ISTIḤSĀN
The Doctrine of Juristic Preference in Islamic Law

Saim Kayadibi
ISTIḤSĀN
The Doctrine of Juristic Preference in Islamic Law

Saim Kayadibi

Islamic Book Trust
Kuala Lumpur
For my wife Yasemin
and our children
Zeynep Pınar, Mehmet Edip Taha,
Mevlana Musa & İsmail Yahya
who are the joys of our life.
Contents

Glossary ix
Preface xxi
Acknowledgements xxiii
Introduction xxvii

1 The Sources of Islamic law 1
   Definition of some juristic terms 3
   Unanimous sources of Islamic law 14
   The Qur’an 14
   The Sunnah 16
   Ijmā’ (consensus) 18
   Qiyās (analogical deduction) 22
   Controversial sources of Islamic law 29
   Definition of istiṣlāḥ 30
   Mašlahah Mursalah (public interest) or al-istiṣlāḥ 33
   ‘Urf’ (customary law) 38
   Sa’dā al-Dharā’i’ (blocking the means) 40
   Qawl ṣaḥābī (the saying of a Companion of the Prophet) 42
   Shar’ man qablanā (revealed laws preceding to the Shari’ah) 44
   Istiqrā’ (induction) 45
   Conclusion 45
2 Development of Ijtihād by Ra’y
   Concept of ijtihād 63
   Validity of ijtihād 69
   Implementations of ijtihād at the time of the Prophet 75
   Conclusion 99

3 Definition of Istiḥsān and Analysis
   Istiḥsān—a historical perspective 114
   View point of istiḥsān amongst the scholars 115
   Further evidences of the validity of istiḥsān 128
   Application of istiḥsān in the early Ḥanafi school 169
   Conclusion 185

4 Various Types of Istiḥsān
   Istiḥsān in the sense of departing from one ruling 237
   Istiḥsān based on sanad in terms of the departure 240
   Conclusion 250

Conclusion 281
Bibliography 298
Index 309