

(The Principles of Jurisprudence (Usul al-Fiqh

<"xml encoding="UTF-8?">

Lesson One: Introduction

The subject under consideration here is the 'ilm, or knowledge of the principles of jurisprudence, usul ul fiqh. The two studies of jurisprudence and its principles are interconnected. They are interconnected in the same way, as will become clear, as the two studies of logic and philosophy are interconnected. The study of the principles is tantamount to a preparation to the study of jurisprudence, and it is for this reason that it has been named the principles of jurisprudence, for the word usul means roots or principles.

Firstly, a short definition of these two studies must be given.

The Arabic word, fiqh essentially means understanding, profound understanding. Our information about the affairs and proceedings of this world can be of two types. Sometimes it is shallow, surface information, and sometimes it is profound. An example from economic affairs will help us. We are continually experiencing the fact that products which years ago did not exist are now finding their way onto the market place, while at the-same time a chain of products that were previously abundant cannot now be found. Likewise, the prices of certain products regularly increase, while the prices of other goods, let us suppose, is fixed.

This type of information is universally available and is shallow, surface information. The information of some people on these matters is profound, however, and they have journeyed from the mere experiencing of the events to a profound understanding of the causes, meaning that they are aware of the reason for a certain article becoming available and another article becoming unavailable, and of the reasons for a certain product being expensive and a different one being inexpensive. They know what causes prices to regularly increase, and they know to what extent these causes are essential, definite and unavoidable, and to what extent they can be checked.

When the information of a person in economic affairs is such that it passes the level of simple experiencing and arrives at the level of discerning the deep-rooted causes and profound currents, he can be said to be a person having deep understanding (mutafaqqeh) in economics. In the Holy Quran and in Traditions from the Holy Prophet and the Imams, we have been repeatedly commanded towards profound understanding (tafaqqah) in the religion, and from the collective content of these sources it is to be discerned that the view of Islam is that Muslims understand Islam, in all its aspects, profoundly and with thorough insight. Of course

profound understanding in religion, consisting of all the Islamic aspects, is a great blessing from God. It is common to what relates to the principles of Islamic beliefs and the Islamic world-view or sense of values, to Islamic morals, ethics and upbringing, to all the aspects of Islamic society, to Islamic worship, to the civil ordinances of Islam, to the particular Islamic customs of the individual and of the society, and more. However, since the second century of the Hejra, the word jurisprudence has become a term for a special area of understanding amongst Muslims that can be said to be jurisprudence in the commands of religion or jurisprudence in the deducing of the commands of religion. In other words "precise and profound deducing of the Islamic regulations of actions from the relevant sources".

The commands or regulations of Islam have not been explained by the Quran or by the Prophet and the Imams in such a way that each and every particularity has been expressly dealt with. Nor is such a thing possible, for events and situations occur in endlessly different forms.

Instead, generalities and precepts have been laid before us in the form of a chain of principles. A person who wants to explain the law of a certain matter to himself or others, must refer to the resources and authentic documents-and later we will clarify the nature of these-and must explain his viewpoint while bearing in mind all the different aspects of those authentic documents. And it is this that is meant by jurisprudence being joined to precise and profound understanding of all aspects.

The masters of jurisprudence (fuqaha) when defining jurisprudence, use the following sentence: Jurisprudence is the study of the secondary commands (i.e. not the principle matters of beliefs and moral perfection, but the commands regulating actions) of the Shari'ah .of Islam gained from the detailed resources and proofs

The Principles of Jurisprudence

For the study of jurisprudence, mastery of many other branches of learning are necessary as a preparation, and these consist of the following:

1. Arabic: syntax, conjugation, vocabulary, semantics, oratory as the Quran and Traditions are in Arabic, without knowing at least the usual standard of the Arabic language and literature it is not possible to benefit from the Quran and the Traditions.
2. Commentary upon the Holy Quran (tafsir). Taking into consideration the fact that the jurisprudents must use the Quran as a point of reference, some knowledge in the study of the commentaries upon the Quran is absolutely essential.
3. Logic, called mantiq in Islam. Every branch of learning in which reasoning is used stands in need of logic.
4. The study of the Traditions. The jurisprudent must have a sound knowledge of the

Traditions and must be able to distinguish the different types of Traditions and they become acquainted with the language of the Traditions as a result of their frequent application.

5. The study of the Transmitters (rijal). The study of the Transmitters means knowing the identities and natures of those who have transmitted the Traditions. Later it will be explained how the Traditions existing in the sanctuary of books of Traditions cannot be accepted without examination. The study of the Transmitters is the examining and scrutiny of the men who make up the chains (isnad) of reporters of the Traditions.

6. The study of the Principles of Jurisprudence. The most important branch of learning in preparation for jurisprudence is the principles of jurisprudence, a delightful subject and one originated by Muslims.

The Principles of Jurisprudence is, in reality, the "study of the rules to be used in deducing the Islamic laws" and it teaches us the correct and valid way of deducing from the relevant sources in jurisprudence. In this way, Principles, like logic, is a study of instructions, and is more a skill than a branch of knowledge, meaning that in jurisprudence, that which is discussed is a chain of things that must be, rather than a chain of things which are.

Bearing in mind the fact that it is possible to refer in particular ways to the documents or sources of jurisprudence and to be led to erroneous deductions opposed to the real view of the Islamic Shari'ah, it is necessary for there to be a special field of study that enables one to clearly discern the correct and valid method of using the sources of jurisprudence as a reference to deduce and extract from them the laws of Islam by means of the proofs of reasoning and the proofs provided by God through the Prophet and the Imams. The Principles of Jurisprudence is the field of study that fulfils this purpose.

From the early days of Islam, another word that is more or less synonymous with the word fiqh (jurisprudence) and which has been in common use amongst Muslims is the word ijtihad. In the Muslim world today, especially the Shi'ite world, the words faqih (jurisprudent) and mujtahid are synonymous with each other.

The word ijtihad is from the root juhd which means utter striving. For this reason, a faqih is (also called a mujtahid, since he must use all his efforts in deducing Islamic laws (ahkam

Lesson Two: The Sources of Jurisprudence

In the previous lesson we learned how the study of the principles of jurisprudence teaches us the correct and valid instructions and methods of deducing the laws of the Shari'ah, the divine law of Islam, from the original sources. Now we must learn what those sources are, and how many they are, and whether all the sects and schools of Islam have the same views about each detail of the sources or whether they hold opposing views. If there are differences, what are

those differences? First we will discuss the views of the Shi'ite jurists on the sources of jurisprudence and, while explaining each of the various sources, we will also discuss the views of the 'ulema of the other Islamic sects. In the view of Shi'ites (with the exception of a small group who are called akhbariyin, the views of whom will later be discussed), there are four sources for jurisprudence:

1. The Book of God, the Quran, which will from here on be referred to in the concise term of the jurists as "The Book".
2. "Sunnah", meaning the words, actions and silent assertions (taqrir) of the Prophet and the Imams.
3. Consensus or ijma'.
4. Reasoning or 'aql.

These four sources in the terms of the jurists are called the "four proofs" or the adillat ul-arba'ah. Generally they say that the study of jurisprudence is centered around these four proofs. Now, it is necessary for us to give an explanation of each of these four sources and at the same time explain the views of the other Islamic sects and likewise those of the akhbariyyin. We will begin our discussion with the Quran

The Quran

There is no doubt that the Holy Quran is the first source for the laws and regulations of Islam. Of course the ayah or verses of the Quran are not limited to laws and regulations. In the Quran, hundreds of different types of issues have been introduced, but a part of the Quran, said to consist of about five hundred ayah, from a total of six thousand, six hundred and sixty, i.e. roughly a thirteenth of the Quran, pertains especially to the laws.

From the early days of Islam, Muslims have always used the Quran as the primal point of reference in order to deduce Islamic laws. However, about the same time as the rule of the Safavid dynasty there appeared in Iran a sect manifesting the view that the right of ordinary people to refer to the Quran is forbidden, and they claimed that only the Prophet and the Imams have this right.

In the same way, this group also considered the referral to consensus and reason as being unpermissible, holding that consensus had been introduced by the Sunnis, and that the use of reason is open to error and thus unreliable. In this way they maintained the Sunnah to be the sole source of reference. It was for this reason that they were called the akhbariyyin for akhbar means tradition.

This group, by denying the right of referral to the Quran, consensus and reasoning, were essentially denying ijihad, for ijihad, as has been stated, means precise understanding and

profound deducing, and it is evident that profound understanding is not possible without making use of reason. This group came to believe that ordinary people, without the medium of a group known as mujtahids, must refer to the traditions for guidance in their daily affairs and actions, just as today they refer to the treatises of the mujtahids. [1]

The appearance of the akhbariyyin and the large numbers that were attracted to them in some cities in the south of Iran and islands of the Gulf and in some of the holy cities of Iraq, was the cause of severe decline. Fortunately, however, with the noteworthy and laudable resistance of the mujtahids of the period, their penetration was firmly checked. Today, apart from a few scattered places, their theories are largely non-existent.

The Sunnah

The Sunnah means the words, actions and assertions of the holy Prophet and the Imams. Clearly it is evident that if by the Holy Prophet a certain law has been verbally explained, or if it is determined how the Prophet performed certain religious obligation, or if it is realised that others used to perform certain religious duties in his presence in a certain way which would earn his blessing and approval, meaning that by his silence he actually gave his endorsement, this is sufficient proof (dalil) for a jurisprudent to consider the action in question to be the actual law of Islam.

About this definition of Sunnah, and it being binding (hujjat) there is no question of argument and no scholar opposes it. The differences that exist on the subject of the Sunnah concern two points. One is the question as to whether only the Sunnah of the Prophet is binding or whether the Sunnah related by the pure Imams is also binding. Our Sunni-Muslim brothers only consider the Sunnah of the Prophet as binding, but the Shi'ites also refer to the words, actions and silent approvals of the holy Imams, in accordance to the traditions of the Prophet which even Sunni Muslims have related and recorded. One of these traditions is this one wherein the Prophet has undoubtedly told us: "I leave behind me two valuable things to which you are to refer, and God forbid that you not refer to them: the Book of God and the people of my House."

The second point is that the related Sunnah of the Prophet of God and the pure Imams is sometimes clear and multi-related, i.e. there are different chains of narrators of the same

Tradition, and sometimes suspicious, or, to coin a phrase, a Single Report (khabar al-wahid). Here the different views vary to an extent that is an excessive exaggeration. Some, like Abu Hanifa, a jurisprudent of one of the four Sunni schools, paid scant attention to the related Traditions; it seems that from all the thousands of Traditions narrated from the Holy Prophet, he considered only seventeen to be reliable.

Others have found confidence even in "weak", unreliable Traditions. But the Shi'ite 'ulema are of

the opinion that only reliable traditions are to be given credence. That is, if the people who make up the chain of narrators, called the musnad, are Shi'ite and just, or at least truthful and reliable, then the Tradition itself can be relied upon. So we must know the narrators of the Traditions and must research into their conditions, and, if it becomes determined that all the narrators of a Tradition were truthful and reliable, we rely upon that Tradition. Many of the 'ulema of the Sunnis have this same idea, and it is for this reason that the study of the Transmitters exists among them. The akhbari Shi'ites, however, who we have mentioned, considered the division of Traditions into the divisions of valid and weak as being uncalled for, and said that all Traditions are reliable, especially those contained in the reliable books. This .extreme [2] view is also held by some of the 'ulema of our Sunni brothers

Consensus

Consensus means the unanimous view of the Muslim 'ulema on a particular issue. In the opinion of the Shi'ite 'ulema, consensus is binding because if all the Muslims have one view, this is proof that the view has been received from the Holy Prophet. It is impossible for all Muslims to share the same view on a matter if it came from themselves, and thus their consensus is proof of the origin of that view being the Sunnah of the Prophet or an Imam.

For example, if it is clear that on one subject all the Muslims of the Prophet's era, with no exceptions, had a certain view and have performed a certain type of action, this is proof that they were taught it by the Holy Prophet. Likewise, if all the companions of one of the pure Imams who took instructions from none but the Imams all had an identical view about something, this is proof that they acquired that view from the schooling of their Imam.

Therefore, in the Shi'ite view, consensus goes back to the Sunnah of the Prophet.

From what has been stated we learn two things:

First, in the Shi'ite view, only the consensus of the 'ulema of the same period as the Prophet or Imams is binding. So, if in these times of ours a consensus occurs about something between all the 'ulema with no exception, this is in no way binding for subsequent 'ulema. Second, in the Shi'ite view, consensus is not genuinely binding in its own right, rather it is binding in as much as it is a means of discovering the Sunnah.

In the view of the 'ulema of our Sunni brothers, however, consensus is a proof in its own right. That is, if the 'ulema of Islam, in their view the management of Islam, are all in agreement upon a certain point of view about a subject in one period (even this period of ours), their view is definitely correct. They claim that it is possible for some of the nation to err, and some not to, but it is not possible for all of them to be in agreement and err.

In the view of our Sunni brothers, complete agreement of all the Muslims in one period is ruled as divine revelation, and thus all the Muslims, at the moment of consensus, are ruled as [Prophets, and that which is revealed to them is the law of God and cannot be wrong. [3

Reason

The binding testimony of reason in the Shi'ite view means that if in a set of circumstances reason has a clear rule, then that rule, because it is definite and absolute, is binding. Here the question arises as to whether the laws of the Shari'ah are in the domain of reason or not, and to this question we will give an answer when we discuss the generalities of the Principles.

As for the akhbaryyin, whom we have discussed and whose ideas we have shown, they in no way count reason as binding.

Amongst the 'ulema of our Sunni brothers, Abu Hanifa considered analogy (qiyas) to be the fourth proof, and thus in the view of the Hanifa sect, the sources of jurisprudence are four: the Book, the Sunnah, consensus and analogy.

The Maliki and Hanbali Sunnis, especially the Hanbalis, pay no heed whatever to analogy. The Shaf'i Muslims, following their leader, Muhammad ibn Idris Shaf'i, pay more attention to Traditions than the Hanafis and also more attention to analogy than the Maliki and Hanbali Muslims.

The view of the Shi'ite 'ulema, however, is that because analogy is pure conjecture and surmissal, and because the total of what has been received from the Holy Prophet and the Imams is sufficient for our responsibility, the referral to analogy is strictly forbidden.

Lesson Three: A Brief History

For a student who wishes to study or gather information about a certain branch of learning, it is necessary that he acquaints himself with the origins of that learning, with those who introduced it, with the nature of its development over the centuries, with its notable champions and exponents and with its famous and creditable books.

The study of Principles is one of the studies that was originated and brought up in the surroundings of the culture of Islam. It is generally recognised to have been introduced by Muhammad ibn Idris Shaf'i. Ibn Khaldun in his famous Muqaddamah, in the section in which he discusses the various sciences and skills, tells us, "The first person in the study of the Principles of Jurisprudence to write a book was Shaf'i, who wrote his famous Treatise. In that treatise, he discussed the commands and prohibitions, the Traditions, abrogation and other matters. After him, the Hanifi 'ulema wrote similar books and brought extensive research into

practice."

However, as has been pointed out by the late Seyyid Hasan Sadr, may God raise his station [4], various problems of Principles, such as the commands and prohibitions and "generalities and particularities" had previously been raised by Shi'ite 'ulema who had written a treatise about each one of them. So perhaps it can be said that Shafi'i was the first person to write one book

about all the issues of Principles that, by his time, had been raised.

Likewise, it has been considered by some orientalists that ijtihad began amongst the Shi'ite some two hundred years after it began amongst the Sunnis; a view they base upon the assumption that during the time of the pure Imams there was no need amongst the Shi'ites for ijtihad and that as a result, there was similarly no need for the preparatory studies of ijtihad.

This is a view, however, that is in no way correct.

Ijtihad, in the proper meaning of deducing the consequences (i.e. legislation) of faith from the sources - meaning referring the consequences, or legislation to the sources, and applying the sources to the legislation-has existed amongst Shi'ites ever since the time of the pure Imams, and the pure Imams used to command their companions to engage themselves in this

practice.

Furthermore, due to the numerous Traditions about different subjects that have been narrated from the pure Imams, Shi'ite jurisprudence has naturally been considerably enriched, and thus the struggles of ijtihad are somewhat easier. At the same time, however, Shi'ite Islam has never considered itself to be free of the need of tafaqquh and ijtihad, and as has been said, the instructions to carry on the struggle of ijtihad were especially given by the Imams to their outstanding companions. In reliable books the following sentences have been recorded from the Imams: "Upon us is the (general) rules (i.e. the general rules are the responsibility of the Imams) while upon you is the application (i.e. the application of the rules in all the particular

circumstances is our responsibility)."

Amongst Shi'ite 'ulema, the first outstanding personality to compile books on Principles and whose views were discussed in Principles for centuries was Seyyid Morteza 'Alam ul Huda. Numerous books on Principles were compiled by Seyyid Morteza, the most well-known of

which is Thariyah (The Medium).

Seyyid Morteza was the brother of Seyyid Razi who was the compiler of the famous Nahj ul-Balagha, the book of sermons, letters, and sayings of Hazrat Ali ((rightly called the Way of Eloquence. Seyyid Morteza lived during the late fourth and early fifth centuries A.H. He died in 436 A.H. He had been the student of the famous mutakallim, or master of theology (kalam), Shaykh ul-Mufid (died 413 A.H.), who in turn had been the pupil of the equally famous Shaykh

Saduk (died 381 A.H.).

Following Seyyid Morteza, a famous and important figure in the study of Principles who wrote a book and whose views were for three or four centuries outstandingly influential was the great Shaykh Tusi (died 460 A.H.) who had been the pupil of Seyyid Morteza and who, almost a thousand years ago, founded the scholastic centre of Najaf in Iraq, which is still functioning today.

A later personality of the study of Principles was the late Waheed Bahbahani (1118-1208 A.H.), who in various ways was a very important figure. Many of his pupils in jurisprudence and ijtiḥād were brought by him to a high level of distinction and excellence. Another was his thorough combat against the previously mentioned akhbāriyyīn who at that time were accumulating an extraordinary influence. The success of the system of ijtiḥād over the corrupt system of the akhbāriyyīn owes much to his efforts.

Over the past hundred years, without doubt the most important figure in the study of Principles is the late Shaykh Morteza Ansari (1214-1281 A.H.), and those who have come after him have all followed his school of thought. Until now no line of thought has been formed that has transformed that of Shaykh Ansari, although many students of his school have formed views, based on Shaykh Ansari's own teachings, that have occasionally abrogated a view of Shaykh Ansari. His two books, Faraid ul-usul and Mukassib (on the subject of jurisprudence) are today both used as textbooks for the students of religion .

Amongst the pupils of the school of Shaykh Ansari the most famous is the late Mulla Khorasani, who has been recorded in the history books as the man who issued the verdict (fatwa), for the constitutional movement in Iran, and who had a major share in the establishment of the constitutional regime.

Amongst the Islamic studies there is none so changeable and variable as the study of Principles and even today there exist outstanding figures who are counted as having their own (legitimate) views in Principles.

The Principles of Jurisprudence, bearing in mind that its concern is the calculation of knowledge and the mind, and has many minute investigations, is a pleasant and heart-warming study that magnetises the mind of a seeker of knowledge. As far as being an exercise in thought and in exact practices of the mind, it stands alongside logic and philosophy. The students of the ancient sciences owe their precise way of thinking largely to the study of .Principles

Lesson Four: The Subjects of the Principles

So as to acquaint the respected reader with the issues of the Principles of Jurisprudence we

will discuss the main outline, not in the order followed by the scholars of the Principles, but in an order which will better suit our purposes.

Previously, we stated that the study of Principles is a study of instructions, meaning that it teaches us the way of correctly and validly deducing the commandments of religion from the original sources. Following upon this, the issues of the Principles are all related to the four types of sources, which we spoke about in the second lesson. Thus the issues of the Principles are related either to "the Book", i.e. the Quran, or to the Sunnah (or to both, since both are originally verbal Sources) or to consensus or to reason.

Now I wish to say that it is possible for us occasionally to meet circumstances in which we cannot deduce the necessary Islamic law from the four sources. In such circumstances the Islamic Shari'ah is not silent and has established for us a system of rules and practices from which we can interpret the apparent law.

Acquiring the apparent duty of application (from the requisite rules) after having failed to deduce the actual duty requires that we learn the correct method and instructions of benefitting from those rules.

Thus the study of the Principles, which is a study of instructions, becomes divided in two parts. One part contains instructions for correct and valid deducing of the actual laws of the Shari'ah from the relevant sources. The other part is related to the correct and valid way of benefitting from a chain of rules for application after having lost hope of deducing. The first part is called the principles for deducing (*usul ul-estanbatiyah*), and the second part is called the principles for application (*usulal-'amaliyah*) (of the special rules when there is no hope of deducing). Furthermore, since the principles of deducing relate to deducing either from the Book, from the Sunnah, from consensus or from reasoning, the issues of the principles of deducing are divided into four parts. We will begin our discussion with the Book

The Binding Testimony of the Quran's Apparent and Accepted Realities (*zawahir*)

In the Principles of Jurisprudence there are not many discussion particular to the Quran. The discussions relative to the Quran are basically related both to the Book and to the Sunnah. The only discussion centered solely on the Quran concerns the binding testimony of its apparent realities, by which is meant the question of whether the apparent laws of the Quran -regardless of whether or not they are qualified, conditioned and explained by existent or authentic traditions-are binding testimonies for the jurists to unconditionally rely on. It seems to be surprising that the *usulin*, those learned in the Principles, should have thought up such a debate. Could the legitimacy of a jurist, relying on the apparent laws of the *ayahs* or verses of the sacred Quran be ever subject to doubt? This is a discussion that was

introduced by the Shi'ite 'ulema of the Principles in order to negate the misgivings of the akhbaryyin, who, as has been shown, believed that other than the holy ones (The Prophet, his daughter and the twelve Imams, peace be upon them all) no one has the right to refer to the Quran, or to deduce the Shari'ah from it. Or, in other words, the eternal benefitting of Muslims from the Quran must be indirect, must be via the Sunnah of the Ahle Bait, the Prophet and the purified members of his House. This claim of the akhbaryyin was based upon the Traditions that have forbidden interpreting the Quran by view.

The 'usulyyin, however, have proved that the deducing of Muslims from the Quran is direct, and that the meaning of the prohibition of 'interpreting the Quran by view' is not that people have no right to understand the Quran by their own thought and reflection, but that the Quran must not be interpreted according to desire and inflated ego.

Furthermore, the Holy Prophet and the Imams have authentically reported to have told us that forged Traditions would appear, and in order to distinguish the true from the false, we must compare all Traditions with the Quran, and any Traditions that disagree with the Quran must be realised to be false and thus be disregarded, meaning that they are not worthy of any respect. This of course cannot be done without referring to the Quran. What is more, the same Traditions make it clear that, in complete contrast to the claims of the akhbaryyin, the Sunnah .is not the criteria of the Quran, rather the Quran is the criteria of the Sunnah

The Apparent and Accepted Realities (zawahir) of the Sunnah

About the binding testimony of the Sunnah, by which is meant the Traditions and narrations that have reiterated the words, actions and silent assertions of the Prophet and the Imams, two important subjects are discussed in the study of Principles. One is the question of the binding testimony of the khabar al-wahid, the Single Report, and the other is the question of the Traditions which are opposed to the Quran, and which, as we have seen, are to be rejected. Thus it is in this way that two important branches of the study of Principles is opened, one called the Single Report, (khabar al-wahid) and the other Unification .(and Preference (t'adul wa tarajih

The Single Report (khabar al-wahid)

The Single Report is a Tradition that has been reported from the Imam or Prophet but by only one person, or is reported by more than one person but does not reach the level of being consecutively related by so many different people that there is no possibility of the Tradition being in any way wrong (tawatur). Now, can such a Tradition be used as a basis for deducing the Shari'ah or not?

The 'usuliyyin believe that, provided the Transmitters of the Single Report from the first to the last were all just or at least were probably truthful, the Traditions they have narrated can be used to deduce the relevant law. One of the justifications for this claim is the holy ayah of the Quran, in which we are told, "If there comes to you a wicked man with news; examine." (49:6), which means that if a wrong-doer comes and gives us some news, we are to research into his report, and without having definitely established the validity of the report, we are in no way to put it into effect. Similarly, the ayah tacitly indicates that if a just person and reliable person gives us a report, we are to put it into effect. The tacit meaning of this ayah, therefore, is proof [of the binding testimony of the Single Report. [5

Unification and Preference

Now the issue of opposing Traditions. Often it occurs that various Traditions on the same subject are opposed to each other. For example, about whether we should recite the thikr (remembrance) of the third and fourth units of prayer (rak'ats) - called the tasbihat al-arb'ah - three times in each unit or whether only one time is enough, from some Traditions it is learned that it must be said three times, while in one Tradition we learn that one time is enough. Or about whether it is permissible to sell human manure, there are likewise various Traditions that oppose each other.

What must be done when we have such varying Traditions? Must we consider that when two contrasting reports exist we are to ignore them both, just as if we had no Traditions on that subject at all? Or do we have the option of acting according to whichever of them we like? Or are we to act according to precaution and thus to the Tradition that is nearer to precaution (which, pursuing our previous example of the thikr of the third and fourth units of the prayer, would mean acting according to the Traditions that tell us to recite it three times, and in the example of the issue of selling human manure, to the Traditions that tell us it is forbidden)? Or is there another way of acting?

The 'ulema of the Principles have determined that firstly the unified content of all the varying Traditions must as far as possible be implemented, and, if this is not possible, and neither of the two sides has preference over the other in some way, such as in the reliability of the chain of narrators, in its credibility amongst earlier 'ulema who may have had some other testimony that we have missed, or in its being clearly not due to taqiya, [6] and such like, we have the option to act according to whichever of them we like. [7]

There are Traditions themselves that contain the instructions of what, in the case of contradicting Traditions, we are to do. The Traditions that lead us to the resolving of the difficulty of contradicting Traditions are called Corrective Reports (akhbar ul-'elajiyah).

The 'ulema of the Principles, on the basis of these Corrective Reports, have expressed their views on the contradicting Traditions. This is the branch of the study of Principles that has been named "unification and preference" and which discusses the unification of opposing Traditions, and the superiority of some over others. From what has been said it is clear that the issue of the binding authority of apparent laws is relevant to the Book and the issues of the Single Report and of the contradicting testimonies concern the Sunnah. Now it is to be said that there are issues in the Principles that are .common both to the Book and to the Sunnah and these we will talk about in the next lesson

Lesson Five: Issues Common to the Book and the Sunnah

In the previous lesson we showed some of the issues of the Principles that were particular either to the Book or to the Sunnah, and at the conclusion of the lesson it was said that some issues of the Principles are related both to the Book and to the Sunnah. In this lesson we will pay attention to these common discussions.

The common discussions consist of the following:

- a. The discussion of imperatives (awamir)
- b. The discussion of negative imperatives (nawahi)
- c. The discussion of generalities and particularities (aam wa khas)
- d. The discussion of unconditional (mutlaq) and conditional (muqayyad)
- e. The discussion of tacit meanings (mafahim)
- f. The discussion of the abstract (mujmal) and the clear (mubayyan)
- g. The discussion of the abrogator (nasekh) and the abrogated (mansukh)

Now, within the limits of merely becoming acquainted with these terms, each one will be .separately discussed

The Discussion of Imperatives (awamir)

The Arabic awamir is the plural of the word amr which means command. It also means the type of verb form that in English is called imperative, such as the verb form: Listen ! or Stand ! In the Book and the Sunnah, many of the phrases are in the form of the imperative, and it is here that many questions are raised in jurisprudence that must be answered in the study of Principles. Such questions as to whether or not the imperative is a proof of its being obligatory (wajib) or of being desirable, or of neither. Does the imperative signify that the verb is to be done once or a number of times?

For example, the Quran contains the following instruction, "Take from their property charity, you cleanse them and purify them thereby, and pray for them; your prayer is a soother for them"

(9:103) "Pray", in this holy verse, means supplicate, or send a blessing. Here, the first question that is raised concerns the status of the imperative verb form, "pray". Does it mean that to supplicate for them or send a blessing upon them is obligatory? In other words, is the imperative here an indication of obligation or not?

The second question is as to whether or not the imperative is an indication of immediate obligation? Is it obligatory that right after taking the divine tax (zakat) prayer is to be offered for them, or is an interval no problem? Thirdly, is one prayer enough or must it be performed repeatedly?

In the study of Principles, these matters are all discussed in depth, but here is not the place to discuss them further. Those who choose to study Jurisprudence and the Principles will naturally learn about these details

The Discussion of Negative Imperatives (naw ahi)

The Arabic word nawahi is the plural of nahy which means to stop or prevent, and is the opposite of amr, the imperative. If in English we say, "Do not drink alcohol," this is a negative imperative in English and in Arabic a nahy. Both in the Book and in the Sunnah there are many phrases which are negative imperatives.

Similar questions arise on this subject to those we saw on the subject of the imperative. Is the negative imperative testimony for the object of the verb being forbidden (haram) or for it being undesirable (makruh) but not forbidden (haram)? Likewise, does the negative imperative testify permanency, i.e. that the action of the verb must never be done, or that it is only to be refrained from during a temporary period?

.These are questions the answers to which are provided by the study of Principles

Discussion of Generalities and Particularities (aam wa khas)

In the civil and penal laws of human society, we notice that a general and common law exists which applies to all, and we then notice that there also exists another law related to a group of individuals from that society; a law that is opposed to the common and general law.

In such instances, what is to be done? Must the two laws be received as being self-contradicting? Or, since one of the two laws, compared to the other, is general while the other is particular, is the particular law to be received as an exception to the general law?

For example, we are told in the Quran that divorced women must wait after their divorce for three monthly periods, and after that term they are free to remarry. In reliable Traditions, however, we are told that if a woman is married by a man, and before marital relations (i.e. sexual intercourse) occurs between them, the woman is divorced, it is not necessary for the

woman to observe the term.

What are we to do here? Are we to consider this Tradition to be opposed to the Quran and therefore reject it and disregard it just as we have been instructed? Or are we to consider that, on the contrary, this Tradition, in reality, expounds the Quranic ayah for us, that it has the rank of an exception in certain of the particular circumstances, and that the Quran is in no way contradicted by it.

It is the second view that is the correct and valid one of course, for man is used to having a law introduced in the general form and then having the exceptions explained. Man is not used to having the exceptions explained before the law is introduced, and the Quran has addressed human beings on the basis of the terms and language of mankind. In another place the Quran itself has counted the Traditions of the Prophet as being reliable. "What the Prophet gives you, take! And what he has prohibited you, avoid!" (59:8). In these types of circumstances, we .receive particularities as having the rank of exceptions to generalities

Unconditional (mutlaq) and Conditional (muqayyad)

The question of conditional and unconditional is similar to the question of generality and particularity, but generality and particularity are relevant to what the law applies to, while conditional and unconditional are relevant to the different circumstances and qualities of the law itself. The general and particular are relevant to an order that generally covers all the different forms of that which the law applies to, some of which, due to a particular reason, are exempt from that generality. The question of unconditional and conditional, however, is related to the essence and nature pertaining to the duty which the duty-bound must perform. If that essence and nature pertaining to the duty has no particular condition then it is unconditional, and if it has a particular condition, it is conditional .

For example, in the example which we previously quoted, the Holy Prophet was commanded that at the time of taking the zakat from the Muslims he was to supplicate for them. This instruction, as regard whether the Prophet was to supplicate for them loudly or quietly, for example, or whether he was to supplicate for them in company or when alone, is unconditional. Now I wish to say that if we have no other proof or reason provided by the Quran or reliable Traditions making one of the two above-mentioned conditions, we act according to the unconditional meaning of the ayah. That is, we are free to perform the command in whatever fashion we like. If, however, we are provided with an authentic proof telling us, for example, that the supplication is to be unconditional to the conditional, which means that we are to consider the unconditional sentence to be given a condition by the conditional sentence, and we then . interpret the unconditional as the conditional

The Discussion of the Tacit (mafahim)

The tacit in the terminology of the study of Principles is the opposite of spoken. Imagine that someone says, "Come with me to my house and I will give you such and such a book." This sentence, in reality, is a sentence taking the place of the following two sentences: First, "If you come with me to my house I will give you that book", and second, "If you do not come with me to my house I will not give you that book".

So here there are two connections: the affirmative and the negative. The affirmative connection is between accompanying and giving, and exists in the substance of the sentence and it is uttered. For this reason it is called the spoken. The negative connection on the other hand is not uttered, but from the sentence it is naturally understood. This is why it is called tacit or, more literally, the understood.

In the discussion on the Single Report we saw how the 'usuliyyin have realised the binding testimony of the Single Report, when the narrators are all just from the holy ayah of the Quran which tells us, "If there comes to you a wicked man with news, examine." This realisation is from the tacit meaning of the ayah. The words of the ayah only tells us that we are not to put into effect the news of the unjust without investigation, while the tacit meaning of the ayah is that we are not to put into effect the news he gives us, but we are to put .into effect the news given to us by someone who is just

The Abstract (mujmal) and the Clear (mubayyan)

The discussion of the abstract and the clear does not have so much importance. It simply means that sometimes a phrase in the language of the Holy Prophet is ambiguous for us and its meaning unclear, like the word ghena (music), while in another proof from the Quran or the Sunnah there exists its explanation. In such cases the ambiguity of the abstract is cancelled by .the clear

The Abrogator (nasekh) and the Abrogated (mansukh)

Sometimes in the Quran and the Sunnah we come across an instruction that was temporary, meaning that after a time a different instruction was given, which has, to use a phrase, cancelled the first instruction.

For example, the Holy Quran first tells us that if women having husbands commit adultery they are to be confined to their houses until they die or until God established some other way for them. Then the way that God established for them was the general instruction that if a man having a wife or a woman having a husband commits adultery, they are to be executed. Or, for example, at first the instruction was revealed that in the holy month of Ramazan, even at

night, men must not have intercourse with their wives. This rule was then cancelled and permission was given.

It is essential for a jurisprudent to distinguish the abrogator and the abrogated. On the issue of abrogation many questions are raised which are reflected on and discussed in the study of .Principles

Lesson Six: Consensus and Reasoning

Consensus

As we saw in the second lesson, one of the primal sources of jurisprudence is consensus. In the study of Principles, the questions of the binding testimony of consensus, the proofs of it being a binding testimony, and the pursuing of the method by which proofs are benefitted from it, are all subjects of debate.

One of the topical points related to consensus is as to the nature of the proof's being binding. The 'ulema of our Sunni brothers claim that the Holy Prophet has told us, "My nation will not (all) consent to a mistake". Basing their view on this, they say that if the Muslim nation find the same point of view on an issue, that view is clearly the correct one.

According to this Tradition, the members of the Muslim nation are ruled in total as having the same status as a Prophet and being faultlessly free from error. The speech of the whole nation has the same rank as the speech of a Prophet, and all the nation, at the moment of finding the same view, are faultless, i.e. immaculate.

According to this view of the Sunni 'ulema, since the whole nation is infallible, whenever such an agreed view occurs, it is as if divine inspiration has been revealed to the Holy Prophet. Shi'ites, however, in the first place, do not count such a Tradition as being definitely from the Prophet. Secondly, they agree that it is impossible for all the members of the whole nation to stray and to err, but the reason for this is that the leader of that nation, the Prophet or Imam, is a person who is infallible and immaculate. That the whole Muslim nation cannot err is because one particular member of the Muslim nation cannot err, not because from a group of people who are fallible, an infallible is formed. Thirdly, that which is called consensus in the books of jurisprudence and theology (kalam) is not the consensus of the whole nation. It is simply the consensus of a group, the group of managers or supervisors-i.e. the 'ulema- of the nation. Furthermore, it is not even the consensus of all the 'ulema of the nation, but the consensus of the 'ulema from one sect from amongst the nation.

Here is where the Shi'ites do not maintain the same principle of consensus that the Sunni 'ulema maintain. Shi'ites maintain the binding testimony of consensus only in as far as it is the means of discovering the Sunnah.

In the thinking of the Shi'ites, whenever there is no proof in the Book and the Sunnah about a certain subject, suppose, but it is known that the general body of the Muslims, or a numerous group of the companions of the Prophet, or those companions of an Imam who did nothing except in accordance to the divine instructions, all used to act in a particular way, then we realise that in those times there existed an instruction of the Sunnah which we are unaware of

Acquired Consensus and Narrated Consensus

Consensus, whether that which our Sunni brothers have accepted or that which Shi'ites consider valid, is of two types: acquired and narrated. Acquired consensus means the consensus, the knowledge of which the mujtahid has himself directly acquired as the result of minute research into history and the views and opinions of the companions of God's Prophet or of the companions of the Imams, or of the people close to the time of the Imams. [8]

Narrated consensus is the consensus about which the mujtahid has no direct information, but which has been related by others. Acquired consensus, of course, is a binding testimony, but narrated consensus, if certitude is not obtained from the narrator by which it is narrated, is not relied upon. Therefore, the Single Report of consensus does not constitute a binding testimony, even though, as we have seen, the narrated Single Report of the Sunnah does, provided the chain of narrators meets the conditions

Reasoning

Reasoning is one of the four sources of jurisprudence. What is meant is that sometimes we discover a law of the Shari'ah by the proof of reason. That is by means of the deduction and logic of reason we discover that in a certain instance a certain necessary law or prohibitive law exists, or we discover what type of law it is and what type it is not.

The binding testimony of reason is proved by the law of reason ("the sun is shining, hence the proof of the sun" - meaning that with the existence of reason no other proof is needed), and also by the confirmation of the Shari'ah. Essentially we are sure of the Shari'ah, and of the principle of beliefs of religion, by means of reason. How could it be that in the view of the Shari'ah reason is not to be considered as binding?!

The issues of the Principles related to reason are in two parts. One part relates to the inner meaning or philosophy of the commandments. The other part is related to the requirements of the commands.

Let us begin with the first part. One of the obvious elements of Islam, especially in the view of the Shi'ites, is that the Shari'ah of Islam exists in accordance to what comprises the best interests of human beings and their worst interests. That is, each command (amr) of the

Shari'ah is due to the necessity of meeting the best interests of human beings and each prohibition (nahy) of the Shari'ah arises from the necessity of abstaining from their worst interests, i.e. the things that corrupt them.

Almighty God, in order to inform them as to what comprises their best interests, in which lies their happiness and prosperity, has made a chain of commands obligatory (wajib) or desirable (mutahab) for them. And so as to keep human beings away from all that which corrupts them, He prohibits them from those things. If the best interests and forms of corruption did not exist, neither command nor prohibition would exist. If the reasoning of human beings became aware of those best interests and those forms of corruption, they are such that it would devise the same laws that have been introduced in the Shari'ah.

This is why the practioners of the Principles, and also the mutakalimin, consider that, because the laws of the Shari'ah accord to and are centred on the wisdom of what is best and worst for human beings-and it makes no difference whether those best and worst interests are relevant to the body or the soul, to the individual or the society, to the temporary life or the eternal - wherever laws of reason exist, so the corresponding laws of the Shari'ah also exist, and wherever there exists no law of reason, there exists no law of the Shari'ah.

Thus, if we suppose that in some case no law of the Shari'ah has been communicated to us, particularly by means of narration, but reasoning absolutely traces with certitude the particular wisdom of the other judgments of the Shari'ah, then it automatically discovers the law of the Shari'ah in this case too. In such instance reasoning forms a chain of logic: First, in such and such a case, there exists such and such a best interest which must necessarily be met. Second, wherever there exists a best interest that must necessarily be met, the Legislator of Islam is definitely not indifferent, rather He commands the meeting of that best interest. Third, so, in the quoted instances, the law of the Shari'ah is that the best interests be met.

For example, in the time and place of the Holy Prophet there was no opium or addiction to opium, and we, in the narrated testimonies of the Quran and the Sunnah and consensus, have no testimonies particular to opium one way or the other, yet due to the obvious proofs of experiencing opium addiction, its corruption has been experienced. Thus, with our reasoning and knowledge, and on the basis of "a form of corruption which is essentially to be avoided", and because we know that a thing which is harmful for human beings and a corruption of them is forbidden in the view of the Shari'ah, we have realised that the law about opium is that addiction to opium is forbidden .

Similarly, if it becomes established that smoking tobacco definitely causes cancer, a mujtahid, according to the judgment of reasoning will establish the law that smoking is forbidden

according to the Divine Law.

The 'usuliyyin and the mutakalimin call reason and the Shari'ah inseparable from each other.

They say that whatever law is established by reason is also established by the Shari'ah. However, this of course is provided that reasoning traces in an absolute, certain and doubtless way those best interests which must be attended to and those worst interests or forms of corruption that must be shunned. If not, the name reasoning cannot be given to the use of opinion, guesswork and conjecture. Analogy for this very factor is void for it is more opinion and imagination rather than reasoning and certitude.

On the other hand, when reasoning plays no part in the forming of a law and we only see that such and such a law has been introduced in the Shari'ah, we know that our best interests were definitely involved, for otherwise the law would not have been made. Therefore, reason, in the same way as it realises the law of the Shari'ah by realising the best interests of human beings,

similarly realises the best interests of human beings by realising the law of the Shari'ah .

Therefore, in the same way it is said that whatever is a law of reason is a law of the Shari'ah, it also said that whatever is a law of the Shari'ah is a law of reason.

Let us now discuss the second part, the requirements of the commands. We know that whatever law made by whatever sane law-maker possessing intellect naturally has a chain of essentials that must be judged according to reason to see if, for example, that particular law necessitates a certain other law, or if it necessitates the negation of a certain other law.

For example, if a command is made, such as the hajj and the form of worship to be performed there- and the hajj necessitates a chain of preparations, amongst them acquiring a passport, buying a ticket, vaccinations, and currency changing; does the law of the hajj being obligatory require these preparations to be obligatory as well, or does it not?

The same question can apply to the things that are forbidden. Does the rule of a thing being forbidden demand that its preparations also be forbidden?

Another issue. At one time a person is not able to do two things that are obligatory for him to do because they must be done separately. Like at the same time it is obligatory to pray one's obligatory ritual prayers, it is also obligatory, assuming it has become unclean by blood, urine, etc., to clean the mosque. So the performing of one of these two duties demands the neglect of the other. Now, does one command necessitate and contain the prohibition of the other? Do both the commands include this prohibition? If two things are obligatory for us while it is not possible for us to perform both of them at once, so that we have no option but to choose only one of them, then if one of the two is more important, we must definitely perform that one.

Which brings us to another issue. Is our duty in regards to the important altogether lapsed by

our duty in regards to the more important or not? For example, two men are in danger of their lives and it is only within our means to save one of them, and one of them is a good Muslim who works for others while the other is a corrupt man who only troubles others, but whose life, all the same, is still sacred.

Naturally, we must save the Muslim who is good and who helps others whose life is more valuable to society than the life of the other. That is, to save him is more important while to save the life of the other is important.

In the above mentioned examples, it is reasoning with its precise calculations which clarifies our specific duties, and in the study of Principles these issues and issues like these are all discussed and the way of properly determining the answers is learned.

From what has been stated from the fourth lesson to here it has become clear that the issues of Principle are all divided into two parts, the "Principles of Deducing" and the "Principles of Application". Likewise, the Principles of Deducing-are in turn divided into two parts; the Narrated and the Reasoned. The Narrated are relevant to all the discussions focused on the .Book, the Sunnah, and consensus, while the Reasoned part is related to reason

Lesson Seven: The 'Principles of Application'

We have learned that the jurisprudents refers to four sources for his deducing of the laws of the Shari'ah. Sometimes in his referrals the jurisprudent is successful and sometimes he is not. That is, sometimes (of course predominately) he attains the actual law of the Shari'ah in the form of certitude or a reliable probability, which means a probability that has been divinely endorsed. In such cases, the duty becomes clear and he realises with certitude or with a strong and permissable probability what it is the Shari'ah of Islam demands. Occasionally, however, he is unable to discover the duty and the Divine Law from the four sources, and he remains without a defined duty and in doubt.

In these cases what must be done? Has the Legislator of Islam or reason or both specified a certain duty in the case of the actual duty being out of reach? And if so, what is it?

The answer is that yes, such a duty has been specified. A system of rules and regulations has been specified for these types of circumstances. Reason too, in certain circumstances, confirms the law of the Shari'ah, for the independent law of (aware) reasoning is the very same as the law of Shari'ah, and in certain other instances it is at least silent, meaning that it has no independent law of its own and accords to the Shari'ah.

In the part of Principles which contains the Principles of Deducing we learn the correct and valid method of deducing the Shari'ah, and, in the part concerning the Principles of Application, we learn the correct way of benefitting from the rules that have been introduced for the kind of

situation mentioned above, and of putting them into practice.

The general principles of application that are used in all the sections of Jurisprudence are four:

1. The Principles of Exemption (bara'at)

2. The Principle of Precaution (ihtiyat)

3. The Principle of Option (takhyir)

4. The Principle of Mastery (istishab)

Each of these four types of principles have a special circumstance which it is necessary for us to acquaint ourselves with. Firstly we will define the four principles themselves.

The Principle of Exemption means that we are released from our obligation and we have no duty. The Principle of Precaution is the principle that we must act according to precaution, which means that we must act in such a way that if a duty actually exists as a law, we have performed that duty. The Principle of Option is that we have the option to choose one of two things, whichever we like, and the Principle of Mastery is the principle that that which existed remains in its original state - or masters the doubt that opposes it - while the doubt is ignored. Now we will see in what circumstances the Principle of Exemption applies and in what circumstances the Principles of Precaution, Option and Mastery apply. Each of these has its particular instance and the study of Principles teaches us these instances.

Sometimes the jurist remains unable to deduce the law of the Shari'ah and is unable to trace a particular necessity and remains in a state of doubt, and it might be that the doubt is linked to some general or broad knowledge like, for example, it is doubted whether, in this era of the physical absence of the Imam, the special congregational prayer is obligatory on Fridays or the normal noon prayer - here the obligation of both the Friday prayer and the noon prayer is in doubt, while we have the general information that one of the two is definitely obligatory - or it might be the doubt is not linked to some general knowledge, like a doubt as to whether, in the era of our Imam's absence, the prayer of id-i-fitr in congregation is obligatory. In this second case our doubt is a "primary doubt" (shak badwi) and not a doubt bordering on something that is known.

So the doubts of the jurists about an obligation are either linked to some general knowledge or are primary doubts. If they are linked to some general knowledge, it is either possible to act in accordance to precaution, meaning that it is possible for both possible duties to be performed, or it is not possible to act in precaution. If precaution is possible, it must be acted in accordance with, and both of the possible duties must be performed, and such an instance calls for the Principle of Precaution. Sometimes, however, precaution is not possible, because the doubt is between obligatory and forbidden. We doubt, for example, in this period

of the Imam's absence, whether the performance of certain duties are particular to the Imam and forbidden for us or whether they are not particular to the Imam and are obligatory for us. Here it is self-evident that in such instances the way of precaution is closed, so here is an instance that calls for the Principle of Option, and we must do which ever of them we choose. Assuming, however, that our doubt is a primary doubt not linked to any general knowledge, the instance is either that we know the previous condition and the doubt is as to whether the previous law stands or is changed, or the instance is that the previous condition not been established either. If the previous condition is established the situation calls for the Principle of Mastery (mastery of the known previous condition over the doubt), and if the previous condition is not established the situation calls for the Principle of Exemption.

A mujtahid must, as the effect of frequent application, have great power of discernment in the execution of these four types of principles; discernment that sometimes is in need of hair-splitting exactitude, and if not he will encounter mistakes. [9] Of these four principles, the Principle of Mastery has been uniquely established by the Shari'ah, to which reason accords having no independent rule of its own, but the other three principles of Principles of Reason that the Shari'ah has confirmed. The justification of the Principle of Mastery consists of a number of reliable Traditions which are in this form: "Do not reverse a certitude by a doubt", i.e. we are not to reverse or reject our certitude for the sake of a doubt. From the content of these Traditions and what precedes and follows this sentence it becomes clearly discerned that what is meant is exactly that which the jurisprudent calls Mastery.

On the subject of the Principle of Exemption likewise there exist many Traditions of which the most famous is the hadith ur-rafi'. The hadith ur-rafi' is from the Holy Prophet, who told us: "Nine things have been taken from my nation: what they do not know, what they have not tolerated, what they have been compelled to, what they have found themselves in need of, mistakes, forgetfulness, misfortune, envy (which they have not acted on) and whisperings of doubt in the thoughts of the creation."

The 'usulin have had numerous discussion about this Tradition and about each of its points, and of course the part that sanctions the Principle of Exemption is the first line wherein we are told that whatever we do not know and has not reached us has been taken from us, and thus the obligation is lifted from us.

These four principles are not particular to mujtahids for understanding the laws of the Shari'ah. They are also relevant to other subjects. People who are not mujtahids and who must therefore imitate (taqlid) a mujtahid can also benefit from them at the time of certain doubts. For example, imagine that an unweaned baby boy takes milk from a woman other than his

mother, and when that boy grows up, he wants to marry the daughter of that woman, and it is not known whether as a baby he drank so much milk from that woman's breast that he is to be counted as the "wet-nurse son" of that woman and her husband or not. That is, we doubt whether the boy drank milk from her breast fifteen consecutive times, or for a complete day and night, or so much that his bones grew from her milk (in which cases the boy becomes counted as her son and thus similar to the daughter's brother are forbidden for her). This instance calls for the Principle of Mastery, because before the boy drank the woman's milk he was not her "wet-nurse son", and now we doubt whether or not he is. By the Principle of

Mastery, we conclude that there is no question of a wet-nurse relationship. Similarly, if we had performed minor ablution obligatory for the ritual prayer or to touch the Quran or the holy names and for certain other things, and we doze and then we doubt whether or not we actually fell asleep (in which case the ablution becomes void), by the Principle of Mastery, we conclude the validity of the ablution. In the same way, if our hand was clean and we then doubt as to whether it is still clean or has become najas (unclean), by the Principle of Mastery, we conclude it to be clean. If, however, it was najas and we doubt whether we have

cleaned it or not, by the Principle of Mastery, we conclude that it is still unclean. Likewise, if a liquid is in front of us and we doubt whether or not it contains alcohol, like some medicines, the situation calls for the Principle of Exemption, and there is no obstacle to the use of that liquid. If, however, we have two glasses of medicine and we know that alcohol exists in one of them, meaning that we have some general knowledge about the existence of alcohol in

one of them, here the Principle of Precaution is called for, and we must not drink either. Imagine that we are at the side of a road in the middle of a desert and to stay there or to travel in one of the two directions of the road definitely involves the risk of our lives, while to travel in the other direction means we will find safety; but we do not know in which direction lies our safety and in which direction lies the risk of our lives. Here we are faced with two laws. The one is the obligation to save our lives and the other is the prohibition against risking it. In which direction must we travel? This situation calls for the Principle of Option, and we must travel in .which ever direction we like, and, if we choose the wrong direction, we are blameless

Notes:

[1] These treatise (risalehah) works are wherein the mujtahid states his verdicts on all or almost all the things that can affect daily life.

[2] The weakness of this view is understood when it is realised that many of the Traditions recorded in the reliable books, i.e. books compiled by reliable men, are opposed to each other, which naturally indicates that the only logical way of discerning the actual holy words from the

false is by examining the chain of narrators. It is also to be borne in mind that for a number of reasons, such as lack of time for research or of knowledge of Transmitters etc., it may not have been possible for the reliable compilers themselves to make the necessary distinctions.

Translator's Note.

[3] Consensus is further discussed in the sixth lesson.

[4] His book is called Ta'sis ash-shi'ah ulum al-islam.

[5] This ayah and such "tacit meanings" (mafahim) are further discussed in the next lesson.

[6] taqiyah is the legitimate practice of concealing one's faith in times of danger-sometimes by means of adopting the practices of a different faith-which was often necessary during the times of the Imams.

[7] In the final lesson, the Principles of Jurisprudence, more light is thrown on this subject.

[8] Of course the Shi'ite view is that the time of the Imam will last as long as mankind itself; what is referred to here is the era of access to the Imams. Translator's Note.

[9] Of course if he was likely to make many mistakes he would not yet be regarded as a .mujtahid at all. Translator's Note