. Anyone who causes harm, Allah will do harm to him and anyone who cause hardship to people, Allah will do the same to him</li> <li>There is no compensation for one killed or wounded by an animal</li> </ul>	<ul style="list-style-type: none"> <li>A person should not cause harm to another person in order to reciprocate the harm he has caused.</li> <li>Choosing between various action to remove Harm must be applied according to the scale of priorities under the Maqasid Shariyah <ul style="list-style-type: none"> <li>a) Religion</li> <li>b) Life</li> <li>c) Mind</li> <li>d) Lineage</li> <li>e) Property</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Develop law based on the following views on Harm: <ul style="list-style-type: none"> <li>a) Remove Harm before it occurs</li> <li>b) Minimise Harm once it occurs</li> <li>c) Prevent Further Harm after it occurs</li> </ul> </li> <li><b>Khiyar</b> = Options to continue or reject a contract when Harm occurs during: <ul style="list-style-type: none"> <li>a) Session (Al Majlis)</li> <li>b) Stipulation (Al Shart)</li> <li>c) Defect (Al Ayb)</li> <li>d) Description (Al Wasif)</li> <li>e) Sight (Al Rukyah)</li> <li>f) Designation (Al Ta'yin)</li> <li>g) Fraud (Al Tadlis)</li> <li>h) Mistake</li> <li>i) Blindman</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Harm is to be prevented from appearing as much as possible</li> <li>Harm must be removed</li> <li>Harm cannot be removed with similar harm</li> <li>A greater harm can be removed by a lesser harm</li> <li>A specific harm is accepted towards a general harm</li> <li>Repelling an evil is preferred over benefits</li> <li>If there is conflict between permitting to reduce harm vs prohibition to reduce harm, the prohibition takes precedence</li> <li>Harm existing from time immemorial cannot be tolerated</li> </ul>

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<b>Custom is Authoritative</b>  (Al Adah Muhakammah)  Al Adah = Adat/ Custom	<p>Urf : An Act widely known by individuals or society either by:</p> <ol style="list-style-type: none"> <li>Word</li> <li>Action</li> <li>Abstinance</li> </ol> <p>In the absence of text.</p> <p>Practices which are acceptable by people of sound nature, with general or universal acceptance by a country or particular generation.</p>	<ul style="list-style-type: none"> <li>Al A'raf 199: Hold to forgiveness, command what is right (Urf) but turn away from ignorant</li> <li>Al Baqarah 241: For divorced women, maintenance should be provided on a reasonable scale. This is a duty of the righteous.</li> </ul>	<ul style="list-style-type: none"> <li>What the Muslims see/think right, it is also right in the sight of Allah</li> </ul>	<ul style="list-style-type: none"> <li>Requirements:               <ol style="list-style-type: none"> <li>Must not against text</li> <li>Has been practiced by society</li> <li>Has been practiced before an event</li> <li>No contradiction in practice</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>Six Categories of Urf:               <ol style="list-style-type: none"> <li>General Custom</li> <li>Specific Custom</li> <li>Custom in Words</li> <li>Custom in Action</li> <li>Good Custom</li> <li>Bad Custom</li> </ol> </li> <li>Urf can change with the change of time</li> </ul>	<ul style="list-style-type: none"> <li>Public usage is conclusive and action must be taken in accordance herewith</li> <li>A matter recognised by customer is regarded as if stipulated by agreement</li> <li>A matter recognised as customary amongst merchants is regarded as if agreed upon among them</li> <li>A matter established by customer is like a matter established by a legal text</li> <li>The two contracting parties have the right to option to remove harm so long as they are not separated (khiyar al majlis)</li> </ul>