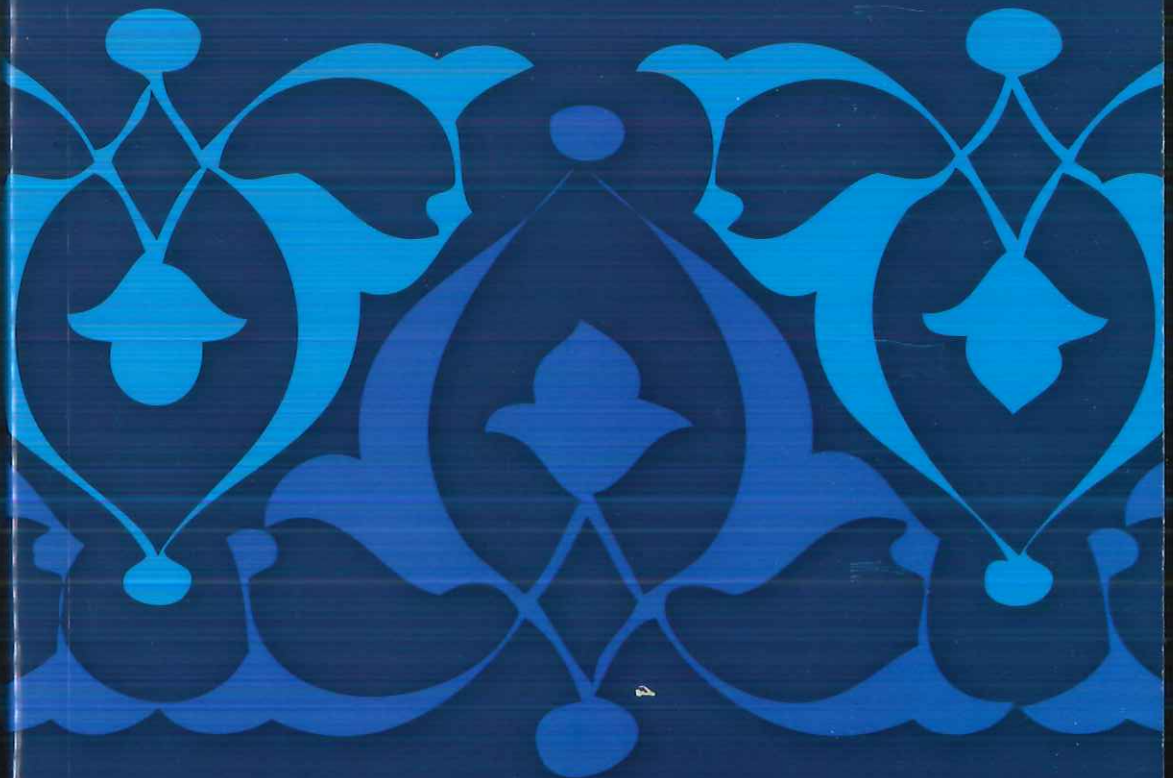


Principles of Islamic Law
The Methods of
Interpretation of the Texts

(Uşul al-Fiqh)



Saim Kayadibi

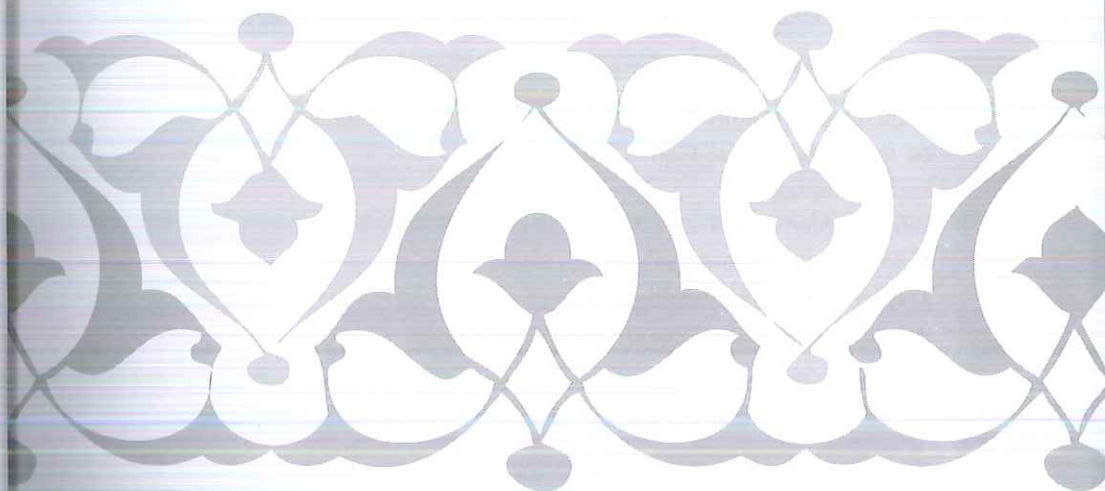


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Saim Kayadibi



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For my beloved Wife

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Preface

In the past couple decades, interest in learning and teaching Islamic law has increased in both the Muslim and non-Muslim world. The popularity of Islamic banking and finance has especially triggered scholarly studies in this field, since the study of *uṣūl al-fiqh* is the essence of comprehending the law revealed by the Lawgiver. In order to fully implement the intention of the Lawgiver in the field of *tashrīʿ*, as well as in Islamic banking and finance, properly learning the components of *uṣūl al-fiqh* is highly essential for those who are both theorists and practitioners. A better understanding of the principles of Islamic law and the methods of interpretation of the texts is necessary to appropriately convey the message of the eternal sources to the experts, just as a driver's licence is necessary to drive a car and a medical certificate is necessary to practice medicine – without these certificates, one may cause a serious accident or death. Such an understanding will protect students, especially those of the younger, technologically advanced generation, from reckless approaches towards *aḥkām* of the *Qur'ān* and the *Sunnah*. Studying the principles of Islamic law, *uṣūl al-fiqh*, is as essential as studying other sciences to be qualified in Islamic sciences, since they are a manifestation of divine law, which reflects the rules (*aḥkām*) derived from the main sources, the *Qur'ān* and the *Sunnah*, which are simply called the

Shari'ah.

It is a blessing from Allah that a considerable number of studies have appeared on principles of Islamic law and interpretation of the texts especially during the last decades. Despite the number of studies done on Islamic law, the works dealing with *uṣūl al-fiqh*, which specifically focuses on the interpretation of the texts and the methods used by the jurists, are reasonably limited in providing such knowledge to students in a holistic manner, especially in the English language.

Nevertheless, there have been some significant contributions to the field of principles of Islamic law in the English language, such as Abdur Rahim, *The Principles of Muhammadan Jurisprudence*, published in 1905; Subhi Mahmassānī, *Falsafat al-Tashrī' fī al-Islam*, translated into English in 1961; Ahmad Hasan, *Principles of Islamic Jurisprudence, The Command of the Shari'ah and Juridical Norm*, published in 1993; *Doctrine of Ijmā' in Islam*, 1978; *Analogical Reasoning in Islamic Jurisprudence*, 1986; Muhammad Hashim Kamali, *The Principles of Islamic Jurisprudence*, 1989; Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 2000; *Theories of Islamic Law, the Methodology of Ijtihād*, 2002; and Sukrija Husejn Ramic, *Language and the Interpretation of Islamic Law*, 2003, from which I have benefited much while constructing this work. The classical works, written in Arabic and some of which have been translated into English and Turkish, are many and have benefited multilingually; all of these are listed in the bibliography.

It would obviously be unbelievable for students, theorists and practitioners of the present Muslim generation to turn a blind eye to the great intellectual heritage of legal doctrines inherited from the classical Muslim jurists and scholars. In order to find solutions to the current issues, we must take into consideration the classical as well as modern works in this field, of which this study is an abridged version, to make it comprehensible for all. It is obviously known that Allah created everything in an appropriated measure; nothing is left on its own. Rather, everything is structured by principles and values.

The book in your hand, *Principles of Islamic Law – The Methods of Interpretation of the Texts (Uṣūl al-Fiqh)*, is aimed to help students, lawyers and people interested in the study of Islamic law to understand the field comprehensively. This work is, indeed, a comprehensive study in its field, authored in a clear and simple manner that meets the requirements of a needed textbook on principles of Islamic jurisprudence (*uṣūl al-fiqh*), and consisting of six chapters, including an introductory chapter.

Chapter one, the introductory chapter, highlights the development of the principles of Islamic law and the three distinct approaches of the formulation of *uṣūl al-fiqh*. It also gives the definitions of *uṣūl al-fiqh*, explains the *ḥukm sharʿī* with its essential terms related to *uṣūl al-fiqh*, the *Sharīʿah* and its components dealing with *al-aḥkām al-iʿtiqādiyyah* (rulings related to beliefs), *al-aḥkām al-khuluqīyyah* (rulings related to moral and ethics) and *al-aḥkām al-ʿamaliyyah* (rulings related to the sayings and doings of the individuals and their relationships with others). The chapter also deals with the characteristics of the *Sharīʿah*; differences between *mujtahid* and *faqīh*, *ijtihād* and *taqlid*, *muqallid* and *faqīh*, *qawāʿid al-fiqhiyyah* and *uṣūl al-fiqh*; and the meaning of *adillah*.

Chapter two is devoted to the sources of Islamic law, classifying them into two types, as unanimously accepted sources (the primary sources), such as the *Qurʾān*, the *Sunnah*, *ijmāʿ*, (consensus) and *qiyās* (analogy); the controversial sources (the secondary sources), such as *istiḥsān* (juristic preference), *maṣlaḥah mursalah* (public interest) or *al-istiṣlāḥ*, *istiṣḥāb* (presumption of continuity), *qawl al-ṣaḥābī* (the sayings of a Companion of the Prophet (ṣ)), *ʿurf* (custom), *sadd al-dharāʿiʿ* (blocking the means), *sharʿ man qablanā* (revealed laws preceding the *sharīʿah* of Islam) and *istiqrāʿ* (induction).

Chapter three deals with the *ḥukm sharʿī* (*aḥkām*) in detail; the problem of good and evil; the *maḥkūm ʿalayh* (the subject) for whose conduct the *ḥukm* is stipulated (i.e. the *mukallaḥ*); the different types of *ahliyyah* (capacity), such as *ahliyyah al-wujūb* (the capacity for acquisition of rights and obligation) and *ahliyyah al-adāʾ* (the capacity

for execution or performance of duties); *'awāriḍ al-ahliyyah* (circumstances affecting legal capacity); the *maḥkūm fīh* (the act) along with its conditions; and the types of rights, such as the rights of Allah (*ḥuqūq Allah*) and the rights of man (*ḥuqūq al-'abd*). The fourth element of the *ḥukm shar'ī* is also dealt with in this chapter, as are its types, such as *al-ḥukm al-taklīfī* (defining law) and *al-ḥukm al-waḍ'ī* (declaratory law).

Chapter four investigates the methods of deducing the rules (*aḥkām*) from the sources, considering their four divisions in detail. The first division is based on the formation of words (*alfāz*) and consists of *'āmm* (general), *khāṣṣ* (specific), *mu'awwal* (interpreted) and *mushtarak* (equivocal, the common word). The *khāṣṣ* is subdivided into *muṭlaq* (absolute), *muqayyad* (limited), *amr* (command) and *nahy* (prohibition). The second division is based on the usage of the words and consists of *ḥaqīqah* (literal), *majāz* (metaphorical), *ṣarīḥ* (clear) and *kināyah* (allusive). The third division is based on the degree of the word's clarity (*wuḍūḥ*) or obscurity. From this viewpoint, words are divided into the two main categories: clear (*wāḍiḥ*) and unclear (*ghayr wāḍiḥ*). The clear words consist of *zāhir* (manifest), *naṣṣ* (explicit), *mufassar* (unequivocal) and *muḥkam* (perspicuous). The unclear words consist of *khafī* (obscure), *mushkil* (difficult), *mujmal* (ambivalent) and *mutashābih* (intricate). The fourth division is based on the rules of indications (textual indication, *dalālāt*) and consists of *'ibārah al-naṣṣ* (explicit meaning), *ishārah al-naṣṣ* (alluded meaning), *dalālah al-naṣṣ* (the inferred meaning), *iqtidā' al-naṣṣ* (the required meaning) and *mafhūm al-mukhālafah* (divergent meaning). The concept of conflict (تعارض) between these methods are taken into consideration from the viewpoint of *Ḥanafī* and *Shāfi'ī* approaches.

Chapter five focuses on the concept of *ijtihād*, its validity, its types, its conditions, areas where *ijtihād* is applicable, its value (*ḥukm*), its relationship with *ra'y* and *istiḥsān* and *ijtihād* by *ra'y* at the time of the Prophet (ﷺ) and the Companions. It also covers the

concept of *taqlīd* (imitation), its definition, its ruling (*ḥukm*), *talfīq*, *takhayyur*, *tarjih*, legal loopholes (*ḥīlah shar'īyyah*) and *maqāṣid al-Sharī'ah* (the higher objectives of Islamic law).

Chapter six discusses the concept of abrogation (*naskh*), its definition, its types, its conditions, the historical approaches to it, the differences between *naskh* and *takhṣīṣ*, the subject matter of *naskh* and the time of *naskh*. The chapter also deals with *ta'āruḍ al-adillah* (conflict of evidences), the place of the conflict of evidences, the method to be followed in resolving conflicts, resolving conflicts among the *nuṣūṣ* (texts), resolving conflicts through recourse to the Companions and *ijmā'* and resolving conflicts of *qiyās* (analogy).

This work, therefore, contributes to the heritage of the principles of Islamic law and the methods of interpretation of the texts (*uṣūl al-fiqh*), inshallah.

With that I would like to thank everyone who has assisted me directly or indirectly in the production of this work, which has taken six years to complete. In fact, the work would have been completed much earlier if I had not assumed an administrative responsibility in the Rectory Office of International Islamic University Malaysia (IIUM), which, along with some other obstacles I had to tackle, made me extremely busy. Nevertheless, with the constant help and the grace of Allah, the work has come to completion and therefore I am very grateful to Allah. I hope that this work will be accepted as *ṣadaqah jāriyah* by Allah. May Allah bless all the scholars from whom I have benefited while writing this book and grant them Paradise.

I am also indebted to the staff of Islamic Book Trust and its respected director, Hj. Koya, for his fatherly cooperation, as well as brother Yusoff Sultan, in publishing this manuscript.

Saim Kayadibi

International Islamic University Malaysia (IIUM)

Gombak, Kuala Lumpur, November 2016

In the past couple of decades, interest in Islamic Law has increased in the Muslim world as well as in the non-Muslim world. The popularity of Islamic Banking and Finance has especially triggered scholarly studies in this field since *uṣūl al-fiqh* is the essence of comprehending the law revealed by the Lawgiver. Despite the number of studies on Islamic Law, works dealing with *uṣūl al-fiqh*, which specifically focuses on the interpretations of the texts and the methods used by the jurists, are limited especially in the English language.

This book, *Principles of Islamic Law – The Methods of Interpretation of the Texts (Uṣūl al-Fiqh)* is aimed at helping the students, lawyers and other interested people to understand the subject more comprehensively.

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