

The Secondary Sources of
Uṣūl al-Fiqh
and Their Practical Application



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PREFACE



uṣūl al-fiqh is the science that explains the methods by which the rules of *fiqh* are deduced from their sources. At its core, this discipline is grounded in the *Tawhīdic* worldview, which affirms the Oneness of Allāh as the ultimate source of knowledge, law, and value. All legal reasoning in Islam is therefore an act of submission (*'ubūdiyyah*) to the Divine Will, guided by revelation and disciplined human reasoning within the framework set by the Lawgiver.

We are aware that there are already many published books on *uṣūl al-fiqh* in Arabic, English, and Malay languages. It is a great challenge to identify meaningful gaps in the existing literature so as to contribute constructively to this field. In addition to teaching *uṣūl al-fiqh*, **the authors** are engaged in teaching, researching, and publishing in numerous areas of the *Sharī'ah*, including Islamic law of transaction, Islamic law of succession, administration of *fatwā*, and Islamic international law. These engagements have shaped our understanding of *uṣūl al-fiqh*, not merely as a theoretical discipline, but as a living epistemological framework that connects revelation (*wahy*), reason (*'aql*), and reality (*wāqi'*) in a harmonious and integrated manner. As a result, this book contains several contemporary and practical examples that are not usually found in conventional *uṣūl al-fiqh* texts.

While the primary sources of Islamic law are the Qur'ān and the *Sunnah*, this book elaborates nine (9) secondary sources of *uṣūl al-fiqh*, including *ijmā'*, *qiyās*, *istiḥsān*, *maṣāliḥ mursalah*, *istiḥāb* and *'urf*. Each of the sources is defined, its legitimacy is discussed, its application is explained with examples, and, at the end of each chapter, guides on how to answer problem-based test and examination questions involving that particular source are shown, for the benefits of students. This book shows how the traditional tools of Islamic legal theory can be used to address modern issues, including Malaysian practices. We use simple English for easy comprehension and grasp of the contents, so that readers are able to absorb the information and impart it to others as well.

This book is designed to cater the needs of students of law and *Sharī'ah*. It can also be useful and beneficial for anyone who is interested in learning the methods of deducing

Islamic law. Although there are *muftīs* who can be consulted, there may be times when a particular person may have to determine the *ḥukm* of the situation he is in himself; for example, when someone who is praying *Zuḥr* has doubt whether he has farted or otherwise, or whether he is in the third or fourth *raka'āt*.

As the science of *uṣūl al-fiqh* relates to the Law of Allāh, the Lawgiver, we attempt to write accurately. However, if a reader finds an inaccuracy in this book, please let us know, so that we can correct the inaccuracy in future editions.

We would like to thank the International Islamic University Malaysia (IIUM), the Ahmad Ibrahim Kuliyah of Laws, the Islamic Law Department and colleagues for continuous encouragement for us to do researches and to publish. Special thanks go to the Center for Islamisation (CENTRIS) for publishing this book. Our deepest appreciation goes to our families for their understanding, patience and endless support that have actually led us this far. We hope that this small book contributes significantly to the betterment of the community.

Mohd Hisham Mohd Kamal

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CHAPTER 1

Ijmā' (Consensus)

1.1 Definition

The English translation of *ijmā'* is: consensus. Literally, *ijmā'* means "to agree upon something" or "unanimous agreement". Technically, in Islamic jurisprudence, *ijmā'* is defined as the unanimous agreement of the *mujtahidīn* (qualified independent jurists) of the Muslim community from any era after the demise of Prophet Muḥammad (s.a.w.) on a particular religious issue.¹

What? Unanimous agreement

By whom? *Mujtahidīn* (qualified independent jurists)

Of whom? The Muslim community

When? In any era after the death of Prophet Muḥammad (s.a.w.)

On what? Any religious matter.

1.2 Basic Elements

From the above definition, the three (3) basic elements of *ijmā'* are: unanimity of opinion, the agreement of *mujtahidīn*, and the agreement is reached at after the demise of Prophet Muḥammad (s.a.w.).

Mujtahidīn (plural of *mujtahid*) are qualified independent jurists in Islamic law who possess the requisite knowledge and expertise to interpret the religious sources and derive legal rulings through *ijtihād* (independent reasoning). Accordingly, only the consensus of qualified *mujtahidīn* is recognised as a legitimate source of law; the agreement of unqualified individuals holds no legal weight.²

There must be a number of *mujtahidīn* living at the same time and agreeing on the same ruling in order for an *ijmā'* to materialise. If there is only one or two *mujtahid* living at any one time, no *ijmā'* could materialise at that particular time.³

Unanimous agreement is a fundamental requirement for the establishment of *ijmā'*. An agreement of jurists from a specific region alone is not sufficient to qualify as an *ijmā'*. For example, the collective opinion of jurists from Madīnah or Makkah does not constitute *ijmā'*.

¹ 'Abd al-Karīm Zaydān, *Al-Wajīz fī Uṣūl al-Fiqh* (Mu'assasat Qurṭubah, 1976), 179; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Ilmiah Publishers, 1998), 156.

² Zaydān, *Al-Wajīz fī Uṣūl al-Fiqh*, 180; Kamali, *Principles of Islamic Jurisprudence*, 156.

³ Kamali, *Islamic Jurisprudence*, 159.

The Secondary Sources of *Uṣūl al-Fiqh* and Their Practical Application

"We are aware that there are already many published books on *uṣūl al-fiqh* in Arabic, English, and Malay languages. It is a great challenge to identify meaningful gaps in the existing literature so as to contribute constructively to this field. In addition to teaching *uṣūl al-fiqh*, the authors are engaged in teaching, researching, and publishing in numerous areas of the *Shari'ah*, including Islamic law of transaction, Islamic law of succession, administration of *fatwā*, and Islamic international law. These engagements have shaped our understanding of *uṣūl al-fiqh*, not merely as a theoretical discipline, but as a living epistemological framework that connects revelation (*waḥy*), reason (*ʿaql*), and reality (*waḥqī*) in a harmonious and integrated manner. As a result, this book contains several contemporary and practical examples that are not usually found in conventional *uṣūl al-fiqh* texts."

AUTHORS

"This book has the potential to become not only an academic reference, but a catalyst for renewed engagement with *uṣūl al-fiqh* as an important tool that ensures the continuity of the rules or *ḥukm* that has been established by the primary sources of the *Shari'ah*. The authors have contributed meaningfully to the ongoing project of ensuring that the *Shari'ah* remains faithful to its sources while being responsive to the needs of the age. In shā' Allāh, this work will be beneficial to all who read it to gain a deeper understanding of the secondary sources of *Uṣūl al-Fiqh* and may it be a source of continuous reward for the authors."

PROF. DR. MAJDAH ZAWAWI

"I am recommending this book, which I consider relevant especially in a time when Muslim societies encounter significant legal and ethical challenges. This book can be a medium to foster a balanced understanding of the *Shari'ah*. This understanding should remain true to its sources while also being adaptable to changing circumstances. I sincerely hope that this book will positively contribute to the study and application of *Uṣūl al-Fiqh* and inspire further scholarly engagement in this important field."

DATUK DR. LUQMAN ABDULLAH

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