

## Shares Business

**Question:** Advise us, may Allaah increase you in knowledge, about the ruling of having shares in the Saudi-American Bank. Is it ribaa (interest), since it trades in interest and is based upon interest, as we know?

**Response by :** The Permanent Committee for Islaamic Research and Fataawa, comprising - Head of the Committee: Shaykh 'Abdul 'Azeez ibn Abdullaah ibn Baaz; Deputy Head of the Committee: Shaykh 'Abdur-Razzaaq 'Afeeefee; Member: Shaykh 'Abdullaah Ibn Qu'ood / Fataawa al-Lajnah ad-Daa'imah lil-Buhooth al-'Ilmiyyah wal-Iftaa., Volume 13/ Page 506/ Fatwa No.3134

The Saudi-American Bank and other banks, if they are based upon interest and trade in interest, then it is not permissible to have shares in them. This is because it is regarded as assisting in sin and transgression, and Allaah has prohibited this, as He (subhaanahu wa ta'aala) says: {...but do not help one another in sin and transgression...}, {Soorah al-Maa'idah, Aayah 2}. And with Allaah is the success and may Allaah send prayers and salutations upon our Prophet (sal-Allaahu 'alayhe wa-sallam) and his family and his companions.

### تفسیر رقیہ

مسلمان خواتین کے لئے بے مثال تحفہ

آج ہی طلب کیجئے: بزم فیضان قادریہ 7/29 ملی ون ایریا لیاقت آباد، کراچی

### واہ کینٹ میں مجلہ فقہ اسلامی

مدیر معاون جناب محمد اعظم چشتی صاحب سے حاصل کریں۔

مکان نمبر ۲۳، ایریا ۱۲ جی (عقب مرکزی جامع مسجد) پی او ایف واہ کینٹ

book, *al Amad* or *al 'Ahd*, and written a full commentary on it, he recorded some of his opinions on *al Usul* in his encyclopedia, some parts of which have been found and printed under the title *al Mughni*. The seventeenth volume of this encyclopedia was devoted to studies in *al Usul*. As Imam *al Haramayn* concerned himself with the book of *al Baqillani*, so *Abu al Husayn al Basri al Mutaziuli* (d 435 AH) concerned himself with the books of *al Qadi 'Abd al Jabbar*, and wrote a commentary on *al Amad/al 'Ahd*. When he felt that this commentary was too long, he summarized it in his well-known book *al Mutamad* "The Reliable", which is in print and widely available.

During this period, *al Shaykh Abu Ishaq al Shirazi* (d 476 AH) wrote his two books. *al Lam* "The Bright Light" and *al Tabstrah* "Enlightenment", both of which are in print. *Al Qadi Abu Yahya al Farra' al Hanbali* wrote a book on *Usul* entitled *al 'Uddah fi Usul al Fiqh* "The Tools of *Usul al Fiqh*", which was edited and published in Saudi Arabia in 1400/1980. *Ibn 'Aqil al Baghdadi*, another Hanbali scholar, wrote *al Wadib Fi al Usul* "What is Clear in *Usul*". *Abu al Khattab* wrote his well-known book, *al Tamhid* "The Preface", which was recently edited and published in Makkah. Among the books written by scholars of the Maliki school of legal thought at that time was '*Uyun al Adillah Fi Masa'il al Khilaf Bayna Fuqaha' al Amsar* "Profusion of Evidence or Controversial Issues Among the Jurists of the New Muslim Settlements", by *Ibn al Qassar al Baghdadi* (d 398 AH), of which there is a copy at *Qarawiyn University* in Fez. *Al Shirazi* considered this to be the best book by any Maliki scholar on the subject of juristic differences. *Ibn al Qassar* also wrote *Muqaddimah fi Usul al Fiqh* "Introduction to *Usul al Fiqh*", of which there is a copy at the *Azhar University* library. The books of the *Shafi'iyah*, *Hanabilah*, *Malikiyah* and *Mu'tazilah* all followed a similar pattern in the order of their chapters and the treatment of their subject matter. Eventually, this pattern became known as "the method of the *Mutakallimun*."

(Contd.....)

## Foot Notes:

55 An edition of a section of *Jassas's* summary of this hook was published in Pakistan by the Islamic Research Institute. The editor of that volume, however, mistakenly attributed the work directly to *Abu Ja'far al Tahawi*. (Ed)

56 see *Ibn al Nadim, Al Fihrist*, p 284.

57 *Ibn al Nadim, op. cit.*, p 299.

58 See, '*Abd al Razzaq, op. cit.*

59 See, *al Qurrafi, Nafa'is*, 1, 149

60 A fine edition of *Al Burhan* has been published recently in Qatar.

61 See *al Ghazzali, al Mustasfa*, I, 187 An excellent translation into English of *al Ghazzali's al Mustasfa* was done by *Dr. Ahmad Zaki Hammad* and will soon be published.

62 *Ibid.* 63 See *Brockelmann, appendix II, p.963, No.49.*

ایبکو ٹیکنیکل - ملتان

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بیرنگ کی دنیا میں جانا پہچانا نام

مجلہ فقہ اسلامی کے دوش بدوش

Then he dealt with languages, and explained that the scholars of jurisprudence have dealt with linguistic matters which the scholars of Arabic had omitted, such as *Awamir* "commands"; *Nawahi* "prohibitions", and *al 'Umum wa al Khusus* "the General and the Specific" which Imam al Shafi'i had dealt with.

In the course of this linguistic discussion, he mentioned some of al Baqillani's ideas, which clearly indicates that al Baqillani had already made these additions to al Imam al Shafi'i's methods.

When al Imam al Ghazzali was the student of Imam al Haramayn it was only natural that he be influenced by him. In fact, al Imam al Ghazzali wrote four books on the subject of *al Usul*. The first of these works was *al Mankhul* "The Sifted", a medium-sized volume written as though for beginners or intermediate level students of *al Usul*. Of the second book nothing is known except that it was referred to in *al Mustasfa*<sup>61</sup>, and that its title was *Tahdhib al Usul* "On the Refinement of Usul". The third book is entitled *Shifa' 'al Ghalil fi Bayan al Shibh wa al Mukhayyal wa Masalik al Ta'lil*, and was edited and published in Baghdad in 1390/1971. Al Imam al Ghazzali's Encyclopedia of Shariah Source Methodology, his fourth book on the subject, and his last work, was *al Mustasfa*, which has been printed several times in Egypt and elsewhere. Indeed, this is the work he wrote after coming out of his period of meditation and seclusion<sup>62</sup>.

Al Imam al Ghazzali began his book with an introduction in which he covered nearly all of Aristotelian logic, a subject in which he had always been deeply interested. Then he wrote about the *Hadd* "Prescribed Punishment", about the conditions that must be satisfied before it can be applied, and about the different types of *Hudud*. He then discussed the *Dalil* "Evidence" and its various types.

At this point in the book, al Imam al Ghazzali proceeds to discuss the four poles of his work, headings under which everything in the field of *al Usul* is covered, and which his teacher, Imam al Haramayn, and predecessors, such as al Baqilani, were most concerned with. As his teacher had his own opinions that differed from those of al Imams al Shafi'i and al Ash'ari, so also did al Imam al Ghazzali hold opinions which differed from those of his predecessors. Likewise, among al Imam al Ghazzali's contemporaries there were those who accepted his views and those who did not.

These were the most important developments made by the followers of al Imam al Shafi'i in the field of *Usul*.

The second group to contribute to the development of the discipline were the *Mu'tazilah*. After al Qadi Abd al Jabbar had written his

thought rejected his commentary and did not give it the attention it deserved, even though they transmitted a great deal from it in their own books.

Two Maliki scholars, al Imam Abu 'Abd Allah al Maziri (d 536 AH) and Abu al Hasan al Abyari (d 616), wrote commentaries on **al Burhan**; and a third Maliki scholar, Abu Yahya, combined the two commentaries. Still, all three of these scholars dealt harshly, if not somewhat unfairly, with Imam al Haramayn because of what they considered to be his audacity in refuting al Imam al Ash'ari on matters where he disagreed with him, and in refuting al Imam Malik on the question of **al Masalih al Mursalah**. Imam al Haramayn added introductions to al Imam al Shafi'i's book which dealt with matters not found in the **Risalah**. He began by discussing the knowledge of those sources and concepts which anyone who wishes to study any science in depth must have. He explained that the sources of **Usul al Fiqh** were 'Ilm al Kalam "Scholastic Theology", Arabic language and Fiqh. Then he dealt with legal judgements, duties, and competence, discussing in detail issues pertaining to various sciences, and explaining those which could be understood by reason, and which by religion. All the above matters formed an introduction to a discussion of the term **al Bayan**, "perspicuous declaration", the subject with which al Imam al Shafi'i began the **Risalah**.

It is quite apparent, however, when we see how Imam al Haramayn dealt with the subject of **al Bayan**, and with other of the subjects mentioned in the **Risalah**, that Imam al Haramayn defined the terms, including **al Bayan**, more precisely than al Imam al Shafi'i had done. He defined it, explained its essence, mentioned disagreements concerning it, and set forth its different categories. He also dealt with another matter which al Imam al Shafi'i had not dealt with, **Ta'khir al Bayan ila Waqt al Hajjah** "Deferment of **al Bayan** until the time when it is Needed", and disagreements concerning it. Then, in discussing the different categories of **al Bayan**, he reiterated the five categories which al Imam al Shafi'i had mentioned, advocated Abu Bakr Dawud al Zahiri's comments on the subject, and then mentioned the other categories of **al Bayan** which some jurists had suggested.

Imam al Haramayn held the opinion that **al Bayan** meant "evidence", of which there are two types: 'Aqli "rational" and Sam'i "received". The basis for "received" evidence is the miraculous Qur'an; so that the closer the evidence is to the Qur'an, the more precedence it has. Hence the order of priority in "received" evidence is: the Qur'an, the Sunnah, **al Ijma' Khabar al Wahid**, **al Qiyas**.

through all the manuscripts. That, however, is a daunting task, as the researcher would need to spend a great deal of time on the undertaking.

## DEVELOPMENTS IN USUL AL FIQH AFTER AL IMAM AL SHAFI'I

What we have mentioned so far can hardly be regarded as development, as it mainly revolves around criticizing, supporting or commenting on the *Risalah*, and really goes no further than that. Once the discipline had been established, this state of affairs obtained until about the beginning of the fifth century AH, when what could be considered as significant development in the field began to take place. During this period, al Qadi al Baqillani (d 402) and al Qadi 'Abd al Jabbar al Hamadani (d 415) undertook to re-write the whole subject of the practice and principles of Shari'ah Source Methodology, or *al Usul*.

In his book *al Bahr*, al Zarkashi wrote: "... the two judges, the Qadi of Ahl al Sunnah, Abu Bakr Tayyib al Baqillani, and the Qadi of the Mu'tazilah, 'Abd al Jabbar, came and expanded upon what had been written, clarified what had previously been little more than indications, provided detail to what had been mentioned in a general way, and removed ambiguities."

Al Qadi al Baqillani earned the title *Shaykh al Usuliyyin*<sup>59</sup> "Master of the Scholars of *al Usul*", after he wrote *al Taqrib wa al Irshad* "Clarification and Guidance". This book has been lost for centuries; though it may yet turn up in one collection of manuscripts or another. In any case, the scholars of *al Usul* continued quoting from it until the ninth century AH.

For his part, al Qadi 'Abd al Jabbar wrote a book entitled either *al 'Ahd* "The Covenant" or *al 'Amad* "The Pillars" and wrote his own commentary on it.

Imam al Haramayn (d 478 AH) summarized al Baqillani's *al Taqrib wa al Irshad*, in a book entitled *al Talkhis* "The Summarizing" or *al Mulakhkhas* "The Summary", of which some pages are preserved in some manuscript collections. Later scholars of jurisprudence transmitted many of al Baqillani's ideas from this work.

Imam al Haramayn patterned his own book on *al Usul*, *al Burhan* "The Proof", on al Baqillani's *al Taqrib*, in that it included all fields of jurisprudence, was free in its method, and followed whatever evidence was available.<sup>60</sup> He disagreed with his teachers, al Imam al Ash'ari and al Imam al Shafi'i, on so many issues that many of his fellow scholars from the al Shafi'i school of legal

Abu al Hasan al Karkhi (d 340) wrote his well-known hook **al Usul "The Sources"**, which was printed with a collection of other books in Cairo (no date).

Abu Sahl al Nawbakhti (d. circa 93 AH), who belonged to the **Imamiyah**, wrote **Naqd Risalat al Shafi'i** "A Critique of al Shafi'i's Risalah", **Ibtal al Qiyas "Invalidating al Qiyas"**, and **al Radd 'Ala Ibn al Rawandi Fi Ba'd Ara'ih al Usuliyah** ("Refutation of Certain of Ibn al Rawandi's Legal Opinions"). Ibn Junayd (d 347), who belonged to the Zaydiyyah group, wrote **al Faskh 'Ala Man Ajaza al Naskh lima Tamma Shar'uhu wa Jalla Naf'uhu** "The Nullification of those who Permitted Abrogation on Laws already Promulgated and Proved Beneficial", and **al Ifham li Usul al Ahkam** "Understanding Juristic Principles".

The adherents of al Imam al Shafi'i's school of legal thought produced the following works:-

Abu Thawr (d 240) wrote **Ikhtilaf al Fuqaha'** "Disagreement of the Jurists".

Abu 'Abd Allah Muhammad ibn Nasr al Marwazi (d 294) also wrote a book on the same subject.

Abu Abbas ibn Surayj (d 305) wrote a hook refuting both 'Isa ibn Abban and Muhammad ibn Dawud al Zahiri on matters in which they differed with al Imam al Shafi'i.

Ibrahim ibn Ahmad al Marwazi (d 340) wrote **Al Ummum wa al Khusus** "The General and the Particular" and **Al Fusul fi Ma'rifat al Usul**<sup>57</sup> "Chapters About Knowledge of Legal Source-Methodology".

Some of these scholars devoted their attention to producing commentaries on al Shafi'i's **al Risalah**; like Abu Bakr al Sayrafi (d 330), Abu al Walid al Nisaburi (d 365 or 363), Abu Bakr al Jawzaqi (d 388) and Abu Muhammad al Juwayni, the father of the famed Imam al Haramayn, teacher to al Imam al Ghazzali.

Commentaries on the **Risalah** are also attributed to five other scholars, namely: Abu Zayd al Jazuli, Yusuf ibn 'Umar, Jamal al Din al Afqahsi, Ibn Fakihani, and Abu al Qasim 'Isa ibn Naji. None of these commentaries, from which the scholars used to quote until after the seventh century, have come to light in modern times.

Shaykh Mustafa 'Abd al Razzaq<sup>58</sup> mentioned that the public library in Paris held a copy of al Juwayni's commentary on the **Risalah**, and quoted some parts of it. I, myself, have tried to locate this manuscript in Paris; but failed. Perhaps it had been placed with other books under a different heading or title. Probably, the only way to find it is to sift

bound into another book, or the title page lost so that it may only be found after much searching.

The sources also mention that Dawud al Zahiri (d 270 AH) wrote *al Ijma'* "Consensus", *Ibtal al Taqlid* "On the Abolition of Imitation", *Khabar al Wahid* "On the Single-Individual Narration", *al Khabar al Mujib* "On the Obligating Narration", *al Khusus wa al 'Umum* "On the Particular and the General", *al Mufassar wa al Mujmal* "The Succinct and the Detailed", *al Kafi fi Muqabalat al Muttalibi*, i.e. al Imam al Shafi'i, "On the Encounter with al Shafi'i", *Mas'alatan Khalafa Fihima al Shafi'i* "Two Issues on which He Differed with al Imam al Shafi'i".

During this period, the 'Ulama' who accepted the school of thought of al Imam Abu Hanifah devoted their attention to the study of Shafi'i's *Risalah*, both in order to refute what they disagreed with, and to derive their own source-methodology and principles of jurisprudence from the case law *Fatawa* of al Imam Abu Hanifah.

In this vein, the Hanafi scholars produced several works. 'Isa ibn Abban (d 220 Ah) wrote *Khabar al Wahid*, *Ithbat al Qiyas*, "Validating Analogical Deduction", and *Ijtihad al Ra'i*, "The Exercise of legal Reasoning".

Al Barza'i (d 317) wrote *Masa'il al Khilaf* "Issues of Disagreement", of which there is a 236-page copy in the Zaytunah Library in Tunis, number 1619.

Abu Ja'far al Tahawi (d 321) wrote *Ikhtilaf al Fuqaha'* "Disagreement of the Jurists", which was summarized by Abu Bakr al Jassas (d 370). There is a copy of this book in Cairo. For more details, refer to the Index of *Ma'had al Makhtutat* (1/329).55

Al Karabisi al Najafi (d 322) wrote *al Furuq* "Differences", of which there are manuscripts in the Ahmad III and Fayd Allah libraries in Istanbul.

Several untitled works on jurisprudence were also attributed to Ibn Sama'ah (d 233).56

Al Kannani (d 289) wrote *al Hujjah fi al Radd 'Ala al Shafi'i*, "The Evidence in Refutation of Imam Shafi'i".

'Ali ibn Musa al Qummi, the Hanafi (d 305) wrote *Ma Khalafa Fihi al Shafi'i al 'Iraqiyin Fi Ahkam al Qur'an* "Instances in which al Shafi'i Opposed the Iraqis in the Legal Interpretation of the Qur'an", *Ithbat al Qiyas*, *al Ijtihad* and *Khabar al Wahid*.

## USUL AL FIQH: METHODOLOGY FOR RESEARCH AND KNOWLEDGE IN ISLAMIC JURISPRUDENCE

**Taha Jabir Al 'Alwani**

English Translation

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(Contd.....from Vol.1. Number.4 & 5)

### USUL AL FIQH AFTER AL IMAM AL SHAFI'I

Al Imam al Shafi'i's *Risalah* dominated studies in Islamic Jurisprudence from the moment it appeared. Indeed, as a result of it, the scholars divided into two groups. One group, the majority of *Ahl al Hadith*, accepted it, and used it in support of al Shafi'i's school of legal thought. The other group, however, rejected most of what it contained, and attempted to refute whatever of al Imam al Shafi'i's work contradicted their own methods and practice before it had the chance to influence people. The members of this group were taken almost exclusively from the *Ahl al Ra'i*, all of whom were in complete disagreement with nearly all that al Imam al Shafi'i had written.

Ibn al Nadim mentioned books which were written in the field of *Usul al Fiqh* after the *Risalah*, including *al Nasikh wa al Mansukh* and *al Sunnah* by al Imam Ahmad ibn Hanbal (d 233 AH). *Al Sunnah*, however, is more a book on *Tawhid* and basic Islamic beliefs "*Aqa'id*" than of jurisprudence. There are two versions of this work in print; the longer version is the one printed in Makkah in 1349 AH, of which there are manuscript copies in the Dar al Kutub and Zahiriyah libraries in Egypt and Damascus respectively. A smaller version, printed in Cairo without a date, deals with the fundamental beliefs of the Sunni Orthodoxy, or "*Ahl al Sunnah*".

Al Imam Ahmad also wrote *Ta'at al Rasul* "Obedience to the Messenger". Ibn Qayyim quotes from it often in his book, *I'lam al Muwaqqi'in*, and it seems that he possessed a copy of it. Nonetheless, I have looked for this book in many places, but have always been unable to find it. From the quoted passages in Ibn Qayyim's book, it is apparent that the book was indeed an important one on the subject of jurisprudence, and the methodology of dealing with the *Sunnah*. It may have been lost after Ibn Qayyim's time, or