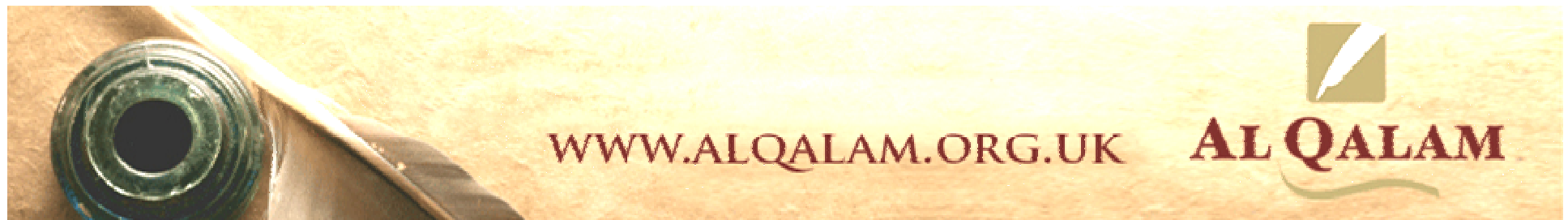


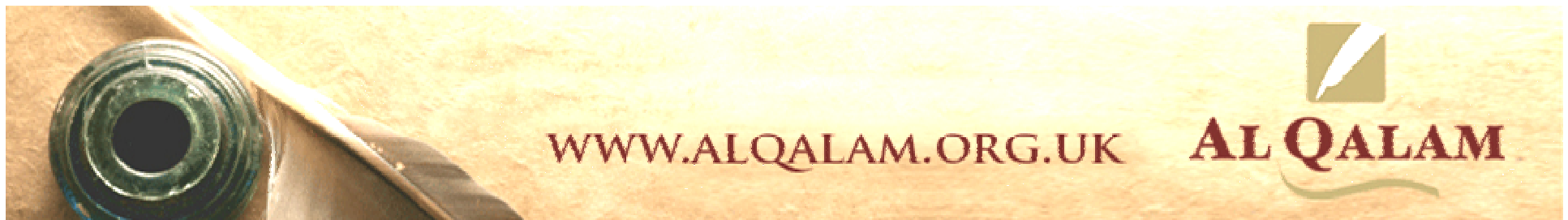
# SOURCES OF ISLAMIC LAW

Mufti Mohammed Zubair Butt  
Chair Al-Qalam Shariah Scholars Panel



# Legal System of Islam

- *Fiqh* stems from *uṣūl* – source evidence
- *Uṣūl al-Fiqh*
  - Sources of Islamic law
  - Their order of priority
  - Methods of deduction
- Principal objective
  - Regulate *ijtihād*
  - Guide in deducing the law from it's sources



# Legal System of Islam

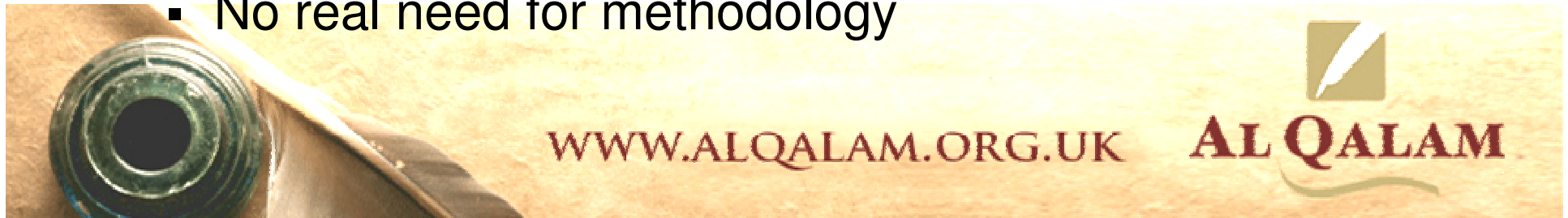
- During time of Prophet (PBUH) guidance and solutions
  - Divine revelation
  - His direct ruling

وَمَا يَنْطِقُ عَنِ الْهَوَىٰ (3) إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ (4)

*Nor does he speak of (his own desire). It is only a Revelation revealed.*

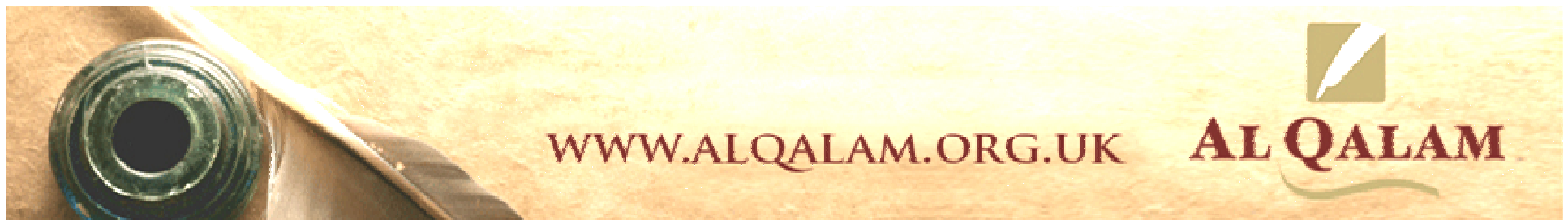
[Al-Najm: 3-4]

- After Prophet's (PBUH) demise
  - Companions' decisions inspired by his precedent
  - Intimate knowledge and proximity to the sources
  - No real need for methodology



# Legal System of Islam

- With expansion of territorial domain of Islam
  - Companions dispersed
  - Direct access difficult
- Diversity of juristic thought
  - Clear guidelines needed
- Imām al-Shāfi‘ī
  - Consolidated and brought coherence
  - Spelt out a basic outline of the 4 principle sources
  - The 4 sources were accepted and complemented by the generality of jurists

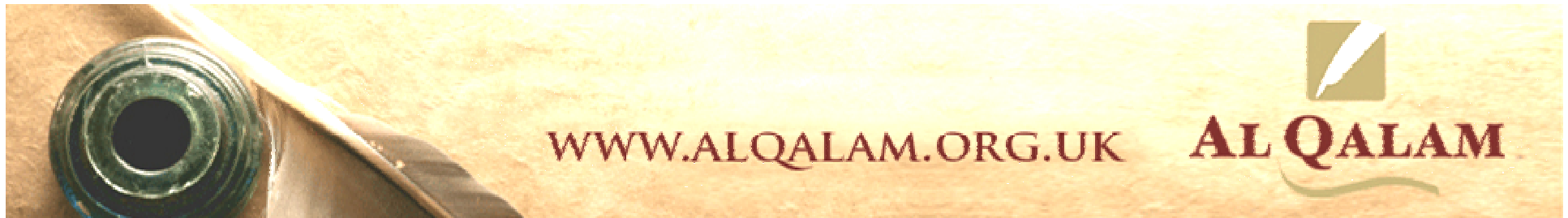


يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَ أَطِيعُوا الرَّسُولَ وَ أُولَى الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَ الرَّسُولِ

*'O you who believe! Obey Allāh and obey the Messenger and those of you who are in authority. And if you differ in anything amongst yourselves, refer it to Allāh and His Messenger.'*

[Al-Nisā' : 59]

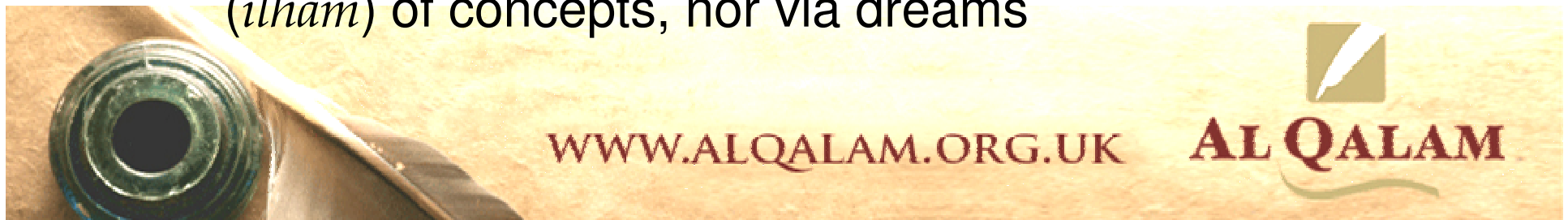
- 'Obey Allāh' - Qur' ān
- 'Obey the Messenger' – *Sunnah*
- 'those of you who are in authority' - *Ijmā'*,
- Referral of disputes to Allāh and His Messenger - *Qiyās*
  - essentially an extension of the injunctions of the Qur' ān and *Sunnah*



# The First Source: The Qur'an

- 'Qur'ān ' literally, 'reading' or 'recitation'
- Defined as

“The words revealed to the Prophet Muhammad (PBUH), which have been recorded in scripture, and every letter of which has been transmitted to us via an indisputably authentic chain of authority (*tawātur*).”
- Manifest revelation (*wahy zāhir*)
- Communication from God
- To Prophet Muhammad via Gabriel
- Words of God
- Received while awake
- Not via internal inspiration (*wahy bāṭin*) - inspiration (*ilhām*) of concepts, nor via dreams



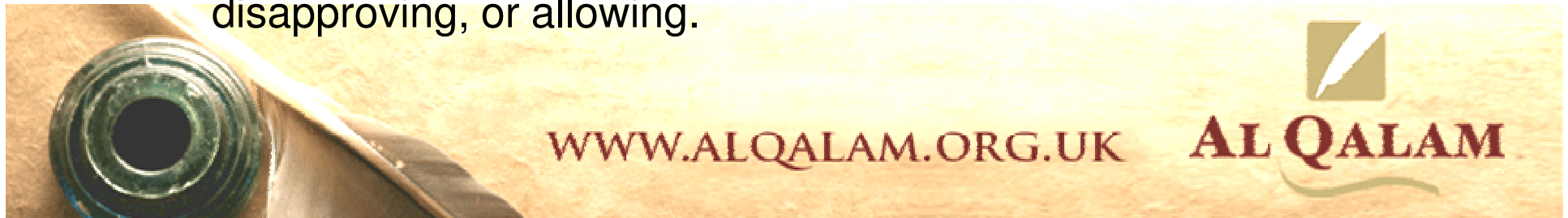
# The Second Source: The *Sunnah*

- '*Sunnah*' literally, a 'clear path' or a 'beaten track'
  - Normative practice
  - Established course of conduct
- Scholars of *Hadīth* :

*Sunnah* includes everything, other than the Qur'ān, which has been transmitted from the Prophet Muhammad (PBUH); what he said, did, and tacitly approved, plus all the reports which describe his physical attributes and character.

- Jurists: exclude description of physical attributes

His every word, deed and tacit approval may be taken as the bases for evidence in a legal ruling, regardless of whether they are related to matters of faith or practices, or whether they were concerned with commanding, recommending, prohibiting, disapproving, or allowing.



# The Third Source: *Ijmā'*

- *Ijmā'* - literally, 'to determine' and 'to agree upon something'
- Defined as  
"The unanimity upon a single legal ruling of those existing at one particular period after the demise of the Prophet (PBUH) and who are qualified to exercise legal reasoning."
- Authoritative part of Sacred Law
- Necessary to adhere to
- No subsequent contravention or annulment
- After demise of the Prophet
- Precludes agreement of laymen
- Validity – from the texts on the infallibility of the *ummah*

إن أمتي لن تجتمع على ضلالة

*Verily, my community shall never agree on an error.*

[Sunan Ibn Mājah]

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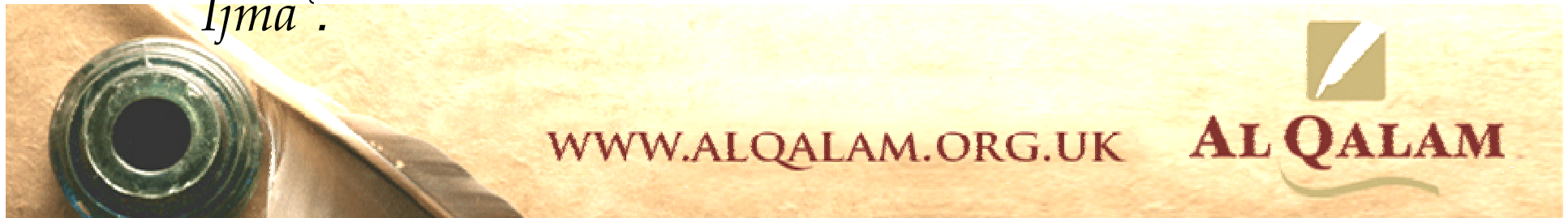
AL QALAM





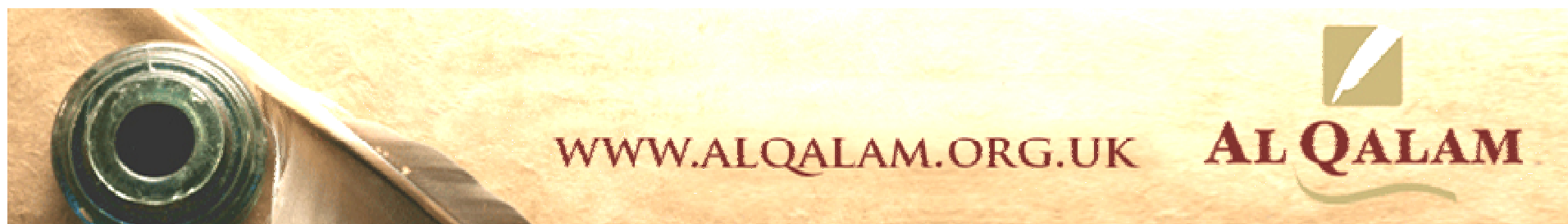
# The Fourth Source: *Qiyās*

- *Qiyās* - literally, 'to measure or ascertain the length, weight or quality of something'
- Defined as  
The transcription of an original ruling (*aṣl*) of the Qur'ān, *Sunnah* or *Ijmā'* into a subsidiary ruling (*far'*) based on a causative factor (*'illa*) which is common between the two.
- Original case is regulated by a given text or consensus
- An extension of the same textual ruling to the new case
- Justified by virtue of the commonality of the causative factor
- Recourse to analogy only warranted if the solution of a new case cannot be found in the Qur'ān, the *Sunnah* or *Ijmā'*.



# Rules of interpretation

- Knowledge of rules essential
- Ensures proper use of human reasoning
- Compliance with the obvious meaning and implied meaning is required
- A text may impart several shades of meaning:
  - explicit - *'ibārah al-naṣṣ*
  - alluded - *ishārah al-naṣṣ*
  - inferred - *dalālah al-naṣṣ*
  - required - *iqtidā' al-naṣṣ*



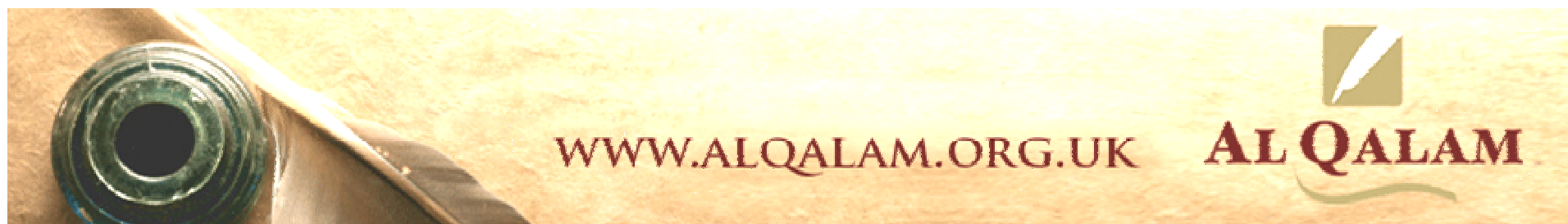
- **The explicit meaning - ‘*ibārah al-naṣṣ***
  - Based on the words and sentences of text
  - Dominant and most authoritative
- **The alluded meaning - *ishārah al-naṣṣ***
  - Indicated by signs and allusions

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ... (233) [البقرة]

*It is his [father's] duty to provide them [divorcees] with food and clothing according to custom.*

[2:233]

- Explicit - father (only) must provide maintenance
- Alluded - child's descent is solely attributed to the father - a concomitant meaning



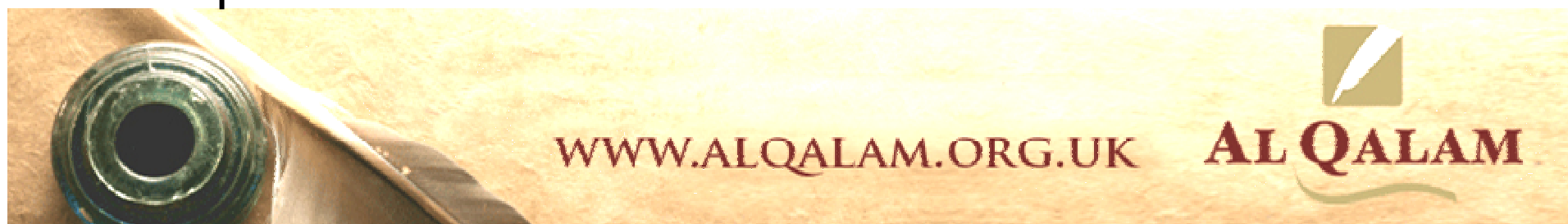
- **The inferred meaning - *dalālah al-naṣṣ***
  - Not indicated by the words and signs of the text - extraneous to the text
  - Complementary meaning
  - Warranted by logical and juridical purport of text

وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا إِمَّا يَبُلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا تَقُلْ لَهُمَا أَفٍّ وَلَا تَنْهَرُهُمَا وَقُلْ لَهُمَا قَوْلًا كَرِيمًا (23) [الإسراء]

*And your Lord has decreed that you worship none but Him, and that you show kindness to parents. If one or both of them attain old age in your life, and say not "Fie" [a word of contempt] to them, nor repel them, but address them in terms of honour.*

[17:23]

- Obviously forbids the slightest word of contempt
- Inferred - All forms of abusive words and acts are prohibited



- **The required meaning - *iqtidā' al-naṣṣ***

- A logical and necessary meaning
- Text is incomplete without it

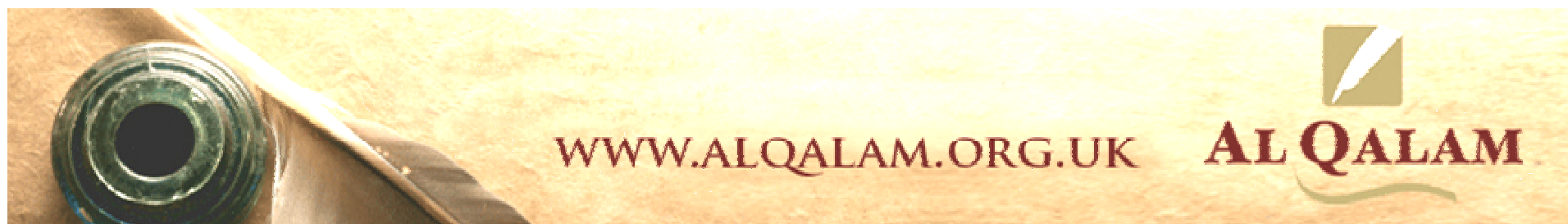
حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ ...

[النساء] (23)

*Unlawful to you are your mothers and your daughters and your sisters and your paternal aunts and your maternal aunts ...*

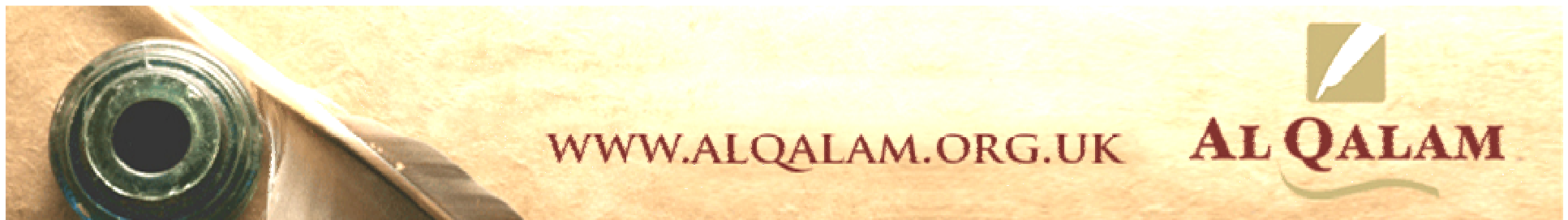
[4:23]

- Required - 'marriage' must be read into the text



# Legal Maxims - *al-Qawā'id al-Kulliyyah al-Fiqhiyyah*

- Theoretical abstractions in short epithetic statements expressive of the goals and objectives of *Sharī'ah*
- Statement of principles derived from the detailed readings of the rules of *fiqh* on various themes
- Actual wording sometimes taken from the Qur'ān and *Hadīth*, but more often the work of leading jurists
- Different from *uṣūl al-fiqh* as they [maxims] are based on the *fiqh*



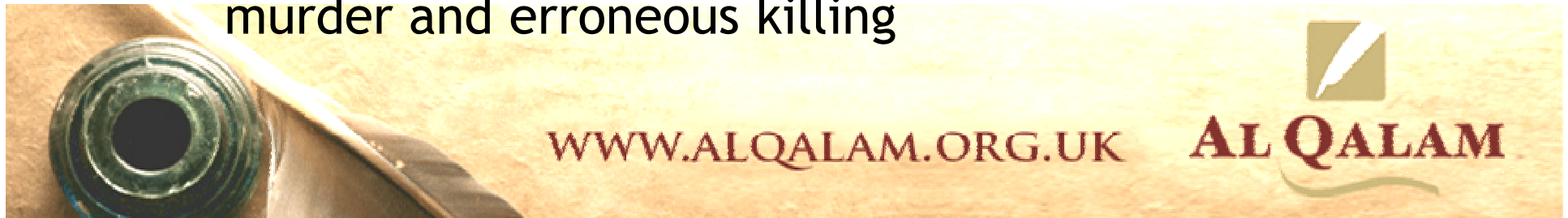
# The five leading maxims

## 1. *Al-Ḍararu yuzāl* - harm must be eliminated

- Derivative of *Ḥadīth* - *lā ḍarara wa lā ḍirār* - let there be no infliction of harm not its reciprocation
- E.g. to install a window which violates the privacy of a neighbour's house
- This *Ḥadīth* is also used as basic authority for legal maxims related to *ḍarūrah* - necessity

## 2. *Al- 'Umūr bi maqāṣidihā* - acts are judged by their goals and purposes

- Rehash of *Ḥadīth* - *innamā al- 'a 'māl bi al-niyyāt* - actions are judged by the intentions behind them
- Wide application
- Element of intent plays a crucial role. E.g. between murder and erroneous killing





3. *Al- yaqīn lā yazūl bi al-shakk* - **certainty is not removed by doubt**

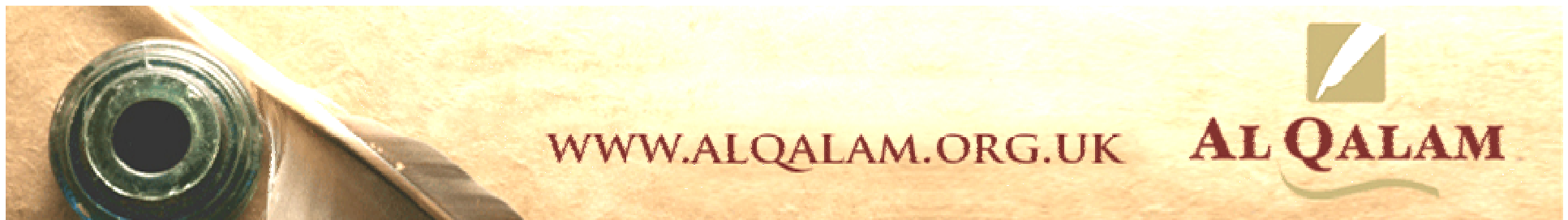
- E.g. - one has performed *wuḍū'* but then has a doubt re continuity of the *wuḍū'*

4. *Al-Mashaqqah tajlib al- teysīr* - **hardship begets ease.**

- Paraphrases Qur'ānic dicta on the theme of removal of hardship
- Utilised in support of many concessions for the sick and disabled and in civil transactions

5. *Al- 'Ādah muḥakkamah* - **custom is made arbitrator**

- Based on Ibn Mas'ūd's statement: what the Muslims deem to be good is good in the eyes of God.

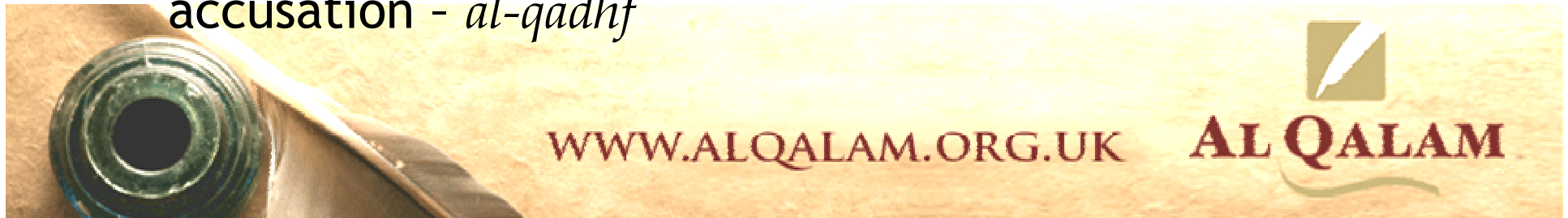




# Goals & Purposes of *Sharī'ah*

## - *Maqāṣid al-Sharī'ah*

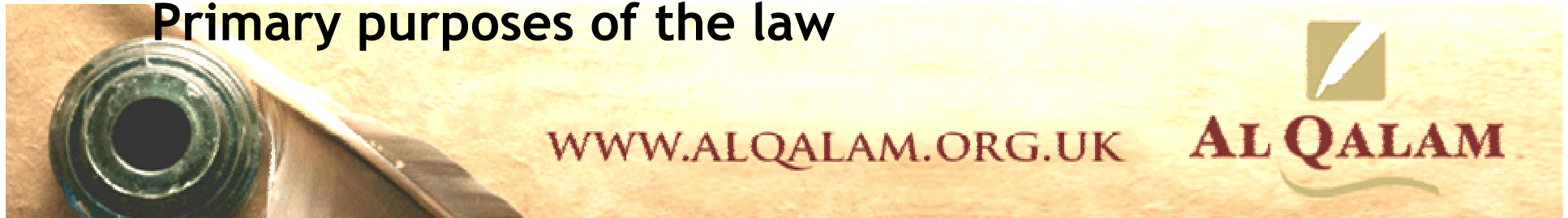
- Did not receive much attention in early stages
- Tend not to be covered in uṣūl al-fiqh texts
- Concerned with the philosophy and purpose of the law
- Term first used by al-Ḥakīm al-Tirmidhī (d.932)
- Al-Juwaynī (d. 1085) probably first to categorise into essential, complimentary and desirable
- Al-Juwaynī's student al-Ghazālī (d. 1111) identified five: faith, life, intellect, lineage and property
- Based on the values prescribed penalties (*ḥudūd*) sought to defend
- Al-Qarāfī (d.1285) added a sixth - honour, as *Sharī'ah* had enacted a separate punishment for slanderous accusation - *al-qadhf*



# *Al-maqāṣid Al-ḍarūriyyah* - The [5] Indispensable Goals

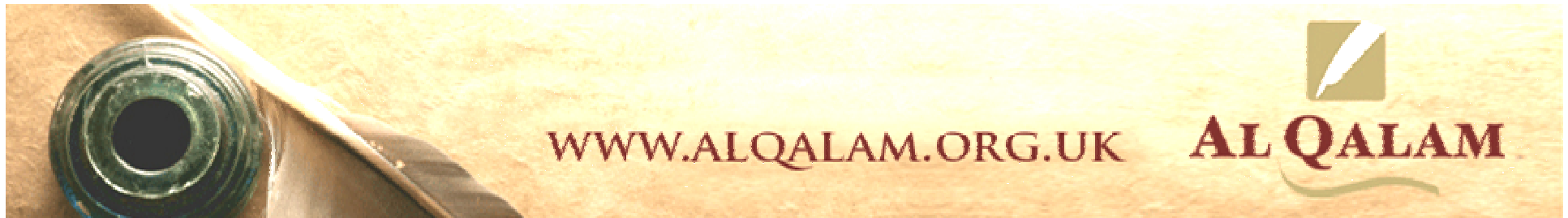
- **Stability of the goals of existence**
  - Termination of life in this world
  - Losing salvation and blessings in Hereafter
- 1. *Ḥifz al-dīn* - Protection of the religion
- 2. *Ḥifz al-nafs* - Protection of oneself - including life and honour
- 3. *Ḥifz al-nasl* - Protection of progeny/family
- 4. *Ḥifz al-‘aql* - Protection of the intellect
- 5. *Ḥifz al-‘aql* - Protection of property

**Primary purposes of the law**



# *Uṣūli v. Maqāṣid* approach

- ***Uṣūli* approach**
  - *Ijtihād* is rooted in the utilization of words and sentences of the text
  - Beyond the text - analogical reasoning by identifying effective cause
- ***Maqāṣid* approach**
  - Sought to open the avenues of *ijtihād*
  - Premised on realisation of benefit and prevention of mischief
  - Takes for granted rationality of laws
  - Look mainly at the general philosophy and objectives of injunctions



# Why do jurists differ?

- Jurist agree upon the overwhelming majority of issues
- Some difference is natural and inevitable
- Differences occur because:
  - Difference in guiding principles
    - Preference of *qiyās* over a *mursal ḥadīth* - Ḥanafī
    - Preference of Medinan practice over *qiyās* - Mālikī
  - Difference in reliability of narrators of *ḥadīth*
  - Difference in understanding the text
  - Difference in preference/conciliation of apparently contradictory texts

