

Monday Dec. 25

- Prophet (s) commanded new Muslims to learn the deen.
- Legal Principles: considered the things the shariah are based
- Al Qaida – universal (not the military one!)
 - o Comes from Qawadutul bayt (foundations of the base)
 - Ibrahim established this
- Famous hadith by Jabir who said “when the Qur’an was revealed they would live it’.
- Oral transmission – riwayyah
- Qur’an was written down, but no gathering until late 1st century (Qutubor al Jami’) –terms of hadith books??
- From there hadiths, ‘ulema derived principles
- Although shariah was complete with the Prophet (s), schools of thought were formed due to the ‘ulema deeming these rulings
- Late 3rd century – scholars realized that certain principles were similar to the past, but it wasn’t written down.
- Qada al Marwarwi wrote down the 5 principles:
 - o Certainty without doubts
 - o Difficulty necessitates ease
 - o Norms of people have a legal ??
 - o Harm must be ??
 - o Affairs must be by the in ...
- Story: Shaykh Abd Darm?, hanafi scholar, worked out 17 qawaid he would recite
- These 5 are considered the basis
- Each madhab began to write there qawaid.
- These 5 are in all of them
- Group in Jeddah currently collecting all the qawaid, so far they have over 20,000.

1st principle

certainty is not removed with doubt

- very important
- the basis is yakeen. Muslim have certainty in there way
- In the ibadat like if you have done wudu, then you doubt if it’s maintained. If you are certain you did it, then you did it.
- The basis is on the certainty
- Qadi can’t judge until there is proof. There has to be certainty
- In prayer, if you are certain you prayed 3 rakah, then you continue from there.
- Foundation of things is purity. Unless there is a reason that the certainty is not pure. Also, if there is proof.
 - o Ex. Fruit come across, where you don’t know, then it’s permissible to eat, until proven not permissible
- People are innocent until proven guilty. Thinking good of people. You don’t look at what’s doubtful. If there is no justification, then you are wrong.
- If you know someone is Muslim for certain, then don’t focus on the doubtful.
- Prophet (s) was told not to sit next to people who judged others on uncertain things.
- This maintains the purity of people’s hearts.

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2nd principle

Hardship necessitates easiness

- Human beings are born weak. Allah wants to make things easy. Human life are in many stages. Once they are born they are weak, then they get older and stronger then they continue to get older and they become weak again. (young-youth-old)
 - Also wealthy people vs. poor people.
 - Allah (swt) understands this and there are different rulings for each
 - Prophet (s) “make things easy for people”
 - This is the Maqsid...
 - If things become constricted, it needs to be open
 - Many principles are derived from this
 - Allah says that Allah will not overburden the believers
 - Allah does not take into account more than you can bear
 - The sahaba were tortured like Bilal. Ammar ibn Yaser - He did say things so that they would stop punishing them. The Prophet (s) said it was okay. “keep doing what you are doing if they keep doing what they doing.”
 - Forced divorce by Ummayyad Caliphate. Invalid by Imam Malik. Government was mad, took Imam Malik and tied him on a donkey, etc...
 - Abu Hanifa differs about being coerced, but stays with the 3 imams on this case.
 - Takfeet
 - o Ex: on a journey, assumption there is difficult. Sharia has allowed certain things like shortening the prayer to 2 rakah. Comes from when the sahaba feared that the enemy would attack them while praying. Allah said to shorten your prayer in a state of fear.
 - o Sitting and praying when sick. Sitting in the position which is easy. To an extent that you just move your eyes.
 - o Remembrance of Allah should be done at all times no matter what
 - o Muslims can pray anywhere. Even in the car.
 - o According to Imam Malik, Qibla doesn't matter.
 - o Tayamum is another example of this easiness
 - o Not prohibited from praying of joining dhuhr + 'Asr and Maghrib + 'Isha (Hanafi's differ
 - 3 things that invalidate business transactions
 - o element of the unknown, sale that has not been completed
 - o riba
 - o devouring people's wealth unacceptably
 - not all mushaqa go under this category. Absolute necessities (lead to death, etc.) are permissible. The least one, (cold water for wudu for fajr) then it's not permissible.
 - Depends on the situation
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Tuesday Dec. 26

- 3 principles from yesterday
- 2 more
 - o harm should be removed

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- affairs are determined by intent

4th principle

Harm should be removed

- Anything that harms the self or someone
- From the Qur'an
- A woman who has a child, she should be harmed by the child and also vice versa.
- The witness or the notary public should not be harmed
- Not to harm women
- Imam Malik hadith "There is no harm or reciprocating harm"
- Smoking, even though tobacco is not najas, but because it causes harm, the sharia said you can't do it. Also secondary smoking also is harmful.
- Can't harm yourself in worship
 - Ex: Prophet (s) told a man to move inside away from the hot sun
 - Prophet (s) told a man to ride the camel instead of walking
- The neighbor, honor him, greet them, smile treat them well. Not harming them
- Guarantees must be fulfilled, if not there is a guarantee.
 - Ex: If you drive and smashes someone else's fence, you have to pay for it.
 - The responsibility is on you towards the other person
- Buying – right to return the product if there is a fault in it
- Marriage – if you marry someone that has a defect, then you have that option
- If you bought something and used it and you knew it was defective, then you can't return it after you used it.
- If you marry someone that has a problem, they also have that option to stay.
- Mental cruelty is also part of harm. If the man is verbally abusive towards the woman, she can leave the marriage without paying anything. It has to be without justification by the man.
- Preparing people for marriage. The shariah takes special care to marriage since it's the core of Islamic upbringing.
- Humiliating a woman, mental abuse is also part of harm. The Prophet (s) gave a specific council to the people in treating women in a good way.
- This law also relates to the animal kingdom and the environment
- If a person is not taking care of the animal, the state has the right to sell that animal.
- Umar (ra) said don't over burden the animals
- Deforestation is prohibited if it causes harm. Burning forests and cutting down trees without just cause is prohibited.
- No wasiya (?)
 - Leave monks, priests alone
 - Do not kill women, children old people
 - Do not cut trees
 - Do not burn bees
 - Don't kill animals without just cause
 - Not to poison wells
- Prohibited to say things that ruin others and yourself reputation. Qur'an says to say good things.

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5th principle

Matters are related to the aims, purposes, intentions

- Allah does not look at your outward form, but in your heart
 - No shirk in your actions, by mixing intentions
 - Every action is based on the intention
 - The hijrah of a person is dependent upon the intention
 - A man intended to get married to Umm Qais so he made hijrah.
 - “May Allah intend for you good”
 - Affairs are based on the niyyah
 - Foundations of the shariah can be based on 4 hulut
 - o Guard yourself from doubtful matters
 - Staying away from the shuhubat, is like it’s pure
 - Shuhubat – grave ones
 - o Zuhud – have zuhud – idea of doing without. Giving up what you don’t need. Don’t desire the world. Don’t desire people’s possessions.
 - o Minding your own business
 - o Actions are by your intentions, so make your intentions pure.
 - This categorization is a qualitative categorization.
 - If a man swears on oath and says “don’t go there”. If that place is no longer a problem to the intention, the oath is done.
 - A person who says clearly “you are divorced.” That is clear, but if he says “go to your parents”, the intention is not clear. (in terms of divorce)
 - Imam Malik, Shafi, Hanbali all say if the niyyah is to make halal for the previous husband for the wife, it’s not valid.
 - Imam Abu Hanifa said he’s not going to indulge in the intentions. It’s valid
 - Green Card marriage – Europeon council of fatwa said it’s not valid. The other person doesn’t know what they are getting into.
 - Not permissible to sell arms during ??? (Malik & Hanbali)
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Wednesday, Dec. 27

Hardship necessitates ease.

The normatives of people

- ‘urf – what people knows, the custom
- ‘ada – something that is repeated, comes from the Arabic word to return, habits
- ‘araf – customs, traditions, respected as long as they are not against Islam
- It’s a reasonable practice and it does not go against the Qur’an and Sunnah.

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- ‘urf – where did this come from? People don’t generally know.
 - o Example: “Who was the first person to wear a jacket?” “I don’t know.”
 - o People don’t know.
 - o In Western clothes, it wasn’t worn in the Muslim world, but now it has become ‘urf and no one knows who was the first Muslim to put Western clothes.
- ‘urf determines the amount of money paid to the divorced wife when a divorce occurs.
- The Prophet (saas) told Hind to take what she needs from Abu Sufyan since he wasn’t giving.
- in the jahiliyyah there were ‘urf that was prohibited by islam like boasting of lineage, or riba.
- The Prophet (saas) said in his last sermon that there is no more riba starting from his family. Also no more feuds between bloods.

Iqra’ – accepting some ‘urf

Calibration of the ‘urf – retained the acceptable ‘urf and left the prohibited ‘urf.

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There are 2 types of ‘urf

- verbal custom – ‘urf al kowli
 - o certain things that people say
 - o ways of divorce
- what people do - ‘urf al ‘amali
 - o how people do things
 - o example: take a product and bring it to the counter and put the money on it with it and say nothing. Imam shafi said it’s invalid. But imam malik said its fins. Later shafi scholars change there view. Now you buy from machines.
- It is not permissible for ‘ulema to give fatwa’s without knowing the ‘urf of the people.
- Imam al Jawziyyah said it’s a grave sin for a person to pass a fatwa without knowing the ‘urf of the people.
- It’s particularly relevant and important in the West and there are many examples that we can look to like the interaction between men and women. In marriage, who does the domestic chores, many women do this. Women are not responsible for domestic chores. In fact it is required according to the madhabs that the husband find someone that can do the domestic chores. Imam Malik said that ‘urf comes into play if it is the norm that the wife takes cares of the domestic chores. In a culture where you have a man and woman working, then that has to be looked out because it its not fair for the women to do the domestic chores. They have to look at the ‘urf to see what it is and if there is not then they have to come to some type of agreement.
- Another example that if the husband’s job, in the Hanafi madhab the wife does not have to move with her husband if he is moving away from her family for fear that the husband may mistreat his wife. In the Maliki madhab the wife has to go unless it was stipulated in the pre-nuptial agreement.
- The ‘urf can’t go against the shariah. The ‘urf becomes prohibited.

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- It is important to avoid non-shariah courts when there is a situation between Muslims. In America they have arbitration where you can get a Muslim judge to the arbiter in situations.
- Basically you can look at 'urf as long as you guard 4 points
 - o 'Urf has to be a general practice. It can't be "my 'urf" "
 - o Something that is habitual, not something that happens once in a while.
 - o Sabiq, not lahiq. The 'urf is what preceded not what happens later down the road.
 - o The most important is that it does not go against anything in the Sharia. There is no opinion, something that is generally agreed upon.
- There is a difference of opinion. Some of them say that the way of the Prophet (saas) spoke is not 'urf in hadith. Some of them say you do take 'urf into consideration.
 - o Imam Abu Hanifa said it was wheat, which was the 'urf of the people
 - o Other say no, when he spoke, it was universal. When it says in the Qur'an that the women should nurse their women for 2 years. Imam Malik said that's not the 'urf.
 - o Do they change due to the 'urf. Some of them say they do.
 - o This also goes under the category under entertainment. For example in some cultures it was inappropriate for people to dance. When Umar saw people dancing in the Masjid, but the Prophet (saas) said leave them. It's not something that the Quraish did, because they were Banu Urfidah

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