THE CONCEPT OF AL-MAŠLAḤA WA AL-NAṢṢ WITH SPECIAL REFERENCE TO KITĀB AL-BUYŪʿ IN THE BOOK OF BULŪĞH AL-MARĀʾĪM

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ABSTRACT

This study examines the concept of al-Maslaha wa al-Nass (Public Interest and Islamic legal text) with special reference to Kitab al-Buyu2 (chapter on business transactions) in the book of Bulugh al-Marâm. The analysis moves from the connection formed between al-Maslaha and al-Nass by Muslim jurists to the investigation of the practical principles of al-Maslaha as those principles apply to al-Buyu2, as encompassed in the ahâdith of the Prophet s.a.w in Kitab al-Buyu2. It is for this reason that the book of Bulugh al-Marâm has been chosen by the present researcher; Kitab al-Buyu2 represents the most explicit source of ahâdith on which to draw for the practical principles discussed.

To this end, six chapters have been drawn up in three parts; that is, parts A, B and C. Part A is entitled ‘The concept of al-Maslaha wa al-Nass in Islamic Jurisprudence’, and consists of three chapters. The first deals with the definition and historical development of the concept of al-Maslaha wa al-Nass. The second chapter extends this with the theoretical development of the concept of al-Maslaha wa al-Nass. This conceptual section closes with the third chapter, which focuses on the significance of Ta’til al-Ahkâm for the concept of al-Maslaha wa al-Nass. Part B examines the authenticity of the Hadith, introduces the book of Bulugh al-Marâm and consists of two chapters, chapter four and chapter five. The fourth chapter discusses the main reference sources for the book of the Hadith, while the fifth both introduces the book of Bulugh al-Marâm and analyses in detail each successive section.

The last part of this thesis is part C, which specifically examines the ahâdith. Part C forms the heart of the thesis, building a specific methodology within the juristic framework of the concept of al-Maslaha wa al-Nass for the analysis of al-Buyu2 according to the practical principles drawn up from the 22 sub topics listed in Kitab al-Buyu2 (chapter on business transactions) in the book of Bulugh al-Marâm. The thesis concludes that if these principles of public interest are applied to all business transactions in accordance with what is laid down in the ahâdith of the Prophet s.a.w, then the public interest of humanity amongst Muslims will be preserved. It is for this reason, that the ahâdith of the Prophet s.a.w are given to humanity as a universal living source on which to draw for their eternal well-being. Thus, it is hoped that using the juristic concept of al-Maslaha wa al-Nass as a new tool with which to analyse the ahâdith of the Prophet s.a.w opens the door to further study in this field.
DECLARATION

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.

Statement 1

This thesis is the result of my own investigation, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references. A bibliography is appended.

Signed.

Statement 2

I hereby give consent for my thesis, if accepted to be available for photocopying and for inter-library loan, and for the summary to be made available to outside organisations.

Signed.

Date...
ACKNOWLEDGEMENT

For the most and prime acknowledgement, I express all the praises and thanks be to Allah the Almighty for His mercy and blessing in bestowing upon me of being a student to seek and learn His valuable knowledge of the Hadith of the Prophet s.a.w and Islamic jurisprudence. Again, by His permission, this humble work has been completed to be examined and utilised for the sake of Islamic knowledge.

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Finally, as the perfection and faultlessness only belong to Allah as the most perfect, therefore I admit that this thesis is subject to weaknesses because lack of knowledge, outlook and experience. Thus, any comment and suggestion that aims to improve this thesis is highly appreciated. However, to Allah s.w.t. I submit this humble work for my submission to Him.

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October 2004
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<td>(zay)  צ</td>
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<td>(sīn)  ס</td>
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<td>(shīn)  ش</td>
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<td>(šād)  ش</td>
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<td>(fathah)  א</td>
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<td>(kasra)  י</td>
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<td>(dammah)  יו</td>
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- **Tanwin**  א   is represented by an, in, un respectively.

- Transliteration will involve only Arabic words. Others will be written in *italics*.

**Exceptions**

- The names of well-known places, e.g. Mecca, Medina, Iraq.
- No macron over the last i in names.
- Authors and titles of non-Arabic books.
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INTRODUCTION

Background

In Islamic jurisprudence, the formation of the juristic concept of *maṣlaḥa* or public interest in connection with Islamic legal texts or *muṣūs* has been termed *maṣlaḥa muʿtabara*. For al-Ghazāli (d.555H/1111CE), the category of *maṣlaḥa muʿtabara* is juristically considered the validity and recognised *maṣlaḥa*, since there is textual evidence in its favour, particularly in the *Qurʾān* and the *Sunna* or the *Ḥadīth* of the Prophet s.a.w.

Apart from *muʿtabara*, the category of *maṣlaḥa mursala* has been juristically recognised by many jurists although it has no textual divine evidence in its favour. At this stage, it can be learned that any juristic rule that formed in the category of *maṣlaḥa mursala* but has no parallel ruling and principle with the objective of Islamic law, would therefore be categorised *mulgha* or unrecognised, nullified and discredited *maṣlaḥa*. This principle highlights the significance of *maqāṣid al-sharīʿa* or the ultimate objective of Islamic law in the formation of new rulings.

Importantly, the above discussion underlines the category of *maṣlaḥa muʿtabara* as the highest level in its category of which juristically in line with the ultimate objective of Islamic law or *maqāṣid al-sharīʿa*. This is because the existence of textual divine evidence or proofs from the primary sources of Islamic law in the category of *maṣlaḥa al-muʿtabara*. In line with this category, some Muslim jurists form the term *al-maṣlaḥa wa al-naṣṣ* as the juristic concept of public interest in

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which interrelated with textual divine evidence particularly the Qur'ān and the Ḥadīth.

The notion of juristic concept of *al-nāṣṣ wa al-maṣlaḥa* or *al-maṣlaḥa wa al-nāṣṣ* (interchangeable terms) has been introduced concisely by Ahmad al-Raysūni and Ahmad Jamal Bārūt in one of sub topics of the book entitles *al-Ijtihād: al-Nāṣṣ, al-Wāqf, al-Maṣlaḥa*. In the introduction to the concept of *al-maṣlaḥa wa al-nāṣṣ*, Ahmad al-Raysūni claims that the current phenomenon of discussion among Muslim jurists on the subject of *al-`aql* (reason) in accordance with *al-naql* (transmitted), is somewhat similar to that of *maṣlaḥa* in connection with *naṣṣ*. Furthermore, in practice, he affirms that apart from the Qur'ān, the Ḥadīth of the Prophet s.a.w is a living source that aims to preserve the public interest of the life of humanity.

It appears that Ahmad al-Raysūni's arguments on the significance of the concept of *al-maṣlaḥa wa al-nāṣṣ* is pivotal to be further examined and analysed. For this reason, some related questions may arise here; on what basis the concept of *al-maṣlaḥa wa al-nāṣṣ* is examined in the light of Islamic jurisprudence? If the Ḥadīth of the Prophet s.a.w is chosen as a reference of legal texts in connection with juristic concept of *maṣlaḥa*, thus, is there any limitation as well as special reference to this thesis because of the huge numbers and references for the Ḥadīth? Above all, what are the main purposes of this thesis to highlight the concept of *al-maṣlaḥa wa al-nāṣṣ* as the basic subject to be examined?

To answer to these particular questions, the next topic will discuss regarding the purpose, scope and limitation of the present study.

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4 Ibid.
5 Ibid.
Purpose, scope and limitation of thesis

The main purpose of this thesis is to examine the formation of the concept of al-maslaha wa al-nass in the light of Islamic jurisprudence. To achieve this main purpose, this thesis will examine the definition, historical and theoretical development of the concept of al-maslaha wa al-nass. This examination aims to highlight the basic foundation upon which the formation of this concept is established in Islamic jurisprudence. Further examination will focus on the significance of taflil al-ahkam for the concept of al-maslaha wa al-nass. The purpose of this examination is to analyse the process of taflil al-ahkam from the legal text of the Qur'an and the Hadith. This process aims to identify the principles of public interest as well as the objective of Islamic law that encompass in the legal text of the Qur'an and the Hadith. At this stage, it can be learned that the concept of al-maslaha wa al-nass is juristically applicable in the analysis of the divine legal texts of the Qur'an and the Hadith. In other words, the concept of al-maslaha wa al-nass can be applied to the subject of Qur'anic exegesis (tafsir al-Qur'an) and the analysis of the Hadith (sharh al-Hadith).

As a matter of scope and limitation of study, this thesis will focus on the Hadith of the Prophet s.a.w as a reference of legal texts in the analysis of the concept of al-maslaha wa al-nass. Since there are huge numbers and references for the Hadith of the Prophet s.a.w, a special reference to the book of Bulugh al-Marâm is made for the purpose of analysis. Bearing in mind that the book of Bulugh al-Marâm consists of a total number of 1572 hadith. In addition, there are 16 chapters and 93 sub topics that enclose in that book. Based on these factual numbers, this thesis will focus only on one of the chapters of Bulugh al-Marâm namely Kitab al-Buyûrî or chapter on
business transactions. The limitation of chapter on Kitāb al-Buyūṭ in this thesis aims to juristically analyse its 22 sub topics as well as 176 aḥādīth within the concept of al-maṣlaḥa wa al-naṣṣ. It is hoped that the chapter on Kitāb al-Buyūṭ will be analysed in revealing the principles of public interest and their main objectives of Islamic law of transactions.

Research Methodology

The study is mainly based on library research within the field of Islamic Jurisprudence in connection with the prophetic source of the Ḥadīth s.a.w. Three basic issues will be discussed: Firstly, the concept of al-maṣlaḥa wa al-naṣṣ. Secondly, the references sources for the Ḥadīth s.a.w and the book of Bulūgh al-Marām. Thirdly, Kitāb al-Buyūṭ; the application of the concept of al-maṣlaḥa wa al-naṣṣ to the aḥādīth of al-Buyūṭ.

The body of the thesis is focused on developing and elaborating the main field of the study and as a library research; it will entail theoretical, historical, analytical and descriptive approaches. The Sunni Schools of law will be confined to their concern with the broad principles of al-maṣlaḥa wa al-naṣṣ. The study will refer to valuable Sunni juristic sources written by many jurists such as al-Imām al-Ghazālī, al-Imām al-Shāfi‘ī, al-Imām Ibn Qayyīm al-Jawzī, al-Imām ʿIzzuddin ʿAbd al-ʿAzīz b. ʿAbd al-Salām and others regarding the juristic concept of maṣlaḥa and its connection with Islamic legal texts, naṣṣ.

For the book of Bulūgh al-Marām, the methodology of compilation will be focussed on the second part of this thesis. This includes the variation numbers of aḥādīth Sahīh, Ḥasan and Daʻīf from each chapter of Bulūgh al-Marām. Diagrams
and tables will be drawn up to highlight the variation numbers of those types of aḥādīth.

In the part of analysis, the methodology of muḥaddithūn or scholars of the Ḥadīth will be applied to analyse the rulings that enclose in 176 aḥādīth of Kitāb al-Buyūṭ of Bulūgh al-Marām. However, the analysis of rulings is bounded to rewrite the disagreement of jurists regarding the rulings of the Ḥadīth. As an alternative, the agreed rulings by jurists will be highlighted in the analysis of those aḥādīth. This approach will be applied as methodology in the application of the concept of al-maṣlaḥa wa al-naṣṣ to the analysis of those aḥādīth. Furthermore, the methodology of simple and concise elaboration and analysis will also be applied to the process of taʿlīl al-ḥākīm that aims to examine the principles of public interest in the aḥādīth of Kitāb al-Buyūṭ of Bulūgh al-Marām.

Literature Review

From juristic historical facts, the concept of maṣlaḥa has been a popular subject among Muslim jurists since the beginning of the 7th century A.H.⁶. Many, particularly from the prominent Sunni jurists, had begun their research on the subject of maṣlaḥa within the framework of Islamic jurisprudence. In the 8th century A.H., Abū Ishāq al-Shāṭibi (d. 790/1388) produced two books entitled al-Muwāfaqūt fī 'Uṣūl al-'Aḥkām and al-Ḥiṣām, which discuss the classification and the levels of maṣlaḥa in the light of Islamic jurisprudence. Al-Shāṭibi's opinion on maṣlaḥa as the ultimate objective of Islamic law affirms that of al-Ghazāli (d. 555/1111), as revealed in al-Mustasfa min ʿilm al-'Uṣūl and Kitāb Shīfā.

The discussion on *maṣlaḥa*, particularly in connection with the legal texts, has been general as well as specific in the works of Ḥanafi jurists such as ʿAbd al-ʿAzīz al-Bukhārī, who wrote *Kashf al-Asrār*, a commentary on *ʿUṣūl al-Bāzūdāwy*. In Ḥanbali legal theory, *Majmūʿ al-ʿFatāwa* by Ibn Taymiyyah and *al-Mughni* by Ibn Qudāmah also discuss the concept of *maṣlaḥa* as a legal principle in Islamic jurisprudence and its connection with the Islamic primary sources.

Most discussions in the preceding classical sources indicate that the application of *maṣlaḥa* on Muslim life must be based on the light of God's revelation and despite a lack of specific reference to the concept of *al-maṣlaḥa wa al-nāṣṣ*, it is clear that *al-Qurān* and *Sunna* prioritise the application of public interest.

Since the scientific period of *ijtihād*, (particularly from the year 132 until 350 A.H.⁷) with its implication for the modern Muslim world, the theory of *al-maṣāliḥ al-mursala* rather than that of *al-maṣlaḥa wa al-nāṣṣ* has been approached effectively by jurists. Much research has been conducted and published on the subject of *maṣlaḥa*, particularly in elaborating the type of *al-maṣāliḥ al-mursala*. Some of these most important contemporary works are as follows: *al- Maṣlaḥa fi Tashrīʿ al-Īslāmiyy wa al-Najm al-Dīn al-Ṭūḥī* (1964) Muṣṭafa Abū Zayd, *Dāwābit al-Maṣlaḥa fi al-Sharīʿah al-Īslāmiyyah* (1966) Saʿīd Ramāḍān al-Būṭi and *Naẓāriyat al-Maṣlaḥa fi fiqīh al-Īslāmī* (1981) Ḥusayn Ḥamīd Ḥassan. Most of the discussion in these books relates to the arguments put forward by Najm al-Dīn al-Ṭūḥī who authorises recourse to *maṣlaḥa* with or without the presence of a textual ruling or *ijmāʿ*, (consensus).

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⁷Rahim, *Islamic*, p. 32
There has been considerable research conducted on the topic of *maslaha*. Attempts have been made to explore a new focus on the subject such as; ‘*Malik’s Concept of Maslaha (The Consideration of The Common Good): A Critical Study of This Method As A Means of Achieving The Goals and Purposes of Islamic Law With Special Reference To Its Application At The Shari‘ah Courts In Northern Nigeria*, (1991) written by Yushau Sodiq, ‘*Maslahah dan Pemakaiannya Di Dalam Undang-Undang Jenayah Islam*, (Malay language), (1999) written by Ridzwan Ahmad and ‘*Studies On The Principles And Theory of Maqāṣid al-Shari‘ah In The Sunni Schools With Special Reference To Their Application To Malaysian Law*, (2002) written by Mohamed Fadzli bin Haji Hassan. These contemporary studies focus on the application of public interest within the modern climate of shari‘a courts, Islamic criminal law and common law, such as Malaysian Law.

Several critiques of classical studies have dealt with the subject of *maslaha*, such as ‘*Utility in Classical Islamic Law: The Concept of Maslaha in ’Uṣūl al-Fiqh*, (1986) by Ihsan Bagby ‘Abdul Wajid. The research entitled ‘*The Theory of Al-Masāliḥ Al-Mursalah In Islamic Law*, (1990) by Juma Mikidadi Omari Mtupa was found to be, verbatim or *in toto* in some parts, without acknowledgment from the book entitled, ‘*Islamic Legal Philosophy: A Study of Abu Ishāq al-Shāfi‘i’s Life and Thought*, (1977) by Muḥammad Kamāl Mas‘ūd.

A most up to date piece of research, ‘*Al-Ijtihād: al-Naṣṣ, al-Wāqf, al-Maslaha*, (2002) by Aḥmad al-Raysūnī, and Aḥmad Jamāl Bārūt, is classified as a broad principle in underlining the relationship between *ijtihād*, *naṣṣ*, *wāqf* and *maslaha*. Furthermore, the latest book of Islamic law; ‘*Islamic Law; From Historical Foundations To Contemporary Practise*, (2004) by Mawil Izzi Dien highlights the
significance of *maṣlaha* as a key tuner that harmonises all sources of Islamic law and occupies a central position in the formation of legal opinion and the interpretation of the legal texts.

However, there is a vacuum in terms of detailed approach and analysis to the concept of *al-maṣlaha wa al-naṣṣ* and the present writer feels that such study would benefit from particular reference to Qur'ānic evidence or the Ḥadīth in the analysis under the heading of *al-maṣlaha wa al-naṣṣ*. It is proposed that the current research entitled *The concept of al-Maṣlaha wa al-Naṣṣ with special reference to Kitāb al-Buyūʿ in the book of Bulūgh al-Marām*, may go some way towards filling this vacuum. As far as can be ascertained, this kind of study has not been carried out previously, particularly in the field of *usūl al-fiqh* (Islamic jurisprudence).

### Outline of chapters

This thesis proposes three parts of focused subject within six related chapters. It is opened with an introduction and closed with a conclusion and some further suggestions.

The introduction elucidates the background of the study, its purpose, scope and limitation, the method applied, its literature review and the outline of the chapters.

The part A consists of three chapters. The first chapter examines the definition and historical development of the concept of *al-maṣlaha wa al-naṣṣ*. This chapter is considered a portal of thesis because its highlights the basic information regarding the juristic concept of *al-maṣlaha wa al-naṣṣ*.

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The second chapter of part A is classified a skeleton of this thesis because its highlights the theoretical development of the concept of *al-mašlaḥa wa al-naṣṣ*. This chapter discusses the hypothetical form of the theory of *mašlaḥa* over the legitimacy of *naṣṣ* and al-Ṭūfī’s theory. It also examines the views of Muslim jurists regarding the priority levels of *darūriyya* and the theory of *maqāṣid al-shari‘a* in connection with *naṣṣ*.

The third chapter deals with the significance of *ta‘līl al-ahkām* for the concept of *al-mašlaḥa wa al-naṣṣ*. It includes the process of *ta‘līl al-ahkām* from the legal texts of the *Qur‘an* and the *Ḥadīth*.

The part B encompasses two chapters. The fourth chapter highlights the main reference sources for the books of *Ḥadīth*. In this regard, there are seven books of main reference sources and five of other reference sources for which they will be examined in this chapter.

The fifth chapter of part B focuses on the introduction to the book *Bulūgh al-Marām*. This chapter consists some sub topics such as the author biography, juristic features and compilation methodology.

The last part of thesis is part C that includes one analysis chapter of the *Ḥadīth*. The sixth chapter entitles *Kitāb al-Buyū‘*; the application of the concept of *al-mašlaḥa wa al-naṣṣ* to the *ahādīth* of al-Buyū‘. This chapter intends to analyse 22 sub topics of chapter on business transactions within the number of the *Ḥadīth* of 176. It is proved during the analysis that there are principles of public interest in the most of every single *Ḥadīth* and its rulings regarding the juristic themes of business transactions.
The conclusion highlights an overall evaluation and analysis of the findings laid down in the previous chapters. The thesis then concludes with some suggestions regarding further research in the area of Islamic jurisprudence and the subject of the *Hadith.*
PART A
THE CONCEPT OF AL-MAŠLAHA WA AL-NAṢṢ IN ISLAMIC JURISPRUDENCE

Introduction to Part A

This part A aims to present the interesting development of al-Mašlaḥa wa al-Naṣṣ through the history and theory of Islamic jurisprudence, and one of the major discussions will centre on the theory of priority of mašlaḥa over the legitimacy of naṣṣ.

In order to analyse the preceding points in a juristic light, it is necessary to examine the definition of the concept al-Mašlaḥa wa al-Naṣṣ, as expressed in chapter one. In conjunction with the defining approach, this chapter will also examine the historical development of al-Mašlaḥa wa al-Naṣṣ, with a view to elucidating the value accorded to this concept by Islamic jurisprudence. The theoretical development of the concept of al-Mašlaḥa wa al-Naṣṣ will be debated in chapter two. The core of part A is concerned with the significance of Ta'liʿ al-Aḥkām to the concept of al-Mašlaḥa wa al-Naṣṣ, which will be discussed in chapter three. This will be followed by a summary of the theory of al-Mašlaḥa wa al-Naṣṣ.
CHAPTER ONE

THE DEFINITION AND HISTORICAL DEVELOPMENT OF THE
CONCEPT OF AL-MAŞLAḤA WA AL-NAṢṢ

1.0 Introduction

In the first section of this chapter, the definition of the term al-Maşlaḥa wa al-Naṣṣ becomes a key note, important to this study in terms of introduction to the juristic discussion regarding its concept. Incorporated is also a terminological discussion of the individual terms al-Maşlaḥa and al-Naṣṣ in the light of Islamic jurisprudence. The second section of this chapter examines the development of the concept of al-Maşlaḥa wa al-Naṣṣ over four eras in history, in order to evaluate the development of this concept within the Sunni perspective of Islamic jurisprudence.

1.1 The definition of the concept of al-Maşlaḥa wa al-Naṣṣ

In order to present the definition of the term al-Maşlaḥa wa al-Naṣṣ, the discussion will be divided into literal\(^1\) and technical\(^2\) definitions. The literal definition of the term al-Maşlaḥa wa al-Naṣṣ, is comprised of two Arabic words i.e. al-Maşlaḥa and al-Naṣṣ, and one Arabic letter, i.e. wa. The technical definition of al-Maşlaḥa wa al-Naṣṣ will be referred to within the scope of the elaboration and analysis made by

\(^1\) Lexically, 'literal' is an adjective word which means, a) corresponding exactly to the original. b) concerned with the basic or usual meaning of a word or phrase. To comply with the term literal definition, maslaha will be given in the original meaning, which Muslim jurists' works have used effectively in Islamic jurisprudence. In many Arabic Muslim jurists' works, al-Tarīf lughatan is used, which means 'literal definition'.


\(^2\) The term 'technical definition' is used in this chapter to indicate a large number of definitions made by Muslim jurists regarding the technical terms of maşlaḥa. Many Arabic Muslim jurists' works use the term al-Tarīf Isjilakān or al-Tarīf Sharrān, which can be translated as 'technical definition'.

See Ba'albaki, al-Mawrid, p.118
Muslim jurists who were involved both directly and indirectly with the subject of *Maṣlaha* in conjunction with the legal text, *Naṣṣ*.

1.1.1 Literal Definition

In the framework of Islamic jurisprudence, many Muslim jurists have defined the word *maṣlaha* on the basis of a literal rather than an etymological definition. To Abū al-Ḥusayn al-Baṣri (d. 478/1085), *maṣlaha* means ‘goodness’ and *maṣāliḥ* means ‘good things’. He adds that, in Islamic jurisprudence, the term *al-maṣāliḥ al-shari‘a* refers to the actions, which the individual is compelled to perform in Islamic law such as *iḥāda* (worship). Based on Zamakhshari’s definition, *maṣlaha* is referred to as *naẓara fi maṣāliḥ al-muslimin*, which means: “he considered the things that were for the good of the Muslim”. Ibn Manẓūr and al-Fayruzābādi define the word *maṣlaha* as *ḥusn al-ḥāl*, which means: “the good condition”.

It is thus evident from the aforementioned that a sense of good is inherent in the term *maṣlaha* and that it always refers to human life, particularly Muslim life. Therefore, later Muslim jurists tend to define *maṣlaha* literally as ‘benefit’ or ‘interest’ or ‘utility’ in conjunction with *Shari‘a* that is concerned with human

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3 Etymology is the study of the origin and history of words and their meaning. In etymological definition, the root of *maṣlaha* is *ṣ-l-h* which becomes *ṣilah* and means *al-naf*. This is used to indicate that something, or a person, becomes good, right and virtuous. In many Arabic dictionaries such as *Al-Qāmūs al-Muḥi‘ī* and *Mukhtār al-Ṣilāh*, the similar word *maṣšala* is *al-ṣilāh* which is contrast with the word *al-fasād* means corruption and invalidity. In a rational sense, *maṣlaha* means ‘a means’, ‘a goal’ and ‘a cause which is good’. For instance, a pen in the light of *maṣlaha* is useful for writing. In this case a pen is a cause for the writing, which is referred to as *maṣlaha*.


4 See al-Baṣri, *al-Mu‘tamad*, v.ii, p.888

5 Zamakhshari, *Asās*, v.ii, p.23


7 See Kamali, *Principles*, p.287.

8 See *Ihsan*, *Utility*, p.10.
welfare and justice as well as equity. This definition concludes the examination of the literal meaning of *maṣlaḥa*.

In the term *al-Maṣlaḥa wa al-Naṣṣ*, *wa* is an Arabic letter that is called *hurf* َاء, a letter which indicates a specific connection between two words. One of the main functions of the letter *wa* in the Arabic language is *yujid al-jam*، that is, to join two words together and form a relationship between them. In this work, it is presumed that the function of *wa* is to describe *maṣlaḥa* as being parallel with *naṣṣ* or even as being convergent with it.

The word *Naṣṣ* or *Nuṣūṣ* generally means texts, script and provision. In Islamic legal theory, *Naṣṣ* refers to a legal text. The *Qur'ān* has been termed a legal document, as has the *Hadīth* which is the second source of Islamic law after the *Qur'ān*. As a result, both the *Qur'ān* and the *Hadīth* are classified as *Naṣṣ* and form the primary sources of Islamic legal theory. Muslim jurists unanimously accept *Naṣṣ* as valid and accredited by the legal sources of Islamic law. It has also been termed the Quranic legislation, of which the Prophet Muḥammad S.A.W was the founder; it being initially applied during the time of Mecca and Medina. In addition, *Naṣṣ* is also known as *dalīl*, ‘evidence’ or ‘proof’ and *naql*, ‘transmitted’, terms that are common in juristic discussion on the subject of Islamic law. In summary, the literal definition of the word *Naṣṣ* refers to the primary sources, either the *Qur'ān* or the *Hadīth*.

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9 Bakar, *The Discernment*, p.103.
10 See Ba'ālbi, *al-Mawrīd*, p.767.
11 Ibid.
13 Qa'ābi and Qanbi, *Mu'jam*, p.480.
wherein are contained a *dalîl*, a *naqîl*, a legal text and a legal document for Islamic law.

### 1.1.2 Technical Definition

As a study of *maṣlaḥa* is one of the main objectives of this work, it is important to examine the definition of the term *maṣlaḥa* in conjunction with *nâṣṣ*. As a starting point, al-Ghazâli claims that the term *maṣlaḥa* itself has no single standard definition. This is partly due to the term itself; the meaning being sometimes very clear, sometimes less so and sometimes completely absent. Due to this ambiguity, the term has received a great deal of attention from many jurists. The views of a representative of these have been chosen as source material for this work. Al-Ghazâli maintains that in general, *maṣlaḥa* is an expression for seeking *manfaʿa* (something useful), whilst simultaneously indicating the removal of *maḍarra* (something harmful). Juristically, he defines *maṣlaḥa* as the preservation of the *maqṣūd*, an objective of the *shariʿa* which is concerned with five issues, i.e. the preservation of religion, life, intellect, lineage and property. In conjunction with *nâṣṣ*, al-Ghazâli defines *muṣṭābara* as a type of *maṣlaḥa* that has textual evidence in favour of its consideration, and which is therefore valid and utilisable as a legal principle for *qiyās*. Moreover, Fakhr al-Dîn al-Râzî (d.606/1209) emphasises that *maṣlaḥa* is very close to *munāṣib* and *munāṣaba*, which suggests 'affinity with a strong feeling of

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interest. Al-Rāzi also claims that God's commandment revealed through the text coincides with maṣlahah. Therefore, he claims that God's commandment has no 'illa, (ratio legis) and it is wrong for jurists to search for and justify the 'illa behind it.

To al-Shātibi, maṣlahah means maqṣūd, likewise, al-Ghazālī's point of view asserts that maṣlahah was the foundation of the theory maqūṣid al-shari'a. Moreover, in collaboration with nasṣ, al-Shātibi maintains that every specific injunction of the Qur'an and the Sunna has a 'specific' purpose or rationale or 'illa that contributes to the achievement of 'general' purpose, maqūṣid al-shari'a. At this stage maṣlahah is parallel with 'illa regarding the revealing of God's commandment to humans in the sense of maṣlahah.

Ibn 'Ashūr undertakes a particularly close study of the terms al-Maṣlahah al-Qaṭīyya and al-Maṣlahah al-Zanīyya, which is valuable as a technical definition of maṣlahah in accordance with nasṣ. He asserts that al-Maṣlahah al-Qaṭīyya means any particular common good in the light of a definitive legal text, therefore no interpretation or ta'wil can be made of it. For instance, the existence of al-Maṣlahah al-Qaṭīyya on the subject of the pilgrimage which is obligatory for those who are capable of performing it, is made clear by the definitive nasṣ of the Sūra 'Āli 'Imrān. The sense of maṣlahah exists in this particular form of definitive nasṣ and

\[21\text{ al-Rāzi, al-Maḥṣūl, vol.ii,p.218}\
\[22\text{ Ibid.}\
\[23\text{ al-Shātibi, al-Muwaqāq, v.ii,p.25.}\
\[24\text{ Hassan, Studies,p.138.}\
\[26\text{ See Ibn 'Ashūr, Maqūṣid.p.168.}\
\[27\text{ al-Kamālī, Min Fiqh,p.12.}\
\[28\text{ The full translation of Sūra 'Āli 'Imrān : 97: "In it are manifest signs; (for example), the Maqām (place) of Abraham; whosoever enters it, he attains security. And Ḥajj (pilgrimage to Mecca) to the house (Ka'ba) is a duty that mankind owes to Allah, those who can afford the expenses (for one's conveyance, provision and residence); and whoever disbelieves [i.e. denies Ḥajj (pilgrimage to Mecca), then he is a disbelievers of Allah], then Allah stands not in need of any of 'Ālamīn (mankind, jinn and all that exists)".} \]
is exemplified by Sūra 'Āli ʿImrān:97, which concerns the condition of performing pilgrimage that is obligatory for those Muslims who are capable of it. Here, the maṣlaḥa is absolutely definite, and there is no room for reinterpretation or taʾwīl, particularly regarding the condition of performing pilgrimage.

Notwithstanding al-Maṣlaḥa al-Qaḍīyya as a definitive naṣṣ, the term al-Maṣlaḥa al-Ẓanniyya has been defined technically by Ibn ʿAbī Ḥamīd as any particular common good achieved by non-definitive naṣṣ and through the process of legal reasoning on the basis of assumption, ẓanniyya. For example, the Ḥadīth, 'no judge should be judging when he is angry' is taken from authoritative sources such as Ṣaḥīḥ Būkārī and Ṣaḥīḥ Mūsliμ and the existence of al-Maṣlaḥa al-Ẓanniyya is inherent in its content, which is concerned with improper acts of judgement such as one undertaken when angry. A second example of the process of legal reasoning on the basis of assumption, is the use of dogs to guard the homes of townsfolk who resided in dangerous locations such as Qayrawan, a town in Tunisia. The point of al-Maṣlaḥa al-Ẓanniyya in this case is the Islamic ruling regarding the keeping of dogs by al-ḥaḍār (the townspeople); an action that most Maliki jurists disapprove of. As al-Sheikh Abū Muḥammad b. Abī Zayd had a dog in his house, he claimed that if Imam Malik himself knew how dangerous the situation was, he would certainly have a lion guarding his house rather than just a dog.

See al-Hilali, The Translation, p.86
30 The text of the Ḥadīth:

This Ḥadīth narrated by Būkārī, Ṣaḥīḥ, no: 6625 and Mūsliμ, Ṣaḥīḥ, no:3241.
31 See al-Nādāwī, al-Qawā'id, p.359.
Later jurists have offered a comprehensive definition of the term *al-Mašlāha wa al-Naṣṣ*. Ahmad al-Raysūni defines it as the interaction between the concept of *al-Mašlāha wa al-Naṣṣ* (in Arabic; *al-Ta‘āmul al-Mašlāhī ma‘a al-Nusuṣ*)\(^{33}\). He emphasises that every single *nusuṣ* and its ruling is intended to fulfill the *mašāliḥ* concerning humanity in seeking something useful (*manfa‘a*) or removing something harmful (*mafsid*) from their lives. In order to clarify the interaction between the concept of *mašlāha* and *naṣṣ*, Ahmad al-Raysūni presents the following three methods:

(a) the criteria of *naṣṣ* in determining the existence of *mašlāha*.

Al-Raysūni insists that belief in *naṣṣ* means belief in its supremacy and this leads to the fundamental principles such as justice, mercy and *mašāliḥ*, for as Allah states; “And We have sent you (O Muḥammad) not but as a mercy for the ālāmīn (mankind, jinn and all that exists)”, 21:107\(^{34}\). This verse indicates directly that the ultimate aim in sending the Prophet Muḥammad was an act of mercy to the ālāmīn, which is connected with the subject of *mašāliḥ*. Moreover, he supports Ibn Taymiyya’s view that most of the principles and activities in *Shari‘a* that take place in the light of *naṣṣ* are directed towards achieving the concept of *mašāliḥ*. In conclusion of this point, he claims that most *nusuṣ* have basic criteria that are employed to determine the value and the types of *mašlāha*\(^{35}\).

(b) the interpretation of *mašlāha* from *nusuṣ*.

According to al-Raysūni, the interpretation of *mašlāha* from *nusuṣ* involves the analysis and study of seeking the *maqāṣid*, that is, the objective of Islamic law, by means of *nusuṣ*. This methodology entails an examination of every single Islamic ruling in *nusuṣ*, and its interpretation in conjunction with the concepts of *maqāṣid* and

\(^{33}\) al-Raysūni, *al-Ijtihād*, p.49.

\(^{34}\) See al-Hilali, *The Translation*, p.441.

maṣlaḥa. He adds that by using this method, the hypothesis that ‘every single Islamic ruling is in accordance with the maṣlaḥa’ can be proven juristically.

(c) the implementation of maṣlaḥa through nusūṣ.

This method is a consequence of the preceding one, whereby following the interpretation of maṣlaḥa from nusūṣ, the implementation of maṣlaḥa must be undertaken. It is significant to note that the basic paradigm for the implementation of maṣlaḥa is valuable in forming an analysis of the method employed by the Prophet and his companions. To simplify, the Sunna-cum-Ḥadīth is the best example of the implementation of maṣlaḥa through nusūṣ. Al-Raysūnī claims that there is much evidence to prove how the Prophet implemented the concept of maṣlaḥa during his lifetime. Therefore, the study of Sunna or Ḥadīth, with special attention paid to the elucidation of the concept of maṣlaḥa, is valuable in terms of the analysis of the basic principle in the implementation of maṣlaḥa through nusūṣ.

The preceding methods proposed by Aḥmad al-Raysūnī indicate a basic foundation for the technical definition of the term al-Maṣlaḥa wa al-Naṣṣ. These methods are also believed to further develop the elaboration of the form of maṣlaḥa muṭabara, which is considered to be a fundamental principle for maṣlaḥa in dealing with naṣṣ.

In conclusion, the definition of the term al-Maṣlaḥa wa al-Naṣṣ from the various aforementioned perspectives, is clarified by the following indicator which shows a framework explaining its concept. This model depicts the initial parallel nature of maṣlaḥa and naṣṣ, which becomes a convergence at the point where a legal

36 Ibid., p.53-54.
37 Ibid., p.55-58.
principle is formed. At this stage, firstly, the subject of *ma'slahā* has been discussed in many ways as parallel with the subject of *maqāsid*, *'illa*, *ijtihād* and *'aqal*. Secondly, the subject of *na's* has also been discussed in many ways as parallel with the subject of the *Qur'ān*, the *Sunna*, *qaf'iy* and *zanni*. Meanwhile, both of these subjects i.e. *ma'slahā* and *na's* are also in many ways have been examined as parallel with each others. Eventually, these two subjects becomes a convergence at the point, which is called as *ma'slahā mu'tabara* or the accredited validity of the legal principle in Islamic legal theory. In order to elaborate the connection between the legal principle of *ma'slahā mu'tabara* and the concept of *al-Ma'slahā wa al-Na's*, thus, this section will proceed to examine how the concept of *al-Ma'slahā wa al-Na's* has been developed through the history of Islamic legal theory.

\[\text{Al-Ma'slahā} \quad \rightarrow \quad \text{(ma'slahā mu'tabara)} \quad \text{THE LEGAL PRINCIPLE}\]

\[\text{PARALLEL CONVERGENCE} \quad \rightarrow \quad \text{IN ISLAMIC LEGAL THEORY}\]

\[\text{Al-Na's} \quad \rightarrow \quad \text{(Qur'ān), (Sunna), (Qaf'iy), (Zanni)}\]

1.2 The Historical Development of The Concept of *al-Ma'slahā wa al-Na's*

Scholars, particularly those from the Sunni school, have referred to the existence of the historical development of this concept. Many Muslim jurists have stated that the early development of the concept of *al-Ma'slahā wa al-Na's* commenced during the life of the Prophet and then continued into the time of the *khulafā' al-Rāshidūn* (Rightly Guided Caliphs) from 11H/632C.E to 40H/660C.E.\(^{38}\)

\(^{38}\) See E\(^1\), (art. *Khulafā'*), vol.iv: IRAN-KHA, p.937-957
Accordingly, the concept of *maṣlaḥa* emerged during the period of the Umayyad Empire, particularly under the caliph of ʿUmar b. ʿAbd ṣAzīz (99H/717C.E to 101H/720C.E)\(^{39}\) and then continued into the beginning of the second and up until the eighth century of Hijra\(^{40}\).

1.2.1 During the life of the Prophet s.a.w

To many later Muslim jurists, the existence of *maṣlaḥa* during the life of the Prophet constitutes part of the form of *ijtiḥād*, although he himself was the expounder of the *Qurʾān* and the living source of Islamic law\(^{41}\). When the Prophet needed to solve a problem or answer a question (particularly during the time lapse between revelations), *maṣlaḥa* as the form of *ijtiḥād* always occurred\(^{42}\). Indeed during his lifetime, there were many events and cases that set precedents relating to the subject of *maṣlaḥa* and these could be obtained from various authentic Ḥadīth.

The process of appointment to leadership during that era offers a clear example pertaining to the subject of *maṣlaḥa*\(^{43}\). In the case of two men who intended to become rulers of some lands, the Prophet rejected their request, saying; ‘By Allah, we do not appoint to this position one who asks for it nor anyone who is covetous for the same’\(^{44}\). Paradoxically, in the case of Ziyād b. al-Ḥārith who requested authority to become a leader, the Prophet agreed to appoint him as leader of the tribe of Sūdā\(^{45}\).

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\(^{39}\) al-Būṭī, ʿDawābih, p.314-315.

\(^{40}\) *Ibid*.

\(^{41}\) Hassan, *Studies*, p.138.


\(^{45}\) Muslim, *Ṣaḥīḥ*, in *Kitāb al-Imāra*, no.:1083.
Ibn Qayyim does not perceive any paradoxical nature between these two cases, since they reveal the permissibility of requesting leadership from the Prophet on the basis of the capability of the applicant. He adds that the former application was rejected as it was based on irrelevant criteria such as over-enthusiasm for leadership, whereas the latter was accepted due to the ability of Ziyād b. al-Ḥarīth to be a good leader for his tribe. Ibn Qayyim asserts that the Prophet s.a.w applied the concept of *maṣlaḥa* in these two cases. In the first, the rejection was partly due to *maṣlaḥa* as it removed the potential harm of over-enthusiastic leadership from the appointment, whereas in the latter case, the acceptance was partly due to *maṣlaḥa* as it relied on seeking good qualities of leadership, such as those possessed by Ziyād b. al-Ḥarīth 46.

The preceding illustrations clearly indicate that the Prophet s.a.w was the best exemplar in implementing the concept of *maṣlaḥa* in the light of Islamic principle and thus, demonstrate why his actions in life are also regarded as primary sources of Islamic law. This instance forms a precedent in Islamic jurisprudence, particularly with reference to the development of the theory of *maṣlaḥa* in conjunction with ḥadīth-cum-sunna, as both are classified as *naṣṣ*.

### 1.2.2 During the period of the *Khulafā’ al-Rāshidūn*

Subsequent to the death of the Prophet, the *Khulafā’ al-Rāshidūn* (Rightly Guided Caliphs) took over the leadership of the Muslim nation for 29 years, during

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which time the application of *maslaha* was increasingly effective. The main factor responsible for this was probably the rapid and vast expansion of Muslim territory and the multicultural nature of the Muslim world\(^{47}\). In order to solve many challenges and problems during that period, *maslaha* as the form of *ijtihād* took place in conjunction with the legal principles of Islamic law. Indeed there were many cases and events in the period of *Khulafā’ al-Rāshidūn*, which exemplify the application of *maslaha*.

Examples of these are as follows;

i. The codification of the *Qur’ān* that began in the period of Abū Bakr (11H/632CE to 13H/634CE) was due to the ‘death reciters’ of the *Qur’ān*, particularly in the war of Yamanā. After Abū Bakar’s death, the codification of the *Qur’ān* was continued by ʿUmar as the second caliph\(^{48}\).

ii. The decision to wage war against Musaylamah al-Kadhdhab and his followers who refused to pay zakah in the period of Abu Bakr\(^{49}\).

iii. In the period of ʿUmar (13H/634CE to 23H/644CE), it was declared that a divorce would be valid if a man three times proclaimed his wife to be divorced. Umar’s justification for validating this type of pronouncement was based on the rising social problem of men misusing the privilege\(^{50}\).

iv. The decision to reverse an application of *hudūd*, prescribed penalties in the case of servants who stole a camel in the period of ʿUmar, as the theft was due to a year of starvation\(^{51}\).

v. The introduction of a standard copy of the *Qur’ān* was later named *muḥāf* ʿUthmānī in the period of ʿUthmān (23H/644CE to 35H/656CE). Introduction of the *muḥāf* ʿUthmānī was due to the differences between the people of Sham and Iraq in the recitation of the *Qur’ān*\(^{52}\).

vi. In the period of ʿAli (35H/656CE to 40H/660CE), the introduction of the punishment for drunkenness was equated with that of the punishment for *gadhaf*, false accusation of adultery. This was based on the premise that drunkenness might lead a person to make such an accusation, and therefore it should merit the same punishment\(^{53}\).

\(^{47}\) *Hassan, The Early*, p.15.

\(^{48}\) Bukhārī, *Ṣaḥīḥ*, v.6,p.183.


\(^{50}\) Iṣṣī Ḥiṃ, *Maṣlāḥa*, p.346.

\(^{51}\) Bayhaqī, *Sunan*, v.viii,p.278.

\(^{52}\) *Ibid.*, v.5,p.510.

The above cases form part of the judicial process towards the implementation of Islamic law within the concept of *mašlaḥa*, which became classified as *ijtihād* during the period of Khulafā’ al-Rāshidūn. In the case of i, ii, iii, and v in particular, the preservation of religion was clearly the objective, whereas in the case of iv, the preservation of life for the starving who stole the camel became the judicial reason for reversing the punishment of *ḥudūd*. In the case of vi, the preservation of intellect became the judicial reason for the punishment of drunkenness being equivalent to the punishment of *qadhaf*. As Imām al-Shāṭibi asserts, the preservation of religion, life, intellect, lineage and property were being offered as a basis for *mašlaḥa-cum-*maqāṣid*. In addition, later Muslim jurists concur that at the time of Khulafā’ al-Rāshidūn, the companions took an inherently rational and comprehensive approach towards the implementation of Qur’anic law and the Sunna, whereby the circumstances and surrounding factors were always considered as vital elements in the application of Islamic law.

1.2.3 During the time of caliph ʿUmar b. ʿAbd. ʿAzīz

The development of the concept of *mašlaḥa* in particular, and in connection with *naṣṣ*, began during the period of tābīʿūn, (followers); under the caliph ʿUmar b. ʿAbd. ʿAzīz (99H/717C.E to 101H/720C.E) in the dynasty of Umayyad. During this era, many jurists considered that the majority of applied government policy was in

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accordance with the concept of *maṣlaḥa*. According to Saʿīd Ramaḍān al-Būṭi, caliph ʿUmar b. ʿAbd. ʿAzīz was among tabfūn who had applied the concept of *maṣlaḥa* or *istiṣlah* through his policy. For example:

i) Giving back the right of people who were treated as victims of injustice by the caliphs before him⁵⁸. Al-Būṭi states that caliph ʿUmar b. ʿAbd. ʿAzīz expended most of his efforts on returning rights to innocent people. Such a policy was not applied during the period of the Prophet s.a.w and the policy itself has no reference to Islamic sources such as the *Qurʾān*, the *Sunna* and *Qiyās⁵⁹*. Caliph ʿUmar b. ʿAbd. ʿAzīz’s course of action reflects the concept of *maṣlaḥa* or *istiṣlah*, which upholds the preservation of life and property in particular and it is undertaken for those who were treated as victims of injustice by the previous caliph⁶⁰. Al-Ṭabarī quotes the following sermon given by caliph ʿUmar b. ʿAbd. ʿAzīz to the people in Khunaisirah. It reveals his policy to be in accordance with the application of *maṣlaḥa*⁶¹:

"Whenever we learn that one of you needs something, I try to satisfy his need to the extent that I am able. Whenever I can provide satisfaction to one of you out of my possessions, I seek to treat him as my equal and my relative, so that my life and his life are of equal value".

ii) The codification of *Ḥadīth*, its transcription and the creation of its rules of narration⁶².

From the perspective of *muḥaddithīn*(scholars of *Ḥadīth⁶³), caliph ʿUmar b. ʿAbd. ʿAzīz was a pioneer; being the first to issue definite orders to Abū Bakar b. Ḥazm, the caliph’s governor at Medina and to other centres, to the effect that codification and

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written collections of *Hadîth* should be prepared officially. His policy contained fundamental reference to the preservation of religion, specifically with regard to the authentic *Hadîth* of the Prophet s.a.w., as well as the *Qur'ân*, as a primary source of Islamic law. To some extent, this policy resulted from the appearance and movement of Muslim sects such as Qadâria and Khawârij who were believed to represent invalid and non-authentic *Hadîth* as being traceable to the Prophet. In order to avoid such misrepresentation and to secure the authentic and authoritative *Hadîth*, the implementation of this policy was necessary and in accordance with Islamic legal principle i.e. *maṣlaḥa*. At this stage, there is clear evidence of the application of *maṣlaḥa* as a tool of *ijtihād* within the policy of ʿUmar b. ʿAbd. ʿAzîz. This may be referred to as the starting point of the development of the concept of *maṣlaḥa* in connection with *naṣṣ*.

1.2.4 During the Abbasid dynasty

After the fall of Umayyad dynasty in 132H/750C.E, the Abbasid dynasty took over Muslim territory for more than five hundred years, from 132H/750C.E to 656H/1258C.E. Philip K. Hitti refers to this era as ‘the golden prime’ of the

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64 Muhammad, *Collection*, p.33.
65 Bukhārī, *Sahih*, v.1 (k.3,b.34)
66 al-Būṭī, *Dawârib*, p.316.
67 Ibid.
68 *E* 1 (art. ʿAbbasid), vol.1: A-B, p.21-23
Abbasid, which endured from 750C.E to 833C.E. This metaphorically golden time witnessed the growth of Islamic knowledge such as fiqh and usūl fiqh; juristic developments that encompassed discussion of the concept of maṣlaḥa and its status within the legal text.

To some extent, the simultaneous emergence of the four Sunni schools of law offered an environment that was conducive to freedom of opinion and thought. Most of the Abbasid caliphs encouraged this and the prevailing climate has contributed indirectly to the development of the concept of maṣlaḥa and its connection with naṣṣ. Though the term al-Maṣlaḥa wa al-Naṣṣ was not in existence at that juncture, it is theorised that juristic discussions regarding the application of qiyās, ijmāʿ, istiḥsān and maṣlaḥa mursala, and their connection with the primary sources i.e. the Qurʾān and the Sunna, indeed contributed to the development of the concept of al-Maṣlaḥa wa al-Naṣṣ. Therefore, the following discussion attempts to prove how the methodologies of those four Sunni schools of law have influenced juristic discussion of the concept of al-Maṣlaḥa wa al-Naṣṣ.

1.2.4.1 The Ḥanafī School of law

The Ḥanafī School of law or Tarīqa al-Ḥanafīyyin was named after Abū Ḥanīfa, the eponym of the ancient schools of Kufa and Basra. The Kufa school of law has been depicted as rationalist or Aḥl al-Rayy, due to its flexibility of approach to

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69 Hitti, History, p.297.
70 Imam Abū Ḥanīfa’s full name is Abū Ḥanīfa al-Nuʿman b. Thabit. He was born at Kufa, Baghdad in the year 80H/699C.E and died in 150H/767C.E. Abū Zahra, Abū Ḥanīfa, p.15.
the interpretation of the text and to the application of Islamic law. These phenomena are consequences of the existing environment; Kufa being a centre in which Arabs and non-Arab Muslims were in intimate contact. Hence, Muslim scholars at Kufa were conscious of the need to accommodate this environment and to apply the Islamic principles in accordance with the primary sources such as the Qur'ān and the Sunna\(^\text{72}\).

In the Ḥanafi school of law, *Qiyās* and *Istiḥsān* (juristic preference) were formulated as secondary sources of Islamic law and these have similar attributes to the concept of *maṣlaha*\(^\text{73}\). According to Hashim Kamali, Ḥanafi jurists tend to define *Istiḥsān* similarly with *qiyās* that consists of a departure from *qiyās jali* (obvious analogy) to *qiyās khafi* (hidden analogy), which is closely connected with *raʾy* (reason) and analogical reasoning\(^\text{74}\). Hussein Ḥāmid Ḥassān adds that *Istiḥsān* will only prefer the benefit of people\(^\text{75}\) in accordance with Qur'ānic principles, such as *al-Zumar*, 39:18 and 55:

‘And give good tidings to those of my servants who listen to the word and follow the best of it [ahsanahu]. Those are the ones God has guided and endowed with understanding’.

‘And follow the best [ahsana] of what has been sent down to you from your lord’.

In conjunction with the Qur'ān and the Sunna, Ḥanafi jurists insist that *Istiḥsān* in particular, is conformed by the primary source of Islamic law and far removed from the elements of prejudice, bias and the like\(^\text{76}\). It is interesting to note that Ḥanafis have formulated the category of *al-Istiḥsān bil-Nāṣṣ* in order to link the connection between *Istiḥsān* and *nāṣṣ* and to reveal how Imām Abū Ḥanīfa himself applied the

\(^{73}\) Kamali, *Istiḥsan*, p.37.  
\(^{74}\) Kamali, *Principles*, p.254.  
\(^{75}\) Hussein, *Nazarīya*, p.587.  
\(^{76}\) Ibid.
interpretation of *Istihsān* from the *nasṣ*. An example of this can be understood from a *Hadīth* relating to the subject of obligatory fasting\(^{77}\). According to Abū Ḥanīfah, if an individual takes food or drink while fasting because he/she has genuinely forgotten, then the fast is still valid\(^{78}\). Here, Abū Ḥanīfah’s judgement is in accordance with the *Hadīth* of the Prophet, wherein he stated, ‘continue your fasting (in case of eating or drinking due to forgetfulness) because Allah the Almighty gave you to eat and to drink’\(^{79}\).

From the Ḥanafi perspective, the juristic method applied in this case is referred to *Istihsān*, which gives a preference to the benefit of Muslims, on the basis that it is connected with the primary source of *Hadīth*\(^{80}\). To some extent, this example signifies that *Istihsān* and *Qiyās* have been applied as secondary sources in Islamic law, particularly by Ḥanafi jurists, in order to give benefit and preference to Muslims. This notion is intertwined with the concept of *maṣlaḥa*\(^{81}\).

The preceding discussion reveals that the Ḥanafi school of law has formulated the basic development of the concept of *al-Maṣlaḥa wa al-Nāṣṣ*, although indirectly, through the application of *Istihsān* and *Qiyās* to Islamic legal theory that aims to benefit Muslims. In conclusion, as the first established school of Islamic law, the Ḥanafis have contributed the fundamental ideas to the development of the concept of *al-Maṣlaḥa wa al-Nāṣṣ*; a process that was to be furthered by the Maliki school of law.

\(^{78}\) Ibid.
\(^{79}\) Ibid.
\(^{80}\) Hussein, *Naẓariya*, p.589.
1.2.4.2 The Mālíki school of law

The Mālíki school of law, known as Ḩāṣib al-Ḥadīth, the 'traditionalist' school and also the Medinese school of law, was centred in Medina. This remained the focal point of intellectual activity and the capital of the Islamic empire during Khulafā' al-Rāshidūn until caliph ʿAli b. Abī Ṭālib moved to the city of Kufa in Iraq. Since Imam Mālik spent all his life in Medina, some 84 years, he was later known as the Imam of Medina, Dār al-Ḥijra.

The Mālíki school of law has been depicted as taking a traditionalist approach, particularly with reference to the book of al-Muwattā', the first work compiled and written by Imām Mālik himself. The book pertains to the subject of Islamic law in accordance with the Ḥadīth (tradition of the Prophet) and the prevailing traditions and practices of the companions. It is interesting to note the conclusion drawn by Macdonald regarding the Mālíki stance, which reveals that both traditional and rational approaches were assumed. According to Macdonald, Imām Mālik's Muwattā' had applied a rational sense to decide the authentic Ḥadīth and its conformity with the principle of the Qur'ān and parallel with the needs of the people.

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82 Ibn Hajar, Tahdhib, v.x, p.6.
83 Imam Malik’s full name is Malik ibn Anas ibn Malik ibn Amir ibn al-Harith ibn ʿUthman al-Asbahi al-Himyari, Abu ʿAbd Allah. The date of his birth is not known; the dates given, varying between 90 and 97H/708-16C.E, are hypotheses, which are presumably correct. However, it is commonly accepted that he was born in 94H/712C.E and died at the age of about 85 in the year 179H/796C.E in Medina and was buried in al-Baqī’.
84 al-Zirikli, al-Fātim,v.vi,p.128.
85 Ibn ʿAbd. al-Barr, al-Intiqā‘,p.20.
The main features of the Mālikī school of law are the recognition of the practices of the people of Medina (‘Amal Ahl al-Madīna) and al-Maṣlaḥa al-Mursala as the secondary sources of Islamic law, apart from the Qur’ān, the Sunna, Qiyās, Qawl al-Šahābi (the views of the companions), al-ʿUrf wa al-ʿAda (custom), Sadd al-Dharāʾ (prevention of presumably a bad thing), İstiṣḥāb (continuance) and İstiḥsān (juristic preference).87

According to ʿAjjāj al-Khatīb, ‘Amal Ahl al-Madīna or the practise of the people of Medina became one of the main features of Imām Mālikī’s legal theory.88 After the Qur’ān and the Hadith as primary sources, Malik gave priority to the preferences of the consensus of the people of Medina in determining the quality of narration and transmission of the Hadith by any given person.89 Al-Šābūnī claims that Imām Mālik’s view in this regard was due to the practical heritage of the Sunna that was undertaken by the people of Medina.90 To some extent, the Mālikī school of law recognised and endorsed ‘Amal Ahl al-Madīna as one of the sources of Islamic law, in accordance with the principles in the Qur’ān and the Sunna.91

Maṣlaḥa Mursala is known to be favoured by the Mālikī school, as an independent tool in Islamic legal principle.92 Though Imām Mālik himself did not define and elaborate the concept of Maṣlaḥa Mursala, it is believed that his disciples and in particular Ibn Qāsīm, had studied the Muwaṭṭā’ and claimed that the notion of

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87 Abū Zahra, Abū Ḥanīfa, p.257.
89 Ibid.
90 Al-Šābūnī, Muḥadara, p.195.
92 Abū Zahra, Mālik, p.368.
Maṣlaḥa Mursala was originally referred to by Imām Mālik. Al-Shāṭibi claims that Maṣlaḥa Mursala is an independent Islamic legal theory in the Mālikī school of law, which has never been employed in contradiction with the principles in the Qurʾān nor the Ḥadīth. He adds that in elaborating Maṣlaḥa Mursala as an independent Islamic legal theory, it is always in accordance with the ultimate objective of Islamic law. Imām Mālik applied it to a number of cases in al-Muwawīṭ as well as in the record of his opinions entitled al-Mudawwana al-Kubra.

Imām Mālik applied Maṣlaḥa Mursala to many cases in Islamic legal theory, but only within the domain of transactional laws (muʿāmalāt). He abandoned its application in the area of worship (ʿibāda) because this sphere must accord with the prescriptions of the Lawgiver. According to Abū Zahra, Imām Mālik has considered the rational role of human intellect in transactional acts, thus, the application of Maṣlaḥa Mursala fits more obviously in muʿāmalāt rather than ʿibāda, wherein the role of human intellect is very limited.

The following case portrays the significance of Maṣlaḥa Mursala as an independent tool in Islamic legal principle. Malik’s Mudawwana outlines a situation whereby a mother was given guardianship over her daughter’s marriage instead of the father, because he appeared to care very little for his daughter. According to Ibn Rushd, Imām Mālik shifted the responsibility of guardianship from the father on the grounds of consideration of the girl’s interest. She was living with her mother due to

93 Ibn “Abd. al-Barr, al-Intiqā’.
95 Ibid.
96 Ibid.
97 Abū Zahra, Mālik, p. 104.
98 Zakārīyya, Awjāz, v. ix, p. 278.
her parents being divorced. Imam Malik perceived that the mother should have the privilege of guardianship in her daughters' marriage on the basis of Maṣlaḥa Mursala, since there is no specific textual ruling to imply the necessity of male guardianship in order to validate a marriage.

The preceding case reveals that the Mālikī school of law has developed the concept of maṣlaḥa through the form of Maṣlaḥa Mursala. Although the concept of Maṣlaḥa Mursala has no connection with the existence of Islamic legal principle in the Qurʾān and the Sunna, the former has always been legislated by Muslim jurists without contravening the text. At this stage, the development of the concept of maṣlaḥa in connection with naṣṣ, such as the Qurʾān and the Sunna, deals with the condition that the former must contain no contradictory principles with the latter in terms of validity. In addition, it is worth noting that al-Shāṭibi was a leading Mālikī scholar who instigated a systematic theory of the concept of maṣlaḥa through his valuable works. A detailed discussion of this will be offered in the separate topic entitled 'The Theoretical Development of the Concept of al-Maṣlaḥa wa al-Naṣṣ'.

In conclusion, the Mālikī school of law has introduced the form of Maṣlaḥa Mursala in which has no connection with any legal principles that source in the Qurʾān and the Hadith. Regarding this, some factors have been debated by the Shāfīʿī school, established as the third school of Islamic law. The subsequent section will examine the development of the concept of al-Maṣlaḥa wa al-Naṣṣ from the Shāfīʿī perspective.

99 Ibn Rushd, Bidāya, v.ii, p.9
100 Jazīrī, Kitāb, v.iv, p.27.
1.2.4.3 The Shāfi‘i school of law

Also referred to as a traditionalist school (Ahl al-Hadīth), the Shāfi‘i school of law has been depicted as containing scholastic theologians (al-Mutakallimūn), those who adhered to God’s text and the principles related to Divine commandments. Imām Shāfi‘i was the eponym of the Shāfi‘i school of law, and as Khadduri claims, he was the first to lay down systematic legal reasoning in Islamic jurisprudence through his valuable work the Risāla. Imām Shāfi‘i was a great jurist who played a significant role in Islamic jurisprudence by resolving the conflict of approach between the Mālikis in Hijaz and the Hanafis in Iraq. Therefore, it is presumed that Imām Shāfi‘i’s Risāla was born in response to the conflict between both schools of law and it was actually written at the request of ṣAbd. Raḥman b. Mahdi (d.198/813), a leading traditionalist in Basra, in order to explain the legal significance of Islamic law in accordance with the Qur‘ān and the Sunna.

According to Ibn Ḥajar al-Asqalānī, Imām Shāfi‘i composed two treatise on Islamic jurisprudence; both being referred to as al-Risāla. It is believed that the first book of al-Risāla is known as the old Risāla, composed in Iraq; whilst the second is known as the new Risāla, composed in Egypt. Majid Khadduri claims that very little is known about the former compared with the latter, due to the text of the former

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See Abū Zahra, al-Shāfici, p.15.
103 Khadduri, Islamic,p.4.
104 Ibid.,p.8.
105 See al-Rāzi, Taqdimat, p.250
106 Ibn Ḥajar, Tawārī, p.77
107 Ibid.
having failed to reach us, thus, it is difficult to define and elaborate precisely its scope and arguments\textsuperscript{108}. The first section of the new Risāla, is mostly concerned with the superiority of the Qur’ān and the Sunna as primary sources of Islamic law. As a leading Muslim jurist of his age, Imām Shāfi‘i denoted the systematic approach of dealing with the Qur’ān and the Sunna in accordance with Islamic jurisprudence in which he discussed the abrogation of Divine Legislation and the duties laid down in the text. Following the detailed textual discussion, the second part of Risāla elaborates on the legitimacy of consensus (Ijmā‘), analogy (Qiyās), personal reasoning (Ijtihād), juristic preference (Istihlās) and disagreement (Ikhtilāf).

Regarding the development of the concept of maṣlaḥa in connection with naṣṣ, the divine texts, indeed Imām Shāfi‘i’s Risāla in particular, has contributed indirectly as well as directly through the form of Qiyās. With regard to Imām Shāfi‘i’s Risāla, the form of Istihlās is rejected if it is not confirmed by the authentic narrative from the Qur’ān and the Sunna unless if Qiyās, (analogy) were abandoned on the basis no narrative have found, thus, it would be permissible for the Muslim jurists to exercise Istihlās in the absence of a narrative\textsuperscript{109}. It is worthing to quote Khadduri’s translation of Imām Shāfi‘i’s Risāla regarding his point of view in this subject;

"For if analogy were abandoned, it would be permissible for any intelligent man, other than the scholars, to exercise Istihlās in the absence of a narrative. But to give an opinion based neither on a narrative nor on analogy, as I have already stated in the discussion on the Qur’ān and the Sunna, is not permissible according to [the rules of] analogy."\textsuperscript{110}

\textsuperscript{108} Khadduri, Islamic, p.22
\textsuperscript{109} Ibid., p.304-305.
\textsuperscript{110} Ibid., p.305.
According to al-Būṭi, though Imām Šāfīʿi rejected the form of Istihsān as well as Maṣlaḥa Mursala, as both are of the secondary sources of Islamic law, there is proof to support that Imām Šāfīʿi accepted the idea and spirit of maṣlaḥa in general through the form of Qiyās (analogy) in which it is acknowledged apart from the Qurʾān and the Sunna\textsuperscript{111}. At this stage, the acceptance of Qiyās by Imām Šāfīʿi and his abandoned to Istihsān and Maṣlaḥa Mursala to be legalised as the principle of Islamic law was due to his consciousness pertaining to inexistence principles from the Qurʾān and the Sunna. Therefore, Imām Šāfīʿi directly made his stands that only Qiyās as a legal form to deal with the concept of maṣlaḥa that in accordance with the divine commandments.

Though Imām Šāfīʿi's point of views are not confined as a final analysis regarding the subject of the development of the concept of maṣlaḥa in connection with naṣṣ, it is believed that particularly Imām al-Juwayni and Imām Ghazāli from the Šāfīʿi school of law, were among leading Muslim jurists in exposing and elaborating the concept of maṣlaḥa in accordance with the principle in the Qurʾān and the Sunna. As both of them gave the valuable views regarding the subject of maṣlaḥa, their views will be discussed juristically in the separate topic entitled 'The Theoretical Development of the Concept of al-Maṣlaḥa wa al-Naṣṣ'.

In conclusion, Imām Šāfīʿi as eponym of the Šāfīʿi school of law accepted the form of Qiyās as a legal principle apart from the Qurʾān and the Sunna, in which some ways have connected with the concept of maṣlaḥa. His concerned with the existence principles in the Qurʾān and the Sunna that must be followed without

\textsuperscript{111} al-Būṭi, Dawābiʿ, p.378-380.
hesitating by Muslim jurists were part of indicating that the concept of *maṣlaḥa* juristically must be parallel with the God’s commandments and the *Sunna* of the prophet. In addition, the following section will be discussed on the Hanbali school of law pertaining to the development of the concept *al-Maṣlaḥa wa al-Naṣṣ*.

1.2.4.4 The *Hanbali* School of law

As the fourth Sunni school of law, the *Hanbali* School of law has been established since its eponym, Imām Aḥmad b. Ḥanbal\(^{112}\) was a leading Muslim jurist, theologian and traditionist located in Baghdad\(^{113}\). He was disciple of Imām *Shāfi‘i*, thus, Imām Aḥmad b. Ḥanbal’s approach was quite similar to that of Imām *Shāfi‘i* that attribute of *Mutakallimūn*. *Al-Musnad* is regarded as an authentic book of Ḥadīth that compiled by Imām Aḥmad in which he juxtaposed a number of narrators includes of Abū Bakar, ʿUmar, ʿUthmān, ʿAli and the principle Companions, and ends with the narrator of the *Ansār*, the Meccans, the Medinians, the people of *Kufa* and *Bāṣra*, and the Syrians\(^{114}\).

As a leading Muslim jurist at his age, Imām Aḥmad b. Ḥanbal was concerned with the supremacy of the *Qur’ān* and the *Sunna* as the primary source of Islamic law as well as *Qiyās*, a legal principle in Islamic legal theory. According to al-Būṭi, with respect to the concept of *maṣlaḥa*, Imām Aḥmad b. Ḥanbal’s view was nearest to Imām Mālik that regarded *maṣlaḥa* as a tool to interpreting the law but as not as a

\(^{112}\)Imām Aḥmad b. Ḥanbal’s name is Aḥmad b. Muḥammad b. Ḥanbal was born on 20th of Rabi‘ al-Awal in the year 164H/780CE in Marw, Baghdad. At the age of 75, he died in Rabi‘ al-Awal 241H/855CE and he was buried in *Maqābir al-Shuhādā*’ (the Martyrs cemetery), near the Ḥarb gate in Baghdad.


\(^{113}\) See *E*\(^2\), (art *Aḥmad b. Ḥanbal*), vol.I: A-B, p.272.

\(^{114}\) Ibid.
source of law. To most of Ḥanbali’s jurists, *maṣlaha* as a valid principle in Islamic legal theory was partly due to its connection with the juridical analogy (*al-Qiyās*)

To some extent, a validity of *maṣlaha* is referred to its compatible with the ultimate objective of Islamic law and its no contradiction with the texts of the *Qur’ān* and the *Sunna*. Though Imam Aḥmad b. Ḥanbal had no such juristic definition of *maṣlaha*, his disciple, Ibn Qayyīm in particular, claims that instead of the term *maṣlaha*, the term *al-wasf al-mundsib* (compatible description) has been used by Ḥanbali jurists as well as Ḥanafī’s jurists that reveal its similar meaning in some way with the concept of *maṣlaha*. Ibn Qayyīm insists that the concept of *maṣlaha* must be rational in the sense of its conformity with the objective of Islamic law and its convene with the needs and benefits of the people.

In addition, the Ḥanbali Imam Ibn Taymīyya, seems sceptical in regarding *maṣlaha* as a source of law, but he occasionally refers to the concept of *maṣlaha* as juristic views that have predominant benefit whilst have no opposite sense with the existing law from the texts i.e. the *Qur’ān* and the *Sunna* in particular. It is believed that Ibn Taymīyya’s sceptical of *maṣlaha* was a consequence of his fear that Muslim jurists attribute of *maṣlaha* would become more legislators rather than interpreter of Islamic law.

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115 al-Būṭi, Ḍawābit, p.368.
117 Ibid.
118 Ibn Qayyīm, *Fiām*, v.i, p.31
119 Ibid.v.3,p.6
The application of the concept of *maṣlaḥa* to the principle of Islamic legal theory made by Ḥanbali scholars can be found in their works, such *al-Qawā'id fi al-Fiqh al-Islāmi*, written by Ibn Rajab al-Ḥanbali. In this regard, the case of requesting permission from a partner before selling any jointly owned property becomes an example of the application of *maṣlaḥa* in the area of transactional law (*muʿāmala*). According to Ibn Rajab al-Ḥanbali, under contract of joint property, a partner must be aware of making any harmful by selling out the property. Therefore, permission must be taken from a partner due to respect his right and interest before any transaction is made to the property. It is clear that this condition is formed due to the concept of *maṣlaḥa* that concerns with the preservation of property that belongs to a person although in a form of sharing property. It is believed that Ibn Rajab al-Ḥanbali formatted this type of principle particularly in the area of transactional law (*muʿāmala*), which conforms to the legal principles contained in the Qurʾān and the Sunna.

The preceding paragraphs reveal that the Ḥanbali school of law has contributed juristically to the early development of the concept of *maṣlaḥa* in connection with the legal texts, particularly the Qurʾān and the Sunna. Moreover, Ḥanbali jurists such as Najm al-Dīn al-Ṭūfī, have involved academically in the discussion on the legitimacy of *maṣlaḥa* having some supremacy over *naṣṣ* (legal texts). Therefore, further relevant will take place in the following chapter, which is concerned with the theoretical development of the concept of *al-Maṣlaḥa wa al-Naṣṣ*.

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121 Ibn Rajab, *al-Qawā'id*, p. 111
1.3 Summary

Within this chapter, the definition of the term *al-Mašlaha wa al-Naşs* with regard to both literal and technical arguments have brought a significant introduction to the concept of *al-Mašlaha wa al-Naşs*. This concept has formed an Islamic legal principle on the basis of public interest or common good of people that always parallel with the Divine legal texts particularly the *Qur'ān* and the *Sunna*. Within the framework of Islamic jurisprudence, the concept of *al-Mašlaha wa al-Naşs* means the interaction and dealing of *mašlaha*, as Islamic legal principle with the Divine commandments through the legal texts in the *Qur'ān* and the *Sunna*, which is termed as *Naşs*.

The concept of *al-Mašlaha wa al-Naşs* is well accepted as a valid and legal Islamic principle that emerged during the period of the Prophet and continued during the era of his companions, particularly that of the *khulafā’ al-Rashidīn* or Rightly Guided Caliphs. In the period of *tābī‘īn* or followers, particularly during the rule of the caliph ṢUmar ṢAbd ‘Azīz, there was significant indication of the further development of the concept *mašlaha* in accordance with *naşs*. This growth continued and filtered into the four Sunni schools of law, who contributed both directly and indirectly to the development of the concept of *al-Mašlaha wa al-Naşs* in terms of defining and elaborating the latter in connection with the former. Their contribution to this concept was subsequently well developed by the disciples and jurists from their own schools of thought, particularly in the sphere of theoretical development. The following chapter will discuss the topic of the theoretical development of the concept of *al-Mašlaha wa al-Naşs*. 
CHAPTER TWO

THE THEORETICAL DEVELOPMENT OF THE CONCEPT OF

AL-MAŞLAḤA WA AL-NAṢṢ

2.0 Introduction

The term theoretical is being used as the main subject of this chapter as an elucidation and examination of the theories designed and developed by Muslim jurists will be undertaken within the framework of Islamic jurisprudence, concerning the correlation between the concept of maşlaḥa and the legitimacy of naṣṣ i.e. the Qur'ān and the Sunna, both being the primary sources of Islamic law. A topic frequently debated amongst Muslim jurists regarding the concept of al-Maşlaḥa wa al-Naṣṣ, is the theory of the priority of maşlaḥa as a form of legal principle in Islamic law, over the legitimacy of naṣṣ in the Qur'ān and the Sunna in particular, as well as the Ijmā'.

Apart from the theory above, Muslim jurists have formulated the theory of the levels of Darūriyya, Ḥājiyya, and Taḥsīniyya, which are closely related to the concept of maşlaḥa in that they relate to the primary sources of Islamic law such as the Qur'ān and the Sunna. In addition, the theory of Maqāṣid al-Shari'a-cum-Maşlaḥa has become popular discussion among Muslim jurists as a new approach to Islamic jurisprudence particularly in dealing with the naṣṣ in the Qur'ān and the Sunna. It can also be held that the theory of Maqāṣid al-Shari'a, was developed by later jurists in order to form a juristic legal principle dealing with the ultimate objective of Islamic law, which is to uphold the commandments of Law in the Qur'ān and in the prophetic life of the Sunna.
From the aforementioned, the main intention of this chapter is to deal with those three main theories regarding the concept of *al-Maslaha wa al-Naşş*. The first section of this chapter deals with the theory of priority of *maslaha* over the legitimacy of *naşş*. This is disputed juristically among Muslim jurists, particularly regarding the view put forward by Najm al-Dîn al-Ţûfî (d. 716H/1316C.E). The theory of the levels of Ḥarûriyya, Ḥâjiyya, and Taḥṣînîyya in connection with the concept of *al-Maslaha wa al-Naşş* is discussed in the second section of this chapter. The final part of this chapter examines juristically the theory of *Maqāṣid al-Shari‘a* in conjunction with *Naşş*.

2.1 The theory of priority of *Maslaha* over the legitimacy of *Naşş*

It is suggested that the juristic discussion regarding the theory of priority of *maslaha* over the legitimacy of *naşş* commenced historically during the life of Imâm Mâlik, the eponym of the Mâlîkî school of law, when he formed *Maslaha Mursala* as a legal principle in Islamic legal theory. This is shown by Muṣṭafa Zayd in his Ph.D thesis (1964) in which he claims there were many juristic opinions made by Imâm Mâlik himself and his disciples which uphold the theory of priority of *maslaha* over the legitimacy of *naşş*. Moreover, Muṣṭafa Shâlibî, in his book entitled *Tafîl al-Ahkâm*, shared the same view as Muṣṭafa Zayd regarding this theory; that is in some ways Imâm Mâlik’s legal opinions, (*fatâwa*) as well as the form of *Maslaha Mursala* that he designed and legalised, obviously contradict *naşş*. The accusation made against Imâm Mâlik and his disciples of giving some sort of priority to *Maslaha Mursala* in particular, over the legitimacy of *naşş*, has subsequently been juristically

1 Zayd, al-Maslaha, p. 128-136.
2 Shâlibî, Tafîl, p. 367

In addition, not only Imam Malik and his disciples have to be said formulated to the theory of the priority of maṣlaha over the legitimacy of naṣṣ, but Najm al-Dīn al-Ṭūfī, a Ḥanbali scholar also accepted this theory. To some extent, Ṭūfī’s point of view pertaining to this theory appears to have become a controversial issue, particularly among later jurists. The debate involves not only Ṭūfī’s point of view on this within the framework of Islamic jurisprudence, but also involves his life and credibility as a Muslim scholar. Some later Muslim jurists seem obviously to oppose Ṭūfī both as a legitimate Muslim jurist and also in his view on this theory, whilst others seem to support him and his theory. For instance, al-Būṭi’s work entitled Ḍawābit al-Maṣlaha (1987) seems juristically to undermine the credibility of Ṭūfī as a Muslim jurist and particularly his point of view on this theory. However, ʿAbdallah M. al-Husayn al-ʿAmiri’s work entitled At-Ṭūfī’s Refutation of Traditional Muslim Juristic Sources of Law And His View On The Priority of Regard For Human Welfare As The Highest Legal Source Or Principle (1982) seems to support Ṭūfī’s choice of life as jurist and encourage his work as well as supporting his point of view pertaining to the theory of priority of maṣlaha over the legitimacy of naṣṣ.
In order to help clarifying the discussion about the theory of the priority of *maslaha* over the legitimacy of *nass*, this section will first examine the hypothetical form of this theory in the light of Islamic jurisprudence. Secondly, an analysis will be undertaken of the form of *Maslaha al-Mursala* suggested by Imam Mālik, which has been claimed to give it some sort of priority over the legitimacy of *nass*. Thirdly, this section will explore Najm al-Dīn al-Ṭūfī’s point of view on the theory of priority of *maslaha* over the legitimacy of *nass*.

### 2.1.1 The hypothetical form

It is to be borne in mind that *al-Maslaha wa al-Nass* was a direct outcome of the theory of the priority of *maslaha* over the legitimacy of *nass*. For Ahmad Rāyūni, recent developments in Islamic jurisprudence explore the theory of the priority of *maslaha* over the legitimacy of *nass* as well as its application. This is due to the theory can be openly interpreted and examined by all Muslim jurists as it has been expressed in hypothetical form by Najm al-Dīn al-Ṭūfī in his analysis of the *Hadīth* of the prophet; ‘You should neither harm yourself nor cause harm to others’.

According to Ahmad al-Raysūni, there was no juristic evidence or absolute example given by Ţūfī in his analysis of the application of the *Hadīth* of the prophet; ‘You should neither harm yourself nor cause harm to others’. The only exception that

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3 al-Raysūni, *al-Ijtihād*, p.49  
5 Ibid.  
6 The *Hadīth* is categorized as *Hassan* and narrated by ‘Amru b. Yahya deriving from his father and from the Prophet. It is reported by Ibn Mājah, Darruqṣṭānī and Imām Mālik in his *al-Muwaddah*. See Zayd, *al-Maslaha*, p.206.
Tüfi mentioned was in the area of transaction (mu‘amala) and custom (‘adat), which in some circumstances is connected with the theory of the priority of maṣlaha over the legitimacy of naṣṣ.

For Muṣṭafa Zayd, Tüfi himself wrote no specific work referring to the theory of maṣlaha and he made no detailed explanation of maṣlaha except in his work about the explanation of the forty Ḥadīth of al-Nawāwi in which he made a brief statement in his analysis of the Ḥadīth of the prophet; ‘You should neither harm yourself nor cause harm to others’. Muṣṭafa Zayd adds that at this stage, Tüfi claimed that this Ḥadīth legalises maṣlaha as the objective of Islamic law, giving it priority over the naṣṣ, as well as the Ijmā’ in the area of transaction (mu‘amala) and custom (‘adat). To some extent, Muṣṭafa Zayd believed that Jamāl al-Dīn al-Qāsimi was a person who quoted Tüfi’s point of view theory until it became controversy particularly amongst later Muslim jurists.

It is worth noting that Muṣṭafa Zayd also claimed that not only Tüfi had the theory of priority of maṣlaha over the legitimacy of naṣṣ but Imām Mālik had previously held the same opinions about the theory by means of a form of Maṣlaha Mursala. Therefore, later jurist such as Hussein Ḥāmid Ḥassan has juristically debated on Muṣṭafa Zayd’s arguments regarding Imām Mālik’s stand on the priority of Maṣlaha Mursala over the legitimacy of naṣṣ. The juristic debate between both

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7 al-Rayştîni, al-Ijtihād, p.38.
8 Zayd, al-Maṣlaha, p.113.
9 Ibid.
10 Hussein, Nazariya, p.108-183
jurists pertaining to this theory clearly indicates its hypothetical form within the framework of Islamic jurisprudence. In the following section, the theory of Maṣlaḥa Mursala and its connection with naṣṣ is examined in order to elucidate the juristic debated amongst Muslim jurists regarding this theory.

2.1.2 The connection of Maṣlaḥa Mursala with the legitimacy of Naṣṣ

As has been discussed in the previous chapter, a form of Maṣlaḥa Mursala was designed by Imām Mālik and extensively applied, particularly by Muslim jurists of the Mālikī school of law to establish their legal opinion of Islamic law. Imām al-Shāṭibi, a leading scholar of Mālikī school of law, defines Maṣlaḥa Mursala as a form of Islamic legal principle that no specific Naṣṣ (legal text) confirms or denies but in general, the maṣlaḥa itself is formed to secure the preponderance of benefit for the people that is in accordance with the objectives of the Lawgiver. At this stage, Imām Shāṭibi employs the term al-munāṣib that is synonymous with Maṣlaḥa Mursala, which in connection with the Maqāṣid al-Šarīʿa, means the ultimate objectives of Islamic law.

It is believed that the above definition of the concept of Maṣlaḥa Mursala is unanimously accepted by the majority of Muslim jurists in the Sunni legal schools. The concept of Maṣlaḥa Mursala is interrelated with the objectives of the Lawgiver, although it does not necessarily conform to any specific legal text (Naṣṣ). At this

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stage, Muslim jurists of Mālikī school of law in particular, laid out the criteria of Maslaha Mursala in order to establish its validity as an Islamic legal principle.

To this effect, Imām al-Shāṭibi has set out three criteria of Maslaha Mursala in al-FTisām under the heading of the distinction between heresy and Maslaha Mursala, or in Arabic; ‘Fi al-Farq bayna al-Bad‘ wa al-Maṣāliḥ al-Mursala’. Imām al-Shāṭibi insists that the first criterion of Maslaha Mursala states that to be validated as an Islamic legal principle through the objectives of Islamic law (Maqāṣid al-Shārī‘a) there should be no contradiction with any textual evidence, dalīl or naṣṣ, juristically referred to in the Qur‘ān, the Sunna and the Ijmā‘. According to Imām al-Shāṭibi, the second criterion by which the validity of Maslaha Mursala can be judged is that it concerns rational matters and has no connection with the area of worship, ‘ibāda. As the third criterion, Imām Shāṭibi emphasizes the correlation between Maslaha Mursala and Maqāṣid al-Shārī‘a or the ultimate objective of Islamic law regarding the matters of Darūrīyya(lit. necessities) that is to preserve the five safeguards for human beings; religion, life, lineage, intellect and property as well as the matters of raf al-harāj; alleviating hardship14.

Through these criteria, Imām Shāṭibi seeks to validate Maslaha Mursala as a legal principle in Islamic law by developing the theory of Maslaha Mursala being interconnected with Maqāṣid al-Shārī‘a in some way, which is referred juristically to the legal principle that is laid down by the legal text or naṣṣ. Though Maslaha Mursala has been legalised as a legal principle independent of legal texts of dalīl, evidence and naṣṣ, to some extent it must, nevertheless be connected, or parallel with,

the basic legal principle of the theory of the *Maqāsid al-Shari‘a*. Many of Imām Mālik’s legal opinions were developed with no opposition or contradiction of *dalīl* or *nass* from the *Qur‘ān*, the *Ḥadīth* or *IJmā‘*, which means they follow juristically, the parallel line between *Maṣlahā Mursala* and *Maqāsid al-Shari‘a* mentioned above.

Moreover, Imām al-Shāṭibi gives ten examples of *Maṣlahā Mursala* which he discusses in the light of Maliki’s legal opinions. It is interesting to note that in order to justify these ten examples of *Maṣlahā Mursala*, Imām al-Shāṭibi draws on, uses as evidence some verses from the *Qur‘ān* and the *Ḥadīth* that indirectly verify Mālikī’s legal opinions on *Maṣlahā Mursala*. It is believed that not only Imām al-Shāṭibi employs method of elaborating *Maṣlahā Mursala*, Imām Mālik himself used this method in which the elaborating of the legal opinions through the form of *Maṣlahā Mursala* is undertaken. In *al-Mudawwana*, Imām Mālik emphasizes the legal opinion in which the *Qur‘ān* and the *Ḥadīth* in particular, are silent on the new ruling that was formed by *Maṣlahā Mursala*. In other way, the connection of *Maṣlahā Mursala* with the legitimacy of *nass* is based on principles of non-existence whereby if the *Qur‘ān* and the *Ḥadīth* are silent on the legal opinions that are formed by *Maṣlahā Mursala*, then they are valid.

The following point exemplify how Imām Mālik and his disciples juristically refer to principles of non-existence of a concept in the *Qur‘ān* and the *Ḥadīth* when forming their legal opinions through *Maṣlahā Mursala*, as follows:

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16 Ibid.
(a) The obligation of the husband in providing the basic needs such as shelter, food and clothing for his wife is based on the husband's capacity and his wife's social status\textsuperscript{17}.

Pertaining to the legal opinion of the Māliki school of law stated above, the consequences can be cited in two examples or cases as follows. In the first case, the husband is incapable of affording the basic needs for his wife; and in the second case, the wife is richer than her husband, therefore, she can afford the basic needs including supporting her husband. Thus, these two cases affect the following questions. In the former case, does the wife have full right to seek basic needs for the family? And does she have a right to appeal for divorce from her husband? In the latter case, is it the wife's right to seek a refund from her husband, thus, considering the husband to be indebted to his wife?

In order to facilitate the acceptance of those two cases as well as alleviate questions arising from them, Imām Mālik and his disciples used the form of Maṣlahā Mursala as the legal principle for their legal opinions. In the first case, the Māliki jurists are in agreement that the wife has two choices, either she remains with her husband and seeks the basic needs for the family, or she may appeal for a divorce from her husband\textsuperscript{18}. The form of Maṣlahā Mursala has been applied to this case in accordance with the concept of Maṣlahā itself, that no harm is caused on either party, therefore the wife is given a choice due to the incapability of her husband to provide for the basic needs of the family\textsuperscript{19}. According to Imām Mālik, the form of Maṣlahā Mursala applies to this particular case, as the basic principle of the Qur'ān and the

\textsuperscript{17} al-Dardir, al-Shari'I, v.i.ii, p.729.
\textsuperscript{19} Mālik, al-Mudawwana, v.2, p.259.
Hadīth is silent about whether the wife should remain with her husband, or whether she should leave her husband\textsuperscript{20}. In the second case, the wife has two choices. Firstly, if the wife chooses not to leave her husband for the sake of her marriage, then, she may choose not seek or a refund from her husband whether he is rich or poor. Secondly, the wife may leave her husband and if the husband is rich, the wife has the right to seek a refund from her husband, which makes him indebted to her\textsuperscript{21}. According to Imām Mālik, in the second case, the form of Maṣlaha Mursala is applied in consideration the interests of both parties as no evidence or naṣṣ exists either to uphold or to oppose this legal opinion in this particular case\textsuperscript{22}.

The clarification above made by Imām Mālik in his al-Mudawwana regarding this particular legal opinion, clearly indicates that in order to legalise the form of Maṣlaha Mursala in accordance with the objectives of Islamic law, and Maqāsid al-Sharīʿa, the consideration of legal principles from the Qurʿān and the Ḥadīth has to be undertaken as to whether they are silent or in opposition to the case in question. Ḥussein Ḥāmid Ḥassan claims that it is incorrect to claim that most of Imam Mālik’s legal opinions are overruled by the legitimacy of naṣṣ. In fact, it is demonstrated clearly that the principles of non-existence that are laid down by the Qurʿān and the Ḥadīth, are always utilized in forming his legal opinions through Maṣlaha Mursala\textsuperscript{23}. In more detail, Ḥussein Ḥāmid Ḥassan cites ten examples of Imam Mālik’s legal opinions that he claims have no priority over the legitimacy naṣṣ\textsuperscript{24}. He also argues that apart from Maṣlaha Mursala, Imām Mālik’s legal opinions have been formed by

\textsuperscript{20} Ibid.
\textsuperscript{21} Ibid.
\textsuperscript{22} Ibid.
\textsuperscript{23} Hussein, Naẓariya, p.108-183.
\textsuperscript{24} Ibid.
'Urf (customary practices) as well as Manat al-Ḫukm (the cause of the ruling). However it should be borne in mind that it is not the main intention of this topic to further Hussein Ḥāmid Ḥassan's arguments on the form of 'Urf or the Manat al-Ḫukm that is concerned with Imām Mālik's legal opinions.

In conclusion, the Qur'ān and the Hadīth are always referred to in as far as no dalīl or nass is either verified or opposed in forming Maṣlaḥa Mursala in connection with Maqāṣid al-Šarīʿa. Consequently, the theory of Maṣlaḥa Mursala, which in some ways is indirectly interconnected with the legitimacy of nass has been proven from the juristic discussion above. Furthermore, it can be seen that the theory of al-Maṣlaḥa wa al-Nass has been further developed by later Muslim jurists particularly by al-Ṭūfī, as he claims that in some ways maṣlaḥa has priority over the legitimacy of nass. In order to illustrate this theory juristically, the following section will discuss al-Ṭūfī's point of view regarding the theory of priority of maṣlaḥa over the legitimacy of nass.

2.1.3 al-Ṭūfī's theory

In order to discuss al-Ṭūfī's theory in the sense of academic analysis within the framework of Islamic jurisprudence, as the first stage it is important to demonstrate its originality and authenticity from reliable sources. As far as can be ascertained, there are two reliable sources regarding al-Ṭūfī's texts on the theory of priority of maṣlaḥa over the legitimacy of nass. The first reliable source is Al-Maṣlaḥa fi al-Tashrīʿ al-Islāmi wa Najm al-Dīn al-Ṭūfī (1964), written by Muṣṭafa Zayd, in which al-Ṭūfī's analysis

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25 Ibid., p.116 and p.127
regarding the Hadith of the prophet; ‘You should neither harm yourself nor cause harm to others’ is set out as well as his controversial theory. The second reliable source is At-Tufi’s Refutation of Traditional Muslim Juristic Sources of Law And His View On The Priority of Regard For Human Welfare As The Highest Legal Source Or Principle (1982) written by Abdallah M. al-Hasayn al-Amiri, in which al-Tūfi’s analysis is translated into English from the Arabic texts in which again support al-Tūfi’s authority. It is to be borne in mind that both are PhD theses; the former was submitted to the University of Cairo in the year 1964 and the latter to the University of California, Santa Barbara, in the year 1982. Hence, in the first stage both reliable sources will be referred to, particularly the latter, in order to present al-Tūfi’s theory in its originality and authencity prior to the discussion and analysis in the second stage.

Before al-Tūfi highlights his theory concerning the priority of maṣlaha over the legitimacy of naṣṣ, previously he examined the significance of the Hadith of the prophet; ‘You should neither harm yourself nor cause harm to others’, which it is connected with the concept of maṣlaha. The full text of al-Tūfi’s point of view in this regard is as follows;

*Its meaning is what we already have pointed out, namely the denial of harm and malicious acts by law. It is a general denial, except for such matters as [legal] argument has particularized. And this necessitates giving priority to the obligatory character of this Tradition over all legal arguments, as well as particularizing them, according to its lights, as regards the denial of injury and the attainment of Maṣlaha [human welfare]. For if we assume that some legal sources of the Law warrant the infliction of some form of harm, then to deny it on the strength of this Tradition would be to act according to two sources. And if we do not deny it according to it, then we render one of the two sources null and void, namely this Tradition. There is no doubt, however, that harmonizing the texts when we act according to their lights is better than to nullify some of them.*

26 al-Amiri, At-Tufi, p.144
Tüfi’s statement above clearly indicates that the Hadith of the prophet, ‘You should neither harm yourself nor cause harm to others’ becomes definite evidence or dalil, which overrules other evidence in giving priority to avoiding harm and to attain the maṣlaha. In other words, Tüfi’s theory concerning the priority of maṣlaha over the legitimacy of naṣṣ is rooted in the basis of the Hadith of the prophet, which clarifies the denial of injury and the attainment of maṣlaha or public interest. Moreover, in later discussion, Tüfi claims that there were nineteen legal sources of Islamic law that are accepted by Muslim scholars as follows:

‘We say, on the basis of investigation, that the sum total of the sources of the law that are known to the Ulama’ (religious scholars) fall into nineteen categories, as no more. The first is the Book (al-Qur’an), the second is the Sunna, the third is the consensus (Ijmā’) of the Community (Umma), the forth is the Ijmā’ of the people of Medina, the fifth is analogy (Qiyāṣ), the sixth is the recorded sayings of the prophets companions, the seven is the unrestricted undefined public interest (al-Maṣlaha Mursala), the eight is the presumptive continued validity of past legal ruling (al-Istīṣāḥās), the ninth is the presumptive exemption from judgment in the absence of a specific ruling (al-barā’a al-aṣliyya), the tenth is accepted custom (al-await), the eleven is investigation or examination (al-istiqra’), the twelfth is the legally correct contributory action (sadd adh-dharāf), the thirteenth is demonstration or deduction (al-istidalāl), the fourteenth is preference (al-istiṣāḥāb), the fifteenth is adoption of the least burdensome [solution] (al-akhṣh bi al-akhaff), the sixteenth is the Ijmā’ of the people of al-Kufah, the eighteenth is the Ijmā’ of the members of the family of the prophet (al-itrah), the nineteenth is the Ijmā’ of the four Caliphs. Some of these are universally agreed upon, others are disputed. However, knowledge of their limits, their prescriptions, the demonstration of their true meaning, and the details of their rulings are to be found in the sources of jurisprudence (Usūl al-fiqh). The saying of the prophet, “La clarar wa là ẓirār”, therefore necessitates that provision be made for the general welfare (maṣāliḥ) by [an implicit] affirmation, and against evil-doing by [an explicit] negation. For harm is evil-doing, ad if the Law (al-Sharī‘) repudiates it, the good, which is the general welfare (maṣlaha), is necessarily affirmed, for the two are mutually contradictory, with no possibility of reconciliation.’

After listing nineteen legal sources of Islamic law, Tüfi insists that some of those legal sources are juristically accepted, whereas some are accepted with

27 Ibid., p.144-145
reservations by Muslim scholars\textsuperscript{28}. At the end of the above discussion, Tüfi claims yet again that the \textit{Hadith} of the prophet, ‘You should neither harm yourself nor cause harm to others’ is juristically significance concerning \textit{maslaha} in indicating that good is affirmative but harm must be refused; both are absolutely paradoxical and must be no compromised. At this stage, Tüfi seemingly begins his theory that the ruling in the \textit{Hadith} of the prophet will legalise the validity of \textit{maslaha}. Thus, in the following section, Tüfi’s theory is elaborated under the topic of the strongest legal sources as follows;

‘The strongest of these nineteen legal sources are the [Qur’anic] text and consensus. Now both of them either agree on showing regard for \textit{maslaha} or they are opposed to it. If they agree on it, no conflict arises, and all is well, for the three legal sources are in agreement in their judgment-they being the text, Consensus and regard for \textit{maslaha}- the latter derived from the Prophet’s saying, ‘Do not cause harm nor repay one harm with another’. But if they disagree with it, then regard for \textit{Maslaha} necessarily takes priority over the [other] two: [such priority being] by way of explaining and specifying them, and not by way of suspending them and denying their validity, just as the \textit{Sunna} takes priority over the Qur’an, by way explaining the [latter]. The determination of this is as follow: The text and Consensus either do not at all necessitate injury and evil-doing or they do. If they do not do so, then they are in agreement with [the principle] of regard for \textit{Maslaha}. If they do, however, necessitate [the infliction of] harm, then it [that is, the harm] is either their entire justification or part of it. If it is their entire justification, then it must necessarily fall into the category of exceptions to the prophet’s saying, “\textit{La darar wa lā dirār}”, such as the fixed \textit{hādd}-punishment and the penalties for crimes. And if it is part of their justification-then if it is rendered necessary by a particular piece of evidence, that evidence is to be followed; but if a particular piece of evidence does not render it necessary, then both of them are necessarily subject to the restrictions of the Prophet’s saying, “\textit{La darar wa lā dirār}”, encompassing all the legal sources together\textsuperscript{29}.

At this juncture, Tüfi strongly believes that the Qur’an and the \textit{Ijmā‘} (consensus) are the strongest legal sources apart from the \textit{Hadith}, which on the subject of \textit{maslaha} is referred to the \textit{Hadith} of the prophet; “\textit{La darar wa lā dirār}”. From this point of view, Tüfi claims that occasionally both the Qur’an and the \textit{Ijmā‘}\textsuperscript{28} Further discussion in this regard can be found in the science of Islamic jurisprudence. See al-Ṭaib, \textit{al-Ijtihād}, p.5-8.
\textsuperscript{29} \textit{Ibid.}, p.145-147.
either agree or disagree with the subject of *maslaḥa* as verified by the *Hadīth* of the prophet. In the case of disagreement, Ṭūfī states that; “*Maslaḥa* necessarily takes priority over the [other] two: [such priority being] by way of explaining and specifying them, and not by way of suspending them and denying their validity, just as the *Sunna* takes priority over the *Qurʾān*, by way of explaining the [latter]”. In other words, Ṭūfī insists that the theory of priority of *maslaḥa* over the legitimacy of *naṣṣ* is quite similar to the theory of priority of the *Sunna* over the legitimacy of the *Qurʾān* by way of explaining and specifying the latter. Ṭūfī later adds the discussion of priority area to which his theory is applied as follows;

“We give priority to due regard for [their] well-being in matters of customs [*ʿada*], social intercourse [*muʿāmala*], and the like. For due regard for it in these matters is the very pivot [*qub*] of the Law’s objective, as opposed to matters of worship [*ʿibāda*], which belongs as of right to the Law, and whose exact formulation cannot be known except through its authority, [as expressed] in text and Consensus”³⁰.

Matters of limitation concerning customs [*ʿada*] and social intercourse [*muʿāmala*] with the exception of matters of worship [*ʿibāda*], are given the priority of *maslaḥa* over the legitimacy of *naṣṣ*, which clearly indicates the legal conditions that are formed by Ṭūfī in his theory. He adds that the priority of *maslaḥa* in the matters of customs [*ʿada*] and social intercourse [*μuʿāmala*] must be in accordance with the very pivot of the objectives of Islamic law. Moreover, Ṭūfī has drawn up three reasons why in his theory the priority to *maslaḥa* over the *naṣṣ* as well as the *Ijmāʿ* are undertaken as follows;

1. **The first reason**: “is that those who have rejected Consensus have upheld the regard for *Maṣlaḥa*, which makes the latter an occasion for harmony and Consensus an occasion for disagreement; and holding to what has been agreed upon”³¹.

2. **The second reason:** ‘is that the texts are at variance and in contradiction (mukhālafa muta‘ārīda). Thus they are the cause of disagreement in formulating judgments, which is legally blameworthy. Regard for Maslaha, however, is a real matter in itself that occasion no disagreement, and is, consequently, the cause of agreement, which is legally desirable, and thus the more appropriate to follow. For the Mighty and Exalted has said, ‘And hold you fast to God’s bond, together, and do not scatter’. ‘Those who have made divisions in their religion ad become sects, thou art not of them in anything’. And he (May peace be upon him) said, ‘Do not be at variance lest your hearts be at variance’. And the Mighty and Exalted has said, in His praise of unanimity, ‘And he brought their hearts together. Hadst thou expended all that is in the earth, thou couldst not have brought their hearts together, but God brought their hearts together’. And he (May peace by upon him) said, ‘Be as brothers and servants of God’

If one reflects on the quarrels and mutual aversion, which have taken place among the Imam of Legal Schools, he will see the truth in what we have said. The followers of Malik took control of the West [i.e. North Africa], and the followers of Abu Hanifah of the East [i.e. east of Egypt], whereby neither of the schools can live in harmony with any other in its own territory, save in token fashion. We have been informed that when a Hanafite chances to come among the Hanbalite people of Jilan, they kill him and take his possessions as booty, just as they do non-believers. Further, we have also been informed about a single Shafi’ite mosque that was in one of the Hanafite in Transoxiana. Seeing that mosque, the governor of the town, who used to come out everyday for the morning prayer, would say, ‘Is it not time to close this church (kinasa)?’ He went on in this manner till he got up one day, and the door of that mosque had been walled up with mud and clay bricks, which greatly pleased the governor. Moreover, the followers of each Imam prefer their Imam over any other in both their writings and debates, to such an extent that I have seen a Hanafite write a compilation of the virtues of Abu Hanifah, and then boast in this [compilation] of his followers, such as Abu Yusuf, Muhammad Ibn al-Mubaraka, et. al. Furthermore, in referring to the other schools, he has said; ‘These are my ancestors: Can you indeed, show me their like, When we, 0 Jarir, are gathered together in council?’ These smacks of the pretentiousness of the Jahiliyya and examples of the like are many. Thus each party began to transmit Traditions exalting the merits of its imam.

And so the Malikites transmitted [the saying]: ‘Camels may be ridden [in all directions], without ever finding anyone more learned than the scholar of Medina’. They said: And this is Malik. The Shafi’ites transmitted [the sayings]: ‘The imams are from Quraysh’, ‘Seek knowledge from Quraysh but do not vie in knowledge with them’. Or ‘The scholar of Quraysh has filled the earth with his knowledge’. They said: ‘No one of this description has emerged from Quraysh al-Shafi’i’. The Hanafites have transmitted the saying: ‘There will be in my community a man by the name of al-Nu’man, who will be the lamp of my community. And there will also be a man in my community by the name of Muhammad b. Idris, who will be more harmful to it than Iblis. The Hanbalites have transmitted [the saying]: ‘There will be a man in my community by the name of Ahmad b. Hanbal who will follow my Sunna, in the manner of the prophet’, or something like this for I do not recall the exact wording.

Abu Faraj al-Shirazi has said in the beginning of his book, al-Minhaj; ‘Know that these Traditions are either correct but not valid or valid but not correct. What has been transmitted about Malik and al-Shafi’i is good but does not provide any indication of their intended objective. For if [the expression] ‘scholar of Medina’ is a generic noun (ism [jins), the scholars of Medina are many, and there is no particular designation of Malik, apart from the others. Moreover, if it is a proper noun (ism shakhs), there is no reason to limit it to Malik, since the Seven Legists (al-Fuqaha’ al-Sba’ah) as well as others were among the scholars of Medina who were the teacher of Malik, and who were more famous than he was at the time. The reason that led his adherents to interpret the Traditions as referring to him is due to the great number of his followers and the broad diffusion of his school throughout the lands. This is what instigated them to say what they did. The same thing applies to [the saying]: ‘The imams are from Quraysh; there is no special designation of al-Shafi’i in it. Moreover, it has been taken to refer to the Caliphs, as argued by Abu Bakar on the Day of Saqifah. Likewise [the tradition]: ‘Seek knowledge from Quraysh...’contains no particular
3. **The third reason:** 'is that it is well established that in the Sunna there are contradictory texts with reference to welfare and other such matters, in a number of cases, some of which [are the following]: Ibn Mas'ud's opposition to the text and Consensus as regards tayammum, in favour of the benefit of precaution in matters of worship, as was mentioned earlier...'

designation of anyone. As for his saying: 'The scholar of Quraysh fills the earth with his knowledge'. Ibn Abbas might well competet with Al-Syafi'i over it, for the former si more entitled to it than the latter due to his seniority, his companionship [with the prophet] and the prophet's [s.a.w] supplication to God for him in his saying: 'O my God! Make him erudite in religion ad instruct him in its interpretation'. For he was called the 'Sea of Knowledge' and the Rabbin (hubr) of the Arabs'. The motive that led the Sha'fi'ites to interpret the tradition as referring to Al-Shafi'i I was the fame of his schools and the great number to his followers. Nevertheless, the school of Ibn 'Abbas is undeniably famous among scholars.

'As for what has been transmitted regarding Abu Hanifi and Ahmad b. Hanbal, it is a forgery with no factual basis. And as for the Tradition, He is the lamp of my community'; it has been cited by Ibn al-Jawzi as among the among the forged [Traditions]. He [also] mentioned that when the school of Al-Shafi'ites became famous, the Hanafites wanted to discredit it. And so they conspired with Ma'mun b. Ahmad al-Salmi and Ahmad b. 'Abdullah al-Khushari, who were liars and forgers, as they forged this Tradition in praise of Abu Hanifah and disparage of Al-Shafi'i. But God refuses but to perfect His light.

'As for what has been transmitted concerning Ahmad b. Hanbal, it is definitely a forgery, for we have already submitted that Ahmad was the most assiduous od men in adhering to the Sunna, and the most rigorous of them in protecting it. It has been established that he has committed to emory a million traditions, and that he said: I composed my Musnad out of 750,000 Traditions, and I let it stand as a testimonial between me and God, sowhatever you do not find therein is as nothing [I value]. Now this Tradition, adduced by al-Shirazi in regard to the virtues of Ahmad, is not found in the latters Musnad; for if it were a genuine one, he would have been the most suitable of men to produce it anduse it as a most suitable of men to produce it and use it as a probativeargument during his ordeal, even the mention of which causes anguish'.

Observe, by God, such a disposition that leads the followers [of the Legal Schools] to forge Traditions, in exaltation of their imams and in dispraise of some others. The instigation for it can only be the rivalry among the Legal Schools in their preference for literal [meanings] and the like, as opposed to regard for Ma'sla, whose explanation is clear and whose proof is obvious. For if they could have come to an agreement somehow, nothing of what we have said above about them would have come into being.

'Know that some of the disagreements among the 'ulama' are due to contradiction (ta°äruc! ) in what has been transmitted and the texts (al-riwayat wa al-nusus). Some people, however, allege that 'Umar b. al-Khattab is the cause of this, since his companions had asked his permission to write down the Sunna at the that time, and he had refused them this. He said, 'I write nothing besides the Qur'an', even though he knew that the prophet has said, 'Write for Abu Shah the Farewell Sermon', and also said: Record knowledge in writing'. [These people] say that if he had let each of the Companions write down whatever he transmitted from the Prophet, the Sunna would have been accurately recorded, and no one would have stood between anyone of the community and the Prophet in every Tradition, save the Companion who wrote what he had to transmit. Such written records would have been handed down from them to us in uninterrupted succession in the same way as those of Al-Bukhari, Muslim and others'.

... Also, his saying to 'A'ishah: 'If your people were not recent converts to Islam, I would have demolished the Ka'bah and built it [a new] on the foundations of Ibrahim, thereby indicating that its construction on the foundation of Ibrahim was the right thing to do. Nevertheless, he abandoned the idea due to his regard for the people's welfare.

'Also, when he bade them consider their pilgrimage (hajj) as a 'umrah, they said: How is that possible, since we have stated [our intention of making] the hajj? And they abstained. This shows a contradiction to the text by way of custom, which is similar to what we are considering. Also, what is related by Al-Mawsili- concerning a man who entered the mosque to pray, and whose appearance pleased the Companions-that the Prophet told Abu Bakar, 'Go and kill him'. When he went he found him praying, so he let him alone. Then he bid 'Umar [do the same], but the two returned
The preceding citation reveals three reasons laid down by TÜFİ in justifying his theory of the priority of maşlağa over the legitimacy of naṣṣ as well as of İjmâ'. In addition to the three reasons that he draws up, Tüfi also elaborates with juristic examples and evidences to support them. As the second stage of this analysis, at this juncture, Tüfi's theory will be examined and discussed including arguments and juristic examples quoted from reliable sources. It is to be borne in mind that there are many findings of examination and analysis made by later jurists concerning Tüfi's theory, however, these will not be referred to until the present writer concludes his own findings. This approach is employed in order to avoid any bias and prejudice that may occur in analysing Tüfi's theory should conclusion coincide with the finding of later jurists. In order to begin the examination and analysis of Tüfi's theory, there are three main points to be discussed on as follows;

a) The first point

The Hadith of the prophet; 'You should neither harm yourself nor cause harm to others' as the basis of discussion on Tüfi’s much saying, How can I kill a man while he is praying?'. The he bid 'Ali kill the man, but when he sought him he did not find him. Thereupon the Prophet said: 'If he had been killed, no two people of my Community would have disagreed with one another.' Therefore, these two companions abandoned the ordinance (naṣṣ) with no probative evidence [to back them up] than their approval of his coming to worship. It cannot be said that they ignored this ordinance to kill the man on the basis of his having said: 'I have been forbidden to kill those engaged in prayer, for the latter ordinance is abrogated by the former, which is more recent and particular to this man. It seems that their refusal to kill him indicates nothing more than their discretionary concern for equity (istibsän), which pertains to the matter concerning us here, [i.e] acting against prescriptive ordinances and the like by [invoking] maşlağa. To be sure, the prophet did not rebuke them, but let them go their own way and allowed them to exercise independent judgment, for he recognised [the purity of] their intention and their sincerity. And so it is anyone who gives priority to the maşlağa of the people over the rest of the legal sources, for the sole purpose of improving their affairs, regulating their condition, and obtaining what God has granted them in the way of well-being, and bringing them into agreement out of their former disharmony. It is necessary that this be permissible, if not altogether obligatory'.

'It is necessary, therefore, that the priority given to regard for the maşlağa over the rest of the legal sources be one of those questions requiring independent judgment (İjtihâd) at the very least, or else it is a weighty and obligatory [matter], as we have already said'.
debated theory of the priority of *maṣlaḥa* over the legitimacy of *nāṣṣ*.

Within the framework of Islamic jurisprudence, the question may be raised as to how the connection is made between the former and the latter, particularly the theory of *maṣlaḥa* itself in terms of juristic discussion. In other words, does Ṭūfī have the juristic approach in correlating the *Ḥadīth* of the prophet; ‘You should neither harm yourself nor cause harm to others’, and the theory of *maṣlaḥa*. It is vital to clarify this point before further discussion concerning Ṭūfī’s theory takes place. In order to deal with this question, Ṭūfī’s approach in elaborating the *Ḥadīth* as interrelated with the theory of *maṣlaḥa* is examined in the light of Islamic jurisprudence.

The main principle arising from the prophet’s *Ḥadīth* (‘You should neither harm yourself nor cause harm to others’) concerns forbidding any actions and deeds that cause harm to one’s own person or that of another. In conjunction with the technical definition of the term *maṣlaḥa* which refers to al-Ghazālī’s point of view, the main principle of the *Ḥadīth* is synonymous. To al-Ghazālī, the first appearance of *maṣlaḥa* is an expression for seeking something useful, whilst simultaneously indicating the removal of something harmful. In building up the legitimacy of *maṣlaḥa*, al-Ghazālī insists that it ought to link with the subject of *Maqāṣid al-Shariʿa*, which concerns the preservation the five principles; religion, life, lineage, intellect and property. To some extent, al-Ṣanʿānī also shared the same view as Ṭūfī concerning this subject in his analysis of the *Ḥadīth* of the prophet; ‘You should

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35 Ibid.
neither harm yourself nor cause harm to others'. To al-Ṣan`ānī, apart from the forbidding of harm indicated by the Ḥadīth, it is also important to legalise maṣlaha as the Islamic legal principle in accordance with averting from harm\(^{36}\).

To some extent, the Ḥadīth of the prophet; ‘You should neither harm yourself nor cause harm to others’ has been perceived differently by Ḥadīth scholars in terms of analysis and study. To Imām Mālik, the Ḥadīth is examined under the topic of judgement (in Arabic; al-’Aqḍīyya) which interrelates with the ruling of public utility, (al-Qadā’ fi al-Mirfaq)\(^{37}\), whereas, in Ibn Ḥajar al-Ṣaqalānī’s analysis of the Ḥadīth, it is studied under the topic of business transactions (in Arabic; al-Buyū’), which interconnects with the issue of the development of barren lands, (Iḥyā’ al-Mawāt)\(^{38}\). Juristically, both of the Ḥadīth scholars i.e. Imām Mālik and Ibn Ḥajar al-Ṣaqalānī have examined the Ḥadīth of the prophet, ‘You should neither harm yourself nor cause harm to others’, in accordance with the subject of maṣlaha; however, the former has discussed the Ḥadīth under the principle of public utility, while the latter has studied the Ḥadīth under the heading of business transactions under the perspective of the cultivation of barren lands. To put another way, as discussed among Ḥadīth scholars, the Ḥadīth of the prophet, ‘You should neither harm yourself nor cause harm to others’, is interconnected with the subject of maṣlaha in which ways can be discussed from many perspectives such as judgement, business transaction and the like.

At this point, it can be concluded that Ṭūfī’s approach in analysing the Ḥadīth of the prophet, ‘You should neither harm yourself nor cause harm to others’ as

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\(^{36}\) al-Ṣan`ānī, Subul, v.ii,p.84.  
\(^{37}\) Mālik, Mawāṣṣa’, p. 134  
\(^{38}\) Ibn Ḥajar, Bulūgh al-Marām,p.272.
interrelated with the subject of *maslaha* is juristically accepted by many prominent *Hadith* scholars such as Imām Mālik and Ibn Ḥajar al-ʿAsqalānī who share the same approach. To some extent, Tūfī's elaboration of the *Hadith* of the Prophet s.a.w concerning the concept of *maslaha* is in accordance with *Maqāsid al-Shari'a*.

b) The second point

As Tūfī claims, the texts are at variance and in contradiction (*mukhālafa mutāʾāriḍa*). Thus, they are the cause of disagreement in formulating judgments, which is legally blameworthy. Regard for *maslaha*, however, is a real matter in itself that occasions no disagreement, and is, consequently, the cause of agreement which is legally desirable, and thus the more appropriate to follow.

The basic idea in the second point, which seems to be the subject of dispute, is Tūfī's view that the texts are at variance and in contradiction (*mukhālafa mutāʾāriḍa*). This basic idea raises the following question; does the subject of texts which are in conflict of evidence (*al-Ta`druci*) is really exist or is this a matter of imagination among Muslim jurists? Again, on what basis does the subject of *Ta`druci* (conflict of evidence) stand? These questions will be discussed from the perspective of Islamic jurisprudence in order to reach an academic solution concerning the subject of *Ta`druci* or conflict of evidence before further examining Tūfī's view in this regard.

To return to the historical development of Islamic jurisprudence, the proper treatment of *al-Ta`druci* (conflict of evidence) as well as its solution, *Tarjīh*⁶⁹, has

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⁶⁹ Bakar, *Conflict*, p.56
been much discussed by Muslim jurists particularly Imām al-Shāfī‘ī through his valuable works such as *Ikhtilāf al-Ḥadīth* and *Ikhtilāf Malik wa al-Shāfi‘ī*.⁴⁰ According to Imām al-Shāfī‘ī’s work, *Ikhtilāf al-Ḥadīth*, a large number of conflicting *Ḥadīth* has been revealed relating to the category of the *mubah* (what is permitted) such as the *Ḥadīth* of recitation in the prayer or *tashahhud*, taking a bath on Friday, women going out to the Mosque and so on⁴¹. In order to deal with the conflicting *Ḥadīth* in *Ikhtilāf al-Ḥadīth*, Imām al-Shāfī‘ī applies a particular method of reconciliation (tawfiq) and harmonization (jāmi‘) by means of specifying the general (takhsīs al-‘amm) or by considering the differences between events (tagyīd al-mutlāq)⁴². It appears, then, that Imām al-Shāfī‘ī also applies the method of Bayān or explanation as well as Ta‘wil or interpretation in dealing with the ambiguities surrounding the Prophetic traditions, whilst not contradicting other *Ḥadīth*⁴³.

Moreover, the subject of *al-Ta‘āruḍ wa al-Tarjīh*, the study of legal texts that refer to the Qur‘ān and the *Ḥadīth* in terms of interpretation and the validity of sources is always a major controversy amongst Muslim jurists⁴⁴. The *Ḥadīth* in particular is therefore commonly examined by a form of the *Ḥadīth* criticism as to both its validity of legal text and chain of transmission (Isnād)⁴⁵. Therefore, the conflict of evidence concerning the legal texts of *Ḥadīth* as well as the chain of transmission (Isnād) of the *Ḥadīth* continues to exist in the Islamic legal theory.

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⁴⁵Ibn Ḥazm, *al-Ṭikām*, v.1,p.85
In conjunction with his view concerning the existence of conflict of evidence among legal texts, Tüfi elaborates the effect of conflict on the validity and its chain of authority of the Ḥadīth, which took place particularly during his life. According to Tüfi, there were many facts concerning the Ḥadīth on the subject of al-Ta‘āruḍ wa al-Tarjīh, due to the followers of each school such as Malikites, Shafi‘ites, Hanafites and Hanbalites, which began to transmit invalid Ḥadīth exalting the merits of its imām. Furthermore, in order to support his point of view, Tüfi quotes in the second reason Abu Faraj al-Shirazi’s analysis, which reveals as forgery with no factual basis the ʿHadīth, which each school of law exalts the merits of imām. At this stage, Tüfi’s arguments on the existence of the texts which are at variance and in contradiction (mukhālafa mutā‘arīḍa) that specifically refer to the Ḥadīth, (as has been elaborated in the second reason of his theory), is juristically proven by referring to the form of al-Ta‘āruḍ wa al-Tarjīh as evidence of its existence.

Tüfi’s argument can be employed to rebut Büti⁴⁶ as well as Muṣṭafa Zayd⁴⁷ on the point that Nuṣūṣ or legal texts were never at variance and in contradiction (mukhālafa mutā‘arīḍa). Büti argues specifically that the Nuṣūṣ of the Qur‘ān were never in disagreement and in contradiction (mukhālafa mutā‘arīḍa); he adds that disagreement between the Nuṣūṣ occurs on only the basis of understanding and interpretation, never in terms of at variance and in contradiction (mukhālafa mutā‘arīḍa).⁴⁸ It should be said at this juncture, that Büti overlooked Tüfi’s second reason elaborating the numbers of Ḥadīth which were at variance and in contradiction (mukhālafa mutā‘arīḍa). In the second reason of his theory, Tüfi never mentions disagreement between the Nuṣūṣ of the Qur‘ān, pointing out only numbers of Ḥadīth.

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⁴⁶ al-Büti, Dowâbiṯ, p.186-187.
⁴⁷ Zayd, al-Muṣlaḥa, p.145.
⁴⁸ Ibid.
which were at variance and in contradiction. Therefore, Büți’s analysis clearly
overlooks the reliable source which Tüfi presents.

c) The third point

Tüfi claims that in the case of conflict and disagreement between
legal texts, the Maṣlaḥa necessarily takes priority by way of
explaining and specifying, not by way of suspending and denying
validity, just as the Ḥadīth takes priority over the Qur’ān, through
explanation.

Tüfi’s statement above indicates the analogy between his theory of the priority
of Maṣlaḥa over the legitimacy of Naṣṣ and the condition of the Ḥadīth which takes
priority over the Qur’ān, by way of explaining the latter. Before further analysis of
the priority of Maṣlaḥa, it is important to study the legal texts as a subject of analogy
as Tüfi claims in his theory. In Islamic legal theory, specifically by reference to
Tafsīr al-Qur’ān, it is unanimously accepted by Muslim scholars that the Sunna or the
Ḥadīth may necessarily take priority over the Qur’ān in terms of interpretation,
explanation and justification. In addition, as al-ʿAwzāʾī (d.157H/774M) citing Ḥasan
b. ʿAṭīya (d.130H/748M) states: ‘Revelation came to the messenger of God, and
Jibriel provided the sunna, which explains it’. He also adds; ‘The holy al-Qurān
needs the sunna more than the sunna needs the holy al-Qurān’⁴⁹. In order to more fully
understand the function of al-Ḥadīth as a commentary on the holy al-Qurān, there

⁴⁹ Ibn ʿAbd. al-Barr, Jāmī, ii. 234.
follows a brief summary of the conclusion of *Sunna* or *al-Hadīth* rules of the holy *al-Qurān*:

‘There are at least five functions of the *Sunna* over the *Qurān*. Firstly, the *sunna* details that which is general in the holy *al-Qurān*, for example, the five times of prayer, the amounts due for *zakat*, the beneficiaries of *zakat*, and the rule of pilgrimage. Secondly, the *sunna* clarifies what is obscure in the holy *al-Qurān*, especially the meanings and applications of words and expressions. Thirdly, the *sunna* contains acts which demonstrate the meanings of the revealed text. Fourthly, the *sunna* gives answers to questions about the rules of worship and behaviour. Fifthly, the *sunna* restricts that which is absolute in the holy *al-Qurān*. For example, in Q. 5/38, it is said that the hands of a thief should be cut off as punishment. The *sunna* restricts that penalty to the amputation of the right hand’.

The preceding points clarify how the *Sunna* as a secondary source of Islamic law takes priority over the *Qurān* as the primary source of Islamic law by explaining the latter but not by suspending or denying its validity. From this point, an important question arises; does the analogy of the *Sunna* as taking priority over the *Qurān* apply to the theory of the priority of *Maṣlaḥa* over the legitimacy of *Naṣṣ* where conditions conflict one with the other?

To address this question, in the third reason of Tūfī’s theory, there is evidence which is advanced to support the theory of the priority of *Maṣlaḥa* over the legitimacy of *Naṣṣ* as follows; The first piece of evidence relates to Ibn Masʿūd’s opposition to the text and consensus as regards *tayammum*, in favour of the benefit of precaution in matters of worship. The second point of evidence pertains to the *Hadīth* of the Prophet s.a.w which sets out the concept of demolishing the *Kaʾbah* and building it anew on the foundations of Ibrāhīm should the people of Mekka refuse to convert to Islam. Eventually, the Prophet s.a.w abandoned this concept due to his concern for the

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50 al-Sibāʿī, *al-Sunna*, p.344
people’s welfare or *Maṣlaḥa*. The third piece of evidence concerns the case of Abū Bakar and ʿUmar who ignored the Prophet’s order assigning priority to the *Maṣlaḥa* of the people over the rest of the legal sources when they killed a man at prayer in the mosque. According to Tūfī, the Prophet eventually agreed with the decision made by his two companions on the basis of exercising independent judgment, for he recognised [the purity of] their intention and their sincerity.

From the three juristic evidences suggested by Tūfī in his argument to legalise his theory of the priority of *Maṣlaḥa* over the legitimacy of *Nass*, the validity of each piece of evidence is supported mostly by reliable sources. However, the evidence advanced by Tūfī, categorises these as the area of *ʿibāda* or worship not that of *Mūʿāmalah* and *ʿAdat*. At this stage, Tūfī seems to contradict his previous statement that the only area applicable for his theory is that of *Mūʿāmalah* and *ʿAdat*.

In conclusion, for the most part, Tūfī advances evidence from reliable sources; he then concludes that juristic solutions are provided through the theory of the priority of *Maṣlaḥa* over the *Nass* when they are at variance and in contradiction (*mukhālafa mutaʿārida*). If this were the reasoning behind Tūfī’s much debated theory, it would be concluded that the analogy he made with the priority of the *Sunna* over the legal texts of the *Qurʾān* is juristically accepted by reference to the specific cases of the Ḥadīth which were at variance and in contradiction (*mukhālafa mutaʿārida*). Much criticism has been levelled at this stage from many aspects and perspectives, but it is not the main objective of this chapter to take part in this debate. Ironically, by way of acknowledgment of Tūfī’s theory, he did his best to develop a new theory as a Muslim jurist out of a sense of responsibility towards solving the critical phenomena
of the variance and contradiction of the Ḥadīth, which occurred during his life. It is also important to note that many Muslim jurists have developed the theory of the levels of Darūrīyya, Ḥājiyya, and Tahsīnīyya due to its significance in the concept of al-Maṣlaḥa wa al-Naṣṣ. The following section will therefore discuss the theory juristically.

2.2 The theory of the levels of Darūrīyya, Ḥājiyya, and Tahsīnīyya and the concept of al-Maṣlaḥa wa al-Naṣṣ.

The Muslim jurists are in agreement that the theory of levels of Darūrīyya (lit. necessities), Ḥājiyya (lit. needs), and Tahsīnīyya (lit. improvements) are originally rooted in the concept of Maṣlaḥa or Maqāṣid al-Shari'a, designed and discussed by al-Ghazālī in al-Mustasfa 51 and followed then by many Muslim jurists in their works such as al-Shāṭibi in al-Muwáfagät 52. As Wael B. Hallaq asserts, the levels of Darūrīyya, Ḥājiyya, and Tahsīnīyya are very close to Ghazali’s taxonomy, which is in turn by al-Shāṭibi as the existential purpose of the Shari'a; to be the protection and promotion of the three legal categories 53. In other words, Darūrīyya, Ḥājiyya, and Tahsīnīyya are three levels of legal categories, which have been examined under the heading of Maṣlaḥa or Maqāṣid, also defined as the aims of the law.

Notwithstanding Darūrīyya, Ḥājiyya, and Tahsīnīyya as three legal categories in accordance with the aims of the law, these have been classified as a medium or vehicle in achieving the aims or objectives of Islamic law. As Jamāl al-Dīn ʿĀṭfiyya claims, the levels of Darūrīyya, Ḥājiyya, and Tahsīnīyya are not concerned with the

51 al-Ghazālī, al-Mustasfa, v.i, p.286.
objectives of the law but act only as a medium in achieving the objectives of the law\textsuperscript{54}.

Jamāl al-Dīn ʿĀṭīya cites juristic examples to support his point of view regarding the levels of IZERIYYA, ḤĀFIYYA, and TAHSINYYA as the medium to achieve the objectives of Islamic law.\textsuperscript{55} In order to elaborate his theory, food is seen as a medium to achieve the objective of preservation of life, which is divided into three levels. The first is DARIRYYA, the basic necessity to eat the right kind of food to maintain a body healthy. It would be harmful to the body to be deprived of food, thus, food is a necessity (DARIRYYA). The second level is ḤĀFIYYA, the need to have a quality food such as fresh or organic products. The third is TAHSINYYA, ‘improvement’ in eating food; that is, one should demonstrate judgement, good manners, restraint and the like. This example suggests that food becomes a medium within three types of level to achieve the objective of preserving the life of humankind\textsuperscript{56}.

In order to correlate the theory of al-MAŠLAḤA wa al-NAṢS with the levels of DARIRYYA, ḤĀFIYYA, and TAHSINYYA, an important question arises; what basis, criterion or standard (Miṣyār) could the theory be inter-related juristically with the three mediums to achieve the objectives of Islamic law? For Jamāl al-Dīn ʿĀṭīya\textsuperscript{57}, there are two types of Miṣyār which accord with the correlation between the theory of al-MAŠLAḤA wa al-NAṢS and the levels of DARIRYYA, ḤĀFIYYA, and TAHSINYYA.

\textsuperscript{54} ʿĀṭīya, Nawl al-Tafīl, p.51
\textsuperscript{55} Ibid., p.51-52.
\textsuperscript{56} Ibid., p.51-52.
\textsuperscript{57} Ibid., p.59-60.
The first type of Mi‘yar refers to the nature of al-Ḥukm al-Taklifi (defining law) which defines rights and obligations. Should al-Ḥukm al-Taklifi constitutes the type of wājib (obligatory) or the type of muḥarrām (unlawful), it could be possibly referred to as Darūrīyya. Alternatively, should al-Ḥukm al-Taklifi constitutes the type of mandūb (commendable) or the type of makrūh (reprehensible), it could be referred to as Ḥājiyya. Finally, should al-Ḥukm al-Taklifi constitutes the type of mubāh (permissible), it could be referred to as Tahṣīnīyya. To Jamāl al-Dīn ʿAṭṭīya, this type of Mi‘yar could be termed as Mi‘yar Shakli. In addition, the correlation between the theory of al-Maslalia wa al-Naṣṣ and the type of Mi‘yar Shakli is proven by the existence of enormous numbers of verses in the Qur’ān and in the Ḥadīth dealing with al-Ḥukm al-Taklifi directly; this constitutes the ruling of wājib, muḥarrām, mandūb, makrūh and mubāh.

The second type of Mi‘yar in this regard has been termed Mi‘yar Mawḍū‘ī, which refers to the level degree of Maṣlaḥa or the level degree of Maṣṣada, whereby both levels interconnect with al-Ḥukm al-Taklifi. Should the level degree is high in Maṣlaḥa or Maṣṣada, it could possibly be referred to as Darūrīyya; However, if low, it could be defined as Tahṣīnīyya. The middle level of degree either in Maṣlaḥa or in Maṣṣada could be referred to as Ḥājiyya. In the case of Mi‘yar Mawḍū‘ī, the common indicators of al-Ḥukm al-Taklifi such as wājib, muḥarrām, mubāh, mandūb and makrūh will not be included in the justification of every single level in Mi‘yar Mawḍū‘ī. However, the indicator of Maṣlaḥa or the indicator of Maṣṣada will important. In this regard, as al-Shāṭibi asserts, the typical indicator of Maṣlaḥa is the form of ‘awāmir, (commandments) particularly from the Qur’ān and the Sunna. On

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58 Ibid.
59 Ibid.
60 Ibid.
the other hand, the typical indicator of Mafsada is the form of nawāhi, (forbiddances) particularly as found in the Qur'ān and the Sunna\textsuperscript{61}. Thus, the form of 'awāmir (commandments) and the form of nawāhi (forbiddances) derived from the Qur'ān and the Sunna demonstrate correlation between the theory of al-Maṣlaḥa wa al-Naṣṣ and the type of Mfyār Mawḍīrī.

It is important to point out that the two types of Mfyār (including Shakli and Mawḍīrī) are two indicators signifying the correlation between the levels of Darüriyya, Haṣiyya, and Taḥṣīniyya and the theory of al-Maṣlaḥa wa al-Naṣṣ. For Imām ʾIzz al-Dīn ʾAbd al-Salām\textsuperscript{62}, the concept of maṣlaḥa as it accords with al-Ḥukm al-Taklifi could be divided into three categories, which refer to the level degree of maṣlaḥa, as follows; firstly, Maṣāliḥ al-Mubāḥāt; secondly, Maṣāliḥ al-Mandūbāt; thirdly, Maṣāliḥ al-Wājibāt. He adds that the level degree of Mafsada could be divided into two categories, as follows; firstly, Mafṣīd al-Makrūhāt; and secondly, Mafṣīd al-Muḥarramāt\textsuperscript{63}.

These categorizations drawn up by Imām ʾIzz al-Dīn ʾAbd al-Salām, as examined above, obviously employ two types of Mfyār; that is, Shakli and Mawḍīrī, two concepts which could be applied simultaneously. Furthermore, in his effort to collate Mfyār Shakli with Mfyār Mawḍīrī, new terminologies have been developed whereby the five terms ( Maṣāliḥ al-Mubāḥāt, Maṣāliḥ al-Mandūbāt, Maṣāliḥ al-Wājibāt, Mafṣīd al-Makrūhāt, and Mafṣīd al-Muḥarramāt) are introduced with specific reference to the theory of al-Maṣlaḥa wa al-Naṣṣ. These terminologies clearly indicate the connection between al-Ḥukm al-Taklifi and the concept of

\textsuperscript{61} al-Shāṭibi, al-Muwāfaqāt, v.iii,p.153.  
\textsuperscript{62} ʾIzz al-Dīn, Qawād, v.i,p.8-9.  
\textsuperscript{63} Ibid.
Maslaḥa and also with Mafsada. Nevertheless, Imām ʻIzz al-Dīn ʻAbd al-Salām’s categorization of levels of Darūriyya, Ḥājiyya, and Taḥṣinīyya or Takmili appears somehow unclear until elsewhere he adds further explanation. For Imām ʻIzz al-Dīn ʻAbd al-Salām, the level of Darūriyya can be divided into two categories as follows; firstly, al-Darūri al-Ukhrāwī, whereby the Muslim submits by carrying out stated obligations and avoiding unlawful actions, and secondly, al-Darūri al-Dunyawī, the basis of daily life such as food, drinks, clothes, house, marriage and the like. He also claims that the level of Ḥājiyya can be attained by carrying out al-Sunan al-Mu‘akkada, (commendable actions) and al-Sha‘ā‘ir al-Zahira, (external rituals). For the level of Taḥṣinīyya or Takmili, he advocates it by actions such as eating good food, drinking quality water, living in a luxury house and the like.

The foregoing represents a juristic discussion on the development of the theory of the levels of Darūriyya, Ḥājiyya, and Taḥṣinīyya designed by Muslim jurists in their analyses within the framework of the concept of al-Maṣlaḥa wa al-Naṣṣ. This juristic discussion has also examined juristic terminologies based on elaboration of the terms Darūriyya, Ḥājiyya, and Taḥṣinīyya, such as that undertaken by Imām ʻIzz al-Dīn ʻAbd al-Salām. To some extent, the present discussion also highlights the theory of the levels of Darūriyya, Ḥājiyya, and Taḥṣinīyya in dealing with juristic methods such Mafyār Shakli and Mafyār Mawdū‘ī, in that both are interrelated with the ultimate objectives of Islamic law (Maqāṣid al-Sharī‘a).

In addition, in Islamic legal theory, discussion on the five constituents of the levels of Darūriyya is of interest to Muslim jurists. Some, for example are concerned
with the order of priority the five constituents are placed, and the limitations either five or six constituents in the levels of Darūrīyya. Discussion in this respect is based on theories of Islamic legal principles developed by Muslim jurists through the juristic approach which accord with Islamic jurisprudence. Eleven views of Muslim jurists have therefore been tabulated for close analysis. It will be seen that there are five or six priority levels of Darūrīyya, each views will therefore be examined in the light of the concept of al-Maṣlaha wa al-Naṣṣ.
### 2.2.1 The Priority Levels of *Darūriyya*; The Views of Muslim Jurists

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⁷⁷ Ibn *Ashūr*, *Maqāṣid*, p.89.
Diagrammatic representation as shown clearly indicates that religion and way of life have been chosen by the eleven jurists as the first level of Durūriyya, beginning with al-Ghazālī, and followed by al-Āmīdī, Ibn Ḥajib, Ibn Subki, Shāṭibī and Ibn ʿĀshūr. This can be explained by the concept of maṣlaḥa which preserves firstly religion, and subsequently life. This group of jurists are thus unanimous in believing that most Islamic rulings are concerned firstly with religion and then life. The legitimacy of Jihād, and the punishment of ḥudūd and Qīṣāṣ are among factual examples of this; in accordance juristically with the theory of al-Maṣlaḥa wa al-Naṣṣ. This derives from the fact that there are an enormous number of verses or legal texts from the Qur'ān and the Hadīth concerning the preservation of religion and life particularly through the form of Jihād, the punishment of ḥudūd and Qīṣāṣ.

It is interesting to note here that five jurists namely al-Rāzi, al-Qarāfī, al-Bayḍāwī, Ibn Taymīyya and al-Zarakshi, have agreed upon life as the first level of Qarāriyya instead of religion, although without justification. Given this lack of justification, it is assumed (based on the arguments of al-Ghazālī and ʿĪzz ʿAbd al-

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78 See al-Ghazālī, al-Mustasfa, v. 1, p. 481.
79 Exemplified as follows;
   In Sura Al-Baqarah: 190; Allah s.w.t says; 'And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors'.
80 The exemplify in this regards as follows;
   Narrated ʿĀʾishah r.a; Allah’s Messenger s.a.w said; 'Are you interceding regarding one of the punishment prescribed by Allah? He then got up and gave an address saying, 'O people, what destroyed your predecessors was just that when a person of rank among them committed a theft, they left him alone; but when a weak one of them committed a theft, they inflicted the prescribed punishment on him'.
81 The exemplify in this regards as follows;
   In Sura Al-Baqarah: 178; Allah s.w.t says; 'O you who believe! Al-Qisas (the Law of Equality in punishment) is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (of the relatives, etc.) of the killed against blood-money, then adhering to it with fairness and payment of the blood-money to the heir should be made in fairness. This is an alleviation and a mercy from your Lord. So after this whoever transgresses the limits (i.e. kills the killer after taking the blood-money), he shall have a painful torment'.
Salām) that under particular circumstances, it is permitted to give priority to life instead of religion, such as, permission to use the words of riddah (apostasy) under the circumstances of compulsion. In addition, Ibn Taymiyya's ruling on life as the first level of Darūriyya has brought significance to studies in this subject. According to Dr. Muhammad Attamāra, during Ibn Taymiyya's life there was political instability under the Mamālik emperor; thus, Ibn Taymiyya has perhaps decided upon life as the first level of Darūriyya due to the necessity of preserving the life of ummah during that time. Juristically, Ibn Taymiyya's ruling clearly indicates the application of the theory of Maṣlaḥa in preserving human life, thus demonstrating that the objectives of Islamic law (Maqāṣid al-Sharī'īyya) are always parallel with evolution and priorities of human life.

As shown by diagram, opinions of Muslim jurists differ upon third and the fourth levels of Darūriyya. Al-Ghazāli, al-Bayḍawi, and Shāṭibi for example, have chosen intellect and lineage interchangeably as the third and the fourth levels of Darūriyya. The justification of the intellect as the third level of Darūriyya basically refers to the theory of maṣlaḥa, whereby the preservation of intellect is due to the efficacy of the human intellect and to prevent the dysfunction that manifests itself as a consequence of any kind of disruption particularly, by drinking alcohol. Thus, the punishment for alcohol consumption in Islamic law is a deterrent intended to avert the disruption of human intellect. On the other hand, the justification of lineage as the fourth level of Darūriyya is due to its lesser importance compared with the intellect. Though the preservation of lineage means to conserve the quality of Muslim lineage, the preservation of intellect is however much more important; this is due to the

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82 Ibid., v.i, p.258. and Izz al-Dīn, al-Fawā'id, p.58-64.
83 Aṭṭīya, Nahw Tafīl, p.46.
concept of the intellectual faculty of the individual, which becomes the basic criterion of taklīf, (i.e. the law concerns itself with circumstances that affect the sanity and capacity of the individual such as duress, minority, intoxication, interdiction, error and insanity).

Instead of the intellect and lineage being interchangeable as the third and fourth level, honour has been chosen as the third level of Darūriyya. As can also be seen from tabulated opinions, however, Ibn Taymīyya chooses honour as the third level of Darūriyya, although no justification is made for this. Again, honour has been chosen as the sixth level of Darūriyya, by al-Qarāfī, Ibn Subki and al-Zarakshi; it is assumed that ruling upon honour as the sixth level of Darūriyya is due to the hadīth; “So he who guards against doubtful things keeps his religion and honour blameless.” In this regard, honour has a similar position with religion as a result of a stand made by a good Muslim against doubtful things. Thus, the concept of mašlahā in the preservation of religion as well as honour is evident through the Hadīth.

It can also be seen from the diagram that property is chosen as level five of Darūriyya by many Muslim jurists such as al-Ghazāli, al-Āmīdi, Ibn Ḥajib, al-Qarāfī, Ibn Subki and Shāṭibi. Based on the hadīth; ‘He who died in defence of his property is a martyr’, it is clear that these Muslim jurists are in agreement that property has become level five of Darūriyya after religion, life, intellect and lineage.

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85 Kamali, Principles, p.351.
86 The text of the Hadīth:

Qul: Rasūlullāh sallallātu 'alāihi wa sallam qamūn kāfī al-sīyāsah yafṣūna 'adhābāh wa 'uzmāh

This Hadīth narrated by Bukhārī, Sahīh, no:50, Muslim, Sahīh, no:2996 and Tirmīdhi, Sunan, no:1126.
87 The text of the Hadīth:

Hukūmat al-dharr min 'umūr wa 'udūr al-lāh sallallātulla 'alāihi wa sallam qamūn kāfī al-sīyāsah

This Hadīth narrated by Bukhārī, Sahīh, no:2300, Muslim, Sahīh, no:202 and Tirmīdhi, Sunan, no:1339.
Consequently, one may learn that if a person dies in the effort to preserve property, that person is classified as a martyr. In this regard, the preservation of property is obviously within the theory of *maalāha* that in accordance with the level of *Darūriyya*.

To sum up the discussion above, juristic opinion as tabulated is divergent on which constituent takes priority within the five or six levels of *Darūriyya*. This phenomenon indicates the variety of interpretations and choices of priority made by Muslim jurists concerning these levels of *Darūriyya*. Importantly, one may also conclude that al-Ghazālī's point of view on the five levels of *Darūriyya* is a basis and foundation for associated juristic discussion. In other words, the priority of the five levels of *Darūriyya* i.e. religion, life, intellect, lineage and property as laid down by al-Ghazālī subsequently becomes the basic framework for many Muslim jurists in their works concerning the theory of *maalāha* or *Maqāṣid al-Shariyya*. As the theory of *Maqāṣid al-Shariyya* becomes a juristic concept in this regard, therefore, the following section will discuss its connection with *naṣṣ* as the Islamic legal texts.

### 2.3 The theory of *Maqāṣid al-Shariyya* in connection with *Naṣṣ*.

Juristically, the term *Maqāṣid al-Shariyya* is interchangeable with the term *maalāha*. Muslim jurists have discussed both terms in the light of Islamic legal theory. At this stage, their main concern is how both terms deal with *naṣṣ* as Islamic legal texts. Therefore, the concept of *Maqāṣid al-Shariyya* in connection with *naṣṣ* will be discussed in order to examine how the former has been developed juristically by Muslim jurists in dealing with the latter. This examination is vital in
terms of the theoretical development of *Maqāṣid al-Sharī'īyya* in connection with *Naṣṣ*, as an integral part of the main concept of *al-Maṣlaha wa al-Naṣṣ*.

According to al-Shāṭibi, theoretically, this connection is significance to freeing humanity from the grasp of its own notions and desires, it justifies *Maqāṣid al-Sharī'īyya* by referring to *Naṣṣ* that effect to be the servant of Allah by preference\(^{88}\). To some extent, al-Shāṭibi insists that the interest of humanity becomes a top priority in legislating to establish the legal principles of Islamic law that in accordance with the purposes of the Hereafter set apart from the purposes of the world\(^{89}\).

In understanding the theory of *Maqāṣid al-Sharī'īyya* in connection with *Naṣṣ*, many Muslim jurists have developed a juristic method which can be applied to identify the legal texts (*Naṣṣ*) (particularly in the *Qurʾān* and in the *Ḥadīth*) in harmony with the concept of *Maqāṣid al-Sharī'īyya* as follows;

a) Identifying *Maqāṣid al-Sharī'īyya* from the literal meaning of legal texts\(^{90}\)

As the bulk of the legal texts in the *Qurʾān* as well as in the *Ḥadīth* have been revealed in the sense of literal meaning, the significance of these legal texts is therefore to deliver the message of *Maqāṣid al-Sharī'īyya*, (the ultimate objectives of Islamic law) directly and definitively to humanity\(^{91}\). To Imām al-Shāfī'ī, every single *Ḥadīth* revealed in the literal and general sense can be understood *per se* except where

\(^{90}\) al-Juwaynī, *al-Burhān*, v.i,p.280  
\(^{91}\) *Ibid.*
there is an ambiguity\textsuperscript{92}. Additionally, Imām Bayhaqi insists that priority must be given to the literal meaning in the Ḥadīth rather than interpreting any ambiguity\textsuperscript{93}. To illustrate this method, some verses or legal texts (from the Qur'ān and in the Ḥadīth) now follow;

i). Allah s.w.t. says; ‘Allah intends for you ease, and He does not want to make things difficult for you’\textsuperscript{94}.

ii). Allah s.w.t. says; ‘He has chosen you (to convey His Message of Islamic Monotheism to mankind by inviting them to His religion of Islam), and has not laid upon you in religion any hardship’\textsuperscript{95}.

iii). Narrated (Ibn ‘Abbas) r.a.: Allah’s Messenger s.a.w said, ‘You should neither harm yourself nor cause harm to others\textsuperscript{96}.

To Nu’man Jughaim, the verses in (i) and (ii) clearly signify the ultimate objectives of Sharī‘a or Maqāṣid al-Sharī‘iyā; that is, to create ease (particularly for the Muslim) in practising the Islamic religion as the way of life and, therefore, to avoid any difficulties and hardships\textsuperscript{97}. Moreover, the Ḥadīth in (iii); signifies further ultimate objectives of Sharī‘a or Maqāṣid al-Sharī‘iyā, that is to circumvent harm both to ourselves and to others. In this sense, the three legal texts above are categorised as definitive and direct legal texts that can be understood as conveying literal meaning. This elaboration thus shows the significance of the study of legal texts which are revealed as direct and definitive in the sense of literal meaning in accordance with the subject of Maqāṣid al-Sharī‘iyā (the ultimate objectives of Islamic law).

\textsuperscript{92} al-Shāfi‘ī, al-Risāla, p.341.
\textsuperscript{93} al-Bayhaqi, Manāqib, v.ii,p.30.
\textsuperscript{94} al-Baqara; 185
\textsuperscript{95} al-Hajj; 78
\textsuperscript{96} This Ḥadīth is reported by Ahmad and Ibn Mājah. Ibn Mājah reported something similar to the aforesaid Ḥadīth from Abū Sa‘īd’s narration; it is found in Al-Muwāṭtā in a Mursal form.
\textsuperscript{97} Nu‘man, Ṭuruq,p.65

b) Identifying \textit{Magāṣid al-Sharī'īyya} through the form of \textit{awāmir} (commandments) and the form of \textit{nawāhi} (forbiddances) that derive from the \textit{Qur'ān} and the \textit{Hadīth} \textsuperscript{98}.

Thus, apart from the literal meaning of legal texts in the \textit{Qur'ān} and the \textit{Hadīth} in identifying the concept of \textit{Magāṣid al-Sharī'īyya}, the form of \textit{awāmir} (commandments) and the form of \textit{nawāhi} (forbiddances) that derive from the formers can also be accepted to identify the latter. To Imam al-Shātibi, the great part of the form of \textit{awāmir} (commandments) and the form of \textit{nawāhi} (forbiddances) both from the \textit{Qur'ān} and the \textit{Hadīth} have conveyed the significance of \textit{Magāṣid al-Sharī'īyya} in delivering the commandments and the forbiddances from the Lawgiver to humanity. In this respect, there are two types of the form of \textit{awāmir} (commandments) and the form of \textit{nawāhi} (forbiddances) revealed from the \textit{Qur'ān} and the \textit{Hadīth}, which are termed direct and indirect \textsuperscript{99}. The following legal texts illustrate both types;

i) Direct type of \textit{awāmir} (commandments) and \textit{nawāhi} (forbiddances);

Allah s.w.t. says; 'O you who believe! Fear Allah (by doing all that He has ordered and by abstaining from all that He has forbidden) as He should be feared. [Obey Him, be thankful to Him, and remember Him always], and die not except in a state of Islam' [as Muslims (with complete submission to Allah)].\textsuperscript{100}

Allah s.w.t. says: 'And kill not anyone whom Allah has forbidden, except for a just cause (according to Islamic law). This He has commanded you that you may understand'.\textsuperscript{101}

\textsuperscript{98} al-Shātibi, \textit{al-Muwāfaqāt}, v.iii, p.153
\textsuperscript{99} Ibid.
\textsuperscript{100} \textit{Ali-Imrān}: 102
\textsuperscript{101} \textit{Al-'Arf'am}: 151
ii) Indirect type of *awāmir* (commandments) and *nawāhi* (forbiddances);

Allah s.w.t. says; ‘So whoever of you sights (the crescent on the first night of) of the month (of Ramadan i.e. is present at his home), he must observe *Saum* (fasts) that month’\(^{102}\).

Allah s.w.t. says; ‘And forbids *Al-Fahsha’* (i.e. all evil deeds e.g. illegal sexual acts, disobedience of parents, polytheism, to tell lies, to give false witness, to kill a life without right), and *Al-Munkar* (i.e. all that is prohibited by Islamic law: polytheism of every kind of evil deeds), and *Al-Baghy* (i.e. all kinds of oppression). He admonishes you, that you may take heed.’\(^{103}\)

The first verse of type one above clearly highlights the objective of Islamic law in living as good believers; to fear Allah and die in a state of Islam. This form of commandment by Allah is direct form in order to elaborate the way of life which should be lived by good believers in Islam. To Nu‘man Jughaim, this direct form of commandment signifies clearly the way to fear Allah for Muslim believers\(^ {104}\). To this end, good Muslim believers must fear Allah by implementing all Islamic principles laid down by Him and by abstaining from all forbiddances as He has directed. Good believers are also directly ordered to keep their lives in the way of Islam until death. Thus, it can be seen that this directive by Allah is revealed as a definitive objective of Islamic law for the way of good believers in Islam.

The same approach is seen in the second verse of type one; it is by way forbidden to kill anyone except for a just cause in accordance with Islamic principle. The directive by Allah in this regard is to signify the killing is forbiddance except for justified causes\(^ {105}\). Juristically, then, one of the main objectives of Islamic law (*Maqāṣid al-Sharīʿa*) is clearly highlighted to preserve the life of humanity. The

\(^{102}\) *al-Baqara*: 185

\(^{103}\) *al-Nahl*: 90

\(^{104}\) Nu‘man, *Turuq*, p. 65

\(^{105}\) *Ibid.*
importance of the preservation of life is shown in directive commandments of Allah, such as in verse 151 of *Sura Al-'Anfâm*. The juristic approach thus justifies the connection between the theory of *Maqāṣid al-Shariyya* and *Naṣṣ* (the legal texts) through the direct form of *nawāhi* (forbiddances).

The first verse of type two above shows the indirect form of *awāmir* (commandment). It concerns obligatory fasting on sight of the crescent on the first night of the month of *Ramadān*. Thus, the commandment obligatory fasting for Muslim through the month of *Ramadān* is conveyed by indirectly; via first sight of the crescent moon. On one level, juristically, the main objective of Islamic law in prescribing obligatory fasting through the month of *Ramadān* is to preserve religion as well life of Muslim\textsuperscript{106}. Though the commandment is revealed indirectly, it is cleared that the objective of Islamic law in this respect is juristical. This elaboration thus demonstrates that the concept of *Maqāṣid al-Shariyya* (the objectives of Islamic law) always in connect with *Naṣṣ* (legal texts) although by the way of the indirect form of *awāmir* (commandments) such as is exemplified in the *Sura al-Baqara*: 185.

The indirect form of *nawāhi* (forbiddances) is shown above in the second verse of type two. This verse is categorised as the indirect form of *nawāhi* (forbiddances) through three terms; i.e, *al-Fahsha*', *al-Munkar* and *al-Baghy*. This indirect form illustrates that the ultimate objectives of Islamic law in forbidding *al-Fahsha*', *al-Munkar* and *al-Baghy* are to preserve exactly the five constituents integral to Islam i.e.; religion, life, intellect, lineage, property, and simultaneously to prevent all things harmful to Muslim life. To Nu'man Jughaim, this indirect form of

\textsuperscript{106} Ibid.
forbiddance also signifies the need to avoid any harmful activities in Muslim life, such as al-Fahsha’, al-Munkar and al-Baghy. He claims that the significance of this forbiddance is interrelated with the ultimate objective of Islamic law in terms of preventive steps.

To sum up the above discussion, two approaches are used to examine juristically the theory of Maqāṣid al-Sharīʿyya as it connects with Naṣṣ; firstly, by analysing the former in the light of the literal meaning of the latter, and secondly, by analysing the former through the form of awāmir (commandments) and the form of nawāhi (forbiddances) that derive from the Qurʿān and the Ḥadīth. These two approaches show the juristic methods that can be applied to illustrate the ultimate objectives of Islamic law (Maqāṣid al-Sharīʿyya) through legal texts such as the Qurʿān and the Ḥadīth. Because of this significance of study, Muslim jurists have designated the juristic process as ‘ratiocination’ of Islamic law (Taʿlīl al-Ahkām al-Sharīʿyya). That is, this process has evolved as a consequence of the theory of Maqāṣid al-Sharīʿyya as it connects with Naṣṣ, in which logical and linguistic analysis is used to identify the exact reasoning behind the Divine commandments. The subsequent chapter will therefore discuss the significance of Taʿlīl al-Ahkām for the concept of al-Maṣlaḥa wa al-Naṣṣ from the standpoint of Islamic jurisprudence. However prior to this discussion, it is useful to conclude this chapter with a brief summary as follows.

107 Ibid.
2.4 Summary

Through this chapter, the theoretical development of the concept of *Maṣlaḥa wa al-Naṣṣ* has been examined via juristic discussion of three theories; firstly, the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*, secondly, the theory of the levels of *Darūrīyya, Ḥājīyya*, and *Tahṣīnīyya*, and thirdly, the theory of *Maqāṣid al-Sharī'a*.

The main finding to emerge from discussion of the first theory is the effort of Muslim jurists to link the concept of public interest (*Maṣlaḥa*) with the Divine legal texts (*Naṣṣ*) such as the *Qur'an* and the *Ḥadīth*. To this end, some Muslim jurists have formed a legal principle of *Maṣlaḥa* that does not complete with any textual evidence, *dalīl* or *naṣṣ*. This form of legal principle is termed *al-Maṣlaḥa al-Mursala*, developed by Imam Malik. Also Ṭūfī has drawn up as a hypothetical form the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*. However, because of its controversial nature, many Muslim jurists have examined this theory from various perspectives and aspects in the light of Islamic jurisprudence. Despite the multiplicity of critical views regarding this theory, it can be stated that at the very least Ṭūfī contributed a new theory in response to juristic crises of his age.

It can be seen from the foregoing that Muslim jurists have developed the theory of the levels of *Darūrīyya, Ḥājīyya*, and *Tahṣīnīyya* to incorporate the basic area of human needs, particularly the preservation of religion, life, lineage, intellect, property and honour. Of great significance here is the priority of legal level in Islamic law; that is, in order to apply Islamic law to humanity, the priority levels of
Darūrīyya (lit. necessities), Ḥāfīyya (lit. needs), and Taḥsīnīyya (lit. improvements) are always to be taken into account. To put it simply, Islamic law is prescribed law, but is nevertheless flexible in its application to humanity.

The main conclusion to emerge from this study of the theory of Maqāṣid al-Shari'a as it connects with Naṣṣ is the significance of every single legal text from both the Qur'ân and the Ḥadīth, and of their ultimate objectives for humanity. This demonstrates that Islamic law (as the Divine law given to humanity) is a civilised law that has at its heart sound objectives which accord with the human capacity for reason, as can be examined through the legal texts of the Qur'ân and the Ḥadīth. This will be elaborated in the next chapter.

To bring this chapter to a close, it is worthy of note that the theoretical development of the concept of al-Maṣlaḥa wa al-Naṣṣ illustrates that Islamic law is an evolving and living law, its purpose to protect humanity through its Divine rules.
CHAPTER THREE

THE SIGNIFICANCE OF TA’LIL AL-ÅHIKÄM FOR THE CONCEPT OF AL-
MAŞLAḤA WA AL-NAṢṢ

3.0 Introduction

Apart from the ultimate objectives (Maqāṣid) as one of the features of Islamic law, ratiocination (Ta’lil al-Ahkām) also highlights Islamic law as a dynamic law for humanity. That is, every single legal text from the Qur’ān and the Hadīth can be examined in order to identify ultimate objectives (Maqāṣid) as well as ‘ratiocination’ (Ta’lil al-Ahkām). This process of Ta’lil al-Ahkām becomes a crucial subject in the science of Islamic jurisprudence, due to its significance in determining the ultimate objectives of Islamic law (Maqāṣid al-Shari‘a), public interest (Maṣlāḥa) and the wisdom at the heart of each Divine commandment (ḥikma). Indeed, Ta’lil al-Ahkām al-Shari‘a has become an essential process in establishing the theory of Maṣlāḥa, as ṢĀbduLLah al-Kamāli demonstrates in the Arabic version, al-Uṣūl al-Mabniyya ‘ala al-Maṣāliḥ¹. In other words, the process of Ta’lil al-Ahkām is critical in clarifying both Maqāṣid al-Shari‘a and Maṣlāḥa through the concept of al-Maṣlāḥa wa al-Naṣṣ.

This being so, this chapter will analyse the significance of Ta’lil al-Ahkām for the concept of al-Maṣlāḥa wa al-Naṣṣ. As a first step to analyse the process of Ta’lil al-Ahkām juristically, it is important to examine its definition in the framework of Islamic jurisprudence. For this reason, the views of Muslim jurists on the subject of Ta’lil al-Ahkām will be discussed, followed by a consideration of the concept of Taḥḥābiyya as it connects with Ta’lil al-Ahkām. The main focus will be upon the

¹ al-Kamāli, Min Fiqh, p.79
significance of the process of Ta'īl al-Aḥkām as it relates to the concept of al-
Maṣlaḥa wa al-Naṣṣ.

3.1 Definition of Ta'īl al-Aḥkām

Juristically, the term Ta'īl al-Aḥkām is rooted in the concept of ʾilla (ratio
legis), which is at the heart of Qiyās (analogical deduction). The Muslim jurists are in
unanimous agreement that ʾilla is the effective cause in Islamic jurisprudence.
Shawkāni has drawn up three alternative definitions of the term ʾilla. Firstly, ʾilla is
referred to as sabab, meaning ‘cause’; secondly, ʾilla is referred to as manāṭ al-ḥukm,
meaning the cause of the law (ḥukm); thirdly; ʾilla is referred to as amārah al-ḥukm,
meaning the sign of the law (ḥukm). When the term ʾilla becomes Ta'īl al-Aḥkām al-
Sharī'at, it is defined as the process of seeking the effective cause of Islamic law,
particularly in the Qur'ān and the Ḥadīth.

Many attempts have been made by later jurists to translate Ta'īl al-Aḥkām al-
Sharī'at into English. Muhammad Khalid Mas'ud, for example, takes the term Ta'īl
al-Aḥkām to mean ‘the determination of the cause of Divine commandments by
logical and linguistic analysis’. Again, Mohammad Hashim Kamali tends to define
Ta'īl al-Aḥkām as ratiocination whereby searching for the effective cause of a ruling
is undertaken in Islamic law. On the face of it, these two approaches are apparently
similar; however, Khalid Mas'ud’s definition is more juristic in that he uses the

2 Muṣṭafā,Ta'īl,p.112-128, and al-'Unqari, Ta'īl, p.34
3 al-Shawkāni, Irshād, p.207.
5 Mas'ud, Shatibi's Philosophy, p.284.
6 Kamali, Principles, p.420.
method of logical and linguistic analysis in determining the cause of Divine commandments.

3.2 The Views of Muslim Jurists On Ta’līl al-Āḥkām al-Sharī`a

There is considerable controversy among Muslim jurists on ways in which of Ta’līl al-Āḥkām al-Sharī`a is applied to the Qur’an and the Ḥadīth. Nevertheless, it must be borne in mind that the Qur’an and the Ḥadīth in particular, are in fact legal texts and documents of Islamic legal theory. As Wael B. Hallaq asserts, the Qur’an is recognized as a legal document which contains some 500 verses with many legal and quasi-legal stipulations, such as the legislation of selected matters of ritual, alms-tax, property and the treatment of orphans, inheritance, usury, consumption of alcohol, marriage, divorce, sexual intercourse, adultery, theft, homicide and the like. It can thus be seen that the legal and quasi-legal stipulations of the Qur’an deal explicitly and implicitly with the subject of Maṣlaha, as will be discussed in a later topic.

Apart from the holy book of the Qur’an, the Sunna or Ḥadīth is unanimously accepted as the second source of Islamic law and as legal doctrines that are validated by tradition. It is the primary fountain of knowledge after that of the Qur’an. Indeed, it has been compiled with numerous texts that deal explicitly and implicitly with the subject of Maṣlaha. Further elaboration on the way the Sunna or Ḥadīth deals with the theory of al-Maṣlaha wa al-Naṣṣ will therefore take place in part B.

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7 See ʿIywāni, Ta’līl, p.169.
8 Hallaq, A History, p.3
A different view among Muslim jurists appears on the subject of Ta'liil al-Ahkâm al-Shari'a in accordance with the primary sources of Islamic legal theory i.e. the Qur'an and the Hadith or Sunna. There are three differing Islamic legal schools of thought on the subject of Ta'liil al-Ahkâm al-Shari'a. The first group totally reject any attempt to undertake Ta'liil al-Ahkâm al-Shari'a on the basis that no Taflil could be made on the Lawgiver's action (af'al Allah) and the Divine commandments. Ibn Ḥazm, for example, asserts that 'al-Qiyās wa al-Ta'liil al-Ahkâm Din Iblis'. This means al-Qiyās and Ta'liil al-Ahkâm is the way of the Devil10. The same point of view is held by al-Jahmiyya11 and madhhab al-'Ash'arīyya12.

The second group takes al-Miftazila's point of view, which holds that Ta'liil al-Ahkâm on af'al Allah (the Lawgiver's action) and the Divine commandments is obligatory. They argue that ʾilla, is a major element in the process of Ta'liil al-Ahkâm (also called wasf dhāti or identical attribute) as a means by which the Divine commandments are understood. Thus, it is absolutely necessary when seeking the sense of mašlaḥa in af'al Allah13.

The third group could be described as holding a liberal opinion on the subject of Ta'liil al-Ahkâm, based on rational points of view which fall between the two fundamental Islamic legal schools of thought. This group accepts the significance of Ta'liil al-Ahkâm in Islamic jurisprudence, particularly its contribution to the process of Ijtihād(lit. exertion), which is the highest accomplishment in Islamic legal theory. It is noteworthy that this third point of view became the most prominently held among

10 See Ibn Ḥazm, al-Iḥkām, v.viii. p.113
11 See Ibn Taymiyyah, Minhāj, v.i. p.463; Ibn al-Qayyim, Shīfā', p.186; and Ibn al-Najar, Sharḥ, v.i. p.312
12 See al-Baqilānī, al-Tamhīd, p.50; Samira, Muḥjam, p.313; al-Āmīdī, Ghāya, p.224
13 See al-Sharastānī, al-Mīlāl, p.63; and al-Juwaynī, al-Irshād, p.287.
Muslim jurists\textsuperscript{14} including Ḥanafi’s jurists\textsuperscript{15}, Ibn al-Qayyīm\textsuperscript{16} and Ibn Taymīyya\textsuperscript{17}. As the majority of Muslim jurists fall in the third group, Aḥmad al-Raysūnī, therefore applies the term \textit{Ijmā} or consensus\textsuperscript{18}.

In the light of this consensus the present writer will elaborate on \textit{Taʿlīl al-Aḥkām} as it applies to \textit{al-Maṣlaha wa al-Naṣṣ}. This application gives rise a number of questions for many Muslim jurists. Does every ruling in Islamic law have \textit{ʿilla}, (the effective cause) and \textit{maṣlaha}? If any ruling in the \textit{Qur’ān} and the Ḥadīth has no \textit{ʿilla} and \textit{maṣlaha}, does it only deal with \texti{taʾbbudiyya} (worshipping or strict obedience)\textsuperscript{19}, leading thereby to the process of \textit{Taʿlīl al-Aḥkām} being rejected by a number of Muslim jurists? What is the best solution for these particular questions?

As step towards finding this solution, the following section will focus on the concept of \textit{taʾbbudiyya} in the light of \textit{Taʿlīl al-Aḥkām}, but in the framework of \textit{al-Maṣlaha wa al-Naṣṣ}.

3.3 The concept of \textit{Taʾbbudiyya} in conjunction with \textit{Taʿlīl al-Aḥkām}

It is significant that The Encyclopedia of \textit{al-Fiqhīyyah}, applies the term \textit{taʾbbudiyya} into two circumstances. Firstly, to the activities of \textit{al-ibāda}, (worship) and \textit{al-tanassuk}, (piety and devotion). Secondly, to any Islamic ruling, which has no

\textsuperscript{14} al-Jurjānī, \textit{Sharḥ}, v.iii, p.162.
\textsuperscript{15} al-Tīfżānī, \textit{Sharḥ}, v.ii, p.63
\textsuperscript{16} Ibn al-Qayyīm, \textit{Shifāʾ}, p.186; and Ibn al-Najār, \textit{Sharḥ}, v.i, p.8330
\textsuperscript{17} Ibn Taymīyya, \textit{Minhāj}, v.i, p.143; \textit{Majmūʿ}, v.viii, p.81.
\textsuperscript{19} Literally, Muhammad Khalid Masʿud defines \textit{taʾbbudiyya} as strict obedience. In English, obedience means doing what is told to do or willing to obey. See Masʿud, \textit{Shatibi's Philosophy}, p.196; and Hornby, \textit{Oxford}, p.796.
added meaning of ḥikma, (wisdom), but only the sense of ta’bbud, i.e., worship per se. One who obeys the Islamic ruling would deserve reward from the Lawgiver, while disobedience would mean punishment

In the first application of ta’bbudiyya, it is unanimously accepted by Muslim jurists that the application of Islamic law in Muslim life means worship (‘ibada) and piety and devotion (tanassuk) to the Lawgiver, Allah, the Lord of the universe. Every single law such as offering prayer (ṣolāt), fasting, performing hajj (pilgrimage), the punishment of ḥudūd, Islamic transactions in banking and the financial sector and the like, is focused on the path of ta’bbudiyya to the Lawgiver. The second application is more complex as it appears to deny the existence of ḥikma in any Islamic law and allowing only for the sense of ta’bbud (worship) per se. However, does (as Abdullah al-Kamāli argues) the origin of Islamic law only consist of ta’bbud (worship) or does it also consist of the process of Ta’līl al-Ahkām, which would entail finding the ḥikma for any Islamic ruling?21. In addition, the present writer would argue that if the second application of ta’bbudiyya is accepted, why is it that the concept of ḥikma per se should not be applicable to many Islamic rulings particularly in the Qurān and the Ḥadīth? And why is the concept of ta’bbudiyya occasionally conjoined by some Muslim jurists with the concept of ḥikma which in turn becomes the main impetus in the theory of al-Maṣlaḥa wa al-Nass?.

This apparent split between ta’bbudiyya with reference to Ta’līl al-Ahkām in the framework of Islamic jurisprudence has exercised Muslim jurists since the

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20 al-Mawsū’a al-Fiqhiyya, v.12,p201
21 al-Kamāli, Min Fiqh, p.103
beginning of the 7th century A.H. Many prominent Muslim jurists such as the Shāfi‘ī jurists, Ibn Taymīyyah, Ibn Qayyīm, al-Zarkashi, al-Shāṭibi took part in the debate, as well as later jurists such as Aḥmad al-Raysūnī, Khalid Masʿud and Mohammad Hashim Kamali.

Ṣaʿad al-Dīn al-Taftazani of the Shāfi‘ī jurists claims that originally, the Islamic ruling applies only to ta`būdīyya, and there is no sense of al-ta‘līl unless it is supported by dalīl, (evidence) particularly from the Qur’ān and the Ḥadīth. A paradox occurs later with Ibn Taymīyyah and his student, Ibn Qayyīm who contends that every single Islamic ruling has a sense of al-ta‘līl. It is therefore bāṭil (invalid) and false to claim that ta`būd takes place only because of Islamic rulings. Ibn Qayyīm adds that the Shari‘a is not only a question of legal rulings but rather of ḥikma or the existence of intellectual activity. In order to support his claim, Ibn Qayyīm has provided evidence in the form of ten examples of Islamic rulings which have a sense of ḥikma. This contradict the Muslim jurists who allege that Islamic rulings have no sense of ḥikma. Ibn Qayyīm argues that Qiyās al-Ṣaḥīḥ can be applied to the Shari‘a without conflict, because it is always parallel with the Divine commandments. He adds that intellectual activity has been elevated through the process of Qiyās al-Ṣaḥīḥ as well as Ta‘līl al-ʿAhhām, and this (he asserts) becomes the major evidence that its application to nasṣ testifies to the value of al-agl.

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22 Zayd, al-Maṣlaḥa, p.21.
23 al-Taftazani, Sharḥ, v.ii,p.64.
Muslim jurists are agreed that Ibn Qayyim’s arguments form the juristic division of *Ahkām al-Sharī‘a* into two categories. The first category involves *hikma*, supported by *nasṣ* and *Ta‘līl al-Ahkām*. The second category does not refer to *hikma*, neither is there any reference to *nasṣ* and *Ta‘līl al-Ahkām*.

The term *hikma* as used by al-Zarakshi has become the main indicator in categorising *Ahkām al-Sharī‘a*, leading to two definitions in Islamic jurisprudence. Based on *The Encyclopedia of Fiqhiyyah*, the first definition of *hikma* is *maṣlaḥa al-ʿabd*; that is, the public interest of humankind in preserving religion, life, lineage, intellect and property. The second definition of *hikma* is *maṣlaḥa al-akhīrat*, (the *maṣlaḥa* of the hereafter) whereby obedience and purity are necessary in the process of *ta‘bbudiyya* to the Lawgiver.

Juristically, the two categories of *Ahkām al-Sharī‘a* created by al-Zarakshi were not the final endeavour in Islamic legal theory in terms of intellectual research by Muslim jurists. Al-Shāṭibi’s research in *al-Muwāfagāt* made a tremendous contribution to academic analysis, particularly on the subject of *Ahkām al-Sharī‘a* as it accords with the concept of *ta‘bbudiyya* and the process of *Ta‘līl al-Ahkām*.

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27 Ibid.
28 *al-Mawsu‘a al-Fiqhiyya*, v.xii, p.201
29 Al-Shāṭibi’s work entitled *al-Muwāfagāt fi Usūl al-Sharī‘a* has been unanimously accepted by Muslim jurists due to these particular characteristics; Firstly; the reconciliation between Maliki’s legal thought and Hanafi’s legal thought directly and indirectly on some points of Islamic legal principles. Secondly; the introduction of the theory *al-Maqāṣid al-Sharī‘a*, which employs the concept of *Maṣlaḥa* in corroborations of the primary sources of Islamic law, i.e.*Qur‘ān* and *Sunna*,Thirdly; the comprehensive discussion on the Islamic legal theory, which has been divided academically into four parts consisting of four book i.e *ahkām* (Islamic ruling), *maqāṣid* (objectives), *adilla* (sources) and *iḥtīād* (legal reasoning). See al-ʿUbaydi, al-Shāṭibi, p.104-112; and Maś′ūd, *Shatibi’s Philosophy*, p.120-124.
For al-Shāṭibi, Ta’lil al-ahkām is part of the process istiqrā’ bi al-nuṣūṣ, (the induction into legal texts) in justifying the concept of mašlaḥa in Islamic legal theory. The main function of the process of Ta’lil al-Ahkām, is seeking and finding the Maqāṣid al-Shari’ā (the ultimate objectives of Islamic law), despite differing opinions on its validity in Islamic legal theory. Again, many later jurists, such as Muhammad Abū Zahra, are agreed that Ta’lil al-Ahkām is the major cause in establishing the ʿIlm al-Maqāṣid, the science of Maqāṣid. Hammādi al-Ubaydi, for example, states that the process of Ta’lil al-Ahkām is a necessary condition for mašlaḥa from al-Shāṭibi’s perspective (Dawābil al-Mašlaḥa ‘ind al-Shāṭibi).

Al-Shāṭibi adds that Ta’lil al-Ahkām may be applied in various contexts including ʿibāda and muʿāmala, as both these concepts are referred to in the Qurʾān and the Ḥadīth where the sense of taʿbbūdiyya exists. In this way al-Shāṭibi highlights the universality of the concept of taʿbbūdiyya, as Muhammad Khalid Masʿud observes: “taʿbbud and maṣlaḥa (........) are not opposite terms for Shāṭibi”. Thus, taʿbbud, is parallel with mašlaḥa; the process of Ta’lil al-Ahkām therefore becomes one of the most authoritative methods of seeking the maṣṣūd and hikma in textual evidence. The concept of al-Mašlaḥa wa al-Naṣṣ is thus seen to

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30 al-Shāṭibi, al-Mawāfaqāt, v.ii,p.315
31 Ibid., v.iii,p.146
32 Ibid., v.ii,p.391
33 Abū Zahra, Uṣūl,p.293.
34 There are five qualifications of maslaha from al-Shatibi’s point of view: a) al-Majāl al-Zamanī means the scope of maslaha which covers worldly and hereafter, b) al-Majāl al-Mawdū’ī means the application of the concept al-Intijā, utility in Islamic legal theory, 3) The authority of Maqāṣid al-Sharī’ā, 4) Ta’lil al-Ahkām, 5) The priority of universality into maslaha.
See al-Ubaydi, al-Shāṭibi,p.139-147.
36 On this topic, Khalid Masʿud brought four characterizations of ta‘abbud by various statements, which were made by Shatibi. Firstly, “al-rujuʿ ila mujarrad ma hadāahu al-Shariʿ ” (recourse only to what the Lawgiver has determined); Secondly, “al-Inqiyyad li awamir Allah” (being bound by the commands of God); Thirdly, “ma haww qaṣṣun lillah khassatān” (that which is the exclusive right of God; Fourthly, “rajiʿun ila ‘adamī ma quliyat al-maʾna” (that which refers to the non-intelligibility of its reason). See Masʿud, Shatibi’s Philosophy, p.202
apply (together with the process of Ta‘lil al-Ahkām) in seeking the magṣūd and ḥikma with special reference to textual evidence from the Qur‘ān and the Ḥadīth.

Pending detailed discussion, it is worth noting here that most of the Māliki and Ḥanbali jurists seem to agree that there is no distinction between the ´illa and the ḥikma. In other words, the terms of ´illa and ḥikma are virtually interchangeable. From this perspective, the process of Ta‘lil al-Ahkām has as its main purpose the identification and justification of ´illa or ḥikma by means of two indicators; firstly, the indication given by nasss, (or textual evidence from the Qur‘ān and the Ḥadīth) and, secondly, the indication justified by Ijmā‘ (consensus). Here Ijtihād will be applied through tanqih al-manāf (isolating the ´illa) as distinct from the other two methods referred to as takhrīj al-manāf (extracting the ´illa) and tahqīq al-manāf (ascertaining the ´illa) respectively.

The scope of this study will limit detailed consideration to the first indication, that is the purpose of identification and justification of ´illa or ḥikma within the process of Ta‘lil al-Ahkām given by nass (textual evidence) of the Qur‘ān and the Ḥadīth. The second indicator justified by Ijmā‘ will therefore not be referred to in this chapter.

In examining how the process of Ta‘lil al-Ahkām is applied to textual evidence in the Qur‘ān and the Ḥadīth, specific factors must be taken into consideration, especially the use of certain Arabic particles, such as kay-la (so as not to), li-ajli (because of), li, fa, bi, anna, inna, li-all, min ajli, la‘allahu kadha, bi-sabab

37 Abū Zahra, Usūl, p.188.
38 al-Shawkānī, Irshād, p.210-212.
39 Ibid., and Kamali, Principles of Islamic, p.213.
kadha, etc., all of which are key terms in the process of Ta‘lil al-Ahkām. Also to be considered is the application of istiqra’ bi al-nas, (the induction to legal texts) which is also associated with the process of Ta‘lil al-Ahkām. As Ibn Qayyim and al-Shātibī argue, in cases where the ‘illa is not indicated by textual evidence, the process of istiqra’ using the indications of al-kulliyāt al-istigrafiyya (universal rules known inductively) may be applied to seek the maṣlaha or the hikma.

3.4 The significance of Ta‘lil al-Ahkām as in relation to the theory of al-Maṣlaha wa al-Naṣṣ

To give a clear example of how the process of Ta‘lil al-Ahkām can be applied to the textual evidence of the Qur‘ān and the Ḥadīth in order to seek the ‘illa and the hikma in the light of the theory of al-Maṣlaha wa al-Naṣṣ, the paradigm below may be helpful.

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41 al-Shātibī, al-Muwāfaqāt, v.ii, p.3.
42 According to Ḥammādī al-ʿUbaydī, al-Shātibī was not the only jurist who introduced the process of istiqra’ into the textual evidence but also Ibn Qayyim in his work ʿIlām al-Muwāqīt, emphasizes istiqra’ as a method of istinbāt al-ahkām, (inferring or deducing a somewhat hidden meaning of Islamic ruling from a given text) in seeking the maṣlaha or the hikma. See al-ʿUbaydī, al-Shātibī, p.139.
43 Ibid.
44 Maṣūd, Shatibi’s Philosophy, p.279.
The Process of Ta'lim al-Ahkām from the Nass of the Qur'ān or the Hadīth

a) Nass from the Qur'ān or Hadīth

\[ \downarrow \]

b) Identification of 'illa through:

b.1) certain associated Arabic particles.
or
b.2) The application of al-kulliyāt al-istiqrā'iyya.
or
b.3) Seeking the ḥikma.

c) Justification of the hukm or ruling.

\[ \downarrow \]

d) Finding the maqṣūd /maqāṣid or mašlaḥa

The paradigm above shows the significance of the process of Ta‘līl al-Ahkām; it operates within a four-step juridical sequence. Step a) begins with the selection of a particular nass from the Qur‘ān or the Hadīth, then moves towards the process of Ta‘līl al-Ahkām in step b. There are then three alternative processes of Ta‘līl al-Ahkām whereby identification of ‘illa is: i) through the association of certain Arabic particles, or ii) the application of al-kulliyāt al-istiqrā‘iyya, or iii) seeking the ḥikma. At this stage, the ruling or hukm from a particular nass can normally be justified by the preceding process. When the ‘illa or the ḥikma has been identified in step b, the process continues to the final step d, which is the finding of the maqṣūd or maqāṣid or mašlaḥa.
It can be seen that there are many instances of naṣṣ (particularly from the Qur'ān or the Ḥadīth) to which the process of Ta‘lil al-Ahkām may be applied in the framework of the steps above. As an example, these steps and processes can be applied to the Quranic text (al-Māida: 5:38) as follows;

a) Naṣṣ from the Qur'ān: (al-Māida: 5:38)

(emphasis added)

Translation: “As to the thief, male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime: and Allah is Exalted in Power. Full of Wisdom.”

b) The process of ta‘lil al-ahkam by using b.1), which is the identification of ‘illa through certain associated Arabic particles. From the above verse, the particle fa in the term ِْلى ِْلى indicates two things; firstly, lil-tāqīb (the punishment) and secondly, lil-‘illa (the cause)⁴⁵. In this case, the particle fa indicates the cause of the punishment which logically follows the theft; thus the theft itself is the cause of the punishment to cut off a thief’s hand according to the legislation of hudūd law. To put it clearly;

The ‘illa: the theft itself is the absolute cause according to the Quranic text (al-Māīda: 5:38).

c) The Justification of ḥukm or ruling; this is obligatory for the punishment of cutting off a thief’s hand in the application of hudūd law to be carried out.

d) Finding the maqsūd /maqāṣid or maṣlaḥa: The hudūd penalty and punishment for theft is to protect the lives and properties of the people⁴⁶.

⁴⁵ al-Kindi, al-Dalālāt, p.216
⁴⁶ Kamali, Principles, p.208.
Many Muslim jurists are unanimous in agreeing that a great number of Hadith have been compiled which deal both directly and indirectly with the subject of Maṣlaḥa. From the perspective of the process of Ta‘lil al-ʿĀkām in the framework of the concept of al-Maṣlaḥa wa al-Naṣṣ, it would therefore be useful to apply the paradigm to at least one example from the Hadith, as the secondary source in Islam after the Qur’ān.

a) Naṣṣ from the Ḥadīth: This Ḥadīth is narrated by Bukhari:5147, Muslim:3733 and Tirmidhi:1784.

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كُلُّ مُسَكِّرٍ خَمَرٌ وَكُلُّ مُسَكِّرٍ حَرَامٌ.

Translation;
The Prophet said, “Every intoxicant is wine and every intoxicant is forbidden”.

b) The process of Ta‘lil al-ʿĀkām through the Ḥadīth above is clearly shown by the term muskir (intoxicant) which becomes the obvious ʿilla in the prohibition of alcohol.

c) The Justification of ʿhukm or ruling; that it is forbidden to drink any kind of alcohol according to the clear naṣṣ of the Ḥadīth and from the obvious ʿilla, which is stated as muskir (intoxicant).

d) Finding the maqṣūd ʿmaqāṣid or maṣlaḥa; the ruling which forbids the drinking of alcohol or any kind of intoxicant derives from both the wisdom of

preserving of the efficacy of the human intellect and of preventing the
dysfunctional behavior that manifests itself as a consequence of alcohol 48.

Thus, applying the paradigm to these two examples demonstrates clearly how the
process of Ta'li l al-Ahkām interlocks with the concept of al-Maṣlaḥa wa al-Naṣṣ in
the juristic process designed by Muslim jurists to seek the effective cause (i i l a) the
ruling (hukm) and finally in finding the ultimate purpose or objective of Islamic law
(termed variously as maqāsid, ḥikma and maṣlaḥa). The significance for Islamic
jurisprudence of Ta'li l al-Ahkām as it relates to Maṣlaḥa can thus be seen.

3.5 Summary

The juristic discussion on the significance of the process of Ta'li l al-Ahkām
for the concept of al-Maṣlaḥa wa al-Naṣṣ, examined in this chapter highlights Islamic
law as a dynamic law for humanity. Every single injunction of Islamic law deriving
from the Qur'ān and the Ḥadīth has rational and reasonable sense. This conclusion
has been reached through the process of Ta'li l al-Ahkām or ratiocination; it can thus
be seen that the application of Islamic law as Divine rule is based on the five
constituents necessary to preserve and protect humanity. Therefore, Islamic law
decrees not only correct modes of worship, but also provides the basis of human
fulfilment in daily life.

Although Muslim jurists differ on the acceptance of Ta'li l al-Ahkām as a valid
process of ratiocination, it appears to be a significant method in justifying effective

causes, ultimate objectives and the wisdom of Islamic law. Over and above this, however, the application of Ta‘lil al-Ahkām to the Nass of the Qur‘ān and the Ḥadīth will highlight Islamic law as a systematic law with features which differ from all other forms of law.

In order to demonstrate the systematic nature of Islamic law through the process of applying Ta‘lil al-Ahkām to the Nass, the following section (part B) will focus on the Ḥadīth and its connection with the concept of al-Maṣlaḥa wa al-Nāṣ. The authenticity of the Ḥadīth or the Sunna as one of the primary sources in Islamic law apart from the Qur‘ān will be examined. In part C the paradigm previously developed will be applied to the book of Bulūgh al-Marām, as one of the authentic books of the Ḥadīth in the framework of the concept of al-Maṣlaḥa wa al-Nāṣ.

Part B now follows, entitled ‘The Authenticity of Ḥadīth and Introduction To The Book of Bulūgh al-Marām’.
PART B

THE AUTHENTICITY OF THE ḤADĪTH AND INTRODUCTION TO
THE BOOK OF BULŪGH AL-MARĀM

Introduction to Part B

The Ḥadīth as a primary source of Islamic law after the Qur‘ān has generated a great deal of discussion amongst Muslim scholars as well as Western scholars. Its authenticity has been juristically much examined and criticized particularly by Western scholars; viz. Ignas Goldziher, Guillaume, Sachau, Wensinck, Schacht and Robson. Nevertheless, later Muslim jurists such as Muḥammad Muṣṭafa Ṣāzmi who has devoted a book to this subject does refute such criticisms and has verified the authenticity of the Ḥadīth as beyond juristic doubt. Thus, attempts to disprove the Ḥadīth as a primary source of Islamic law after the Qur‘ān definitely proven as false and bogus in the light of juristic discussion.

Moreover, the authenticity of Ḥadīth to some extent means the quality of the chain of narrators (isnād) and the validity of the text (matn), which are both classified as the main elements of the Ḥadīth. In fact most traditionists are in agreement that these two elements can be divided into at least three levels; the first is Sāḥīḥ (lit. validity), the second is Ḥasan (lit. fairness) and the third is Ḍaʿīf (lit. weak).

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1 See Ṣāzmi, Studies, p.5-10
2 Ibid.
3 Ibid.
4 Ibid.
5 Ibn Ḥajar, Nukhba, p.39
6 Ibid.
As the first and highest level, Sahih means that the Hadith has a continuous chain of narrators (isnād) made up of the most trustworthy narrators (caddy), possessed of the most accurate and greatest powers of memory (dabīḥ). Simultaneously, in terms of validity of text, the Hadith has neither irregularities (shudhādh) nor defects (cilla). This is a definition which has been juristically drawn up by traditionists, viz. Ibn al-Ṣalāḥ (d.643H/1245A.D), al-Nawāwi (d.676H/1277A.D), Ibn Ḥajar al-Asqalānī (d.852H/1449A.D), al-Suyūṭi (d.911H/1505A.D) and al-Qāsimi (d.13321/1914A.D). At the same time, the above definition also demonstrates the features of Sahih. In order to discuss these features of Sahih, the following Hadith is exemplified as well as its explanation;

The prophet is narrated as having said; “My people will come on the Day of Resurrection with bright faces, hands and feet from the traces of Wudu’ (ablutions or cleansing). If any of you can lengthen his brightness, let him do so”.

This Hadith is derived from the two authentic books of the Hadith, the first book (namely Jams al-Sadiq) is compiled by Bukhārī, and the second (namely al-Sahih) is compiled by Muslim, and is classified as Sahih because it has the following features;

a) The Hadith has a continuous chain of narrators (isnād), in accordance with the paradigm below;


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7 Ibn al-Ṣalāḥ, Muqaddima. p.10.
10 Ṣhākir, Sharḥ p.3
11 al-Qāsimi, Ḍawād. p.79
12 See Bukhārī, Sahih, no.133 and Muslim, Sahih, no.362
13 See CD Mawsū'a : al-Kutub al-Tis'a
b) Every single narrator of the Hadith is juristically identified as trustworthy (adil) and possessed of the most accurate and greatest powers of memory (dābiṭ)\(^{14}\).

c) The Hadith is juristically identified as having neither irregularities (shudhūdh) nor defects (illa)\(^{15}\).

The features analysed demonstrate the strict criteria in identifying the quality of the chain of narrators (isnād) and the validity of the text (matn). It can be seen that the main objective is thus to secure the authenticity of Hadith as a primary source of Islamic law after the holy Qur'an\(^{16}\).

The second level is Hasan (fairness), means the Hadith which have a continuous chain of narrators (isnād), made up of the most trustworthy narrators (adil) but possessed of less accuracy and power of memory (khafīf dābiṭ) compared with Sāhiḥ. Simultaneously, in terms of validity of texts, the Hadith has neither irregularities (shudhūdh) nor defects (illa). The main difference between Sāhiḥ and Hasan is in the area of accuracy and power of memory (dābiṭ) of the narrators, whereby the first level is the more accurate while the second is less so (khafīf al-dābiṭ)\(^{17}\). This second level of classification is also known as Hasan līdḥātiḥ; that is, even though Hasan līghayriḥ refers to the narrator who has inaccurate power of memory, this narrator is nevertheless accepted as narrator of the Hadith. An example is as follows;

\(^{14}\) Ibn Hajar, al-Isāba, v.iv,p.112.
\(^{15}\) Op.cit., CD Mawsūa : al-Kutub al-Tis'a,
\(^{16}\) Ibn Hajar, Nukhba,p.42
\(^{17}\) Ibid.,p.63 and al-Suyūṭī, Tadrīḥ, p.42
The prophet is narrated as having said: "Whatever (portion) is cut off from an animal when it is alive is dead (meat)".18

The *Hadith* above is derived from two other but lesser authentic books of *Hadith*, the first book (namely *Sunan*) is compiled by Abū Dāwūd and the second book (namely *Sunan*) is compiled by Tirmidhi. The following points elaborate and clarify the features of *Hadith Hasan* as discussed;

a) The *Hadith* has a continuous chain of narrators (isnad) in accordance with the paradigm below.19


b) These narrators of the *Hadith* are juristically identified as trustworthy (ʿadil) and possessed of the most accuracy and greatest powers of memory (dābit); two of them, however, are juristically identified as having less accuracy and powers of memory (khāṣf al-dābit), i.e. °Abd. Al-Raḥman and Salma b. Rajāʾ.20 Thus, the *Hadith* is categorized as Hasan due to this specific feature.21

c) The *Hadith* is juristically identified as having neither irregularities (shudhūdh) nor defects (ʿilla).22

This elaboration demonstrates both the juristic process of determining the authenticity of *Hadith*, and the application of strict classification criteria such as those of ʿṢāḥīh and Hasan. From this process it can be seen that the authenticity of the *Hadith* is verified only at the levels of ʿṢāḥīh and Hasan, which are considered as the

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19 Tirmidhi, *Sunan*, v.5, p.215
20 Ibn Ḥajar, *al-Ḥṣāba*, v.3, p.45
primary source of Islamic law after the holy Qur'an. Thus, every single Ḥadīth categorized as Ṣāḥīḥ and Ḥasan is also considered as a Divine ruling of Islam, derived from the prophetic life of Muḥammad s.a.w.

The third level (Daʿīf - lit. weak) refers to the Ḥadīth which have a discontinuous chain of narrators, made up of the least trustworthy, lacking in powers of memory. Simultaneously, in terms of validity of texts, most of the Ḥadīths have either irregularities (shudhūdh) or defects (ʿilla). To put it simply, Daʿīf means the Ḥadīth which have no features such in Ṣāḥīḥ and Ḥasan. The level of Daʿīf (in describing the prophetic life of Muḥammad s.a.w) exhibits a multiplicity of narrators and their chains of narration, but has no verified features such as those of the levels of Ṣāḥīḥ and Ḥasan.

Juristically, traditionists have drawn up many categories of Daʿīf, based on the levels of discontinuity of the chain of narrators, discrepancies in levels of memory and levels of defect. Ibn Ḥibban al-Busti (d.354H/965A.D) for example has drawn up 49 levels or categories of Daʿīf. Juristic scholars assert that under specific circumstances, the Ḥadīth Daʿīf can be upgraded to the level of Ḥasan if supported by the quality of narration. On the other hand, if the level of defect is juristically identified as high, it will be categorized as Mawdūʿ (Fabricated). This kind of categorisation is typically employed in the science of Ḥadīth. However, many books

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23 Ibn Ḥajar, Nukhba, p.46.
24 Ibid.
25 al-Nawāwi, Taqrib, p.5; al-Suyūṭī, Tadrīb, v.i, p.179 and Subhi, Ulūm al-Ḥadīth, p.165
27 Ibid., Ibn Ḥajar, p.49
28 Ibn al-Ṣālah, Muqaddima, p.37.
of the Ḥadīth are not only compiled with numerous numbers of the Ḥadīth Ṣaḥīḥ and the Ḥadīth Ḥasan, but also numbers of the Ḥadīth Daʿīf. This phenomenon raises important questions. If the Ḥadīth Ṣaḥīḥ and the Ḥadīth Ḥasan are the only authentic sources of the Ḥadīth, then why are the Ḥadīth Daʿīf are also included?

Traditionists and Muslim jurists are in agreement that the Ḥadīth Daʿīf is not the authentic Ḥadīth - the primary source of Islamic law after the holy al-Qur'ān. Only the Ḥadīth Ṣaḥīḥ and Ḥadīth Ḥasan are accepted as the authentic Ḥadīth in the light of Islamic jurisprudence. Nevertheless, the Ḥadīth Daʿīf is considered acceptable in limited areas, but within strict conditions, as follows;

a) The level of Daʿīf does not approximate to the level of fabricated or forgery.

b) The ruling or injunction derived from Daʿīf must be parallel with Ṣaḥīḥ and Ḥasan.

c) It is forbidden to believe in Daʿīf as derived from the prophet Muhammad s.a.w.

d) Reference to Ḥadīth Daʿīf is allowed only in the area of motivation for doing good and prevention from doing evil.

Nevertheless, despite these strict conditions, Ḥadīth Daʿīf have been compiled together with Ḥadīth Ṣaḥīḥ and Ḥadīth Ḥasan in many authentic books such as Musnad Aḥmad, Sunan Abī Dāwūd, Jāmiʿ Abī Ḥāmid al-Tirmidhi, Sunan al-Nasāʾi and

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32 Ibid.
33 al-Sakhāwī, al-Qawl, p.4
34 Ibid.
35 Ibid.
Sunan Ibn Māja. Yet there are also authentic books in which only the Ḥadīth Ṣaḥīḥ and the Ḥadīth Ḥasan appear, such as Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Muslim. However, some traditionists make the accusation that even these are compiled with small numbers of the Ḥadīth Daʻīf.

Again, a book exists where Ḥadīth Ṣaḥīḥ, Ḥadīth Hasan and Ḥadīth Daʻīf are compiled together, and which also refers to those many authentic books of the Ḥadīth previously listed. This kind of book is entitled Bulūgh al-Marām - a summary of authentic books of the Ḥadīth, compiled with the Ḥadīth Ṣaḥīḥ, the Ḥadīth Hasan and the Ḥadīth Daʻīf.

In accordance with the science of Ḥadīth, part B will examine analyses of the authenticity of the Ḥadīth in accordance with its main references. The main points of part B have been highlighted through its introduction as previously discussed. This part B consists two chapters i.e. chapter four and chapter five. Chapter four focuses on the seven authentic books of the main references, while the book of Bulūgh al-Marām forms the core of the study. Chapter five therefore introduces this work of reference, while part C analyses its content as it connects with the main topic of this thesis - the concept of al-Maṣlaḥa wa al-Naṣṣ.
CHAPTER FOUR

THE MAIN REFERENCE SOURCES FOR THE BOOKS OF ḤADĪTH

4.0 Introduction

In the science of Ḥadīth (Ulūm al-Ḥadīth), there are numerous references works for the books of Ḥadīth. Most traditionists agree that there are seven books of Ḥadīth which are classified as main reference sources (viz. Sahīh al-Bukhārī, Sahīh Muslim, Musnad Aḥmad, Sunan Abī Dāwūd, Jāmiʿ Abī ʿĪsā al-Tirmīdhi, Sunan al-Nasāʾī and Sunan Ibn Māja)\(^1\), compiled during the third century of Hijra\(^2\) - the golden age of Islamic civilization\(^3\).

Their classification as the principal reference sources is based on certain juristic features, in accordance with the levels of authenticity of the Ḥadīth as previously discussed. These juristic features will now be examined in detail throughout this chapter to highlight the quality and value of these works of reference as primary sources of Islamic law apart from the Qurʾān.

The analysis will also include a brief discussion of each author's biography as well as the features of each book, focusing on incorporated levels of the Ḥadīth Sahīh, the Ḥadīth Ḥasan and the Ḥadīth Daʿīf. This analysis will be cross-referenced with the book of Bulūgh al-Marām in order to validate its authenticity as a definitive work of reference in this field.

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\(^1\) Ibn Ḥajar, Bulūgh al-Marām, p.3.
\(^2\) al-Zuhri, Tadwin, p.271.
\(^3\) Hitti, History, p.138
4.1 Sahih al-Bukhari

The author of Sahih al-Bukhari is 'Abū ʿAbd Allah Muhammad b. Ismāʿīl b. Ibrāhim al-Mughirah al-Bukhari. He was born in 194H/910M at Bukhara and died in 256H/870M at Samarqand. His best-known name is Imām Bukhari. Imām Bukhari is acknowledged as one of the greatest scholars in the science of Hadith due to his mastery in the area of memorization, knowledge of the chain of narrators of the Hadith and the variety of their sources. At the time when he lived memorization skills were highly valued; his ability to identify authentic texts among the multiplicity of the Hadith was therefore verified by a number of tests. He showed a remarkable ability to successfully differentiate between authentic and non-authentic Hadith. Indeed, it is reported that Imām Bukhari was able to memorize one hundred thousand authentic Hadiths and two hundred thousand non-authentic Hadiths.

The title of Sahih al-Bukhari was assigned by traditionists to acknowledge Imām Bukhari’s efforts to compile authentic Hadith (Sahih) in one single book. While Imām Bukhari himself names his book al-Jamiʿ al-Sahih al-Mukhtar min 'umūr RasūlilLah s.a.w wa sunanihi wa ayyāmihi, the easier and shorter title of Sahih al-Bukhari is preferred by most traditionists.

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5 Ibid.  
6 Ibid.  
7 Ibid.  
8 Ibn Ḥajar, Huda, v.i,p.6  
9 Ibid.  
10 Ibid.  
11 Ibid.  
12 Ibid.
The book of Ṣaḥḥ al-Bukhārī is juristically recognized as a main reference of Ḥadīth due to the following features;

a) All narrators of Ḥadīth are juristically identified as having a continuous chain of narrators (isnād) through disciples of the prophet (ṣ.a.w) and their successors, culminating in ʿImām Bukhārī himself. All are recognized as trustworthy (ʿadil) and possessed of the most accurate and greatest powers of memory (dābīj).  

b) It was the first book of Ḥadīth to be compiled as chapters and subtopics. It is suggested that there are 7,275 Ḥadīth, which are divided into 77 chapters and 3,888 sub topics.

c) The book of Ṣaḥḥ al-Bukhārī has been analyzed and commented by many traditionists. It contains analyses and commentaries by many traditionists, seven in all, in which every single Ḥadīth is analyzed from every possible scholastic perspective, viz. 'Aflām al-Sunan (Ḵhaṭṭābī ʿAbī Sulaitāną), al-Kawkab al-Darārī fī Ṣaḥḥ Ṣaḥḥ al-Bukhārī (al-Ḥāfīẓ Sāmīddīn Mūḥammad), Fatḥ al-Bārī (Imām ʿIblīs al-ʿAṣqālānī), Umda al-Qārī (al-Ḥāfīẓ Badrūdīn ʿAbī Mūḥammad, Irshād al-Sārī (Ṣhiḥābūdīn Aḥmad), Fayḍ al-Bārī (Ṣheikh Mūḥammad Anwār al-Kashmerī), Lāmī al-Darārī (Ḥājj Rashīd Aḥmad al-Kankuhi).

Though traditionists are mostly in agreement that the book of Ṣaḥḥ al-Bukhārī is juristically recognized as a main reference for the Ḥadīth, some scholars doubt the validity of some texts. One of these was ʿImām Daraqūṭī who formally

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13 Ibn Ḥajār, al-Isāba, v.ii, p.70  
15 Ibn al-Ṣalāḥ, ʿUlam, p.16.  
16 al-Zuhārī, Tadhwīn, p.122.
criticized a few narrators, which he classified as doubtful and fraudulent in its chain of transmission. Consequently, Imam Ibn Ḥajar al-ʿAsqalānī in turn examined the accusations made by Imam Daraquṭnī, rebutting his arguments as lacking in both judgment and evidence. He thus strongly defended the validity of narrators in Ṣaḥīḥ al-Bukhārī.

The importance of Ṣaḥīḥ al-Bukhārī as the principal source for the Ḥadīth is further upheld by many other reference books such as Bulūgh al-Maḥām. For example, from 1,572 Ḥadīths in Bulūgh al-Maḥām, 557 Ḥadīths are derived from Ṣaḥīḥ al-Bukhārī, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (557):

![Diagram of the Numbers of Ahadith from Sahih al-Bukhari in Bulugh al-Maram: 557](image)

18 Ibid.
19 Ibid. This kind of detailed examination and analysis can be found in many traditionists books particularly in those seven books of the commentary of Ṣaḥīḥ al-Bukhārīas listed above.
4.2 Ṣaḥīḥ al-Muslim

The author of Ṣaḥīḥ al-Muslim is Abū Ḥussein Muslim b. al-Ḥajjāj b. Muslim al-Qushairi al-Naṣṣābūrī. He was born at Nāṣṣābūr in 204H and died in his homeland on Sunday, in the month of Rajab, 261H. His best-known name is Imām Muslim. He was a gifted disciple under Imām Bukhārī, and was endorsed as such by the Imām himself. Thus, Imām Muslim’s approach and methods followed those of Imām Bukhārī very closely.

Imām Muslim is thus acknowledged as one of the greatest scholars in the science of Ḥadīth apart from Imām Bukhārī. He is well known for mastery in the area of memorization of the Ahādīth, establishing the chain of Ḥadīth narrators and the variety of their sources, the science of criticizing its narrators, and distinguishing between the valid and the weak amongst them.

The title of Ṣaḥīḥ al-Muslim was assigned by traditionists to acknowledge Imām Muslim’s efforts to follow Imām Bukhārī’s work in compiling the numbers of authentic Ahādīth in one single book. Nevertheless, Imām Muslim himself entitles his book al-Musnad al-Ṣaḥīḥ. The book is compiled from 300,000 of Ahādīth.

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21 Ibid.
22 Ibid.
23 Ibid.
24 Ibid.
25 Ibid.
26 al-Zuhrani, Tadwīn, p. 125.
27 Muslim, Muqaddima, p. 3.
which were passed orally directly to Imām Muslim by the authentic narrators of the Hadīth.

The book of Saḥīḥ al-Muslim is recognized as a main reference source for the book of Hadīth after Saḥīḥ al-Bukhārī due to the following juristic features;

a) All narrators of Hadīth are juristically identified as having a continuous chain of narrators (isnād) through the disciples of the prophet (s.a.w) and their successors, culminating in Imām Muslim himself. All are recognized as trustworthy (‘adil) and possessed of the most accurate and greatest powers of memory (dābiq).

b) It was the second book of Hadīth to be compiled as chapters and sub topics. Scholars have estimated that there are 5,362 numbers of Hadīth which are divided into 56 chapters and 1,423 sub topics.

c) The book of Saḥīḥ al-Muslim has been analyzed and commented upon by many traditionists. There are six books of commentaries in which every single Hadīth of Saḥīḥ al-Muslim has been analyzed from every possible scholastic perspective; viz. al-Mufḥim fi Sharḥ Muslim (ʿAbd al-Ghāfir b. Ismāʿīl al-Fārisi,d.529H), al-Muʿāllim fi Sharḥ Muslim (Abī ʿAbdullah Muhammad b. ʿAli,d.536H ), Ikmāl al-Muʿāllim bifawaiʿd Sharḥ Saḥīḥ Muslim (Al-Qāḍī Abī al-Fadl ʿIyāḍ, d.544H), Sharḥ Saḥīḥ Muslim (Abī ʿAmrū b. ʿUthmān b. al-Silah,d.643H), al-Minhāj fi Sharḥ Saḥīḥ Muslim (Abī Zakarīyya Yahya b.

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28 Ibid
29 Ibn al-Ṣalāḥ, Siyāna,p.76.
31 al-Suyūṭī, Tadrib,p.104.
32 al-Zuhārī, Tadhīn,p.122.

As a second main reference source for the book of Ḥadīth after Ṣaḥīḥ al-Bukhārī, Ṣaḥīḥ al-Muslim’s work has also generated a great deal of discussion as well as criticism amongst traditionists. Imām Abū Zar’ah al-Rāzi was one of those who juristically criticize some narrators disqualified by Imām Muslim, such as ʻAtṭā’ b. al-Saʻīb and Muḥammad b. ʻAmrū b. ʻalqamah33. But surprisingly, Imām Daruqṭūnī who vociferously criticizes some narrators validated by Ṣaḥīḥ al-Bukhari, nevertheless acknowledges Imām Muslim’s judgement concerning the quality of all his narrators.34 As a result, a later scholar, Dr. al-Fadhil Rabi’ b. Hadi al-Mudakhali has in turn undertaken research on the quality of all narrators in Ṣaḥīḥ al-Muslim. His studies lead him to conclude (controversially) that all narrators of Ṣaḥīḥ al-Muslim are qualified at the level of Ṣaḥīḥ, including 95 narrators held as disqualified by some traditionists35.

As the importance main reference source for the book of Ḥadīth, Ṣaḥīḥ al-Muslim has been referred to more recently by many others books of Ḥadīth, such as Bulūgh al-Marām. For example, from 1,572 Ahādīth in Bulūgh al-Marām, 745 Ahādīth are derived from Ṣaḥīḥ al-Muslim, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (745):

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34 Ibid.  
35 al-Mudakhali, Bayna,p.15
4.3 *Musnad Aḥmad b. Ḥanbal*

The author of *Musnad Aḥmad b. Ḥanbal* is *Abū ʿAbdullah Aḥmad b. Muḥammad b. Ḥanbal b. Hilāl al-Shaybānī*. He was born in the month of *Rabīʿ al-awwal*, 164H at Baghdad and died on Friday, 12th *Rabīʿ al-awwal*, 241H. His best-known name is Imam Aḥmad b. Ḥanbal. He is acknowledged as one of the greatest scholars in the area of theology, Islamic law and in the science of Hadīth.

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He is also known as one of the four foremost Imams of the Islamic juristic school due to his contribution as the founder of the Ḥanbal’s juristic school (Madhhab Al-Ḥanbaliya). In the science of Ḥadīth, Imām Aḥmad showed remarkable skill in memorizing one million Aḥādīth. Furthermore, his work of compiling the Aḥādīth (the Musnad) using his unique methods of classification - highlights his expertise in the area of the history of Ḥadīth’s narrators.

The book of Musnad Aḥmad b. Ḥanbal is recognized as one of the main reference sources for the book of Ḥadīth due to the following juristic features;

a) The narrators of the Ḥadīth are juristically divided into Ṣāḥīḥ (lit. validity), Ḥasan (lit. fairness) and Ḍaʿīf (lit. weak). It is suggested by Ibn al-Jawzi that Musnad Aḥmad b. Ḥanbal also contains some fabricated narrators (Muwdūf). Nevertheless, most traditionists agree that Musnad Aḥmad is still recognized as the foremost reference source for the book of Ḥadīth due to the large numbers of authentic narrators in its chain of transmission.

b) It was the first book of Ḥadīth to be compiled in which every single narrator is classified into many levels of disciples of the prophet (s.a.w)

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38 Ibid.
39 Ibid.
40 al-Jazri, al-Musnad, p. 34.
and their successors. Furthermore, some narrators are classified by the name of the place to which they are belonged.


The importance of *Musnad Aḥmad* b. Ḥanbal as one of the main references for the book of Ḥadīth is further upheld by many other reference books such as *Bulūgh al-Marām*. For example, from 1,572 Ḥadīth in *Bulūgh al-Marām*, 259 Ḥadīth are derived from *Musnad Aḥmad* b. Ḥanbal, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (259);

![Ahadith Cross-Referenced Between Musnad Ahmad b Hanbal and Bulugh alMaram](image)

4.4 Sunan Abū Dāwūd

The author of Sunan Abū Dāwūd is Sulaiman b. al-Ash'ath b. Ishak al-Azdi al-Sijistani. He was born in Basrah in 203H/817M, where he lived until his death on Friday in the month of Shawwal 275H/888M. He is best-known as Abū Dāwūd, and also studied under Imām Aḥmad b. Ḥanbal along with al-Bukhārī. He later became a Ḥadīth scholar, teaching many scholars such as al-Tirmīdhi and al-Nasā'ī.45

As one of the great scholars at that time, Abū Dāwūd collected 5,000,000 Ahādīth but he compiled only 4,800 Ahādīth in one single book entitled al-Sunan.47 The book of Sunan Abū Dāwūd is juristically recognized as a main reference source of Ḥadīth due to the following features:

a) The narrators of Ḥadīth are juristically divided into Sahīh (lit. validity), Ḥasan (lit.fairness) and Da'if (lit. weak).48 Though Abū Dāwūd himself referred to many narrators authenticated by Imām Bukhārī and Imām Muslim, it is argued by Imām Ibn Ḥajar al-ʿAqalānī that small numbers of these are juristically identified as having discontinuity; that is, certain members of the chain of narrators should be categorized as the least trustworthy and as lacking in powers of memory. At the same time, in terms of text validity, the Hadīths concerned have either irregularities (shudhūdh) or defects (ʿilla).49

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46 Ibid.
47 Ibid.
48 al-Jazrī, al-Musāfād, p.34.
b) Scholars have estimated that there are 4,590 Ḥadīth in the book of Sunan Abū Dāwūd, which are divided into 35 chapters and 1,879 sub topics.


The importance of Sunan Abī Dāwūd as one of the main reference sources for the book of Ḥadīth is further upheld by many other reference books such as Bulūgh al-Marām. For example, from 1,572 Ḥadīth in Bulūgh al-Marām, 444 Ḥadīth are derived from Sunan Abī Dāwūd, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (444);

\(^{50}\) al-Zuhrāni, Tadhārīn, p.136.
4.5 Jāmi' Abī Ėsa al-Tirmidhi

The author of Jāmi' Abī Ėsa al-Tirmidhi was Muhammad b. Ėsa b. Sūra b. Mūsa b. al-Dhahak al-Sulma al-Bughī al-Tirmidhī51. He was born in the town of Tirmidh, Uzbekistan in 209H, where he died on 13th of Rajab 279H52. He is most commonly known as al-Tirmidhi. As a student of Imam Bukhārī, al-Tirmidhī showed his scholastic attainment by compiling approximately 4,000 Ḥadīth in one single book namely al-Jāmi53. Most importantly, al-Tirmidhi pioneered a juristic methodology to determine in Ḥadīth the level of Ḥasan (lit. fairness)54. He also analyzed the level of Dařīf (lit. weak) in his book on the subject of al-īlal55.

The book of Jāmi' Abī Ėsa al-Tirmidhī is juristically recognized as a main reference of Ḥadīth due to the following features;

52 Ibid.
53 Ibid.
54 Ibid.
55 Ibid.
(a) The narrators of Ḥadīth are juristically divided into Ṣaḥīḥ (lit. validity), Ḥasan (lit. fairness) and Ḍaʿīf (lit. weak). Though al-Tirmīdhi himself referred to many narrators validated by Imām Bukhārī and Imām Muslim, Imām Ibn Ḥajar al-ʿAqalānī asserts some of these are juristically identified as having a discontinuous chain of narrators, made up of the least trustworthy and those lacking in powers of memory. ⁵⁶

(b) Scholars have estimated that there are 3,965 Aḥādīth in the book of Sunan Abū Dawūd, which are divided into 47 chapters and 2,036 sub topics.

(c) The book of Jāmiʿ Abī ʿĪsā al-Tirmidhi has been analyzed and commented upon by many traditionists, viz. Āřīḍa al-Aḥwāzī (al-Ḥāfīẓ b. al-ʿArābī al-Mālikī, d. 546H), Sharḥ al-Tirmīdhi (Ibn Rajab al-Ḥanbali, d. 795H), Tuhfa al-Aḥwāzī (ʿAbd al-Rahman al-Mubarakfūrī)⁵⁷.

The importance of Jāmiʿ Abī ʿĪsā al-Tirmidhi as one of the main references for the book of Ḥadīth is further upheld by many other reference books such as Bulūgh al-Marām. For example, from 1,572 Aḥādīth in Bulūgh al-Marām, 298 Aḥādīth are derived from Jāmiʿ Abī ʿĪsā al-Tirmidhi, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (298);

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⁵⁷ al-Zuhrānī, Tadwīn, p. 140.
4.6 *Sunan al-Nasā'ī*

The author of *Sunan al-Nasā'ī* was Ahmad b. Shu'āib b. ʿAli Sinan Abū ʿAbd. Raḥman al-Nasā'ī. He was born in the city of Nisā' in Khurasan in 215H, where he died in the year 303H at Makka. He is most commonly known as al-Nasā'ī. As a student of Abū Dāwūd, al-Nasā'ī is acknowledged as a Ḥadīth scholar due to his mastery in the area of memorization and his methodology of analysis of the Ḥadīth. Al-Nasā'ī's famous book of Ḥadīth is entitled *Sunan al-Nasā'ī*.

The book of *Sunan al-Nasā'ī* is juristically recognized as a main reference of Ḥadīth due to the following features;

(a) The narrators of Ḥadīth are juristically divided into Ṣāḥīh (lit. validity), Ḥasan (lit. fairness) and Daʿīf (lit. weak). Though al-Nasā'ī himself referred to many narrators recognized as authentic by Imām Bukhārī and Imām Muslim,

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here as elsewhere, a small number of narrators are juristically identified as the least trustworthy and also lacking in powers of memory.\textsuperscript{60}

(b) Scholars have estimated that there are 5,662 \textit{Ahadith} in the book of \textit{Sunan al-Nasā'i}, which are divided into 51 chapters and 2,535 sub topics.

(c) The book of \textit{Sunan al-Nasā'i} has been analyzed and commented upon by traditionists such as \textit{Sharḥ} (al-Sheikh Sirajuddin ʿUmar b. ʿAli b. al-Mulqin al-Shāfiʿi, d.804H) and \textit{Sharḥ} (al-Ḥāfiz Jalāluddin al-Suyūṭi, d.911H)\textsuperscript{61}.

The importance of \textit{Sunan al-Nasā'i} as one of the main references for the book of \textit{Ḥadīth} is further upheld by many other reference books such as \textit{Bulugh al-Marām}. For example, from 1,572 \textit{Aḥādīth} in \textit{Bulugh al-Marām}, 271 \textit{Aḥādīth} are derived from \textit{Sunan al-Nasā'i}, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (271);

\textsuperscript{60} Suyūṭi, \textit{Sharḥ}, v.i, p.3-5.
\textsuperscript{61} al-Zuhrāni, \textit{Tadwīn}, p.143.
4.7 Sunan Ibn Mājah

The author of *Sunan Ibn Mājah* was Muḥammad b. Yazīd b. Maja al-Qızwīni ⁶², born in the city of Qızwīn in 207H. There he died in the month of Ṭaʿlīb 273H⁶³. He is best-known as Ibn Mājah. As a student or Imām Wāli and other scholars, Ibn Majah is acknowledged as a Ḥadīth scholar due to his skill in memorization, the history of narrators and analysis of the Ḥadīth. His most famous book of Ḥadīth is entitled *Sunan Ibn Mājah*.

The book of *Sunan Ibn Mājah* is juristically recognized as a main reference source for the Ḥadīth due to the following features;

(a) The narrators of Ḥadīth are juristically divided into Ṣāḥīḥ (lit. validity), Ḥasan (lit.fairness), Ḍaʿīf (lit.weak) and Mawdūʿ (lit.fabricated). Nevertheless, many scholars argue that the book does have a discontinuous chain of

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narrators, made up of the least trustworthy and the most deficient in powers of memory. At the same time, text validity is marred by either irregularities (Shudhūd) or defects (ʿIlā).  

(b) Scholars have estimated that there are 4,333 Aḥādīth in the book of Sunan Ibn Mājah, which are divided into 33 chapters and 1,536 sub topics.

(c) The book of Sunan Ibn Mājah has been analyzed and commented upon by many traditionists such as Sharḥ (al-Ṣalamah Abī al-Ḥassan ʿAlī b. ʿAbdullāh b. Niʿmah al-Anṣārī, d.567H), Miṣbāḥ al-Zujājah ʿala Sunan Ibn Mājah (al-Ḥāfīẓ Jalāluddin al-Suyūṭī, d.911H) and al-Dibājah Sharḥ Sunan Ibn Mājah (Sheikh Kamaluddin Muḥammad b. Mūsā al-Damri al-Shāfī, d.808H).

Despite the defects described, Sunan Ibn Mājah is upheld as one of the main reference sources for the book of Hadīth. From 1,572 Aḥādīth in Bulūgh al-Marām, for example, 240 are derived from Sunan al-Nasāʿī, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (240);

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64 al-Bāṣī, Dirāsah, p.1519.
Thus, in comparison with the other five books of Ḥadīth, (viz. Musnad Aḥmad, Sunan Abī Dāwūd, Jāmiʿ Abī ʿIsa al-Tirmidhī, Sunan al-Nasāʿīe and Sunan Ibn Mājah), it can be seen that Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ al-Muslim have the most authentic juristic features as source references. Nevertheless, the other five books discussed are also juristically recognized as important reference sources, although to a lesser degree.

There is, however, much cross-referencing between Bulūgh al-Maraḥm and the seven books of Ḥadīth examined, as well as reference to other existing source material. This suggests that the book of Bulūgh al-Maraḥm could not have been compiled without drawing upon the wealth of other extant and juristically accepted works. For this reason, additional source material used in compilation will now be briefly investigated.
4.8 Other Reference Sources

Of those reference sources for the books of Ḥadīth judged as supplementary, most were written in the second, fourth and fifth centuries of Hijra\textsuperscript{66}. Their classification by traditionists was according to their juristic features; that is, a less acceptable quality of narration and narrators compared with the seven books of Ḥadīth\textsuperscript{67} as previously discussed. However, although this latter material is classified as supplementary, it nevertheless continues to be of importance for reference. It is therefore useful to highlight the following juristic features;

4.8.1 Muwaṭṭā' al-Imām Mālik

The author of Muwaṭṭā' al-Imām Mālik is Abu ʿAbdullāh Mālik b. Anās al-Asbahi\textsuperscript{68}. The book of Muwaṭṭā' al-Imām Mālik is juristically recognized as an important reference source for the Ḥadīth. Indeed, before the emergence of the works of Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Muslim, Muwaṭṭā' al-Imām Mālik was judged by Imām al-Shāfiʿi to be the most authentic reference source for the Ḥadīth after the holy al-Qur'ān\textsuperscript{69}. However, most scholars now agree that Muwaṭṭā' al-Imām Mālik should be ranked as only supplementary reference material since juristic features are of lower quality\textsuperscript{70}.

\textsuperscript{66} al-Zuhrāni, Tadwīn, p.271-276.
\textsuperscript{67} Ibid.
\textsuperscript{68} He was born in 84H and died in 179H. He also known as one of the leading Imams of the Islamic juristic school due to his role as the founder of the Māliki school (Madhab al-Mālikiyya).
\textsuperscript{69} Ibn al-Ṣalāḥ, Uṣūl, p.14
The book of *Muwattā' al-Imām Mālik* is also drawn upon for authentication by important reference books such as *Bulūgh al-Marām*. This cross-referencing reveals that in the book of *Bulūgh al-Marām*, 24 *Aḥādīth* are derived from *Muwattā' al-Imām Mālik*.

### 4.8.2 Ṣaḥīḥ al-Imām Ibn Khuzaima

The author of *Ṣaḥīḥ al-Imām Ibn Khuzaima* was Abū Bakr Muḥammad b. Ishak b. Khuzaima al-Nisaburi. The book of *Ṣaḥīḥ al-Imām Ibn Khuzaima* is juristically classified as one of the supplementary sources for the *Ḥadīth* together with many other references, as suggested by Ibn al-Ṣalāḥ, given that its juristic features are much more similar to the seven main reference sources previously discussed.

In addition, the works of *Ṣaḥīḥ al-Imām Ibn Khuzaima* are further referred to by many source books such as *Bulūgh al-Marām*, where 20 *Aḥādīth* are derived from *Ṣaḥīḥ al-Imām Ibn Khuzaima*.

### 4.8.3 Ṣaḥīḥ Ibn Hibban

The author of *Ṣaḥīḥ Ibn Hibban* is Abū Ḥatim Muḥammad b. Ḥibban b. Aḥmad b. Ḥibban al-Busti. As another supplementary reference source for the book of *Ḥadīth*, *Ṣaḥīḥ Ibn Hibban* has juristic features which are in many ways similar to those discussed. Nevertheless, the book of *Ṣaḥīḥ Ibn Hibban* emphasizes the strict

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73 al-Dhahābī, *Tadhkira*, v.iii, p.924.
classification of *ahādīth*\(^{74}\). For al-Suyūṭī, this kind of feature renders the book of *Ṣaḥīh Ibn Ḥibban* distinctive\(^{75}\). This distinction is further upheld by reference books such as *Bulugh al-Marām*, where 20 *Ahādīth* are derived from *Ṣaḥīh Ibn Ḥibban*.

### 4.8.4 Sunan al-Daraquṭnī

The author of this reference source was Abū al-Ḥasan, ʿAli b. ʿUmar b. Aḥmad b. Mahdī al-Baghdādi\(^{76}\). One of its main juristic features is the explanation of the three levels by which each *Ḥadīth* which is judged (i.e. *Ṣaḥīh* [lit. validity], Ḥasan [lit. fairness] and *Daʿīf* [lit. weak])\(^{77}\). For this reason, 19 of its *Ahādīth* are found in the book of *Bulugh al-Marām*.

### 4.8.5 Sunan al-Kubra al-Baihaqi

The author of *Sunan al-Kubra al-Baihaqi* is Abū Bakr Aḥmad b. al-Ḥussein b. ʿAli al-Baihaqi\(^{78}\). Like the preceding reference source, *Sunan al-Kubra al-Baihaqi* also examines the strict criteria for the determining levels within each *Ḥadīth*\(^{79}\). Sixteen of its *Ahādīth* are therefore found in the book of *Bulugh al-Marām*.

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\(^{75}\) *Ibid*.  
\(^{76}\) al-Baghdādi, *Tārikh*.  
\(^{78}\) al-Dhahābī, *Tadhkira*, v.v.p.345  
4.9 Summary

The foregoing examination of main reference and other supplementary Ḥadīth underlines their authenticity as the primary source of Islamic law apart from the Qur'ān on the basis of juristic evidence as shown, in line with the three juristic measures (i.e. Ṣāḥīḥ [lit. validity], Ḥasan [lit. fairness] and Ḍaʿīf [lit. weak]). The principle seven books of Ḥadīth can thus be termed the most authentic compared with other supplementary sources with lesser juristic features. Nevertheless, these supplementary sources are alluded to at length in later works such as Bulūgh al-Marām, along side references to the principle seven volumes.

Indeed, a cross-referencing between the later work of Bulūgh al-Marām, the supplementary sources and the seven main books of Ḥadīth highlights the lesser juristic texts as an important source without which Bulūgh al-Marām could not have been compiled. The juristic features of this work and its connection with the reference sources for the book of Ḥadīth will therefore now be discussed in chapter five under the heading of 'introduction to the book of Bulūgh al-Marām'.
CHAPTER FIVE

THE INTRODUCTION TO THE BOOK OF BULŪḠH AL-MARĀM

5.0 Introduction

The book of Bulūḡh al-Marām is classified by many scholars as the most concise book of Ḥadīth, compiled by Ibn Ḥajar al-ʿAṣqālānī in one volume only. It therefore differs from other works of Ḥadīth in this, and in its divisions into 16 Kutūb (chapters) and 93 Abwāb (sub-topics) - one of its juristic features.

Why Bulūḡh al-Marām has been collected in one single volume is interesting question of methodology - a question which will be addressed in the following analysis, together with a brief discussion of Ibn Ḥajar al-ʿAṣqālānī as an author for the book of Bulūḡh al-Marām.

5.1 The author's biography

The author of Bulūḡh al-Marām was ʿAbd al-ʿĀli b. Ṭalhā b. Muḥammad b. ʿAbd al-ʿĀli. He is best-known as Ibn Ḥajar al-ʿAṣqālānī. He was born in the month of Shaʿbān, 773H at Qaherah, where he died on Saturday night of 28th of Zulhijjah, 852H/1449M.

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1 Khalifah, Madrasa, v.i, p.193
3 Ibn Ḥajar was a nickname inherited from his grandfather, ʿAbd al-ʿĀli. See al-Sakhāwī, Ibid., p.15.
4 Geographically, ʿAṣqālānī refers to the highlands by the seas, located between the Gaza strip and Bayt Jibrin in Palestine. Al-ʿAṣqālānī indicates the name of the place belonging to the descendants of Ibn Ḥajar. See Yaqut, Muḥjam, v.iv, p.122.
Ibn Ḥajar al-Ṣaqaqānī lived in and absorbed an environment of knowledge during his childhood. He entered primary school when he was six years old and memorized the Qur’an at the age of nine, under the supervision Sadr al-Dīn al-Sūfī (d.845H/1444M). At the age of twelve, he went on a pilgrimage to Mecca with his guardian, al-Kharrūbī in the year 784H/1382M, where he stayed for two years to learn the book of Ṣahīḥ al-Bukhārī with Sheikh ʿAfīf al-Dīn al-Nishāwārī (d.790H/1388M).

In the year 790H/1392M, under the tutelage of Muḥammad al-Qaṭṭān al-Miṣrī (d.830H/1410M), Ibn Ḥajar al-Ṣaqaqānī learned Islamic jurisprudence, linguistics and mathematics. When he was nineteen years old, he developed a great admiration for literature and wrote many volumes of poetry in anthology entitled Diwān Ibn Ḥajar.

At the age of twenty, in the year of 795H/1392M, Ibn Ḥajar al-Ṣaqaqānī became a scholar of Islamic jurisprudence, logic, philosophy, literature, mathematics, rhetoric, linguistics and calligraphy. According to al-Sakhāwī, a year later (796H/1393M), he started his learning in the science of Ḥadīth from Zainuddin al-Irāqī (d.806H/1404M). He took ten years to finish his studies in the area of Ḥadīth and he was later known as a leading scholar in this field, as he was in others.

8 Ibid.
9 Ibid.
10 Ibid.
11 Ibid.
12 Ibid.
Many books were thus written in the area of history (Inbā’ al-Ghumar bi Anbā’ al-ʿUmr, Rafa’ al-Isr ‘an Qudāt Misr and al-ʿIliām fi man walla Misr fi al-Islām), literature (Diwan al-Sha’ir and Divān Khutb), Taṣṣīr (a Quranic exegesis which includes al-Aḥkām li bayān mā fi al-Qur’ān min al-Aḥkām) and the Ḥadīth itself. Here, among his important works are Bulūgh al-Marām min Adillah al-Aḥkām, Muqaddimah Fath al-Bārī fi Sharḥ Ṣaḥīḥ al-Bukhārī, Nuzhah al-Naẓr fi Tawdīḥ Nukhbah al-Fikr, Tahdīb al-Tahdīb, Taqrīb al-Tahdīb, al-Iṣābah fi Tamyīz Asmāʾ al-Ṣaḥābah, al-Alqāb al-Ruwāt.

The prolific nature of Ibn Ḥajar al-Asqalānī’s writings in this area point to his mastery of the specialised knowledge necessary in the science of Ḥadīth. For this reason, his particular expertise will be examined throughout this chapter.

5.2 Meaning and significance

The term Bulūgh al-Marām has some significance, as indicated in the author’s introduction;

‘I have named it (this book) Bulūgh al-Marām min Adillat al-Aḥkām; and I pray to Allah not to render what we have learnt a calamity against us; but may He guide us to act according to what pleases Him – the Glorified and Exalted One’13.

---

13 See English Translation of Bulūgh al-Mara'm, 1996, Dar al-Salam, Saudi Arabia, p.9. It is referred to this chapter after this as Eng. Trans. B.M.
In Arabic, the term *Bulūgh* is derived from the verb *balagha*, meaning; to reach, gets to, attain, arrive at and come to\(^\text{14}\). Thus, the term *Bulūgh* can be translated as ‘attainment’ or ‘achieving’\(^\text{15}\). The term *al-Marām* originates from the word *ramy*, meaning; intention, target, objective, purpose, aim and goal\(^\text{16}\). The title in its totality (*Bulūgh al-Marām min Adillat al-Āhkām*) therefore translates as ‘Attainment of the ultimate objectives according to the guidelines of the Holy Ordinances’\(^\text{17}\).

The significance of *Bulūgh al-Marām* for its intended readership is also clearly highlighted in the introduction;

‘To proceed; this is a concise book comprising the *Hadīth* evidence sources of the *Sharī'a* which I have compiled meticulously so that the one who memorizes it excels among his peers, it may assist the beginner student and the learned one seeking more knowledge may find it indispensable’\(^\text{18}\).

Thus, one of Ibn Ḥajar al-Asqalānī’s ‘ultimate objectives’ is seen to be to assist the early level of student to learn the *Hadīth* as a divine source of Islamic law\(^\text{19}\). The work is written in a concise manner and in only one volume for this reason. Nevertheless, despite its brevity, the book of *Bulūgh al-Marām* has valued juristic features as follows.


\(^{15}\) *Ibid*.

\(^{16}\) *Ibid*., p.1014.

\(^{17}\) The term *Bulūgh al-Marām min Adillat al-Āhkām* has also been translated as ‘Attainment of the Objective according to Evidence of the Ordinances’. See Eng. Trans. B.M.

\(^{18}\) *Ibid*.

5.3 Juristic features

As indicated elsewhere, the Aḥādīth of Bulūgh al-Marām are central to this study. For this reason, a principle aim is to determine the quality of the book of Bulūgh al-Marām as a definitive source of Hadīth\textsuperscript{20}. This will be done by applying the paradigm developed to establish the three authentic levels of the Hadīth i.e. Ṣāḥīḥ (lit. validity), Ḥasan (lit. fairness) and Daʿīf (lit. weak).

5.3.1 Ḥadīth Ṣāḥīḥ

Analysis of Ḥadīth Ṣāḥīḥ in the book of Bulūgh al-Marām will therefore focus on the numbers of aḥādīth ṣaḥīḥ in every chapter and sub-topic to determine validity. The method of calculation will be applied to all 1,572 Aḥādīth. Reference materials for aḥādīth ṣaḥīḥ will also be examined in order to identify the variety of their sources.

In terms of validity, then, from 1,572 Aḥādīth in the book of Bulūgh al-Marām, it is calculated that there are 1221 Aḥādīth Ṣāḥīḥ from 16 Kutūb (chapters) and 93 Abwāb (sub-topics). The following chart shows the numbers of Aḥādīth Ṣāḥīḥ from each chapter in greater detail:

The above chart highlights that the chapter of prayer has the highest numbers of Hadith Sahih, calculated as 308 Ahadith, due perhaps to the seventeen sub-topics therein. It can thus be said that its juristic validity is thereby increased. In contrast, the lowest numbers of Hadith Sahih are found in the chapter of emancipation. This chapter contains only one sub-topic, calculated as 15 Ahadith Sahih from the total numbers of 19 ahadith.

The numbers of Hadith Sahih in Bulugh al-Maram as juristic evidence are referred to in both the seven books of Hadith and in other reference sources. These are tabulated in greater detail below.

<table>
<thead>
<tr>
<th>Chap./Ref.</th>
<th>Ahmad</th>
<th>Bukhari</th>
<th>Muslim</th>
<th>Abu Dawud</th>
<th>al-Nasa'i</th>
<th>al-Tirmidhi</th>
<th>Ibn Majah</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purification</td>
<td>16/31</td>
<td>45</td>
<td>69</td>
<td>28/48</td>
<td>21/29</td>
<td>26/38</td>
<td>13/24</td>
<td>40/54</td>
</tr>
<tr>
<td>Prayer</td>
<td>52/63</td>
<td>139</td>
<td>182</td>
<td>76/95</td>
<td>50/54</td>
<td>52/77</td>
<td>27/37</td>
<td>79/99</td>
</tr>
<tr>
<td>Funerals</td>
<td>5/8</td>
<td>23</td>
<td>35</td>
<td>13/17</td>
<td>8</td>
<td>12/16</td>
<td>9/10</td>
<td>8/13</td>
</tr>
<tr>
<td>Zakat</td>
<td>4/4</td>
<td>8</td>
<td>9</td>
<td>11/8</td>
<td>5/8</td>
<td>4/9</td>
<td>2/4</td>
<td>13/19</td>
</tr>
<tr>
<td>Fasting</td>
<td>9/10</td>
<td>34</td>
<td>32</td>
<td>10/14</td>
<td>11/13</td>
<td>8/10</td>
<td>9/12</td>
<td>12/14</td>
</tr>
<tr>
<td>Business Transaction</td>
<td>28/44</td>
<td>71</td>
<td>74</td>
<td>36/50</td>
<td>28/35</td>
<td>24/31</td>
<td>23/39</td>
<td>45/73</td>
</tr>
</tbody>
</table>
As can be seen, juristic evidence in terms of numbers is highest in Muslim (711) and Bukhārī (580), and lowest in Ibn Mājah (156) and Imām Aḥmad (191). It is suggested that these high figures are due to the validating work of Imām Bukhārī and Imām Muslim as against a smaller degree of such work in the books of Sunan Ibn Mājah and Musnad Imām Aḥmad. Numbers for Abū Dāwūd (294), al-Nāsai’e (205), al-Tirmīdhi (200) and others (315) can also be found in the book of Bulūgh al-Marām, which can therefore be seen as supplementary reference sources of Ḥadīth Ṣaḥīḥ apart from the main works i.e. Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Muslim.

Importantly, also found in the book of Bulūgh al-Marām are three modes of classifying Ḥadīth Ṣaḥīḥ as reference sources. The first of these was coined by Ibn Ḥajar al-Ṭasqalānī as a definitive classification meaning ‘agreed upon’ (Muttafaq ʿalaih) with particular reference to Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Muslim, as in the following exemplar:

‘Narrated Anas r.a.: Allah’s Messenger s.a.w used to supplicate frequently:
“Our Lord, give us good (things) in this world and good (things) in the Hereafter, and defend us from torment of [the] fire[s of hell]”.
[Agreed upon]’²¹.

The second mode of classifying Ḥadīth Ṣaḥīḥ in Bulūgh al-Marām is based on the direct condition of Ṣaḥīḥ (validity), which is regularly used as a criterion to verify ahāḍīth. This is demonstrated in following Ḥadīth:

‘Narrated Jābir r.a.: Allah’s Messenger s.a.w said, “If a [large] big amount of anything causes intoxication, a small amount of it is prohibited”.
[ Reported by Ahmad and al-Arba’a; Ibn Ḥibbān graded it ṣaḥīḥ (validity)]

The third method of classifying Ḥadīth Ṣaḥīḥ in Bulūgh al-Marām is an indirect version of Ṣaḥīḥ (validity), very occasionally used as a criterion to verify ahāḍīth, as demonstrated in the following instance:

‘Narrated ʿĀisha r.a.: Allah’s Messenger s.a.w used to divide visits to his wives equally and say, “O Allah, this is my division concerning what I possess, so do not blame me concerning what You possess and I do not”.
[ Reported by al-Arba’a; Ibn Ḥibbān and al-Ḥākim graded it ṣaḥīḥ (validity), but al-Tirmīdhi preponderated that it is Mursal (non-continuous linkage)]

Although the above Ḥadīth is juristically identified as Ṣaḥīḥ by two traditionists (i.e. Ibn Ḥibbān and al-Ḥākim) it is nevertheless argued by al-Tirmīdhi to be invalid due to the condition of non-continuous linkage (Mursal) to the Prophet s.a.w. Under these circumstances, the Ṣaḥīḥ cited can be classified as an indirect version of Ṣaḥīḥ in accordance with the disagreement between traditionists.

Thus, given the sheer number of references to the Ḥadīth Ṣaḥīḥ in Bulūgh al-Marām, together with the three classification modes discussed which are used as validity criteria, it can be stated conclusively that the book of Bulūgh al-Marām is

22 Ibn Ḥajar, Bulūgh al-Marām, (no: 1248)
23 Ibid., (no: 1056)
proven to be authentic. These criteria, together with those examined elsewhere, will now be applied to the large numbers of Ḥadīth Ḥasan which exist aside from the Ḥadīth Ṣaḥīḥ in Bulūgh al-Ma'mām.

5.3.2 Ḥadīth Ḥasan

There are 253 ʾahādīth Ḥasan referred to in the book of Bulūgh al-Ma'mām - obviously a small figure compared with the numbers of Ḥadīth Ṣaḥīḥ (1221 ʾahādīth). Indeed, this contrast between numbers of references within these two levels of authenticity does suggest that it was the author’s priority to seek juristic validation through compiling many ʾahādīth ṣaḥīḥ rather than numbers of ʾahādīth Ḥasan.

These 253 ʾahādīth Ḥasan are divided into 16 Kutūb (chapters) and 93 Abwāb (sub-topics), as highlighted in the following chart;
As shown, the chapter on marriage contains the highest numbers of *Hadīth Ḥasan* (44) as against other chapters such as the chapter on prayer (36), on business transactions (33), on comprehensive ethics (28) and on purification (26); there are, however, no *Ḥasan* references in the chapter on oaths and vows. The lowest number (only one) is found in the chapter on food. The chart also illustrates the same pattern of low *Ḥasan* content in the chapter on emancipation (3), on fasting (6) and on prescribed penalties (7). This phenomenon underlines the low priority of Ḥasan in the writer's mind as against the importance of Ḥadīth Ṣaḥīḥ.

Despite the small numbers of Ḥadīth Ḥasan (253) in Bulūgh al-Marām, it is nevertheless helpful to tabulate the variety of references to other Hadīth sources as follows,

<table>
<thead>
<tr>
<th>Chap./Ref.</th>
<th>Ahmad</th>
<th>Bukhari</th>
<th>Muslim</th>
<th>Abu Dawud</th>
<th>al-Nasai'e</th>
<th>al-Tirmidhi</th>
<th>Ibn Majah</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purification</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>12</td>
<td>4</td>
<td>12</td>
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<td>7</td>
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<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Funerals</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Zakat</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Fasting</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>11</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Pilgrimage</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>5</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Business Transaction</td>
<td>11</td>
<td>0</td>
<td>0</td>
<td>11</td>
<td>6</td>
<td>5</td>
<td>7</td>
<td>19</td>
</tr>
<tr>
<td>Marriage</td>
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<td>0</td>
<td>20</td>
<td>11</td>
<td>9</td>
<td>9</td>
<td>23</td>
</tr>
<tr>
<td>Offenses</td>
<td>3</td>
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<td>0</td>
<td>7</td>
<td>6</td>
<td>4</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Prescribed Penalties</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>11</td>
<td>6</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Jihad</td>
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<td>0</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>0</td>
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<td>1</td>
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<td>Foods</td>
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<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Oaths and Vows</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Judgement</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Emancipation</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Comprehensive Ethics</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>3</td>
<td>14</td>
<td>5</td>
<td>9</td>
</tr>
</tbody>
</table>

**Total:** 69 0 0 119 59 72 53 104
It can be observed from the above table that the highest number of Hasan references are to Abū Dāwūd (119), to ‘others’ (104), to al-Tirmidhi (72), to Aḥmad (69), to al-Nasā’ī (59) and to Ibn Mājah (53). Interestingly, the table also highlights the absence of Hasan references to al-Bukhārī and Muslim, the most juristically authentic compilers of Ḥadīth.

Although the small numbers of Ḥadīth Hasan (253) suggest their low priority in terms of material, according to the three modes of internal classification described, significant juristic features do occur. For example, the first pattern of Ḥadīth Hasan is a cross-category between Hasan and Ṣaḥīḥ, as illustrated;

‘Narrated Anas bin Mālik r.a.: Allah’s Messenger s.a.w was asked about making vinegar out of wine. He said, “No (it is prohibited)”.[Reported by Muslim, and al-Tirmidhī and the latter graded it Hasan-Ṣaḥīḥ(fairness-validity)]24.

Muslim assigns to this pattern the term of Ṣaḥīḥ, while al-Tirmidhī downgrades the material slightly to Hasan-Ṣaḥīḥ, thus creating this type of juristic cross-category. The Ḥadīth is in this way juristically authenticated at a level which nearly approximates to that of Ṣaḥīḥ, but not quite.

The second mode of classification is not an indirect, but a direct version of Hasan, which is exemplified as follows;

‘Narrated Abū Huraira r.a.: The Prophet s.a.w said, “A believer’s soul is attached to his debt till it is paid on his behalf”. [Reported by Ahmad and al-Tirmidhī who graded it Hasan]25.

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24 Ibn Ḥajar, Bulugh al-Marām, (no: 22)
25 Ibid., (no: 529)
Apart from this direct type, *Bulûg al-Marâm* also applies a third indirect verifying criterion of Hasan, which is illustrated in the following example;

‘Narrated Muadh bin Jabal r.a.: Allah's Messenger said; “If anyone disgraces his brother for a sin, he will not die before committing it himself”.

[Al-Tirmîdhi reported it saying it is a Hasan but a Munqatî (disconnected)]

This type of Hadîth is firstly juristically categorized by al-Tirmîdhi as authentically Hasan, but nevertheless disconnected in its chain of transmission (Munqatî). Secondly, *Bulûg al-Marâm* downgrades the Hadîth to the level of Da'îf (weak). Thirdly, the science of Hadîth regards the occurrence of Munqatî as a disqualifying factor. This means that the Hadîth will be unanimously rejected by traditionists as neither Sahîh nor Hasan. Fourthly, al-Tirmîdhi does suggest that the Hadîth has certain juristic features which at least qualify it for the level of Hasan. For these reasons, this pattern of Hadîth can be classified as an indirect version of Hadîth Hasan.

The book of *Bulûg al-Marâm* is therefore shown to be of the most importance as a reference source of Hadîth, as it provides a sophisticated classification model to grade the quality of each legal text within the level of Hadîth Hasan. Apart from Hadîth Hasan, small numbers of Hadîth Da'îf are also found in this book, which will now be discussed.

5.3.3 Ḥadīth Daʿīf

The numbers of Ḥadīth Daʿīf (99) in the book of Bulūgh al-Marām are very small indeed compared with those of Ḥadīth Ḥasan (253) and Ḥadīth Ṣaḥīh (1221), underlining their lesser importance in terms of juristic validity. These 99 aḥādīth Daʿīf are scattered throughout 16 Kutub (chapters) and 93 Abwāb (sub-topics), shown schematically as follows;

The bar chart form shows clearly that only three chapters contain more than 10 aḥādīth Daʿīf: 18 in the chapter on purification, 29 in that on prayer and 15 in that on business transaction. In other chapters, numbers of Daʿīf are even smaller; in that on funeral rites only 1, zakat 2, fasting 1, pilgrimage 3, marriage 3, offences 1, prescribed penalties 3, jihad 6, food 3, judgement 3, emancipation 1, comprehensive ethics 5, yet none at all in the chapter on oaths and vows.
Thus, it can be inferred that in terms of juristic validity *Hadith Da'if* are relatively unimportant in the book of *Bulugh al-Marâm*, as is reflected throughout all other volumes of *Hadith*. The table below shows this pattern diagrammatically:

<table>
<thead>
<tr>
<th>Chap./Ref.</th>
<th>Ahmad Bukhari</th>
<th>Muslim</th>
<th>Abu Dawud</th>
<th>al-Nasâ‘i‘e</th>
<th>al-Tirmidhi</th>
<th>Ibn Majah</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purification</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>9</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Prayer</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
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<td>0</td>
<td>0</td>
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<td>Comprehensive Ethics</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Total: 26 0 0 29 2 28 25 45

This pattern here is from highest to lowest, beginning with the category of ‘others’ (45) through to *Abû Dâwûd* (29), *al-Tirmidhi* (28), *Ahmad* (26) and *Ibn Mâjah* (25). Only two *Hadith Da'if* are referred to in *al-Nasâ‘i‘e*, and none at all in either *al-Bukhâri* or *Muslim*, confirming their juristic validity.
Within these Hadith Da'if, there are three internal modes of classification (identified elsewhere). The first of these is definitive and is exemplified as follows;

‘Narrated Ibn ʿUmar r.a: Allah’s Messenger s.a.w said, “Two types of dead animals and two types of bloods (sic) have been made lawful for us, the types of dead animals are locusts and fish (seafood), while the two types of bloods are the liver and the spleen”. [Reported by Ahmad and Ibn Mājah, and this Hadith has some weakness.]’

The second mode of classifying is based on a multiplicity of factors, among which is quality of narration, as the following example shows:

‘Narrated Ubai bin ʿImara r.a.: I asked, “O Messenger of Allah, may I wipe over the Khuffain (leather socks)?” The Prophet s.a.w replied, “Yes”. I asked, “For one day?” He replied, “For one day”. I again asked, “And for two days?” He replied, “For two days too”. I again asked, “And for three days?”, He replied, “Yes as long as you wish”. [Reported by Abū Dāwūd, who said, “It is not strong”]’

According to Imām al-Nawāwi one of the multiple classifying factors here is the untrustworthy nature of narrators, juristically identified by traditionists as ‘disqualified’. For this reason, the content itself is juristically classified as invalid and unsound.

The third classification mode is based on indirect conditions, as demonstrated in the following instance:

‘Narrated ‘Abdullah bin Abu Bakr r.a: The book written by Allah’s Messenger s.a.w for ṬAmr bin Ḥazm also contained: “None except a pure person should touch the Qur’ān”. [Reported by Mālik as a Mursal and by al-Nasā’i and Ibn Hibban as Mawṣūl. And it is graded as Ma‘lūl (defective)]’

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27 Ibn Hajar, Bulūgh al-Marām, (no: 11)
28 Ibid, (no : 64)
29 Ṣanʿānī, Subul al-Salām, v,i,p.34.
Here traditionists identify the indirect condition as ‘non-continuous linkage of narrators’ (*Mursal*) between the reporting disciple and the Prophet s.a.w. Himself. Nevertheless, al-Nasā’ī, Ibn Hibbān and Haithami grade this *Hadīth* as *Mawṣūl*—‘connected linkage’ as well as qualified narrators. Aside from this difference of opinion, the majority of traditionists agree on a classification of *Daʿīf*, with defective narrators in the chain of transmission.

Analyses here (and indeed throughout this thesis) demonstrate how the classification model developed by the writer can be used as an instrument to determine the quality of each *Hadīth*. Thus, while the low juristic priority of *Daʿīf* is affirmed, despite their small number these *Hadīth* do have complementary value as reference sources, along with the *Hadīth* *Sāḥīḥ* and the *Hadīth* *Hasan*.

As discussed previously, the concise nature of the book of *Bulūgh al-Marām* raises the interesting question of the author’s compilation methodology. To a discussion of this, the writer now turns.

5.4 Compilation methodology

In this slim volume, Ibn Ḥajar al-Asqalānī has laid down a defining compilation methodology in terms of those *Hadīth* selected for inclusion; the clear arrangement of general topic chapters (16) and sub-topic divisions within those chapters (93); and, thirdly, a specific and highly economical system of referencing.

32 Ibid.
across all volumes of *Hadith*. Each of these compilation elements will now be discussed in turn.

### 5.4.1 Numbers of *Hadith*

Unusually, Ibn Ḥajar al-Ṣaqqālī does not appear to regard either numerical sequencing of *Hadīth* or their actual numbers as significant, unlike previous and more recent compilers. Perhaps this was considered unimportant at that time. A personal count shows, however, that there are 16 *Kutūb* (chapters) and 93 *Abwāb* (sub-topics).

For many later traditionists, as for compilers prior to Ibn Ḥajar al-Ṣaqqālī, sheer numbers of *Hadīth* would point to both the quality and the juristic features in each book of *Hadīth*. Thus, some have calculated the *ahādīth* in *Bulūgh al-Marām* using their own method of calculation. Muhammad Rashad Khalīfah for example claims a total of 1,373 *ahādīth*\(^34\) and Abū Zahw 1,400\(^35\), whereas Muhammad Ḥāmid al-Fiqi has come up with 1,569\(^36\).

Why, then, does this discrepancy exist? It seems that different calculating systems are used by different scholars, depending on what they wish to prove on the basis of either inclusion or omission of *Hadīth*\(^37\). That is, some *Hadīth* are repeated in many chapters and sub-topics, while others are not. For this reason, discrepancies will occur when repeated *Hadīth* are included in some final numbers but not in others.

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\(^{34}\) Khalīfah, *Madrasa*, p.447.

\(^{35}\) Abū Zahw, *al-Ḥadīth*, p. 347


However, in order to specify exact numbers of Ḥadīth in Bulugh al-Marām, every Ḥadīth should be calculated within each chapter and sub-topic regardless of repetition. The writer considers such methodology to be fair and just, since no single Ḥadīth is in this way ignored. By way of illustration, this methodology has been used to tabulate the numbers of Ḥadīth Sahih, Hasan and Da`īf in Bulugh al-Marām, shown below.

<table>
<thead>
<tr>
<th>Chap./Numbers</th>
<th>Overall</th>
<th>Sahih</th>
<th>Hasan</th>
<th>Da`īf</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purification</td>
<td>147</td>
<td>103</td>
<td>26</td>
<td>18</td>
</tr>
<tr>
<td>Prayer</td>
<td>373</td>
<td>308</td>
<td>36</td>
<td>29</td>
</tr>
<tr>
<td>Funerals</td>
<td>65</td>
<td>53</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td>Zakat</td>
<td>49</td>
<td>34</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>Fasting</td>
<td>58</td>
<td>51</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>Pilgrimage</td>
<td>75</td>
<td>63</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Business Transactions</td>
<td>191</td>
<td>143</td>
<td>33</td>
<td>15</td>
</tr>
<tr>
<td>Marriage</td>
<td>195</td>
<td>148</td>
<td>44</td>
<td>3</td>
</tr>
<tr>
<td>Offenses</td>
<td>46</td>
<td>35</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>Prescribed Penalties</td>
<td>56</td>
<td>35</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>Jihad</td>
<td>62</td>
<td>49</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
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<td>0</td>
</tr>
<tr>
<td>Judgement</td>
<td>36</td>
<td>25</td>
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<td>3</td>
</tr>
<tr>
<td>Emancipation</td>
<td>19</td>
<td>15</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Comprehensive Ethics</td>
<td>132</td>
<td>99</td>
<td>28</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1572</strong></td>
<td><strong>1220</strong></td>
<td><strong>253</strong></td>
<td><strong>99</strong></td>
</tr>
</tbody>
</table>

It will be seen that each chapter and sub-topic has been analysed to show totals of Ḥadīth Sahih as against Hasan and Da`īf. Out of the total number of Ḥadīth of 1572, the very high figure of 1220 are Ḥadīth Sahih, whereas only 253 are Hasan and 99 are Da`īf. Percentage-wise, these figures are calculated as 77.6%, 16.08% and 6.29% respectively. The dominance of Ḥadīth Sahih thus demonstrates conclusively the juristic value of Bulugh al-Marām as a reference source for the Ḥadīth, while the small numbers of Hasan and Da`īf provide important supplementary variety of reference.
Aside, then, from the unusual disregard for both numbering sequences and actual numbers of Ḥadīth, the succinct arrangement of chapters and sub-topics within them is another unique aspect of Bulūgh al-Marām and of its compilation methodology. To an analysis of this the writer now turns.

5.4.2 Arrangement of chapters and sub-topics

A significant feature of the compiler's layout methodology for the 16 chapters and 93 sub-topics is that of terminology. Firstly, each chapter topic is assigned the term Kitāb (meaning 'book'); within these, all the aḥādīth are categorized into specific sub-topics or Bāb. Thus, as an example, Kitāb al-Ṭahāra fi Kitāb Bulūgh al-Marām would translate literally from the Arabic as 'Book of Purification in the book of Bulūgh al-Marām'. In the writer's opinion, however, academic specificity demands the term 'chapter' rather than 'book', since the latter implies too much generality.

As for the interesting term 'Bāb', the compiler uses this as a kind of frame within which to group sub-topics; a metaphorical or symbolic dimension is thus added to the concept of 'door'. This literary device is noted by al-Ṣan'ānī, for whom the term Bāb is a metaphor which indicates the launch point for discussion of a particular juristic theme within each chapter.38 Put another way, the 'door' acts as a 'portal' or 'doorway', leading through into a kind of discussion forum. However, in line with academic specificity, the term Bāb can perhaps best be translated as 'sub-topic'. An

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example of this ‘Kitab’ and ‘Bab’ structure is shown below, to demonstrate how this methodology works in practice:

The Chapter on Purification:

Sub-topic 1. Water
Sub-topic 2. Utensils
Sub-topic 3. The nature and cleansing of impurities
Sub-topic 4. Ablutions
Sub-topic 5. Wiping of leather socks
Sub-topic 6. The nullification of ablutions
Sub-topic 7. The manner of dealing with natural body functions
Sub-topic 8. Taking baths and precepts regarding sexual impurity
Sub-topic 9. Purification with soil
Sub-topic 10. Menstruation

Secondly, each of these chapters and sub-topics is set out in accordance with principles for holy living and worship as laid down in the Qur’an – as a kind of practical instruction manual. Further, these instructions start with the most basic requirement for the Muslim way of life, that of ‘purification’, with its 10 sub-topics. ‘Prayer’ then logically follows, containing 17 sub-topics\(^{39}\). Next comes the discussion forum on ‘funerals’; here (interestingly) there are 65 Ḥadīth, yet no sub-topic arrangement\(^{40}\).

Another important practical area of the Muslim way of life then follows - that of Zakāt - setting out instructions for financial assistance for the poor. Here within 49 Ḥadīth, only 24 aḥādīth are categorized into 3 sub-topics; i.e., Ṣadaqat al-Fītr, 40

\(^{39}\) The following list is 17 sub-topics of the chapter on prayer;

Sub-topic 1. The times of prayers
Sub-topic 2. The call to prayer
Sub-topic 3. The conditions of prayer
Sub-topic 4. Sutra (screen) in prayer
Sub-topic 5. Humility in prayer
Sub-topic 6. Mosques
Sub-topic 7. The description of the prayer
Sub-topic 8. Prostration due to forgetfulness in prayer
Sub-topic 9. Voluntary Prayer

Sub-topic 10. Prayer in congregation and the imamate
Sub-topic 11. The prayer of a traveler and a patient
Sub-topic 12. Al-Jumu’a (Friday) prayer
Sub-topic 13. Prayer in the time of fear
Sub-topic 14. The prayers of the two ‘Eids
Sub-topic 15. The prayer at an eclipse
Sub-topic 16. Prayer for rain
Sub-topic 17. The manners of clothing

\(^{40}\) See Part C for full analysis.
voluntary alms and the division of Șadaqa. As for the remaining (unclassified) 25 aḥādīth, these can be divided in terms of known juristic areas; the obligatory Zakāt, the measurement of seeds and plantations and inherited wealth.

The chapter on fasting then follows Zakāt, consisting of 58 aḥādīth. 22 only of these are divided into 2 sub-topics; i.e., firstly; voluntary fasting and the prescribed days of prohibited fasting, and, secondly; keeping vigil in the mosque to offer voluntary prayers during the nights of Ramaḍān. The remaining 26 aḥādīth are non-categories, but do concern matters such as sighting of the crescent moon of Ramaḍān, prohibited fasting on non-sighting days, intention to fast and Sahīr (taking a meal before fasting).

41 The exemplified Hadīth as follows;
"Narrated Ibn ’Abbas r.a.: The Prophet s.a.w sent Mu'adh r.a. to Yemen - he mentioned the rest of the Hadīth which has: “Allah has made obligatory for them, in their wealth, a Sadaqa to be taken from their rich and handed over to their poor. [Agreed upon and the version is of Al-Bukhari]”
See Ibn Hajar, Bulūgh al-Marām, (no: 586)

42 The exemplified Hadīth as follows;
"Narrated Sahl bin Abu Hathma r.a.: Allah’s Messenger s.a.w ordered us, “When you estimate (the Sadaqa of fruits like dates) take them leaving a third; and if you do not leave a third, leave a quarter (of the estimated Sadaqa for the owners)”. [Reported by Al-Khamsa except Ibn Majah. Ibn Hibban and Al-Hakim graded it Šahīh].
Ibid., (no: 604)

43 The exemplified Hadīth as follows;
"Narrated ’Amr bin Shu’ail ibn on his father’s authority from his grand father r.a.: Allah’s Messenger s.a.w said, regarding a treasure which was found by a man in a wasted place - “If you find it in an inhabited village, a fifth is payable on it and on buried treasure”. [Ibn Majah reported it through a a good chain of narrators].
Ibid., (no: 611)

44 The exemplified Hadīth as follows;
"Narrated Ibn ’Umar r.a.: The people tried to sight the new moon and he informed the Prophet s.a.w that he had seen it, so he fasted and commanded the people to fast. [Abū Dāwūd reported it and al-Hākim and Ibn Ḥībān graded it Šahīh].
Ibid., (no: 639)

45 The exemplified Hadīth as follows;
"Narrated Ammar bin Yasir r.a.: He who fasts on a day that (the starting of Ramadan) is doubted has disobeyed Abu al-Qasim s.a.w. [Al-Bukhari mentioned it as a Mu’allaq, but Al-Khamsa traced it back to the Prophet s.a.w as a Mawṣūl and Ibn Hibban graded it Šahīh].
Ibid., (no: 636)
Next comes the doorway into ‘pilgrimage’, with its 75 *ahādīth* within 6 sub-topics, followed by the chapter on ‘business transaction’ (191 *ahādīth*). The 22 sub-topics in this latter chapter cause it to be considered as the biggest sub-topic in *Bulūgh al-Marām*, although the discussion forum on ‘marriage’ has 195 *ahādīth* — the highest number compared with other chapters.

46 The exemplified *Hadīth* as follows;

‘Narrated Hafsa r.a., Mother of the Believers: The Prophet s.a.w said, “No fasting is accepted from the one who does not commit his intention to fast before dawn”. [Reported by Al-Khamsa, Al-Tirmidhi and al-Nasa'i preponderate (sic.) it as *Mawquf*, Ibn Khuzaima and Ibn Hibbān authenticated it as *Marfū*.”

*Ibid., (Hadīth: 641)*

47 The exemplified *Hadīth* as follows;

‘Narrated Anas bin Malik r.a.: Allah’s Messenger s.a.w said, “Take a meal (just) before dawn, for there is a blessing in *Sahūr* (taking a meal) at the time”. [Agreed upon]

*Ibid., (Hadīth: 645)*

48 The following list is 6 sub-topics of the chapter on pilgrimage;

Sub-topic 1. Its merit and the definition of those to whom it was prescribed
Sub-topic 2. *Mawqūf* (time and location)
Sub-topic 3. Manners and nature of the *Ihrām*
Sub-topic 4. The *Ihrām* and its related activities
Sub-topic 5. The nature of the pilgrimage and entering *Makka*
Sub-topic 6. Missing the pilgrimage and being detained

49 The following list is 22 sub-topics of the chapter on business transactions;

Sub-topic 1. Conditions of business transactions and those which are forbidden
Sub-topic 2. Conditional bargains
Sub-topic 3. Usury
Sub-topic 4. Permission regarding the sale of *al-ʿArāyā* and the sale of trees and fruits
Sub-topic 5. Payment in advance, loans and pledges
Sub-topic 6. Bankruptcy and seizure
Sub-topic 7. Reconciliation
Sub-topic 8. The transfer of a debt and surety
Sub-topic 9. Partnership and agency
Sub-topic 10. Confession
Sub-topic 11. *al-ʿAariya* (the loan)
Sub-topic 12. Wrongful appropriation
Sub-topic 13. Option to buy neighbouring property
Sub-topic 14. *al-Qirād*
Sub-topic 15. *al-Musaqat* and *al-Ijara* (tending palm-trees and wages)
Sub-topic 16. The cultivation of barren lands
Sub-topic 17. Endowment
Sub-topic 18. Gifts, life-tenancy, and giving property which goes to the survivor
Sub-topic 19. Lost and found items
Sub-topic 20. Bequests
Sub-topic 21. Wills and testaments
'Marriage' has 14 sub-topics\(^{50}\), although 31 \(a\hbox{hādīth}\) within these are non-categories. A logical arrangement would be sub-topics such as motivation for marriage\(^{51}\), choosing a wife\(^{52}\), the marriage sermon \(^{53}\), the engagement \(^{54}\), the dowry \(^{55}\), conditions of marriage \(^{56}\) and the temporary marriage \(^{57}\).

Sub-topic 22. Trusts

\(^{50}\) The following list is 14 sub-topics of the chapter on marriage;  
Sub-topic 1. Equality in marriage and right of choice  
Sub-topic 2. Relations with wives  
Sub-topic 3. The jointure (\textit{Mahr})  
Sub-topic 4. The wedding feast  
Sub-topic 5. Division of visits to each wife  
Sub-topic 6. Separating from a wife and compensation  
Sub-topic 7. Divorce  
Sub-topic 8. \textit{Al-Raj'ā}  
Sub-topic 9. \textit{Al-Ilya'}, \textit{al-Zihar} and \textit{al-Kaffara}  
Sub-topic 10. Invoking curses  
Sub-topic 11. \textit{Al-Iddah}, \textit{Al-Ihdad}, \textit{Al-Istibra'}, and other pertaining matters  
Sub-topic 12. \textit{Al-Rida'}  
Sub-topic 13. Maintenance  
Sub-topic 14. Guardianship

\(^{51}\) The exemplified \textit{Hādīth} as follows;  
'Narrated (Anas bin Malik) r.a.: Allah's Messenger s.a.w used to command us to marry and forbid severely celibacy and say, "Marry women who are very prolific and loving, for I shall outnum

\(^{52}\) The exemplified \textit{Hādīth} as follows;  
'Narrated Abu Huraira r.a.: The Prophet s.a.w said, "A woman may be married for four qualities, for her property, her rank, her beauty and her religion; so get the religious one and prosper." [Agreed upon; with the rest of \textit{al-Sab\textdegree}].

\(^{53}\) The exemplified \textit{Hādīth} as follows;  
'Narrated 'Abdullah bin Mas\textdegree'ud r.a.: Allah's Messenger s.a.w taught us \textit{al-Tashahhūd} in case of some need, which is: "Praise is due to Allah Whom we praise and from Whom we ask help and pardon. We seek refuge in Allah from the evils within ourselves. He whom Allah guides has no one who can lead him astray, and he whom He leads astray has no one to guide him. I testify that there is no god but Allah, and I testify that Muhammad is His slave and Messenger." And recited three verses. [Reported by Ahmad and \textit{al-Arb\textdegree'a}; \textit{al-Tirmīdhī} and \textit{al-Ḥākim} graded it \textit{Hasan}].

\(^{54}\) The exemplified \textit{Hādīth} as follows;  
'Narrated Ibn 'Umar r.a. Allah's Messenger s.a.w said, "One of you must not ask a woman in marriage when his brother has done so already, until the suitor giver her up before him or gives
This chapter then leads into that on ‘offences’ consisting of 46 ahādīth within 4 sub-topics; i.e., types of blood money, accusations of murder and taking oaths, killing of transgressors and fighting against offenders and killing apostates. Here, the 16 ahādīth which are non-categories could be arranged into sub-topics such as Qisāṣ\(^58\), rulings on offences\(^59\) and reconciliation in Qisāṣ\(^60\).

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\(^{55}\) The exemplified Ḥadīth as follows; 
‘Abū Dāwūd reported this Ḥadīth from Abu Huraira r.a.: He asked, “What do you memorize?” He replied, “Sūra al-Baqara and the one that follows it.” He then said, “Get up and teach her twenty verses.”

\(\text{Ibid., (no: 971)}\)

\(^{56}\) The exemplified Ḥadīth as follows; 
‘Narrated Abu Burda bin Abu Musa on the authority of his father; Allah’s Messenger s.a.w said, “There is no marriage without a guardian.” [Ahmad and al-Arba’a reported it; Ibn al-Madini, al-Tirmidhi and Ibn Hibbān graded it Šahīḥ, but it was regarded defective for being Mursal]’. 

\(\text{Ibid., (no: 972)}\)

\(^{57}\) The exemplified Ḥadīth as follows; 
‘Narrated ‘Ali r.a.: Allah’s Messenger s.a.w forbade the temporary marriage in the year of Khaibar. [Agreed upon]’. 

\(\text{Ibid., (no: 991)}\)

\(^{58}\) The laws of equality in punishment for wounds etc. in retaliation. The exemplified Ḥadīth on this regard as follows; 
‘Narrated Ibn Mas‘ud r.a.: Allah’s Messenger s.a.w said, “The blood of a Muslim who testifies that, ‘there is no god but Allah and that I am Allah’s Messenger’ may not be lawfully shed but for one three reasons: a married man who commits fornication; a life for a life; and one who turns away from his religion and abandons the community.” [Agreed upon].’ 

\(\text{Ibid., (no: 1156)}\)

\(^{59}\) The exemplified Ḥadīth as follows; 
‘Narrated Samura r.a.: Allah’s Messenger said, “If anyone kills his slave we will kill him, and if anyone maims his slave we will maim him.” [Reported by Ahmad and al-Arba’a; al-Tirmidhi graded it Hasan, and it is from Hasan al-Basri’s version on the authority of Samura, but it was disagreed upon whether he has heard from Samura or not].’ 

\(\text{Ibid., (no: 1159)}\)

\(^{60}\) The exemplified Ḥadīth as follows; 
‘Narrated Anas r.a.: al-Rubaiyi' daughter of al-Nadr - his paternal aunt - broke the front tooth of a girl and they (the people of al-Rubaiyi) asked the girl’s people to pardon her, but they refused; then they offered a fine, but they refused, and they went to Allah’s Messenger s.a.w but they refused any offer but retaliation. So Allah’s Messenger s.a.w ordered retaliation to be taken. Then Anas bin al-Nadr said, “O Allah’s Messenger, will the front tooth of al-Rubaiyi be broken? No, by Him Who has sent you with the Truth, her front tooth will not be broken.” Allah’s Messenger s.a.w then replied, “O Anas, Allah’s Decree is retaliation.” But the people agreed to pardon her, so Allah’s Messenger s.a.w said, “Among Allah’s slaves are those who, if one adjured Allah, He would Consent to it.” [Agreed upon; the wording being of al-Bukhārī].’

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‘Offences’ then into connects with ‘prescribed penalties’ which has 56 ahādīth divided into 4 sub-topics; i.e., prescribed punishment for committing fornication, for foul accusation, for theft and for drinking of alcohol, followed by explanation of the terms ‘intoxication’ and flogging and ordinances regarding assailants.

The discussion forum on ‘Jihād’ then follows consisting of 62 ahādīth, which incorporate 2 sub-topics; i.e., head tax and truce, and racing and shooting. The 43 ahādīth which are non-categories could perhaps be arranged in sub-topics such as obligatory Jihād61, categories of war62, the methods of war63, war hostages64 and Jihād as its applies to women65.

61 The exemplified Hadith as follows;
‘Narrated Abu Huraira r.a: Allah’s Messenger s.a.w said, “He who dies without having gone or thought of going out for Jihad, will die guilty of a kind of hypocrisy.” [Reported by Muslim].’
Ibid, (no: 1258)

62 The exemplified Hadith as follows;
‘Narrated Anas r.a.: The Prophet s.a.w said, “Use your property, your selves and your tongues in striving against the polytheists.” [Ahmad and al-Nasa’i reported it; Al-Hakim graded it Sahih].’
Ibid, (no: 1259)

63 The exemplified Hadith as follows;
‘Narrated Sulaiman bin Buraida on his father’s authority (from ‘Aisha r.a.): Whenever Allah’s Messenger s.a.w appointed a commander over an army or a Sariya, he instructed him to fear Allah Himself and consider the welfare of the Muslims who were with him. He then used to say, “Go out for Jihad in Allah’s Name in Allah’s Path and fight with those who disbelieve in Allah. Go out for Jihad and do not indulge in Ghulu (stealing the war booty before its distribution), or be treacherous, or mutilate anyone, or kill a child. When you meet your enemy – the polytheists, summon them to three things, and accept whichever of them they are willing to agree to, and leave them alone: Call them to Islam, and if they agree accept it from them, and summon them to leave their abodes and transfer to the abode of al-Muhajirin (the Emigrants). But if they refuse, then tell them they will be like the desert Arab Muslims, thus they will have no Ghanima or Fai’ unless they participate in the Jihad with the Muslims. If they refuse Islam, demand the Jizya from them. If they refuse seek Allah the Most High’s help against them and fight with them. When you besiege a fortress, and its people wish you to grant them the protection of Allah and His Prophet, grant them neither but grant them your protection, for it is less serious to break your guarantee of protection than to break that of Allah. And if they offer to capitulate and have the matter referred to Allah’s judgement, do not grant this, but let them have the matter referred to your judgement, for you do not know wheter or not you will concur with Allah the Most High’s Judgement regarding them.” [Muslim reported it].’
Ibid, (no: 1268)
The chapter on ‘foods’ which follows has 41 hadith and 3 sub-topics within these; i.e., hunting and animals which may be slaughtered, sacrifices and al-aqīqa. The 12 hadith which are found as non-categories in this chapter could be divided into 2 supplementary sub-topics; i.e., food which are suitable or unsuitable for human consumption.

‘Oaths and vows’ then follows, with 22 hadith (here without sub-topics) leading to the doorway into ‘judgement’. This consists of 36 hadith divided into 2 sub-topics; i.e., testimonies, and claims and related evidence. For the 13 hadith which remain as non-categories, new sub-topics are suggested such as the specific role of judge, the legal reasoning of judges and the suitability of women as judges.

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64 The exemplified Hadith as follows;
‘Narrated ‘Imran bin Hussain r.a.: Allah’s Messenger s.a.w exchanged two Muslim men from captivity with a Mushrik man.” [Al-Tirmidhi reported it, he graded it Sahīh (sound). Its origin is in Sahīh Muslim].
Ibid., (no: 1284)

65 The exemplified Hadith as follows;
‘Narrated ‘Aisha r.a.: I said, “O Allah’s Messenger, is Jihad prescribed to women?” He replied, “Yes”, a Jihad which is without fighting; it is the pilgrimage (Hajj) and the ‘Umrah”, [Reported by Ibn Majah and its origin is in Sahīh Al-Bukhārī].
Ibid., (no: 1260)

66 The exemplified Hadith as follows;
‘Narrated Ibn Abu Aufa r.a.: We went on seven expeditions with Allah’s Messenger s.a.w and we ate locusts. [Agreed upon].
Ibid., (no: 1323)

67 The exemplified Hadith as follows;
‘Narrated Jabir r.a.: On the day of Khaibar, Allah’s Messenger s.a.w forbade the flesh of domestic asses, but permitted horse flesh. [Agreed upon]. A version by Al-Bukhari has: “He gave permission”.
Ibid., (no: 1322)

68 The exemplified Hadith as follows;
‘Narrated Buraida r.a. Allah’s Messenger s.a.w said: “Judges are of three types, two of whom will go to Hell and one to Paradise. The one who will go to Paradise is a man who knows what is right and gives judgement accordingly; but a man who knows what is right and does not give judgement accordingly and acts unjustly in his judgement will go to Hell, and a man who does not know what
'Emancipation' is next introduced with 19 ahādīth consisting of only one sub-topic; i.e., matters pertaining to Mudabbar, Mukātab and Umm al-Walad. Since 9 ahādīth are non-categories, new sub-topics are suggested such as priority for the freedom of slaves\textsuperscript{71}, provisions for freeing slaves\textsuperscript{72}, and wealth due to freed children\textsuperscript{73}.

The final discussion forum is on 'comprehensive ethics', with 132 ahādīth integrating 6 sub-topics; i.e., good behaviour, kindness and joining the ties of relationship, ascetism and piety, cautioning against mischievous conduct, exhortations to good character, remembrance of Allah and supplications.

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\textsuperscript{69} The exemplified Hadīth as follows;

'Narrated `Amr bin al-'As r. a.: He heard Allah's Messenger s. a. w says, "When a judge gives a ruling having tried his best to decide correctly and is right, he will have a double reward; and when he gives a ruling having tried his best to decide correctly and is wrong, he will have a single reward"

[Agreed upon].'

\textit{Ibid.}, (no: 1383)

\textsuperscript{70} The exemplified Hadīth as follows;

'Narrated Abu Bakar r. a.: The Prophet s. a. w said, "A people who make a woman their ruler will never prosper." [Reported by al-Bukhari].'

\textit{Ibid.}, (no: 1395)

\textsuperscript{71} The exemplified Hadīth as follows;

'Narrated Abu Huraira r. a.: Allah's Messenger s. a. w said, "If a Muslim man emancipates a Muslim man, Allah will set free from Hell an organ of his body for every organ of his (the emancipated man's body)". [Agreed upon].'

\textit{Ibid.}, (no: 1419-1421)

\textsuperscript{72} The exemplified Hadīth as follows;

'Narrated Safina r. a.: I was a slave of Umm Salama r. a., and she said, "I shall emancipate you, but on condition that you serve Allah's Messenger s. a. w as long as you live." [Reported by Ahmad, Abu Dawud, al-Nasa'ie and al-Hakim].'

\textit{Ibid.}, (no: 1428)

\textsuperscript{73} The exemplified Hadīth as follows;

'Narrated `Aisha r. a.: Allah's Messenger s. a. w said, "The right of inheritance from an emancipated slave belongs to the one who set him free." [Agreed upon, in a long Hadīth].'

\textit{Ibid.}, (no: 1429)
The significant question addressed throughout this chapter, then, has been that of 'selection'. That is, in selecting specific topics and sub-topics from the wealth of Islamic jurisprudence, Ibn Hajar al-Asqalani has clarified the order of priority for the basics of Islam. At the same time, he has introduced a standard compilation methodology for the inclusion of many Hadith in one volume. This he achieves through the metaphor of a 'portal' or 'doorway' leading through into a kind of discussion forum on a theme.

An important part of this method is its sheer economy. Not only an economy of selection, but also an economy of cross referencing between this and other volumes of Hadith. That is the author of Bulugh al-Marâm has coined specific terms to refer to specific groups of narrators, thus eliminating the need for elaborate individual acknowledgement. At the same time, this extensive cross referencing marks out Bulugh al-Marâm as the most authentic compilation of Hadith in terms of authenticity. To a discussion of this the writer now turns.

5.4.3 The specific terms of reference sources

For the first ever in the science of Hadith, Bulugh al-Marâm initiates the specific terms of reference sources for the Hadith⁷⁴. There are six specific terms that have been introduced by the author to demonstrate the reference sources for most of the Hadith in Bulugh al-Marâm. The six specific terms are al-Sab'a, al-Sitta, al-

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Khamsa, al-Arba' a, al-Thalatha, al-Muttafaq  `alaih. In the introduction of his book, the author clarifies the significance of these specific terms as follows:

'I have indicated at the end of every Ḥadīth, the Imam who collected it, in order to be honest to the (Muslims) Umma. And therefore, al-Sab'a (the Seven) stands for Aḥmad, al-Bukhārī, Muslim, Abū Dāwūd, al-Nasā'i, al-Tirmidhi and Ibn Mājah. Al-Sitta (the Six) stands for the rest excluding Aḥmad. Al-Khamsa (the Five) stands for the rest except al-Bukhārī and Muslim or I may say Al-Arba'a (the Four) and Aḥmad. I mean by Al-Arba'a (the Four) the rest except the first three (i.e. Aḥmad, al-Bukhārī and Muslim), and by Al-Thalatha (the Three) I mean the rest except the first three and the one. I mean by al-Muttafaq  `alaih (the Agreed upon) al-Bukhārī and Muslim, and I might not mention with them anyone else and any other thing apart from these clarifications is clear'.

Importantly, each term shows the reference source for the Ḥadīth and clarifies it level of authenticity of Ḥadīth. For these two reasons, the examination will be made on each term which in line with the Ḥadīth in Bulūgh al-Marām, as follows;

5.4.3.1 Al-Sab'a

The term al-Sab'a has been used by the author to illustrate the reference source for 10 aḥādīth in Bulūgh al-Marām. In provisos of validity of the Ḥadīth, the term al-Sab'a verifies the most authenticity due to the collective agreement between seven narrators i.e. Imaṃ Aḥmad bin Ḥanbal, Bukhārī, Muslim, Abū Dāwūd, al-Tirmidhi, al-Nasā'i, Ibn Mājah. There are two patterns of al-Sab'a which are established in Bulūgh al-Marām.

The first pattern is called as a definitive al-Sab'a. In terms of numbers, there are 9 āḥādīth in this pattern, which can be exemplified as one of them below;

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75 Ibn Hajar, Bulūgh al-Marām, p.3.
‘Narrated Anas r.a.: The Prophet s.a.w on entering the lavatory used to say:
“O Allah, I seek refuge with You from devils – males and females (or all offensive and wicked things, evil deeds and evil spirits, ect.)”. [Reported by al-Sab’a]76.

The second pattern is termed as indirect al-Sab’a which indicates only one Hadith as follows;

‘Narrated ‘Ali r.a: At the battle of Khaibar, the Prophet s.a.w forbade the temporary marriage of women, and eating the flesh of domestic asses. [Al-Sab’a except Abū Dāwūd reported it].’77

Although the above Hadith is referred to al-Sab’a, the author nevertheless made the exception of reference to Abū Dāwūd. In general, this provision can be understood that without the reference to Abū Dāwūd, it will therefore six narrators only for the Hadith (al-Sitta). However, the author does mention in the above quotation regarding the stand of al-Sitta is for the rest of seven narrators excluding Ahmad. For this ground, the statement of ‘al-Sab’a except Abū Dāwūd reported it’ - is not the same as the term al-Sitta.

5.4.3.2 Al-Sitta

According to Ibn Ḥajar al-ṣāqalāni, the term al-Sitta is applied to the Hadith which is referred to the six narrators of Hadith i.e. al-Bukhārī, Muslim, Abū Dāwūd, al-Nasā’i, al-Tirmīdhi and Ibn Mājah. This term can be seen as the second most authenticity after al-Sab’a due to the collective concurrence in terms of narration. However, none at all of the Hadith in Bulugh al-Marām is referred to the term Al-

76 Ibid., (no: 86)  
77 Ibid., (no: 992)
Sitta. At this stage, the author can be seen as ignoring to demonstrate the Ḥadīth of al-Sitta although it is mentioned at a first place in his introduction.

5.4.3.3 Al-Khamsa

The term al-Khamsa means the narration of Ḥadīth which is referred to the five narrators i.e. Aḥmad, Abū Dāwūd, al-Nasā’i, al-Tirmīdhi and Ibn Mājah. Two narrators are excluded in this term i.e. Bukhāri and Muslim. In terms of numbers, there are 60 aḥādīth that are in line with the term al-Khamsa, which can be divided into 3 patterns as follows;

The first pattern is classified as definitive al-Khamsa which is exemplified in the following Ḥadīth;

‘Narrated (ʿĀisha) r.a.: When the Prophet s.a.w came out of the privy, he used to say, “Ghufranaka (O Allah! Grant me Your forgiveness).”’ [Reported by al-Khamsa. Abū Ḥātim and al-Ḥākim graded it Šaḥīḥ].’78

The second pattern is indirect of al-Khamsa that is illustrated below;

‘Narrated ʿĀisha r.a.: The Prophet s.a.w said, “The prayer of a woman, who has reached puberty, is not accepted unless she is wearing a Khimar (cover).”’ [Reported by al-Khamsa except al-Nasā’i’e. And Ibn Khuzaima graded it Šaḥīḥ].’79

The third pattern is based on disapproval al-Khamsa as demonstrated in the following instance:

‘Narrated (Abū Huraira) r.a.: Allah’s Messenger s.a.w said: “When the (month of) Shaʿbān is halfway, do not fast.”’ [Reported by al-Khamsa. Aḥmad disapproved it].’80

78 Ibid., (no: 98)
79 Ibid., (no: 204)
80 Ibid., (no: 676)
5.4.3.4 Al-Arba’ā

Al-Arba’ā is a term which has been used to indicate the aḥādīth that are referred to the four narrators i.e. Abū Dāwūd, al-Nasā’ī, al-Tirmīdhi and Ibn Mājah. In this term, three narrators are eliminated i.e. Aḥmad, Bukhārī and Muslim. For the term al-Arba’ā, there are 59 aḥādīth which are referred to and they are classified into two patterns as follows;

The first pattern is classified as definitive al-Arba’ā, which can be exemplified in the following Hadīth;

‘Narrated Jābir r.a.: Allah’s Messenger s.a.w said, “If anyone says when he hears the Adhān: ‘O Allah! Lord of this perfect call and of the regular prayer which is going to be established! Kindly give Muhammad s.a.w. the right of intercession and superiority, and send him (on the day of Judgement) to the best and the highest place in Paradise which You promised him’, he will be assured of my intercession.” [Reported by al-Arba’ā].’

The second pattern in based on indirect version of al-Arba’ā, as in the following exemplar;

‘Narrated Ibn ºAbbas r.a.: The Prophet s.a.w used to say between the two prostrations: “(O Allah, forgive me, have mercy on me, guide me, heal me, and provide sustenance for me).” [Reported by al-Arba’ā except al-Nasā’ī, and this is the version of Abū Dāwūd and al-Hākim graded it Ṣaḥīḥ].’

5.4.3.5 Al-Thalātha

For the author, the term al-Thalātha means the Ḥadīth which is referred to the three narrators i.e. Abū Dāwūd, al-Nasā’ī and al-Tirmīdhi. Four narrators are

81 Ibid., (no: 202)
82 Ibid., (no: 299)
disregarded in this term i.e. Ahmad, Bukhārī, Muslim and Ibn Mājah. There are 14 ḥādith which are in accordance with the term al-Thalātha that has one pattern only in terms of narration. The pattern is called as definitive al-Thalātha which is exemplified as follows;

‘Narrated Abū Saʿīd al-Khudrī r.a.: Allah’s Messenger s.a.w said, “Water is pure and nothing can make it impure.” [Reported by al-Thalātha, and Aḥmad graded it Ṣaḥīḥ].’

5.4.3.6 al-Muttafaq ʿalaih

The term al-Muttafaq ʿalaih means the reference source for the Ḥadīth is agreed upon only by the two most respected scholars i.e al-Bukhārī and Muslim. The Ḥadīth which is referred to this term is juristically considered the most authentic Ḥadīth. In the book of Bulūgh al-Marām, there are 435 ḥādith which are in line with the term al-Muttafaq ʿalaih.

In terms of pattern, there is only one pattern in the term al-Muttafaq ʿalaih which is exemplified as follows;

‘Narrated Hudhaifa bin al-Yaman r.a.: Allah’s Messenger s.a.w said, “Do not drink in silver or gold utensils, and do not eat in plates of such metals, for such things are for them (the disbelievers) in this worldly life and for you in the Hereafter.” [Agreed upon].’

Apart from the term al-Muttafaq ʿalaih, the author regularly refers either to al-Bukhārī or Muslim in separate term, which demonstrates below;

‘Bukhārī’s version adds: “Then perform ablutions for every prayer”.’

‘In the version of Muslim: “I used to scrape it (the semen) off the garment of Allah’s Messenger s.a.w and then he offered prayer with it”.

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83 Ibid, (no: 2)
84 Ibid., (no: 14)
85 Ibid., (no: 66)
The coining of the six specific terms in line with the referencing across all important books of Ḥadīth can be stated conclusively as the remarkable compilation methodology of Bulūgh al-Marām. Importantly, some of these six specific terms have been referred and utilized by many latter jurists in their books particularly in terms of referencing across all volume of Ḥadīth. It will therefore be concluded that the book of Bulūgh al-Marām can be considered a first model of concise book of Ḥadīth which has been followed by many other books later on.

5.5 Summary

This chapter juristically shows the author’s biography of Bulūgh al-Marām and more importantly the significance and features in which the book is considered as a concise book of Ḥadīth. The analytical approach has been applied to examine the three authenticity levels of Ḥadīth i.e. Šāhīḥ, Ḥasan and Daʿīf. As a result, the book of Bulūgh al-Marām authentically consists of 77.6% Šāhīḥ, 16.08% Ḥasan and 6.29% Daʿīf. These figures of percentage-wise prove the quality and significance of Bulūgh al-Marām as the importance reference source for Islamic legal texts of the Ḥadīth.

The examination of compilation methodology of Bulūgh al-Marām academically verifies a defining approach within three main elements i.e. numbers of Ḥadīth, arrangement of chapters and sub-topics and specific terms of cross-referencing. Moreover, this pattern of compilation methodology has been followed by many later jurists as a benchmark approach to compile the legal texts of Ḥadīth.

86 Ibid, (no: 25)
To further analysis of *Bulugh al-Marām*, the next part C will examine the legal texts of Ḥadīth in the framework of juristic concept of *al-Mašlaḥa wa al-Naṣṣ*. This analyse part will explore conceptually the significance of public interest through the Islamic legal texts of Ḥadīth. To a discussion of this the writer now turns.
PART C
ANALYSIS OF THE ḤADĪTH

Introduction to Part C

The Ḥādīth of Būlūgh al-Marām have been analysed and commented upon by many jurists. Muḥammad Rashad Khalīfa,¹ for example, states that there are at least seven jurists who undertook this task. The most well-known of these is al-Imām Muḥammad b. Ismāʿīl al-Ṣanʿāni (d.1182H), who entitles his book Subul al-Salām. The six remaining jurists include al-Qāḍī Sharfuddin al-Ḥusein (d.1119H), whose works (al-Badr al-Tamam) were written in manuscript, al-Sheikh Abū al-Khayr Nūr al-Ḥasan Khān, who wrote a commentary of Būlūgh al-Marām (Fatḥ al-ʿAllām) and al-ʿAllāma Abū Ṭaib Ṣadiq Ḥassan Khān, whose analyses of the Ḥādīth of Būlūgh al-Marām were written (interestingly) in Persian. As yet, there is no known title for this later work. al-ʿAllāma Aḥmad Ḥasan al-Dahlāwi has produced two volumes of Muntakhab, while other commentators are al-Sheikh Muḥammad ʿĀbidīn Aḥmad al-Anṣārī (d.1257H) and al-Sheikh Muḥammad ʿAli Aḥmad, lecturer in Uṣūluddīn at al-Azhār University, for whose works there is also no title, perhaps due to unavailable or unpublished material.

Significantly, these seven books mostly have a very similar pattern in terms of analytical methodology. For instance, Subul al-Salām falls into three parts: definitions of terminologies used in the Ḥadīth, followed by a biography of each narrator, then concluding with a juristic discussion on Islamic rulings contained therein. This three-part pattern can be classified as the classical approach.

¹ Khalīfa, Madrasa, v.2, p.202
Methodology of Analysis

In part C, the writer will apply the contemporary approach to analyse the *Aḥādīth* in *Būlūgh al-Marām*, particularly that chapter termed *Kitāb al-Buyūt*, because of its central importance to the focus of the present study. Nevertheless, those classical commentaries already discussed will be referred to in this analysis, particularly the book of *Subul al-Salām*, written by al-Ṣanāʿī. The contemporary approach suggested differs from the traditional method in that the concept of *al-Maṣlaḥa wa al-Naṣṣ* will be applied to this analysis. That is, the Ḥadīth will be examined through the 'juristic themes' as set out in the book of *Būlūgh al-Marām*. This examination aims to pinpoint the significant principles of public interest (*Maṣlaḥa*) which emerge from the Islamic rulings enclosed within it.

More specifically, these principles will be determined through the process of ratiocination (*Taʾlīl al-Ahkām*). That is, the examination will focus on the effective causes of Islamic rulings, applying both linguistic and inductive methods, followed by simple and concise elaboration.

In other words, this section will analyse the objectives of Islamic rulings as laid down in the *Aḥādīth* of *al-Buyūt* in *Būlūgh al-Marām*. For example, in the sub topic of 'usury', the discussion will single out those objectives which are in line with the concept of public interest (*Maṣlaḥa*). Each Ḥadīth in turn will then be scrutinised for those rulings and teachings which are in accordance with the principle of public interest (*Maṣlaḥa*). In order to do so, the process of ratiocination (*Taʾlīl al-Ahkām*) will be applied to identify the main objectives of Islamic law, also termed in Islamic
jurisprudence *Maqāṣid al-Shariʿa*. For some jurists, these objectives are synonymous with the term *hikma*, the wisdom of the Divine Commandments. To this analysis, the writer now turns.
CHAPTER SIX

KITĀB AL-BUYūM : APPLICATION OF THE CONCEPT OF AL-MAṢLAḤA WA AL-NAṢṢ TO THE AḤĀDĪTH OF AL-BUYūM

6.0 Introduction

This chapter forms the heart of the present study, building a specific methodology within the juristic framework of public interest in legal texts (al-Maṣlaḥa wa al-Naṣṣ) for the analysis of Kitāb al-Buyūm according to the practical principles drawn up from the 22 juristic 'themes' or sub topics therein. The process of ratiocination (tafal il al-aḥkām) is applied to identify the main objectives of Islamic law as set out in Kitāb al-Buyūm.

Prior to this analysis, the definition and significance of al-Buyūm will be examined as the first sub topic of this chapter, with the aim of justifying both its inclusion and the way in which rulings and teachings are set out in accordance with the juristic principle of public interest (al-Maṣlaḥa wa al-Naṣṣ). In addition, juristic features of the Aḥādīth from each sub topic of al-Buyūm will be highlighted to verify their authenticity.

6.1 Definition and Significance of al-Buyūm

In terms of a literal definition, the book of Subul al-Salām defines the term al-Buyūm (sing. al-Bayūf) as (tamliḳ māl bi-māl) or 'conveyancing property by property', where the term 'conveyancing' is translated from the Arabic 'tamliḳ'. In the al-Mawrid dictionary, the term tamliḳ is translated literally as 'investment with
ownership, putting in possession transfer (of ownership), conveyance (of property),
alienation, making over, assignment, delivery and cession\textsuperscript{2}, which demonstrates its
strong connection with the subject of property. As further verification of this strong
link, Collins Cobuild Learner’s Dictionary defines conveyancing as ‘the process of
transferring the legal ownership of property’\textsuperscript{3}, which underlines the sense of
‘ownership of property’ to which the term \textit{tamli\k} refers.

In the English language, the term \textit{al-Buy\ü} (sing.\textit{al-Bay\ü}) translates in several
ways; this is seen, for example, in Rayner\textsuperscript{4}, where the term is defined as ‘the contract
of sale’ in a comprehensive discussion in the chapter entitled ‘The Theory of
Contracts in Islamic law’. \textit{Kitâb al-Buy\ü} is thus translated by Rayner as ‘Chapter on
Sales’. Interestingly, however, scholars do translate this differently. The English
translation for the book of \textit{Bulûgh al-Marâm}, as a further example, defines \textit{Kitâb al-
Buy\ü} as ‘The Book of Business Transactions’. At this stage, the term \textit{al-Buy\ü} means business transaction and the term \textit{Kitâb} is literally translated as the book.

Selecting an accurate translation for the two terms discussed is thus not an
easy task. However, in view of the numerous types of business transaction listed
within each sub topic under the heading of \textit{al-Buy\ü}, it is clearly preferable in the
context of this study to choose the term ‘business transactions’ rather than ‘sales’. As
for the term \textit{Kitâb}, although the meaning here is literally ‘the book’, to translate as
‘the book of business transactions in the book of \textit{Bulûgh al-Marâm}’ nevertheless
seems strange. For this reason, ‘chapter’ is preferred to ‘book’ for the term \textit{Kitâb}.

\textsuperscript{2} al-Ba\'albaki, \textit{al-Mawrid}, p.372.
\textsuperscript{3} Cobuild, \textit{Learner's Dictionary}, p.239.
\textsuperscript{4} Rayner, \textit{The Theory}, p.103-143.
Accordingly, from hereon ‘chapter on business transactions’ will refer specifically to Kitāb al-Buyūf.

In juristic terminology, the term al-Buyūf is defined as ‘offer and acceptance on two types of property’; however, this type of transaction does not include donations or gifts, and specifically excludes the context of ‘dealing and giving’. Elsewhere the term al-Buyūf is defined as the ‘exchange’ of property (as against ‘offer and acceptance’) which also excludes both donations and ‘giving’. Importantly for this study, the first of these definitions (the condition of ‘offer and acceptance’) is in line with the principle laid down in the Qurʾān which insists on ‘mutual consent’ as a fundamental ethic when engaging in trading or in business transactions. The preferred definition thus embodies a classic Islamic principle when interpreting the term al-Buyūf, on which many jurists are in agreement.

Furthermore, many jurists agree that the principle of ‘offer and acceptance’ within the fundamental ethic of mutual consent as applied to the contract of al-Buyūf is equally applicable to other contracts, particularly those in areas such as marriage, family, descendants, finance and court judgements, as argued for example by Ibn ʾĀshūr. The main objective of this legal principle is thus to preserve the rights of interested parties involved in any contract or transaction. It is for this reason that the section concerning al-Buyūf is chosen for analysis, since it embodies a vital legal principle (that of ‘mutual consent’) laid down between contracting parties.

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6 Ibid.  
7 Allah s.w.t says; ‘O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. (Al-Nisa’: 29).  
8 al-Jaziri, Kitāb al-Fiqh, v.2, p.147.  
9 Ibid.  
10 Ibn ʾĀshūr, Maqāsid, p.302.
This view is upheld by the book of Subul al-Salām as the definitive textual analysis for the Ḥādīth of Bulūgh al-Marām, where the importance of al-Buyūrī is highlighted as forming a fundamental part of human life. For al-Ṣanāʿī, business transactions act as a medium through which human objectives are legitimately attained in a straightforward manner. In other words, incorporated into this important area of human activity are principles and methods for business transactions as laid down by the Prophet s.a.w in many authentic Ḥādīth, with the objective of guiding humanity towards dealing uprightly and legally in business transactions. These significant principles of business transactions will thus now be further discussed within the framework of juristic concept of al-Maṣlaḥa wa al-Naṣṣ.

6.2 Chapter on Business Transactions

In the book of Bulūgh al-Marām, the chapter on business transactions is the largest compared with others, particularly in terms of sub topics. There are 22 sub topics, including specific numbers of the Ḥādīth as follows; conditions of business transactions and those which are forbidden (44 ʿahādīth); options of transaction (3 ʿahādīth); usury (17 ʿahādīth); permission regarding the sale of al-ʿArāyū and the sale of trees and fruits (7 ʿahādīth); payment in advance, loans and pledges (8 ʿahādīth); bankruptcy and seizure (8 ʿahādīth); reconciliation (3 ʿahādīth); the transfer of a debt and surety (4 ʿahādīth); partnership and agency (8 ʿahādīth); confession (1 ʿahādīth); loan (4 ʿahādīth); al-Ghasb (5 ʿahādīth); option to buy neighbouring property (5 ʿahādīth); al-Qirād (2 ʿahādīth), tending palm-trees and wages (9 ʿahādīth), developing

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11 al-Ṣanāʿī, Subul, v.3, p.3-4
12 Ibid.
barren lands (9 \(a\hbar d\bar{i}\bar{h}\)); endowments (3 \(a\hbar d\bar{i}\bar{h}\)), gifts, life-tenancies and giving property for the recipient's life time (11 \(a\hbar d\bar{i}\bar{h}\)); lost and found items (6 \(a\hbar d\bar{i}\bar{h}\)); shares of inheritance (13 \(a\hbar d\bar{i}\bar{h}\)); wills and testaments (5 \(a\hbar d\bar{i}\bar{h}\)) and trusts (1 \(a\hbar d\bar{i}\bar{h}\)).
6.2.1 Conditions of business transactions and those which are forbidden

As the first sub topic in the chapter on *al-Buyūʿ* or business transactions, this is the largest sub topic because it consists of 44 *Ahādīth* that are encompassed 37 *Ṣaḥīḥ*, 4 *Ḥaṣan* and 3 *Daʿīf*. In terms of reference, this sub topic is referred to authentic narrators of the *Ḥadīth* such as Aḥmad (narrated 14 *Ahādīth*), Bukhārī (narrated 18 *Ahādīth*), Muslim (narrated 18 *Ahādīth*), Abū Dāwūd (narrated 11 *Ahādīth*), al-Nasāʿī (narrated 9 *Ahādīth*), al-Tirmīdhi (narrated 10 *Ahādīth*), Ibn Mājah (narrated 10 *Ahādīth*), and others (narrated 16 *Ahādīth*).

This sub topic has two interrelated main points to highlight i.e. i) conditions of business transactions ii) those which are forbidden to deal in business transactions. There are 35 *Ahādīth* in line with the conditions of business transactions and 9 *Ahādīth* in connection with the particular items which are forbidden to deal with business transactions. However, the former and the latter are interrelated to each other in specific topic.

To begin with, those 35 *Ahādīth* in conjunction with the conditions of business transactions will be examined within the framework of juristic concept of *al-Maṣlaha wa al-Nass*.

The first *Ḥadīth* that in line with the conditions of business transactions emphasises on two types of work that are earning the best i.e. a man's work with his

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1 In this chapter, the term ‘others’ is referred to scholars of *Ḥadīth* such as Mālik, al-Shāfiʿi, Abū Hātim, Ibn Khuzaimah, Ibn Hibbān and al-Ḥākim.
hand and every business transaction which is approved. For al-Ṣanāʿī, this Ḥadīth is a proof on the reward of the effort of work. Since there are only two types of work laid down in the Ḥadīth, some jurists differ to interpret a type of profitable work and to determine which is the best one. For al-Mawardi, a type of profitable work refers to farming, business and manufacturing. At this stage, al-Nawāwi highlights farming is the best profitable work because it would gain a sense of reliance to Allah almighty. However, Shāfiʿi's scholars prefer business as a profitable work compared with the others. These arguments can be understood simply that practical work is a juristic cause to gain profitable. The best of practical work is either physical work or business. In line with juristic concept of Maṣlaḥa or public interest, both physical work and business would benefit the life of humanity. In terms of profitable for humanity, business is the best because of its feature that can be related to many areas such as agricultural business, industrial business, educational business and so on. However, those types of business must in line with Islamic principle that aims to preserve the right of both parties either seller or buyer. This condition has been underlined by the Prophet s.a.w in the third Ḥadīth of this sub topic.

In the third Ḥadīth, the Prophet s.a.w underlines a solution for two people who are arranging a business transaction disagree and there is no proof to arbitrate between them, the seller's word is final, or they may break the deal. For the author of Subul al-Salām, this Ḥadīth is a proof to endorse the authority and right of seller either to

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2 Narrated Rifaʿī b. Rāfiʿ. The Prophet صلى الله عليه وسلم was asked, "What type of earning is best?" He replied, "A man's work with his hand and every business transaction which is approved." (Reported by al-Bazzār; al-Hākim graded it Šajīʿ (sound)).


4 Ibid.

5 Narrated Ibn Masʿūd. I heard Allah's Messenger صلى الله عليه وسلم saying, "When two people who are arranging a business transaction disagree and there is no proof to arbitrate between them, the seller's word is final, or they may break the deal." (Reported by al-Khamsa and validated by al-Hākim).
persist or break a deal in the transaction for particular reason such as disagreement with buyer\(^6\). This provision is in line with the concept of public interest in which the right of ownership is preserved from loss and damage of his wealth or property. Furthermore, in the case of disagreement between seller and buyer, the Islamic principle of claims and proofs must be applied to gain justice and right for both parties. This is in line with the Hadith of the Prophet s.a.w; ‘the proof lies on the plaintiff and the oath must be taken by him who rejects the claim\(^7\). The juristic principle in this Hadith clearly provides justice and right for both parties who are in disagreement by proving the proof for plaintiff and confessing the oath for defendant. This juristic principle is in line with the basic fundamental necessity of public interest in Islam whereby the preservation of wealth is undertaken by implementing the principle of justice and right for both parties who are engaging the business transaction.

Within the fifth Hadith of this sub topic, the Prophet s.a.w demonstrates how to deal with a sale that binds within the condition of al-Istihna\(^3\) or exception. In the fifth Hadith, the Prophet s.a.w has returned the camel and its price of which he bought from the buyer who gave a condition in the transaction that the camel should be allowed to ride it to his home\(^8\). In the examination of this Hadith, Muslim jurists


\(^7\) Narrated Jābir b. Abdullah رضي الله عنهما: I was travelling on a camel of my own which had grown jaded and I intended to let it off. The Prophet صل الله عليه وسلم followed me and made supplication for me and struck it, then it went as it had never done before. He then said, "Sell it to me for one Uqiyah." I replied, "No." He again said, "Sell it to me." So I sold it to him for one Uqiyah, but conditioned that I should be allowed to ride it to home. Then when I reached (home), I took the camel to him and he paid me its price in ready money. I then went back and he sent someone after me. (When I came), he said, "Do you think that I asked you to reduce the value of your camel's price to take it? Take your camel and your coins; for it is yours." (Agreed upon; and this is Muslim's version).
differ on the legality of condition of *al-Istithnā'* that includes in the contract of sale. For Imām Aḥmad and Mālik, the contract is legal and valid if the buyer knows clearly on the condition of *al-Istithnā'* that is dealt with9. However, most jurists of Shāfi‘i and Ḥanafi reject the contract that binds with the condition of *al-Istithnā'* due to its uncertain and doubt10. This Ḥadīth and its rulings form a legal choice for the buyer either to proceed the transaction with the knowledge of the condition of *al-Istithnā'* or to cancel this type of transaction. In line with the concept of public interest, either seller or buyer would have a legal choice of transaction that deals with this type of contract.

In dealing with the buyer of sale, the sixth Ḥadīth11 of the Prophet s.a.w underlines a bankruptcy is a particular characteristic of buyer that is not allowed to involu in the sale12. However, a leader or government of state can be appointed as a representative for a bankruptcy in dealing for any transaction. It is obvious that the reason behind this is to preserve the interest of seller from loss in the transaction with a bankruptcy buyer. A detail discussion on this regard and its connection with the concept of public interest will take place in the sub topic six.

The seventh, eighth and ninth Ḥadīth in this sub topic deal with the topic of animals in connection with food and business transaction. In the seventh13 and eight14

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10 Ibid.
11 6) Narrated (Jābir bin Abdullah) A man of us declared that a slave of his own would be free after his death, but he had no other property. The Prophet ﷺ sent for him and sold him. (Agreed upon).
13 7) Narrated Maimuna : A mouse fell into some ghee and died. The Prophet ﷺ was asked about it and he replied, "Throw it and what is surrounding it away and eat it (the ghee)." (Reported by al-Bukhāri; Aḥmad and al-Nasā‘i added: "into a solid ghee.")
Iladith, both discuss the mouse that falls into ghee which is solid, must be thrown and what is surrounding it away; but if it is in a liquid state do not go near it. In connection with the chapter on al-Buyūc or business transactions, these two ahādīth have no significant at all. In the analysis of these two ahādīth, the book Subul al-Salām has no elaboration that relates to the topic on al-Buyūc. However, al-Ṣanʿānī does relate the seventh Hadith to the juristic concept of public interest. For al-Ṣanʿānī, this Hadith emphasises on the application of attaining benefit for humanity in case if a solid ghee is entered by a mouse, thus, the mouse should be thrown and what is surrounding it away. Accordingly, the solid ghee is safety to eat. However, the eight Hadith underlines the application of avoiding harmful to humanity whenever the Prophet s.a.w disallows to eat a liquid ghee if it is entered by a mouse15.

Many jurists discuss both ahādīth in reasonable chapters such as chapter on food and chapter on purification. None of primary sources for the book of Hadith arranges the aforementioned Hadith16 in the chapter on al-Buyūc except in the book of Bulūgh al-Marām. Only Ibn Ḥajar al-Asqalānī as an author could give reasonable reasons on why both seventh and eight ahādīth are arranged in the chapter on al-Buyūc.

14 8) Narrated Abū Huraira رضي الله عنه Allah's Messenger ﷺ said, "If a mouse falls into ghee which is solid, throw the mouse and what is surrounding it away; but if it is in a liquid state do not go near it." (Abmad and Abū Dāwūd reported it; al-Bukhārī and Abū Ḥātim ruled it to be misconceived).


16 The aforementioned Hadith has been arranged by al-Tirmidhi, Abū Dāwud and al-Dārīmi in the chapter on food. Al-Dārīmi also categorises this Hadith in the book on purification (831).
In the ninth Hadith, a topic on cats and dogs have been highlighted by the Prophet s.a.w by which it is not allowed to sale except for domestic purpose such as hunting and the like. Some jurists such as Abü Hurairah, Täwüs and Mujähid state the ruling for selling dog or cat is forbidden. The fourth Hadith also encompasses in this regard. However, most jurists agree that it is permissible to sale both for domestic reason such as hunting and guarding. This ruling is in line with the principle of juristic concept of public interest in which the interest of humanity is preserved and the benefit of animals are utilised for sensible reasons.

Further discussion on the preservation of the life of humanity has been detailed within six-separated Ahädith but interrealated to each other regarding specific topic on the sale of slave. These six Ahädith are the tenth, eleventh, twelfth, sixteenth, sixtieth and thirty-first.

Prior to the prohibition of slave in Islam, those four Ahädith discuss on the condition of the sale of slave. The tenth Hadith rules the legitimacy of recorded or

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17) Narrated Abü Zubair (رضي الله عنه) I asked Jābir (رضي الله عنه) about the payment for cats and dogs and he replied, "The Prophet صلی الله عليه وسلم rebuked that." (Reported by Muslim and al-Nasâ‘i; the latter added: "except a hunting dog.")
18) al-Ṣan‘ānî, Subul, v.2, p.464
19) 4) Narrated Abü Mas‘ūd al-Ansârî (رضي الله عنهما) Allah's Messenger صلی الله عليه وسلم prohibited the price paid for a dog, the payment made to a prostitute, and the gift given to a soothsayer." (Agreed upon).
20) Ibid.
21) 10) Narrated A‘îsha (رضي الله عنها) Barîra came to her and said, "I had arranged to buy my freedom for nine Uqiya; one to be paid annually, so help me." A‘îsha (رضي الله عنها) replied, "If your people are willing that I should count them out to them, and I shall have the right to inherit from you, I shall do so." Barîra went to her people and told them about it, but they refused the offer. When she came back Allah's Messenger صلی الله عليه وسلم was sitting (in the house). She said, "I offered that to them, but they insisted that the right to inherit from me should be theirs." The Prophet صلی الله عليه وسلم heard that and A‘îsha (رضي الله عنها) told him about it, so he said to A‘îsha (رضي الله عنها), "Take her on the condition that the right to inherit from her will be yours, for the right of inheritance belongs only to the one who has set a slave free." A‘îsha (رضي الله عنها) did so. Allah's Messenger صلی الله عليه وسلم then stood up among the people, and after praising and extolling Allah, he said, "To proceed; what is the matter with some men who make conditions which are not in Allah's Most High Book? Any condition which is not in Allah's Book is worthless. Even if there are a hundred conditions, Allah's Decision is more valid and Allah's Condition is more binding. The right of inheritance belongs only to the one who has set a slave
written contract for liberation of a slave by paying money to his master. For those who pay for liberation of a slave, they have the right of inheritance of slave. For Imam Ahmad and Malik, this ruling is classified permissible if both parties satisfied on the written contract. However, for Abu Hanifa it is not permissible to sell a slave because it would lose the ownership of master.

Regarding the right of inheritance of freed slave, in the sixteenth Hadith, the Prophet s.a.w reminds that the inheritance is forbidden to be sold or gifted because by analogy its part of slave’s lineage. It can be learned that this stipulation was applied on that time to preserve the inheritance of wealth of freed slave.

The specific discussion on selling a slave and its conditions has been prolonged in the eleventh, twelfth, thirteenth and thirty-first Hadith. In terms of selling a slave women who had borne children, the eleventh Hadith rules as forbidden whereas the twelfth Hadith constitutes as permissible. For al-Sha’abi, the ruling of forbidden in the eleventh Hadith has been abrogated by the ruling in the twelfth Hadith.

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free." (Agreed upon; the version is of al-Bukhari). A version by Muslim has: "Buy her, set her free and make the stipulation that the right to inherit from her will be yours."  

22 al-Sha’abi, Subul, v.2, p.466-467.  
23 Ibid.  
24 16) Narrated (Ibn ʿUmar) Allah’s Messenger forbade selling or giving away the right of inheritance from a freed slave. (Agreed upon).  
25 11) Narrated Ibn ʿUmar (رضي الله عنهما) forbade the sale of the slavewomen who have given birth to children (of their owners) and said, "She is not to be sold, bestowed as a gift or inherited; but he (the owner) enjoys her as long as he lives and when he dies, she becomes free." (Reported by Malik and al-Bayhaqi).  
26 12) Narrated Jābir (رضي الله عنه) We used to sell our slavewomen who had borne children when the Prophet was alive and he saw no harm in that. (Reported by al-Nasāʾi, Ibn Mājah and al-Daraqutni and Ibn Hibbān graded it Sahih (sound)).  
27 30) Narrated Abū Ayyūb al-Anṣāri (رضي الله عنه) I heard Allah’s Messenger saying, "If anyone separates a mother from her child, Allah will separate him from his beloved ones on the Day of Resurrection." (Reported by Ahmad; al-Tirmidhi and al-Hākim graded it Sahih (sound)).  
28 31) Narrated ʿAli b. Abī ʿAbdullāh (رضي الله عنه) Allah’s Messenger commanded me to sell two youths who were brothers. I sold them and separated between them. When I made mention of that to the Prophet, he said, "Find them out and get them back; and do not sell them but together." (Reported by Ahmad) And the narrators of this version are reliable, and indeed Ibn Khuzaima, Ibn al-Jārūd, Ibn Ḥibbān, al-Jākimi, al-Tabarāni and Ibn Qattān graded it Sahih (sound).
Hadīth in which it is permissible to sell a slave women who had borne children. It suggests that this ruling would give freedom for a slave from slavery and he would gain the rights as humanity. However, in the thirtieth Hadīth, the Prophet s.a.w rules that it is forbidden to separate a mother from her child in the case of selling a slave women. The same principle applies into the thirty-first Hadīth in which the Prophet s.a.w underlines the prohibited of selling separately two slave youth of brotherhood. This ruling is applied on that time in order to preserve the lineage and humankind. The discussion on slavery transactions in this topic is changed into discussion on selling transaction that regards on the significance of measurement and weighting of goods or foods, which takes place in the eighteenth Hadīth.

The condition of measurement and weighting of goods or foods must be given priority by seller prior to the sale. This condition has been emphasised by the Prophet s.a.w in the eighteenth Hadīth of this sub topic. The purpose of this condition is to give quality and quantity value of goods or foods for purchaser in the sale. This purpose is in line with the juristic concept of public interest in which the right of purchaser is preserved to buy the goods or foods with theirs quality as well as quantity. Furthermore, the Qur'an reminds the punishment in the Day of judgement for those who deal in fraudulent transactions.

29 18) Narrated (Abū Huraira) Allah's Messenger ﷺ said, "If anyone buys grain he must not sell it till he weighs it." (Reported by Muslim).

30 Allah s.w.t says; 'Woe to al-Mutaffifin (those who give less in measure and weight). Those who, when they have to receive by measure from men, demand full measure. And when they have to give by measure or weight to (other) men, give less than due. Do they not think that they will be resurrected (for reckoning), On a Great Day?'. (1-5 : Sura al-Mutaffifin).
In connection with fraudulent transactions, within the nineteenth\textsuperscript{31} and twentieth\textsuperscript{32} Hadīth there are four types of fraudulent transactions i.e. i) the condition of a loan combined with a sale, ii) two conditions relating to one transaction, iii) the profit arising from something which is not in one's charge, iv) selling what is not in one's possession. This four conditions or types of fraudulent transactions are prohibited to deal with. The juristic reasons of prohibition on these four types of transactions because the interrelated features to uncertainty conditions of contract that may cause loss and damage for one party. These four unlawful transactions have no sense of preservation of public interest due to unfair and fraudulent elements in its transactions. Furthermore, the Islamic transaction emphasises on the condition of al-\textit{Qabḍ} or certainty of delivery of good of purchase within the contract of sale. The third and fourth conditions of the above fraudulent transactions clearly indicates the absence of al-\textit{Qabḍ} or certainty delivery of good of purchase.

The discussion on the condition of al-\textit{Qabḍ} or certainty of delivery of good of purchase has been extended in the twenty-second and twenty-third Hadīth of this sub topic. For al-Ṣanāʿī, the twenty-second\textsuperscript{33} Hadīth is a proof to indicate the void selling of which the commodities such as oil or fruits to be sold on the spot where

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31 19) Narrated (Abū Huraira) \textit{رسول الله ﷺ} forbade two transactions combined in one. (Reported by Ahmad and al-Nasāʾī, al-Tirmīdhi and Ibn Ḥibbān graded it \textit{Sahih} (sound)). Abū Dāwūd has: "If anyone makes two transactions combined in one he must confirm that of a lower price, or he is involved in committing usury."

32 20) Narrated °Amr b. Shuʿaib on his father's authority from his grand father (\textit{رسول الله ﷺ})\textit{ Messenger of God} said, "The condition of a loan combined with a sale is not lawful, nor two conditions relating to one transaction, nor the profit arising from something which is not in one's charge, nor selling what is not in your possession." (Reported by al-Khamsa, al-Tirmīdhi, Ibn Khuzayma and al-Hākim graded it \textit{Sahih} (sound)).

33 22) Narrated Ibn °Umar \textit{رسول الله ﷺ} I bought some oil in the market and when I came to receive it, a man met me and offered to give me good profit for it; and when I was about to seize the price from him, a man caught hold of my hand from behind. So I turned and found that he was Zayd b. Thābit (\textit{رسول الله ﷺ}). He said, "Do not sell it in the place where you have bought it from, till you take it to your dwelling; for Allah's Messenger \textit{رسول الله ﷺ} forbade the commodities to be sold on the spot where they were bought from, till the traders take them to their dwellings." (Reported by Ahmad and Abū Dāwūd, the version is of the latter, Ibn Ḥibbān and al-Hākim graded it \textit{Sahih} (sound)).
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they were bought from, till the traders take them to their dwellings. It appears that this type of commodities needs a proper place before selling as requirement of *al-Qabḍ*. However, in the twenty-third Ḥadīth, the Prophet s.a.w underlines the valid selling for golden dinars, takes silver dirhams, and vice versa, provides this exchange is concluded at the current rate. For Shāfiʿi’s jurists, this transaction is in line with the condition of *al-Qabḍ* because the features of dinar and dirham currency are certainty delivery and transferable commodity. This provision is in line with the juristic concept of public interest in which the condition of *al-Qabḍ* is applied to the transaction that aims to preserve the right of ownership for purchaser.

Another discussion on condition of transactions takes place in the twenty-seventh and twenty-eighth Ḥadīth of this sub topic. In the twenty-seventh Ḥadīth, the Prophet s.a.w emphasises on unethical manner of broker who takes advantage from village supplier who are unaware of the market price of their merchandise. However, in the twenty-eighth Ḥadīth, the Prophet s.a.w warns unethical manner of supplier who takes advantage to manipulate the market price by controlling the terms of demanding and supply. If this were the case for the purchaser, it would be suggested to deal with the form of *al-Khiyār* or option by canceling the transaction. In this Ḥadīth, the preservation of traders is given priority at this stage by which the

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34 al-Ṣanāʿī, Subul, v.2,p.481-482.
35 23) Narrated (Ibn “Umar) يرثي الله علیهما I said, "O Allah's Messenger, I sell camels at al-Bāqi’. I sell for Dinars and take Dirhams (for them), and sell for Dirhams, and take Dinars (for them), I take this for that and give that for this." Allah's Messenger صلى الله عليه وسلم replied, "There is no harm in taking them at the current rate so long as you do not separate leaving something still to be settled." (Reported by al-Khamsa and al-Hākim graded it Ṣahiḥ (sound)).
37 27) Narrated Tāwús from Ibn °Abbās صلى الله عليه وسلم said, "Do not go out to meet riders (to conduct business with them), and a towner must not sell for a man from the desert." I asked Ibn °Abbās صلى الله عليه وسلم "What did he mean by 'A towner must not sell for a man from the desert.'" He replied, "He should not act as a broker for him." (Agreed upon; the version is of al-Bukhārī).
38 28) Narrated Abū Huraira صلى الله عليه وسلم said, "Do not go out to meet what is being brought (to market for sale). If anyone has met so and some of it is bought, when its owner comes to the market he has the choice (of cancelling the deal)." (Reported by Muslim).
suppliers should not manipulate the price of market because of over demanding factor. At this stage, the priority of public interest goes to the traders or purchasers and not to the suppliers.

Furthermore, in the thirty-third Hadith, the Prophet s.a.w forbade al-Ihtikār or storing goods for future profit particularly made by suppliers. For Abū Yussūf, this ruling is applied to all types of goods that may leads to harmful effects of the interest of humanity.

In the analysis of the twenty-seventh Hadith, Muslim jurists differ to determine the ruling of unethical manner of broker who takes advantage from village supplier who is unaware of the market price of his merchandise. For Imām al-Haramain, the ruling is forbidden for the broker to practice with such unethical manner. However, for Imām Abū Ḥanifah and al-Awzā'ī, it is permissible for broker to deal with the market price of merchandise from village supplier within the condition of unharmed effect to the consumers. For Hadāwiyya and Shāfi'īs, this dealing is bonded with the condition of al-Khiyār or option of transaction; either to cancel or proceed. Importantly, al-Ṣan'āni highlights the significance of the concept of public interest in dealing with the rulings of both aḥādīth. The twenty-seventh Hadith signifies the preservation of consumers as well as village suppliers from the unethical manner of broker who takes advantage to set high price of goods in the market.

39) Narrated Ma'mar b. 'Abdullah رضي الله عنه said, "None keeps goods till the price rises but a sinner." (Reported by Muslim).
The discussion on unethical manner of transactions has been extended and asserted in the twenty-ninth\textsuperscript{41} Hadith. In this Hadith, the Prophet s.a.w forbade five types of transaction or criteria of dealer of which few of them have been discussed above as follows; i) unethical broker, ii) unethical bidder, iii) sale of overbidding, iv) to propose an engagement to engaged women, v) a woman to ask to have her sister divorced for the purpose of wealth. The ruling of forbidden is applied to those types of transaction due to juristic reasons of injustices such as deceit, cheating, peril and loss for one party in such transactions. The ruling of those types of transactions verifies the prevention of harmful effects for one party, whilst simultaneously affirming the preservation of justice and interest for both parties of transactions. This principle obviously refers to the theme of public interest in Islam.

In line with the preservation of consumers, the thirty-fourth\textsuperscript{42} Hadith also highlights in this matter by applying the form of al-Khiyār or option within three days to return the goods because of their defects. In returning the defected goods particularly in the purchase of a dairy cattle, the thirty-fifth\textsuperscript{43} Hadith rules the payment should be made as compensation for the seller on the amount of a Sa’ (2.6 kg.) of any kind of grains. It suggests that this is because the dairy cattle may be utilised by the buyer prior to its returning. Thus, the seller is entitled to get

\textsuperscript{41} Narrated (Abū Huraira) Allah’s Messenger forbade, a towner to sell for a man from the desert; one to bid against another; a man to buy in opposition to his brother, to propose a woman after his brother has done so, or a woman to ask to have her sister divorced in order to deprive her of what belongs to her. (Agreed upon). Muslim has: "A Muslim must not offer a price above that offered by another Muslim."

\textsuperscript{42} Narrated Abū Huraira The Prophet said, "Do not tie up the udders of camels and goats, for he who buys them after that (has been done) has two choices open to him after milking them: he may keep them if he wishes, or may return them along with one Sa’ of dates." (Agreed upon). Muslim has: "He has three days in which to decide whether to keep them or not." A version by Muslim which al-Bukhārī termed as Mu‘allaq has: "He must return with it one Sa’ of any grain but wheat." (al-Bukhārī said, "One Sa’ of any dates" is mentioned in many ahādīth).

\textsuperscript{43} Narrated Ibn Mas‘ūd If anyone buys a goat whose udder has been tied up and he returned it, he must return with it one Sā’. (Reported by al-Bukhārī). Al-İsmā‘ili added: "of dates."
compensation such a certain amount of Sa’ that laid down in the thirty-fifth Hadith. In accepting the returning of the defected goods, the last Hadith\textsuperscript{44} in this sub topic highlights the blessing and forgiveness from Allah almighty for the seller who sticks to the contract of sale. However, during the time given of returning the purchase, the buyer entitles to get any profit of the goods and take responsibility of any loss. This provision is ruled in the thirty-eighth\textsuperscript{45} of Hadith Da’if which is juristically classified the weak quality of authenticity of the Hadith.

For Sanhūri\textsuperscript{46}, the thirty-fourth Hadith also indicates the fraudulent transaction on the sale of Musarrāt (animals whose udders have been tied). For Ḥanafis, this type of transaction is forbidden whereas Shāfi’is and Ḥanbalis consider that to be deception (Ghushsh)\textsuperscript{47}. These provisions are ruled to preserve the interest of consumers in dealing with the fraudulent transactions. This principle also applies to the transaction of al-Ghish or cheating of which the Prophet s.a.w describes this as forbidden in the thirty-sixth\textsuperscript{48} Hadith of this sub topic. In line with the fraudulent transactions, in the fifteenth\textsuperscript{49}, seventeenth\textsuperscript{50}, twenty-first\textsuperscript{51}, twenty-fourth\textsuperscript{52} twenty-

\textsuperscript{44} Narrated (Abū Huraira) Aºý Allah's Messenger ý-j 46 At said, "Whoever accepts back what he had sold to a Muslim, Allah will forgive his fault." (Reported by Abū Dāwud and Ibn Majah and validated by Ibn Ḥibbān and al-Ḥākim).

\textsuperscript{45} Narrated °A'isha 10. At j: Allah's Messenger ,. '4c At c said, "Any profit goes to the one who bears responsibility." (Reported by al-Khamsa; al-Bukhäri and Abū Dawūd graded it Da’if. al-Tirmīdhi, Ibn Khuzaima, Ibn al-Jārūd, Ibn Ḥibbān, al-Ḥākim and Ibn al-Qattān graded it Šaḥīḥ (sound)).

\textsuperscript{46} Sanhūri, Masādir, v.2, p.183.

\textsuperscript{47} Ibid

\textsuperscript{48} Narrated Abū Huraira Aºý Allah's Messenger ý-j 46 Aud once came upon a heap of grain, and when he put his hand inside it, his fingers felt some dampness, so he asked the owner of the grain, "What is this, O owner of the grain?" He replied, "Rain had fallen on it, O Allah's Messenger." He said, "Why did you not put it (the damp part) on the top of the foodstuff so that people might see it? He who deceives has nothing to do with me." (Reported by Muslim).

\textsuperscript{49} Narrated Ibn 'Umar Aºý Allah's Messenger ý-j 143c. At c,: -_: Allah's Messenger ý-j 143r- At uL,. forbade the transaction called Habalal Habala' which was one entered into in the Jahiliya era, whereby a man bought a she-camel which was to be the offspring of a she-camel which was still in its mother's womb. (Agreed upon, and this version is of Bukhäri). g on,

\textsuperscript{50} Narrated Abū Huraira Aºý Allah's Messenger ý-j 46 Aud forbade a transaction determined by throwing stones, and the transaction which involves some uncertainty (or cheating). (Reported by Muslim).
fifth and twenty-sixth Hadīth, the Prophet s.a.w forbade the transaction of al-Ḥabl al-Ḥabla, Ḥasāt, al-Gharār, al-Najsh, Muḥaqala, Muzābana, Mukhābara, Thunya, Mukhadara, Mulāmāsa, and Munābadha.

In the analysis of those types of fraudulent transactions, it is interesting to highlight the work of Ahmad Hidayat, a later scholar who examines the prohibition of gharār and its connection with the above prohibited transactions. The examination of literal meaning of the term gharār covers some adjectives of negative elements such as deceit, cheating, danger, peril and risk that might lead to destruction and loss. For Ahmad Hidayat, the prohibition of gharār that derives from the Hadīth can be divided into two categories i.e. i) incorporated the element of gharār with the gharār sale such as the Ḥabl al-Ḥabla sale and the Ḥasāt sale, ii) incorporated the element of gharār without gharār sale such as Thunya, Munābadha, Mulāmāsa, Mukhābara, Muzābana and Muhāqala. However, the transaction of al-Najsh is found not to be categorised in both categories of the prohibition of gharār.

The prohibition of Ḥabl al-Ḥabla can be deduced from the explanation of text of the seventeenth Hadīth in which indicates the absolute futurity and uncertainty of delivery of the contract. For Imām Mālik, Shāfi'i and Jama'a, the juristic cause for this type of Jahiliyya transaction is the ignorance of definite time of delivery, whereas

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51 21) Narrated (ʿAmr b. Shu'aib on his father's authority from his grand father) : Allah's Messenger forbade the type of transaction in which earnest money was paid. (Reported by Mālik, who said, "I was told on the authority of ʿAmr b. Shu'aib that" i.e., the aforesaid Ḥadīth).
52 24) Narrated (Ibn ʿUmar) : Allah's Messenger forbade bidding against one another. (Agreed upon).
53 25) Narrated Jābir b. Abdullah : The Prophet forbade Muhāqala, Muzābana, and Mukhābara. He also forbade Thunya making an exception unless it was explicit. (Reported by al-Khamsa excluding Ibn Mājah; al-Tirmidhi graded it Sahih (sound)).
54 26) Narrated Anas : Allah's Messenger forbade Muhāqala, Mukhābara, Mulāmāsa, Munābadha and Muzābana. (Reported by al-Bukhārī).
Imām Aḥmad, Iḥṣāk and Jāmā'ā indicate the sale of nonexistent goods and the sense of *gharār* as the juristic causes for this prohibited transaction⁵⁶. Although the transaction of Ḥabl al-Ḫabla physically different with Ḥasāt by which literally known as pebble throwing trade, but both is having the same juristic causes.

In the contract of *Thunya*, *Munābadha* and *Mulāmasa*, the same juristic reason of prohibition is applied to these contracts that is the unknown of knowledge regarding the nature of the object of the sale. In terms of practice of *Jahiliyya*, *Thunya* is referred to the sale of goods with the exempted part of it is unknown. The only difference between *Munābadha* and *Mulāmasa* is a degree of acting. The former is dealt with the act of throwing something whereas the latter by touching the object. In dealing with both transactions, the purchaser has no right to inspect thoroughly the object of sale.

For the prohibited transactions such as *Mukhādara*, *Mukhābara*, *Muzābana* and *Muhāqala*, it appears that the general juristic cause for the prohibition is want of knowledge in the quantity as well as quality. Although the practice of those transactions differ to each other but they have the same cause and effect in terms of transaction. In the practice of *Mukhādara*, the purchaser cannot be guaranteed by the seller the quantity of the goods because the contract is agreed prior to the time of consumption of the goods⁵⁷. The transaction of *Mukhābara* refers to a lease contract of agricultural land where the lessee cultivates the crops for himself and for the lessor⁵⁸. The conflict might occur between both parties if they got differently in terms of the quantity and quality of the crops. In the transaction of *Muzābana* and

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Muhäqala, both refer to the barter sale of the crops which are still on the tree\(^59\). The former refers to barter sale of dried dates for fresh dates whereas the latter refers to barter sale of harvested crops with crops.

The observation on those prohibited transactions clearly indicates their juristic cause is want of knowledge in the quantity as well as quality of the goods within the contract. From those prohibited transactions, the purchaser or lessee is due to have loss, damage and injustice.

The same degree of injustice exists in the transaction of al-Najsh of which similar to auction or bidding that purely aims to increase the value of price of the goods and not genuinely to sell them\(^60\). For Ibn Baṭṭāl, the unethical bidder is considered disobedient and the selling of al-Najsh is classified void in the perspective of Muḥaddithūn. However, for Māliki, the transaction of auction is bonded with the condition of option (al-Khiyār) that is juristically justified on the intention of bidder\(^61\). Importantly, unethical bidder signifies the sense of deception (khidā) and deceiving (ghanūr)\(^62\). The prohibition of this transaction aims to preserve the interest of purchasers as well as ethical bidders. Apart from the preservation of their interest, the thirtieth-second Ḥadīth verifies the preservation of the interest of traders.

In connection with the interest of traders, the thirtieth-second\(^63\) Ḥadīth underlines the preservation of the interest of traders by imposing unfixed price of the

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59 Saʿāti, al-Fath, v.15, p.44.
61 Ibid.
62 Ibid.
63 32) Narrated Anās b. Mālik When prices were high in Medina in the time of The Prophet صلى الله عليه وسلم, the people said, "O Allah's Messenger, prices have become high, so fix them for us".
market. For al-Ṣanāʿī, this Ḥadīth indicates a proof that fix price is an injustice particularly for traders. Thus, the ruling of injustices is forbidden. However, under reasonable circumstances, for Imām Mālik, the fix price is permissible particularly for basic necessities of humanity such as foods. This ruling is applied to prevent the harmful effect of humanity due to high price of basic necessities. At the meantime, the application of this provision is to preserve the interest of consumers as well as their life.

The preservation of wealth of fundraiser and its interest has been affirmed in the thirtieth-ninth Ḥadīth in this sub topic. This Ḥadīth also rules the principle of approval from the owner of property prior to the selling. This principle aims to preserve the wealth of owner from loss in such selling. Furthermore, this Ḥadīth also rules that no personal profit could be gained from the selling of sacrificial animals, although it is permissible. The profit from this type of selling must be given to charity or public purposes.

Apart from the preservation of interest of humanities such as consumers, traders and suppliers, the thirtieth-seventh Ḥadīth underlines the importance of the preservation of religion in the business transactions. In this Ḥadīth, the Prophet replied, "Allah is the One Who fixes prices, Who withholds, gives lavishly and provides, and I hope that when I meet Allah the Most High, none of you will have any claim on me for an injustice regarding blood or property." (Reported by al-Khamsa excluding al-Nāṣī; Ibn Hibbān graded it Sahīh (sound)).

64 39) Narrated `Urwa al-Bāriqi: The Prophet gave him a Dinar to buy a sacrifice or a goat. He bought two goats with it, sold one of them for a Dinar and brought him a goat and a Dinar. So he invoked a blessing on him in his business dealings, and he was such that if he had bought dust he would have made a profit from it. (Reported by al-Khamsa except al-Nāṣī; al-Bukhārī also recorded it within another Ḥadīth and did not report its version).

65 37) Narrated Abdullah b. Buraida on his father's authority, "Whoever hoards grapes in the vintage season till he sells them to those who get wine out of them, has hastily thrown himself into Hell-fire with clear knowledge." (al-Ṭabarānī reported it in al-Awsat with a good chain of narrators).
s.a.w warns the punishment of Hell-fire for those who involve in the transaction of selling grapes to make wine. Most jurists in agreement that this kind of transaction is forbidden due to the consuming of alcohol or the like such wine. There are two juristic causes for this ruling; firstly, al-Khamr or alcohol is classified impurity and secondly, the effect of intoxicant of consuming alcohol. In line with the concept of public interest, the application of this ruling will preserve the interest of religion, life and intellect.

In the second part of this sub topic, the examination will focus on nine ahādīth that relate to the ruling of forbidden in dealing with particular types of transactions. There are four types of transactions that can be divided in this regard as follows; i) prohibited contracts related to animals and theirs goods, ii) prohibited contracts related to humanity, iii) prohibited contracts related to agricultural transactions, iv) prohibited contracts related to natural resources.

Under the type of prohibited contracts related to animals and theirs goods, there are eight transactions that have been highlighted by the Prophet s.a.w in the second, fourth, fourteenth, fortieth, fortieth first, fortieth second and fortieth

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67 Ibid.
68 Narrated Jābir b. Abdullah: I heard Allah’s Messenger saying in the year of the Conquest when he was in Makka, “Allah and His Messenger have forbidden the sale of wine, dead animals, swine and idols.” He was asked, “O Allah’s Messenger, what about the fat of a dead animal for it is used for caulking ships, greasing skins, and making oils for lamps?” He replied, “No, it is unlawful.” Allah’s Messenger then added: “May Allah curse the Jews, when Allah the Most High declared the fat of such animals unlawful they melted it, then sold it and enjoyed the price they received.” (Agreed upon).
69 Narrated Abū Masʿūd al-Ansārī: Allah’s Messenger prohibited the price paid for a dog, the payment made to a prostitute, and the gift given to a soothsayer.” (Agreed upon).
70 Narrated Ibn ʿUmar: Allah’s Messenger forbade the sale of a stallion’s semen. (Reported by al-Bukhārī).
71 Narrated Abū Saʿīd al-Khudrī: The Prophet forbade buying what is in the wombs of domestic animals till they give birth, or selling what is in their udders, buying a
third Hadith as follows; i) selling dead animals, ii) selling swine, iii) the price paid for a dog, iv) the sale of a stallion's semen, v) buying an animal's fetus, vi) selling the milk that still in the udders of an animal, vii) selling the fur that still on the back of an animal, viii) buying the fish that still in the water.

The juristic reasons of the prohibited of eight transactions can be concisely stated as follows; the impurities of the dead animals, swine and dog as juristic reasons of prohibited transaction for type one, two and three as mentioned above. However, for Ibn Ḥajar al-Asqalānī and al-Nawāwi, the exemption is given to the utilization of a dead animal’s skin that has been tanned as refers to the transaction of type one. The uncertainty of delivery in terms of quality and quantity is a common juristic reason for the prohibited transactions of type four, five, six, seven and eight as mentioned above.

The above discussion on juristic reasons of the prohibited of eight transactions that laid down by the ahādīth of the Prophet s.a.w highlights the reasonable approach of application of Islamic rulings to the life of Muslim believers. Conceptually, the preservation of interested parties of business transaction is given priority by Islamic law to ensure the achievement of justice and rights within its application to humanity.

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41) Narrated Ibn Mas‘ūd Aṣ Allah’s Messenger ﷺ said, “Do not buy fish which is in the water, for it involves uncertainty.” (Reported by Ahmad who said it is correctly Mawquf (untraceable)).

42) Narrated Ibn ʿAbbās ﷺ Allah's Messenger ﷺ forbade the selling of a fruit till it becomes ripe, or the selling of fur which is (still) on the back (of an animal) or milk which is (still) in the udder. (Reported by al-Ṭabarānī in al-Awsat. Al-Daraqutnī reported it too. Abū Dāwūd reported in the Marasil of ‘Ikrima and al-Bayhaqī endorsed it).

43) Narrated Abū Hurairā The Prophet ﷺ forbade the sale of what is in the womb of a domestic animal or the semen that is in the body of a stallion. (Reported by al-Bazzār and there is weakness in its Isnād )


Ibid.

Ibid.
Under the type of prohibited contracts related to humanity, there are two transactions that have been underlined by the Prophet s.a.w in the fourth**Hadith** as follows; i) the payment made to a prostitute and ii) the gift given to a soothsayer. The juristic reason of both prohibited transactions is the immorality of prostitution and the falsification of the activity of soothsayer**. In line with the concept of public interest, both transactions are prohibited because the harmful effects to the religion, life and honour of humanity.

The type of prohibited contract related to agricultural transactions that can be examined in this sub topic is the selling of unripe fruit that still on trees which has been underlined by the Prophet s.a.w in the fortieth second**Hadith**. The main juristic reason of this prohibited selling of unripe fruit that still on trees is because the uncertainty of delivery in terms of quality and quantity. The purchaser might have damage and loss of the fruits on the day of delivery. This provision may prevent the deception of such transaction and whilst simultaneously preserves the ineffective cost of purchaser.

In this sub topic, the prohibited contract related to natural resources refers to the selling of excess water that has been verified by the Prophet s.a.w in the thirteenth of **Hadith** in this sub topic. The prohibition of this transaction applies to the activity

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78 4) Narrated Abu Mas′ūd al-Anṣārī Allah's Messenger prohibited the price paid for a dog, the payment made to a prostitute, and the gift given to a soothsayer. "(Agreed upon). 79 al-Ṣanʿānī, Subul, v.2, p.458
80 42) Narrated Ibn 'Abbas Allah’s Messenger forbade the selling of a fruit till it becomes ripe, or the selling of fur which is (still) on the back (of an animal) or milk which is (still) in the udder. (Reported by al-Ṭabarānī in al-Awsat. Al-Daraquṭnī reported it too. Abī Dāwūd reported in the Marasīl of İkrima and al-Bayhāqī endorsed it). 81 13) Narrated Jābir b. Abdullah Allah’s Messenger prohibited the sale of excess water. (Reported by Muslim). In a version, he added: "And hiring a camel to impregnate a she-camel."
of withholding or selling surplus water than needed whether it sources from a well or spring and regardless the ownership of the land of sources. However, it is permissible to sell personal stored water. The juristic reason of this prohibited selling of surplus water refers to its feature as a basic necessity of human life which is obviously in line with the theme of the concept of public interest in Islamic law of which to preserve the life of humanity.

In dealing with the sub topic on conditions of business transactions and those which are forbidden, the above examination on 44 ahādīth within the framework of the juristic concept of al-Maṣlaḥa wa al-Nāṣṣ conclusively signifies a dynamic living source of the Hadīth as primary source of Islamic law after the Holy Qur’an, in line with the preservation of the interest of humanity. The significant principles of public interest in the conditions of business transactions have been identified through the analysis on 35 ahādīth of this sub topic. Those 35 ahādīth clearly signify the preservation of interested parties in business transactions such as traders, sellers, buyers, brokers, suppliers, consumers and the like. Furthermore, the prohibition of fraudulent transactions, which has been discussed within those 35 ahādīth, highlights its juristic reasons that have been identified by jurists of which demonstrate their connection with the concept of public interest.

The examination on the remaining 9 ahādīth of this sub topic juristically underlines the prohibited transactions related to particular parties such as animals and theirs goods, humanity, agricultural transactions and natural resources. In terms narrations, although 3 of 9 ahādīth are classified Daʿīf (weak) but their juristic rulings

\footnotesize{\textsuperscript{82} al-Ṣan`āni, Subul, v.2, p.471. \textsuperscript{83} Ibid.}
are similar to the numbers of authentic Ḥadīth such as Sahih and Hasan particularly in the examination of prohibited transactions. The prohibition on those particular transactions indicates the relation between the preservation of religion and the preservation of life of humanity.

To some extent, this first sub topic demonstrates an introduction and general themes of the chapter on business transactions. Further discussion will focus on the particular topic of al-Khiyār or options of transaction which has also been discussed generally in this sub topic.
6.2.2 Al-Khiyār or Options of transaction

The sub topic of al-Khiyār consists of 3 aḥādīth that are encompassed 2 Saḥīḥ and 1 Ḥasan. In terms of reference, this sub topic is referred to many authentic narrators of the Ḥadīth such as Aḥmad (narrated 1 Ḥadīth), Bukhāri (narrated 2 aḥādīth), Muslim (narrated 2 aḥādīth), Abū Dāwūd (narrated 1 Ḥadīth), al-Nasāʾī (narrated 1 Ḥadīth), al-Tirmīḍī (narrated 1 Ḥadīth), al-Dāraquṭnī (narrated 1 Ḥadīth), Ibn Khuzaima (narrated 1 Ḥadīth) and Ibn al-Jārūd (narrated 1 Ḥadīth).

In the fiqh literature, the subject of al-Khiyār has been discussed juristically by jurists particularly in terms of its categorisations. There are at least five categories of al-Khiyār i.e. Khiyār al-Majlis, Khiyār al-Sharṭ, Khiyār al-ʿAib, Khiyār al-Ruʾyat and Khiyār al-Taʿyīn. In a simple definition, al-Khiyār can be defined a unilateral choice either to cancel (Faskh) or ratify (Imdā') a contract of sale. For the five categories of al-Khiyār, the concise definition is referred to their categorisations themselves. For Rayner, the concise definition of the five categories of al-Khiyār can be demonstrated as follows; Khiyār al-Majlis (option of contractual session), Khiyār al-Sharṭ (option of condition or stipulation), Khiyār al-ʿAib (option of defect), Khiyār al-Ruʾyat (option of inspection) and Khiyār al-Taʿyīn (option of determination).

In line with the three aḥādīth of this sub topic, al-Ṣanāʾī provides that the first and second Ḥadīth are referred to the category of Khiyār al-Majlis (option of

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1 Rayner, The Theory, p.305.
2 Ibid., p.380.
3 al-Ṣanāʾī, Subul, v.3, p.6-9.
4 692-1 Narrated Ibn ʿUmar رضي الله عنهما. Allah's Messenger صلى الله عليه وسلم said, "Both parties in a business transaction have a right to annul the bargain, so long as they have not separated and are together; or one of them tells the other to exercise his right and he does it, then they make the bargain
contractual session). The first Hadith highlights the condition of Ḥayyr al-Majlis in which the transaction is bonded between seller and purchaser. The category of Ḥayyr al-Majlis applies to both parties as long as they are either in two conditions; i) they have not separated and are together in a contractual session, or, ii) they separate after having made the bargain and none of them has annulled it. However, in the second Hadith, the Prophet s.a.w reminds that it is forbidden to rescind the contract because of the separation between the buyer and the seller. This ruling aims to preserve the interest of both parties in terms of loss and damage of goods of purchase. In connection with the objective of Ḥayyr al-Majlis, the third Hadith underlines an ethical manner for both parties to declare a statement of ‘deceiving is not allowed (in the religion)’ as a reminding in the contract to avoid any element of ghardr or fraudulent transaction.

Based on three aḥādīth in this sub topic, it can be concluded that the notion of al-Ḥayyr with particular reference to Ḥayyr al-Majlis clearly indicates its connection with the concept of public interest that aims to preserve the interest of both parties who involve in the contract.

3 693-2 Narrated Amr bin Shu‘aib on his father’s authority from his grandfather: The Prophet said, “The two parties in a business transaction have a right to annul it so long as they have not separated unless it is a bargain with the right to annul it, attached to it; and one has not the right to separate from the other for fear that he may demand that the bargain be rescinded.” (Reported by al-Khamsa except Ibn Mājah, al-Daraquṭnī, Ibn Khuzaima and Ibn al-Jārūd reported it too). Another version has: “till they separate at their place (of transaction).”

6 694-3 Narrated Ibn Umar: A man told Allah’s Messenger that he was being deceived in business transactions, and he replied, “When you make a bargain say, ‘Deceiving is not allowed (in the religion)” (Agreed upon).

The discussion on the preservation of the interest of related parties in the contract of transaction will further detail in the next topic that regards with *al-Ribā*. 
6.2.3 Al-Ribā or Usury

This sub topic consists of 17 ahādīth within variation on numbers of the authentic Ḥadīth as follows; Sahīh (14 ahādīth), Hasan (2 ahādīth) and Da‘if (1 Ḥadīth). In terms of narration, those ahādīth have many authentic narrators of the Ḥadīth such as Ahmad (narrated 4 ahādīth), Bukhāri (narrated 5 ahādīth), Muslim (narrated 9 ahādīth), Abu Dāwūd (narrated 5 ahādīth), al-Nasā‘i (narrated 2 ahādīth), al-Tirmidhi (narrated 3 ahādīth), Ibn Mājah (narrated 2 ahādīth), al-Ḥākim (narrated 3 ahādīth), Ibn Qatṭān (narrated 1 Ḥadīth), Bayḥāqī (narrated 1 Ḥadīth), Ibn Ḥibbān (narrated 1 Ḥadīth), Ibn al-Madīnī (narrated 1 Ḥadīth), Ishāq (narrated 1 Ḥadīth), al-Bazzāz (narrated 1 Ḥadīth), Ibn Khuzaima (narrated 1 Ḥadīth) and Ibn al-Jārūd (narrated 1 Ḥadīth).

For al-Ṣanā‘ī, those 17 ahādīth can be divided at least into two specific topics that relate to the subject of al-Ribā namely the cursed individual who involve in the transaction of al-Ribā and the prohibited transactions of al-Ribā.

In the first specific topic of the cursed individuals who involve in the transaction of al-Ribā, there are 4 ahādīth in this regard i.e. the first, second, twelfth and thirteenth Ḥadīth. Prior to analyses of those 4 ahādīth, it is vital to

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1 695-1 Narrated Jābir at Allah's Messenger cursed the one who accepts usury, the one who gives it, the one who records it and the two witnesses to it, saying, "They are all the same." (Reported by Muslim). Al-Bukhāri reported something similar from Abū Juhaifa's Ḥadīth.

2 696-2 Narrated Abdullah b. Mas‘ūd : The Prophet cursed the one who accepts usury, the one who gives it, the one who records it and the two witnesses to it, saying, "Usury has seventy-three categories, the least one in sin is as that of a man who marries his mother, and the very essence of usury is the violation of the honour of a male Muslim." (Ibn Mājah reported it in a short form and al-Ḥākim in a complete one. The latter also graded it Sahīh (sound)).

3 706-12 Narrated Abu Umāma : The Prophet cursed the one who accepts usury, the one who gives it, the one who records it and the two witnesses to it, saying, "Whoever intercedes for his brother and that one gives him a present which he accepts, becomes guilty of a serious type of usury." (Reported by Abū Ḥadīth and Abū Dāwūd, but some of its narrators' reliability has been doubted).
highlight a literal and standard definition of \textit{al-Ribā} in the perspective of Islamic transaction. Literally, the term \textit{al-Ribā} is defined \textit{al-Ziyāda} or increase in capital\textsuperscript{5}. In a ‘Dictionary of Islam’, \textit{al-Ribā} is literally translated as ‘usury’, ‘excessive interest’ or ‘usurious interest’\textsuperscript{6}. The standard definition of \textit{al-Ribā} is referred to ‘Encyclopedia of Islam’ in which it is defined as ‘any unjustified increase of capital for which no compensation is given’\textsuperscript{7}. From this simple and standard definition of \textit{al-Ribā}, it can be understood upon why the ruling of \textit{al-Ribā} is obviously forbidden.

In line with the above definition of \textit{al-Ribā}, those 4 \textit{ahādīth} emphasise on particular individuals who have been cursed by the Prophet s.a.w because of their involvement in such activities of \textit{al-Ribā}. In the first \textit{Hadīth}, the Prophet s.a.w. classifies four types of individual who have the same degree of curse as follows; i) one who accepts usury, ii) one who gives usury, iii) one who records usury, iv) witnesses for usury’s transaction. In addition to those four categories, the Prophet s.a.w highlights in the second \textit{Hadīth} that indeed usury has seventy-three categories. However, at this stage, no detail explanation is given regarding 73 categories of usury except the Prophet s.a.w highlights the least and very essence of its category. According to the \textit{Hadīth}, the least category of usury is that of a man who marries his mother and the very essence of usury is the violation of the honour of a male Muslim.

The discussion on the category of usury has been prolonged in twelfth and thirteenth \textit{Hadīth} of this sub topic. From the both \textit{ahādīth}, juristically, the Prophet

\textsuperscript{4} 707-13 Narrated Abdullah b. ʿAmr b. al-Ās. \textit{الله صلى الله عليه وسلم}رَضِيَ اللَّهُ عَنْهُمَا} cursed the one who bribes and the one who takes bribes. (Reported by Abū Dāwūd and al-Tirmīzhī, who graded it \textit{Sahīh}).


\textsuperscript{6} Hughes, \textit{A Dictionary}, p.230

\textsuperscript{7} Schacht, \textit{‘Riba’}, v.3, p. 1148.
s.a.w. underlines bribery as another type of prohibited transaction of usury. For example, the thirteenth Ḥadīth rules that accepting the gift after making recommendation for a bad deed is classified by the Prophet s.a.w as a serious type of usury. This ruling also applies to the involved individuals such as (al-Rāshi) or one who bribes and (al-Murtashi) or one who takes bribe. Those types of individual have been cursed by the Prophet s.a.w in the thirteenth Ḥadīth.

The above discussion clearly highlights the element of injustice and corruption as main juristic causes in the prohibited transaction of bribery. In line with the concept of public interest, this prohibited transaction of bribery aims to prevent any fraudulent element in such transaction that may leads to injustice and corruption to particular parties. The discussion on fraudulent elements particularly in usury transaction has been detailed by the Prophet s.a.w in numbers of Ḥadīth of this sub topic.

There are 13 of 17 Ḥadīth in this sub topic that have been discussed regarding fraudulent elements of usury transactions. From 13 Ḥadīth, 9 of them highlight the type of Ribā al-Buya' or Ribā al-Fadl i.e. the third, fourth, fifth, sixth, seventh, eighth, ninth, fifteenth and sixteenth Ḥadīth.

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8 Narrated Abū Sa'id al-Khudri: The Prophet said, "Do not sell gold for gold unless it is same amount for the same amount, and do not make one amount greater than the other, do not sell silver for silver unless it is same amount and do not make one amount greater than the other, and do not sell for ready money some of it to be given later." (Agreed upon).

9 Narrated 'Ubāda b. al- Sammy: Allah's Messenger said, "Gold is to be paid for with gold, silver with silver, wheat with wheat, barley with barley, dates with dates, and salt with salt, same quantity for same quantity and equal for equal, payment being made on the spot. If these classes differ, sell as you wish if payment is made on the spot." (Reported by Muslim).

10 Narrated Abū Huraira: Allah's Messenger said, "Gold is to be paid for with gold, both being of equal weight and of same quantities; silver is to be paid for with silver, both being of equal weight and of same quantities. If anyone gives more or asks for more of it, it is then usury." (Reported by Muslim).
In a standard definition of Ribā al-Buyūf or Ribā al-Fadl, its definition refers to the exchange contracts that applies to six items i.e. gold, silver, date, raisin, wheat and barley and the like of them. The prohibition of this contract is based on the potential fraudulent element that may occur particularly in terms of inequality in quantity and quality in the exchange between those items and a potential delay in delivery. This juristic cause or "illa for the prohibition of Ribā al-Buyūf or Ribā al-Fadl has been termed by Hanafis jurists as al-Kayl (measurement) or al-Wazn (weight). Numbers of hadith highlight in this regard such as the third, fourth, fifth, sixth, seventh, eighth, ninth, fifteenth and sixteenth Hadith.

In contrast with the juristic cause of the prohibited of Ribā al-Buyūf, the Prophet s.a.w affirms that if the contract applies to the equality in quantity and quality in the exchange between those items and immediate delivery, thus, the transaction is valid.

11 700-6 Narrated Abū Sa'īd al-Khudri and Abū Hurairā Rضي الله عنهم Ellah's Messenger asked a man over Khairbar and he brought him dates of a very fine quality. Allah's Messenger asked, "Are all the dates of Khairbar like this?" He replied, "I swear by Allah that they are certainly not, O Allah's Messenger. We take one Sa' of this kind for two, and even for three. So Allah's Messenger said, "Do not do so. Sell the mixed dates for Dirhams, then buy the very fine dates with the Dirhams." And he said that the same applies when things are sold by weight. (Agreed upon). Muslim has: "and so is the weight."

12 701-7 Narrated Jabir b. Abdullah Rضي الله عنهم Allah's Messenger forbade selling a quantity of dates whose measure was unknown for a specific quantity of dates. (Reported by Muslim).

13 702-8 Narrated Ma'āmar b. Abdullah Rضي الله عنهم I used to hear Allah's Messenger say, "Food for food, of same quantities." Our food at that time consisted of barley. (Reported by Muslim).

14 703-9 Narrated Faḍālā b. ʿUbaid Rضي الله عنهم I bought a necklace for twelve Dinars at the battle of Khairbar and there were gold and gems in it, so I considered them separately and found that it was worth more than twelve Dinars. I told the Prophet Rضي الله عنهم about that and he said, "It must not be sold till the contents are considered separately." (Agreed upon).

15 709-15 Narrated Ibn ʿUmar Rضي الله عنهم Allah's Messenger forbade al-Muṣābāna, which means that a man sells the fruit of his garden, if it consists of palm-trees (fresh dates), for dried dates by measure; or if it consists of grapes, for raisins by measure; or if it is corn, he sells it for a measure of corn. He forbade all that. (Agreed upon).


17 Monzer Kahf, Types of Riba, in Islamonline fatw, all n (ish/Fahý aDý 1 Sp?

legal and lawful. This provision has been laid down by the Prophet s.a.w in the third, fourth, fifth, eighth, and ninth Hadith of this sub topic.

At this stage, the preservation of equality is given priority by the Prophet s.a.w not only applies to the quantity and quality in the exchange between those items, but moreover to particular party who involves in such transaction. This objective of transaction is in line with the concept of public interest for which to gain benefit for humanity, whilst simultaneously to prevent harmful effects to their life.

In line with the above theme of public interest, this sub topic highlights another type of prohibited transaction of al-Ribā, which is termed Ribā al-Nasā. There are at least 3 aḥādīth in this regard i.e the tenth, eleventh and seventeenth Hadith.

The prohibited transaction of Ribā al-Nasā refers to the contract of loan in which the additional amount is added to the premium of the loan because of the late time of payment. Most jurist agree that this transaction also covers a type of Ribā al-Fadl as well as Ribā of debts. A main juristic cause for this prohibited transaction is the charge of additional amount. Thus, in the tenth Hadith, the Prophet

19 704-10 Narrated Samura b. Jundub The Prophet forbade selling animals for animals when payment was to be made at a later date. (Reported by al-Khamsa) Ibn al-Jārid and al-Tirmidhi graded it Sahih (sound).
20 705-11 Narrated Ibn Umar I heard Allah's Messenger say, "When you will sell anything on credit to anyone on the condition that you will buy it back for a lower price, follow the cattle, prefer agriculture and give up Jihad. Allah s.w.t. will make disgrace prevail over you and will not strip it off from you till you return to your religion." (Reported by Abu Dāwūd from the version of Nāfi' on the authority of Ibn Umar but there is an unreliable narrator in its chain. 'Aṣūr reported something similar from the version of 'Aṭṭā'). Its narrators are reliable and Ibn al-Qaflān graded it Sahih (sound).
21 711-17 Narrated Ibn Umar The Prophet forbade selling a debt to be paid at a future date for another i.e., a debt for a debt. (Reported by Ishāq and al-Bazzār with a weak Isnād).
23 Ibid.
s.a.w obviously forbade selling animals for animals when payment was to be made at a later date. It suggests that the charge of additional amount in this transaction would effect loss and damage for the debtor. However, in the eleventh Hadith, the difference emerges with the former in terms of the condition of contract. For al-Ṣan`āni, the eleventh Hadith also indicates the prohibited transaction of `Aina in which the selling is made by credit on the condition that the seller will buy it later at lower price\textsuperscript{24}. It appears that this transaction leads to loss and injustice particularly for the buyer at the end of the stage of transaction.

In the seventeenth Hadith of Da‘īf, the Prophet s.a.w highlights a type of transaction in which selling a debt to be paid at a future date for another i.e. a debt for a debt. For al-Ṣan`āni, although the Hadith has been categorised Da‘īf, its still a proof of such prohibited transaction\textsuperscript{25}. However, Imām Aḥmad suggests that it is not permissible to engage a debt for a debt\textsuperscript{26}. The reason behind this ruling can be understood clearly that a debt is considered a burden for debtor. To engage another debt will therefore increase a degree of burden for debtor. This solution obviously contrast with the concept of public interest that aims to remove harmful effects and simultaneously to gain benefit for the life of humanity.

The fourteenth\textsuperscript{27} Hadith in this sub topic deals with the legal transaction of al-Qard. For al-Ṣan`āni, this Hadith is a proof to indicate that no al-Ribā transaction on animals but the alternative is formed in the transaction of al-Qard. To put it simply,

\begin{itemize}
\item \textsuperscript{24} al-Ṣan`āni, Subul, v.3, p.24.
\item \textsuperscript{25} Ibid, p.31
\item \textsuperscript{26} Ibid
\item \textsuperscript{27} 708-14 Narrated (Abdullah b. ṬṣʿAmr b. al-ʿĀṣ) The Prophet ﷺ commanded him to equip an army, but when the camels were insufficient, he commanded him to keep back the young camels of Ṣadaga. He said, "I was taking a camel to be replaced by two when the camels of Ṣadaga came." ( Reported by al-Ḥākim and al-Bayḥāqi, its narrators are reliable).
\end{itemize}
al-Qard or al-Mudāraba is a contract of equity sharing between investor and trader. Further discussion on this regard will take place in the specific topic of al-Qirād.

In conclusion, this topic has significantly discussed the principles of public interest through the juristic causes of ruling from numbers of ḥadīth that relate to the subject of al-Ribā. The prohibition of al-Ribā's transactions clearly aims to prevent harmful effects to the life of humanity and simultaneously would preserve their basic necessities of life.
6.2.4 Permission regarding the sale of al-\'Arāya and the sale of trees and fruits

This sub topic consists of 7 ahādīth Sahih. In terms of narration, those ahādīth have many authentic narrators such as Alīmad (narrated 1 Hadīth), Bukhāri (narrated 5 ahādīth), Muslim (narrated 6 ahādīth), Abū Dāwūd (narrated 1 Hadīth), al-Tirmīdhi (narrated 1 Hadīth), Ibn Mājah (narrated 1 Hadīth), Ibn Ḥibbān (narrated 1 Hadīth) and al-Ḥākim (narrated 1 Hadīth).

In the fiqh literature, the sale of al-\'Arāya refers to the exchange commodities that have same measurement in terms of quantity and quality. For al-Ṣanā`ī, this transaction is permitted by the Prophet s.a.w because of the principle of equality in quantity and quality that applies within the contract. The application of the sale of al-\'Arāya to the legal business transaction verifies the concept of al-Tarkhīs that aims to facilitate the transaction of commodities such as dates, grapes and grains. In line with this concept, there are at least two ahādīth highlight on this particular sale of al-\'Arāya i.e. the first and second Hadīth.

In the first and second Hadīth, the Prophet s.a.w emphasises on the basis of computation of dry commodities as a basic condition for the permission of the sale of al-\'Arāya. For instance, in the second Hadīth, the permission of al-\'Arāya applies to

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1 al-Ṣanā`ī, Subul,v.3,p.32.
2 Ibid
3 712-1. Narrated Zayd b. Thābit: Allah's Messenger gave permission regarding al-\'Arāya for its sale on the basis of a calculation of what the dates would be when dry by measure. (Agreed upon).
Muslim has: "He gave permission regarding the al-\'Arāya for its sale in which the household buys its fruit on the basis of a calculation of what the dates would be when dry, yet they could eat them when fresh."
4 713-2. Narrated Abū Hurāra: Allah's Messenger gave permission regarding the sale of al-\'Arāya for a computation of their amount when dry on the condition that they be less than five Ausuq, or amounting to five Ausuq. (Agreed upon).
dry dates on the condition that they would be less than five *awsuq* (more than eight quintals), or amounting to five *Awsuq*. The reason behind this is to give a standard and equal measurement of dry commodities for the benefit of traders as well as consumers.

In the sale of *al-`Arāya*, the measurement of quality and quantity of commodities is given priority by the Prophet s.a.w to avoid their possibility of loss and damage particularly at the stage of delivery. In the case of the absence of quality and quantity of commodities, thus, the Prophet s.a.w forbade the sale. This provision has been underlined in the third⁵, fourth⁶, fifth⁷, and sixth⁸.

Those four *ahādīth* underline the prohibited sale of fruits unless they are in good condition as it has been highlighted in the third *Hadīth*. At this stage, the term of good condition refers to the condition that the fruits were safe from blight. Most jurists agree that this condition aims to avoid any fraudulent element in the sale of *al-`Arāya⁹*. Furthermore, the rest three *Hadīth* signify the bad condition of fruits that are forbade to be sold such as colourful of reddish and yellowish (in the fourth *Hadīth*), black of grapes and hard of grains (in the fifth *Hadīth*) and affected fruits by blight (in

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⁵ 714-3. Narrated Ibn ʿUmar : Allah's Messenger forbade the sale of fruits till they are clearly in good condition, forbidding it both to the seller and to the buyer. (Agreed upon).

⁶ 715-4. Narrated Anäs b. Mālik : The Prophet forbade the sale of fruits till they become colourful. He was asked what that meant, he replied, "Till they become reddish and yellowish." (Agreed upon and the version is of al-Bukhārī).

⁷ 716-5. Narrated (Anäs b. Mālik) : The Prophet forbade the sale of grapes till they become black and the sale of grain till it becomes hard. (Reported by al-Khamsa except al-Nasāʾī and graded *Sahīh* by Ibn Hibbān and al-Ḥākim).

⁸ 717-6. Narrated Jābir b. Abdullah : Allah's Messenger said, "If you sell some fruit to your brother and it was smitten by blight it would not be lawful for you to take anything from him. Why should you take your brother's property unjustly?" (Reported by Muslim). A version by Muslim has: "The Prophet commanded that unforeseen loss be remitted in respect of what is affected by blight."

the sixth Ḥadīth). However, in the sale of pollinated tree, the fruits belong to the seller who has sold them unless the buyer makes a condition to buy them together with the tree. This provision has been laid down by the Prophet s.a.w in the last\textsuperscript{10} Ḥadīth of this sub topic.

In line with the concept of public interest, the permission of the sale of al-
\textsuperscript{c}Arāya demonstrates the flexibility of Islamic transactions in the sale of dry commodities such as dates, grapes and grains. However, the contract of al-
\textsuperscript{c}Arāya must be in line with the condition of measurement of good quality and quantity of commodities. This condition clearly highlights the theme of public interest in which the interest of buyers as well as consumers is preserved from fraudulent elements in such transaction.

\textsuperscript{10} 718-7. Narrated Ibn \textsuperscript{c}Umar. The Prophet ﷺ said, "If anyone buys a palm tree after it has been fecundated, the fruits belong to the seller who has sold them unless the buyer makes a condition." (Agreed upon).
6.2.5 Payment in advance (al-Salm), loans (al-Qard) and pledges (al-Rahn)

This sub topic consists of 8 ahādīth within variation on numbers of the authentic Ḥadīth as follows; Saḥīh (6 ahādīth), Ḥasan (1 ahādīth) and Daʿīf (1 ahādīth). In terms of narration, those ahādīth have many authentic narrators of the Ḥadīth such as Bukhārī (narrated 4 ahādīth), Muslim (narrated 2 ahādīth), Abū Dāwūd (narrated 1 Ḥadīth), al-Ḥākim (narrated 2 ahādīth), Bayḥāqī (narrated 1 Ḥadīth), al-Dāraquṭni (narrated 1 Ḥadīth) and al-Ḥārith (narrated 1 Ḥadīth).

There are three transactions in this sub topic i.e. al-Salm, al-Qard and al-Rahn. From 8 ahādīth of this sub topic, 2 ahādīth relate to the transaction of al-Salm, i.e. the first¹ and second² Ḥadīth. For the transaction of al-Qard, 4 ahādīth of this sub topic are referred to, i.e. the third³, fourth⁴, seventh⁵ and eighth⁶ Ḥadīth. The rest 2

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¹ 719.1 Narrated Ibn ʾAbbās At u-ː When the Prophet ( سبحانه وتعالى) came to Medina, they were paying one and two years in advance for fruits, so he ( سبحانه وتعالى)said, "Those who paid in advance for fruits must do so for a specified measurement and weight for a specified time." (Agreed upon). Al-Bukhārī has: "Those who pay in advance for anything.”

² 720.2 Narrated ʿAbd. al-Rahman b. Abza and ʿAbdullah b. Abu Awfa At w.: "We used to get booties along with Allah’s Messenger, and some peasants from those of Syria used to come to us and we would pay in advance to them for wheat, barley and raisins. " A version has: "and olive oil for a specified fixed time." It was asked, "Did they have standing crop?" They replied, "We were not asking them about that." (Reported by al-Bukhārī).

³ 721.3 Narrated Abū Huraira At j: The Prophet ( صلى الله عليه وسلم) said, "If anyone accepts other people’s belongings meaning to pay back, Allah will pay back for him; but if anyone accepts them meaning to squander them, Allah the Most High will squander him." (Reported by al-Bukhārī) .

⁴ 722.4 Narrated ʿĀʾisha ʿAt j: I said, "0 Messenger of Allah, so-and-so has brought clothes from Syria, how about if you sent someone to him and you get from him two garments on credit till it is easy for you to repay?" So he sent someone to him but he refused. (al-) ākim and al-Bayḥāqī reported it, and its narrators are reliable).

⁵ 725.7 Narrated Abū Rāfiʿ ʿAt j: The Prophet ( صلى الله عليه وسلم) borrowed a young camel from a man, and when some ṣadqa camels came to him he ordered Abū Rāfiʿ ( صلى الله عليه وسلم) to pay the man his young camel. He told him, "I can find only an excellent camel in its seventh year." He said, "Give it to him, for the best person is he, who discharges his debt in the best manner.” (Reported by Muslim).

⁶ 726.8 Narrated ʿAli ʿAt j: Allah’s Messenger ( صلى الله عليه وسلم) said, "Every loan which leads to a benefit is usury." (al-Ḥārith b. Abū Usāma reported it, but there is omission in its chain of narrators). The aforesaid Ḥadīth has a weak citation on the authority of Faḍāla b. ʿUbayd ( صلى الله عليه وسلم) by al-Bayḥāqī. It has also another Mawquf version reported by Abdullah b. ʿAlam ( صلى الله عليه وسلم) and al-Bukhārī reported it.
The definition of *al-Salm* is equivalent to an advance payment for future delivery. Technically, the sale of *al-Salm* refers to a contract in which payment is made in advance for the goods which are delivered at a concurred later date. In the first and second *Hadith*, the Prophet s.a.w verifies the transaction of *al-Salm* by stating the condition of specified measurement of goods in terms of quantity, quality and delivery. This condition is applied to the terms of contract of *al-Salm*. Furthermore, Muslim jurists are in agreement that this transaction can be applied to any type of goods or products.

In line with the concept of public interest, the transaction of *al-Salm* within the condition of specified measurement of goods in terms of their quantity, quality and delivery would preserve the interest of the buyer from getting loss and being the victim of fraudulent elements.

For the juristic theme of *al-Qard*, literally it can be defined as interest free loan or gratuitous loan of which it has been ruled by the Prophet s.a.w as permissible. This ruling is laid down in the fourth *Hadith*. In line with this type of

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7 723.5 Narrated Abū Huraira: "An animal may be ridden for spending on it when it is in pledge and the milk of a camel may be drunk for spending on it when in pledge. And the responsibility of caring for it is upon the one who rides (it) and drinks (its milk)." (Reported by al-Bukhārī).

8 724.6 Narrated (Abū Huraira) Allah's Messenger said: "A pledge does not become lost to its owner when he does not redeem it in time. Any increase in its value goes to him and any loss must be borne by him." (Reported by al-Dāraquṭnī and al-Hākim. Its narrators are reliable, but it is *Mursal* according to Abū Dāwūd and others).


loan, al-Ṣanʿāni suggests that the third Ḥadīth of this sub topic highlights an ethical manner for borrower to deal with the transaction of al-Qard\textsuperscript{12}. In this Ḥadīth, the Prophet s.a.w reminds the importance of good intention of borrower that will be rewarded by Allah s.w.t and vice versa for the bad intention of borrower. In the case that the borrower kindly gives something else or pays some profits to creditor with the principle money, thus, the Prophet s.a.w praise his giving as underlines in the sixth Ḥadīth. At this stage, both aḥādīth clearly emphasis on an ethical manner of intention of borrower in dealing with the transaction of al-Qard and the way to appreciate the creditor. This ethical manner of transaction would lead a good relationship between borrower and creditor as part of the way to preserve the interest of both parties in the transaction of al-Qard. Furthermore, the last Ḥadīth of this sub topic which is classified Daʿīf signifies the transaction of loan that leads to a benefit which particularly made by creditor is usury.

Regarding the transaction of al-Rahn or pledge or pawn, for al-Ṣanʿāni, the fifth Ḥadīth rules the right of pledgee or pawnbroker to utilise the belonging or property of borrower with the sense of responsibility during the time of possession\textsuperscript{13}. However, Muslim jurists agree to impose the condition of permission from the borrower prior the utilisation of his belonging\textsuperscript{14}. In line with the responsibility of belonging, the sixth Ḥadīth signifies that the increase and decrease of its value would be responsibility of owner or borrower and not to pawnbroker. The reason behind this is to give equal right for both pawnbroker and borrower. Since the borrower would get benefit from the value of property in the transaction of al-Rahn, therefore it is equal right for the pawnbroker to utilise the property within the period

\textsuperscript{13} Ibid.  
\textsuperscript{14} Ibid.
of possession. The application of equal right in this transaction would preserve the interest to both parties as part of the principle of public interest.

In conclusion, these three types of transactions i.e. al-Salm, al-Qard and al-Rahn mostly highlight the principle of transparency of transaction between creditor and debtor. The significance of ethical manner for both parties has been highlighted as a fundamental condition to achieve the principle of transparency of transaction. In line with the concept of public interest, the significant principle of ethical manner aims to prevent any devastating effect of humanity that might occur in those types of transactions such as bankruptcy and seizure. Further discussion on such devastated transactions will take place in the next topic.
6.2.6 Bankruptcy and seizure or al-Taflis wa al-Ḥajr

The sub topic of al-Taflis wa al-Ḥajr consists of 8 ahādīth Ṣaḥīḥ. In terms of narration, those ahādīth have many authentic narrators of the Ḥadīth such as Āḥmad (narrated 2 ahādīth), Bukhārī (narrated 3 ahādīth), Muslim (narrated 4 ahādīth), Abū Dāwūd (narrated 4 ahādīth), al-Nasāʿī (narrated 3 ahādīth), al-Tirmīdhi (narrated 1 Ḥadīth), Ibn Mājah (narrated 2 ahādīth), Ibn Ḥibbān (narrated 2 ahādīth), al-Ḥākim (narrated 4 ahādīth), al-Dāraqutni (narrated 1 Ḥadīth) and Ibn Khuzaima (narrated 1 Ḥadīth).

The first Ḥadīth of this sub topic highlights the right of creditor on debtor's property if the debtor is declared a bankrupt. At this stage, the creditor becomes the owner of the property due to the bankruptcy of his debtor. Shall the debtor dies, his property is belonged to the creditor because of the debtor's condition of bankruptcy. Many jurists observe that this regulation laid down by the Prophet s.a.w is juristically justified in the light of the concept of public interest. For instance, Imām Ibn ʻAbd al-Salam argues that in the case of bankruptcy, the interest of the creditor is given

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1 Narrated Abū Bakr b. ʻAbd. al-Raḥman on the authority of Abū Huraira رضي الله عنه We heard Allah's Messenger ﷺ say, "If a creditor finds his very property with a debtor who becomes bankrupt, he is more entitled to it than anyone else." (Agreed upon).

Abū Dāwūd and Mālik reported the aforesaid Ḥadīth from Abū Bakr b. ʻAbd. al-Raḥman's version in a Mursal form with this wording: "If anyone sells some goods (on credit) and the one who buys them becomes bankrupt and does not repay any of the price to the seller who then finds his very goods (with him), he is more entitled to them (than anyone else); if the buyer dies, the owner of the goods is then equal to the other creditors." (al-Bayhāqi reported it with full chain of narrators but graded it weak according to Abū Dāwūd's narration).

Abū Dāwūd and Ibn Mājah reported the aforesaid Ḥadīth from ʻUmar b. Khalda's version and it has: "We went to Abū Huraira رضي الله عنه regarding a friend of ours who was bankrupt. He said, 'I shall certainly pronounce judgement about him in accordance with the judgement of Allah's Messenger صلى الله عليه وسلم. If anyone becomes bankrupt or dies and the owner of the goods finds his actual goods he has most right to them.'" (al-Ḥākim graded it Ṣaḥīḥ (sound); Abū Dāwūd proved it to be weak, and also termed this addition regarding the mention of the death to be weak).
priority over the interest of the debtor. In this respect, the priority is given to the creditor as the solution to pay back his credit through the seizure of debtor's property.

In line with the seizure of debtor's property, the second Hadith affirms the ruling of the seizure is lawful, although this would effect to dishonour and punish for the debtor. For al-Ṣan'ānī, the Hadith also highlights the ruling of forbidden to debtor who deliberately delays the payment of credit. It appears that the late payment of credit made by the debtor will effect many difficulties to the creditor. For this reason, in the third Hadith, the Prophet's a.w allows the creditor to take debtor's property through the process of legal action or by court permission. The third Hadith also underlines that a bankrupt debtor who is undertaken of seizure is allowed to accept ṣadaqa or donation from donors. This provision demonstrates the application of the concept of public interest in which the life of bankrupt debtor is preserved by the assistance of donors.

Regarding the discussion on seizure of bankrupt's property, the fourth Hadith rules the legality of seizure through the process of legal action that aims to pay back a debt of bankrupt to creditor. The legality of seizure also depends on the legal capacity

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2 Izi Dien, Qawā'id al-Ahkām, v.1,p.79.
3 2. Narrated Ām r b. al-Sharid on the authority of his father: Allah's Messenger صلى الله عليه وسلم said, "Delay in payment on the part of one who possesses the means makes it lawful to dishonour and punish him." (Abü Dāwūd and al-Nasā'ī reported it; al-Bukhārī reported it without Isnād, and Ibn Ijibān graded it Ṣahīh (sound)).
4 al-Ṣan'ānī, Subul, v.3, p.54-55.
5 3. Narrated Abū Sa'id al-Khudri. In the time of Allah's Messenger صلى الله عليه وسلم a man suffered loss affecting fruits he had bought, owed a large debt and became bankrupt, so Allah's Messenger صلى الله عليه وسلم said to the people, "Give him ṣadaqa." They did so, but as that was not enough to repay his debt in full, Allah's Messenger صلى الله عليه وسلم said to the creditors, "Take what you can find, and you will have nothing other than that." (Reported by Muslim).
6 4. Narrated Ibn Ka'b b. Mālik on the authority of his father: Allah's Messenger صلى الله عليه وسلم seized the property of Mu'ādh and sold it in return for a debt he was indebted for. (al-Dāraquini reported it, al-Ḥakīm graded it Ṣahīh (sound); Abū Dāwūd reported it through a Mursal form and preponderated it as Mursal).
of bankrupt as the fifth and sixth Hadith underline the age of maturity is fifteen years. For al-Ṣanāʿī, in the context of vice versa, the fifth Hadith indicates that below fifteen years is disqualified legal capacity of business transactions. Thus, it can be learned that the provision of the age of maturity of business transaction aims to prevent the harmful effects of contract such as fraudulent element and discrimination that might occur in such contract. This preventive objective is related to the concept of public interest for which to preserve the right and equality of interested party of the contract.

In line with the preservation of right and equality, the seventh and eight Hadith highlight on this respect. The seventh Hadith rules the right of women to deal with her wealth such as dowry, inherited property and the like without permission of her husband. In the concept of public interest, this ruling will preserve the right and equality for married women to deal with her property for the best of her interest. In contrast with this topic and its ruling, the eight Hadith highlights the permissible of begging for those who are in one of three conditions as follows; a man who has

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7. Narrated Ibn Umar رضي الله عنهم: I was brought before the Prophet صلى الله عليه وسلم on the Day of Uḥud when I was fourteen years old but he did not give me permission to fight. I was afterwards brought before him on the Day of al-Khandaq (the battle of Trench) when I was fifteen and he gave me permission to fight. (Agreed upon). Al-Bayhaqī’s version has: "He did not give me permission to fight and did not find me having attained puberty." (Ibn Khuzayma graded it Sahih (sound)).

8. Narrated ʿAttīya al-Qurazi رضي الله عنهم: We were brought before the Prophet صلى الله عليه وسلم on the day of Quraiza. Those who had began to grow hair (on their private parts) were killed, but those who had not, were set free; I was among those who had not begun to grow hair so I was set free. (Reported by al-Arba’ā. Ibn Hibbān and al-Hākim graded it Sahih (sound)).


10. Narrated ʿAmr b. Shuʿaib on his father’s authority from his grandfather: Allah’s Messenger صلى الله عليه وسلم said: “It is not lawful for a woman to give a gift without her husband’s permission.” A version has: "It is not lawful for a woman to dispose of anything regarding her property when her husband is responsible for her." (Reported by ʿAḥmad and the authors of al-Sunan except al-Tirmidhī and al-Hākim graded it Sahih (sound)).

11. Narrated Qabisa b. Mukharig al-Hilālī رضي الله عنه: Allah’s Messenger صلى الله عليه وسلم said, "Begging is allowable only to one of three (people): a man who has become a guarantor for a payment, to whom begging is allowed till he gets it, after which he must stop begging; a man whose property has been destroyed by a calamity which has smitten him, to whom begging is allowed till he gets what will support life; and a man who has been smitten by poverty, the genuineness of which is confirmed by three intelligent members of his people." (Reported by Muslim).
become a guarantor for a payment, a man whose property has been destroyed by a calamity which has smitten him and a man who has been smitten by poverty. Those three conditions can be seen the juristic causes of permissibility of begging. The main objective of this provision is very clear for which to preserve the life of those who are in one of three conditions above. In connection with the seventh Ḥadīth, it suggests that a wife who has wealthy ownership should help her husband who is in predicament as discussed in the eight Ḥadīth. The assistance for those who are in such predicament is juristically classified as a humanity obligation particularly for those who have material capability. In such predicament situations, a solution of al-Ṣulh or reconciliation between two parties of contract is part of the best way to achieve mutual understanding whilst simultaneously to prevent harmful effects of life as the main principle of Islamic public interest. Further discussion on al-Ṣulh or reconciliation will take place in next topic.
6.2.7 Al-Ṣulḥ or Reconciliation

This sub topic of al-Ṣulḥ consists of 3 ahādīth Sahīh. In terms of reference, this sub topic has referred to authentic narrators of the Ḥadīth such as Bukhārī (narrated 1 Ḥadīth), Muslim (narrated 1 Ḥadīth), al-Tirmidhī (narrated 1 Ḥadīth), Ibn Ḥibbān (narrated 2 ahādīth) and al-Ḥākim (narrated 1 Ḥadīth).

In the fiqh literature, the term al-Ṣulḥ can be literally defined peace or reconciliation. However, according to al-Ṣaḥābī, Muslim jurists divide the subject of al-Ṣulḥ into several categories, which are technically defined upon which based on its subject and category. For example, the term al-Ṣulḥ is defined as treaty and truce in the subject of political such as a treaty between Muslim and non-Muslim, and a truce between rebels and government, whereas as rapprochement in the subject of marriage such as a rapprochement between husband and wife. In the subject of financial transaction, the term al-Ṣulḥ can be defined as reconciliation between two parties of contract who were disagreement on particular terms.

In line with the above definition, the first Ḥadīth of this sub topic underlines the ruling of permissible of al-Ṣulḥ particularly between Muslims. However, the Ḥadīth rules the permissibility of al-Ṣulḥ in general terms and does not refer to specific contract such as financial contract and so on. Primarily, the Ḥadīth rules that

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2 1. Narrated ʿAmr b. ʿAuf al-Muzāni, Allah's Messenger صلى الله عليه وسلم said, "Reconciliation is allowable between Muslims except such which makes unlawful something which is lawful, or makes lawful something which is unlawful; and Muslims must keep to the conditions they have made, except for a condition which makes unlawful something which is lawful, or makes lawful something which is unlawful." (al-Tirmidhī reported and graded it Sahīh (sound), but the Ḥadīth scholars disagreed with him because the narration of Kathīr b. Abdullah b. ʿAmr b. ʿAuf is weak, perhaps al-Tirmidhī considered it reliable for its many ways of narration). Ibn Ḥibbān declared the aforesaid Ḥadīth to be sound from the version of Abū Hurairah رضي الله عنه.
the contract of *al-Ṣūlḥ* must not against any basic principle of Islamic law while simultaneously must not change unlawful into lawful and vice versa. Furthermore, many jurists agree to affirm that the mutual consent of ethic must be taken into account for both parties in the contract of *al-Ṣūlḥ*. This condition clearly in connection with the theme of public interest that aims to preserve the right and equality for interested parties that involve in such contract of transaction.

In the context of social right of community, the mutual consent of ethic that applies to the contract of *al-Ṣūlḥ* must be practiced by each person. The second and third Hadīth rule the condition of mutual consent of ethic as a basic principle in the contract of *al-Ṣūlḥ* within a specific example. In line with this principle, the second Hadīth demonstrates a specific example whereby one must not prevent his neighbour from fixing a beam on his wall. At this stage, the mutual consent of ethic must be practiced by each neighbour to achieve the social right of community. Shall this principle is to be ignored by each person, the Prophet s.a.w rules that it is unlawful to take something from someone without permission and have no sense of mutual consent of ethic. This provision has been ruled in the third Hadīth in which the Prophet s.a.w affirms that it is unlawful to take his brother's stick except with his good will.

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4 2. Narrated Abû Huraira The Prophet said, "One must not prevent his neighbour from fixing a beam in his wall." Abû Huraira then said, "Why do I see you turn away from it? I swear by Allah that I will always narrate it to you." (Agreed upon).

5 3. Narrated Abû Ḥumayd al-Sa‘īdī Allah's Messenger said, "It is not lawful for a person to take his brother's stick except with his good will." (Ibn Ḥibbān and al-Ḥākim reported it in their two *Ṣaḥīḥ* books).
In the perspective of public interest, the concerning on mutual consent of ethic between each party who involve in a contract would lead the social right for each party as well as community as a whole. The stability of social right in community will preserve the peace and prosperity of life of humanity as one of basic principles of the concept of public interest.

The topic of al-Ṣulḥ will be further detailed in the subject of financial transaction with particular reference to the transaction of al-Ḥawāla wa al-Ḍaman in which the focus is given on the examination of the transfer of debt and surety.
6.2.8 The transfer of a debt and surety or al-Ḥawāla wa al-Ḍamān

This sub topic of al-Ḥawāla wa al-Ḍamān consists of 4 aḥādīth that are encompassed 3 Ṣaḥīḥ and 1 Daīf. In terms of narration, mostly, those aḥādīth have authentic narrators such as Aḥmad (narrated 2 aḥādīth), Bukhārī (narrated 2 aḥādīth), Muslim (narrated 1 Ḥadīth), Abū Dāwūd (narrated 1 Ḥadīth), al-Nasāʾī (narrated 1 Ḥadīth), al-Bayhāqī (narrated 1 Ḥadīth), Ibn Hibbān (narrated 1 Ḥadīth) and al-Ḥākim (narrated 1 Ḥadīth).

The first Ḥadīth of this sub topic rules two injunctions regarding the transaction of al-Ḥawāla or the transfer of debt. For al-Ṣanʿānī, the Ḥadīth highlights the injunction of forbidden for a rich man to delay the payment of debt because this would lead to injustice for the creditor. The second injunction that can be deduced from the Ḥadīth is the permissibility of transferring debt to other creditor. This injunction would help the debtor to pay back a debt to the creditor by transferring the debt to other party. This type of transaction can be applied to the critical situation in which the debtor has no capability to pay the debt. At this stage, the Prophet s.a.w insists to accept the transfer of debt from critical debtor as the way to help him out from such predicament of debt. Some jurists agree that at this stage it is obligatory to accept the transfer of debt from critical debtor.

The importance of payment the debt through the transaction of al-Ḥawāla particularly in the case of debtor's death has been emphasised by the Prophet s.a.w in

1. Narrated Abū Huraira Allah's Messenger ﷺ said, "Delay in payment by a rich man is injustice, but when one of you is referred for payment to a wealthy man he should accept the reference." (Agreed upon). A version by Aḥmad has: "And if anyone is referred to another, let him accept that."
2 al-Ṣanʿānī, Subul, v.3, p.69.
3 Ibid.
the second \(^4\) \textit{Hadith}. In the analysis of that \textit{Hadith}, Muslims jurists agree that the transaction of \textit{al-Damān} or surety is applied to debtor's death for which his relatives must take responsibility to pay the debt as the way to free the debtor from the burden of debt\(^5\). In line with this topic, in the third \(^6\) \textit{Hadith}, the Prophet s.a.w underlines the vital responsibility of relatives of a dead body to pay his debt to creditor. However, the \textit{Hadith} rules the responsibility of government to take over the payment of debt in the case of one dies and leaves nothing to pay his debt. This provision is clearly related to the significance of public interest for which the authority parties such as government and community leaders should take social responsibility to help needed people such as hopeless and poor debtor.

The discussion on the transaction of \textit{al-Damān} or surety is closed with the fourth \(^7\) \textit{Hadith} of \textit{Da'if} in which the Prophet s.a.w rules the exemption of \textit{hudūd} or prescribed punishment in the application of \textit{al-Damān}. Although the ruling that includes in the \textit{Hadith} can be deduced as invalid, but the question of why no \textit{al-Damān} in the \textit{hudūd} is worth interesting to be discussed here. It is suggested that there is simple distinguish between the transaction of \textit{al-Buyūf} and the \textit{hudūd} laws.

\(^{4}\) 2. Narrated Jābir Ibn-ul-Uzza: A man of us died, so we washed, embalmed and shrouded him; we then brought him to Allah's Messenger صلى الله عليه وسلم and ask him to pray over him, he went forward some steps and asked, "Did he owe anything?" We replied, "Two Dinars." He turned away, but Abū Qatādā (رضا الله عنه) took upon himself the bearing of them. We then came to him (رضا الله عنه) and Abū Qatādā (رضا الله عنه) said, "I shall discharge the two Dinars." Allah's Messenger صلى الله عليه وسلم thereupon said, "Will you be responsible for paying them as a right to the creditor; and the dead man will then be free from them?" He replied, "Yes." So He prayed over him. (Reported by Aḥmad, Abu Dāwūd and al-Nasā'i. Ibn Hibbān and al-Jākim graded it Ṣahīḥ (sound)).

\(^{5}\) al-Ṣanānī, Subūl, v.3, p.70-71.

\(^{6}\) 3. Narrated Abu Huraira : رضي الله عنه A man who had died in debt would be brought to Allah's Messenger صلى الله عليه وسلم and he would ask, "Has he left anything to discharge his debt?" If he was told that he had left enough he would pray over him, otherwise he would say, "Pray over your friend." But when Allah brought the conquests at his hands he said, "I am closer to the believers than their own selves, so if anyone dies leaving a debt I shall be responsible for repaying it." (Agreed upon). A version by al-Bukhārī has: "If anyone dies and leaves nothing to discharge his debt."

\(^{7}\) 4. Narrated ʿAmr b. Shuʿaib on his father's authority from his grandfather (رضي الله عنه): Allah's Messenger صلى الله عليه وسلم said, "No surety is allowed regarding a prescribed punishment." (Reported by al-Bayhāqī with a weak Ḳānū).
The simple distinguish between both of them is referred to the juristic concept of public interest. In terms of the application of benefit to humanity, the transaction of *al-Buyūf* is seen more applicable compared with the *hudūd* laws. Although both are in line with the concept of public interest, but the former has more interactions and benefits to humanity whereas the latter is seen has little interaction but more punishments to humanity.

Further discussion on interaction and benefit to humanity in the transaction of *al-Buyūf* will take place in the next topic of partnership and agency or *al-Shirka wa al-Wakāla*. 
6.2.9 Partnership and agency or al-Shirka wa al-Wakāla

This sub topic consists of 8 aḥādīth within variation on numbers of the authentic Ḥadīth as follows; Sahīh (6 aḥādīth) and Ḥasan (2 aḥādīth). In terms of narration, those aḥādīth have many authentic narrators of the Ḥadīth such as Aḥmad (narrated 1 Ḥadīth), Bukhārī (narrated 3 aḥādīth), Muslim (narrated 3 aḥādīth), Abū Dāwūd (narrated 3 aḥādīth), al-Nasāʾi (narrated 1 Ḥadīth), Ibn Mājah (narrated 1 Ḥadīth) and al-Ḥākim (narrated 1 Ḥadīth).

The first Ḥadīth of this sub topic verifies the significance of al-Shirka or partnership in a contract of which Allah s.w.t becomes the third (partner) of two partners as long as no fraudulent elements exist in the contract. The Prophet s.a.w affirms that the fraudulent elements of the contract is away from the mercy and bless of Allah almighty. For al-Ṣanī, the smart partnership in business would deserve profit and reward and vice versa for the fraud partnership. In other words, the transaction of al-Shirka must be applied within the transparency of contract between two parties.

In line with the transaction of al-Shirka, the second Ḥadīth can be classified as a proof to indicate historically that al-Shirka was applied before Islam to Arab community but it has been endorsed and legalised during the life of the Prophet s.a.w.

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1. Narrated Abū Huraira ﷺ: Allah's Messenger ﷺ said, "Allah the Most High said, 'I am the third (partner) of two partners as long as one of them does not cheat his companion, but when he cheats I depart from them.'" (Reported by Abū Dāwūd and al-Ḥākim graded it Sahīh (sound)).


3. Narrated al-Sā'ib al-Makhzūmi ﷺ: I was a partner with the Prophet ﷺ before the Prophethood and when the day of Conquest (of Makka) came, he said, "Welcome my brother and my partner." (Reported by Aḥmad, Abū Dāwūd and Ibn Mājah).
In terms of practice during the life of companions, the third Hadith signifies the permissibility of partnership in non-business activities of which has been termed Shirka al-âbdân. For Imâm Abû Ḥanîfa and al-Hadâwiya, this type of transaction is allowed and legal if every party knows the terms of contract. However, al-Shâfî'i differs on this transaction due to fraudulent elements that may exist in the transaction particularly in the aspect of measurement of profit, which is considered uncounted measure of profit in non-business activities. At this stage, al-Shâfî'i's argument can be rebutted as the profit of non-business activities can be defined and clarified by each party in the terms of contract, thus, the fraudulent elements can be avoided.

Regarding the transaction of al-Wakâla, there are five aḥâdîth of this sub topic verify this transaction i.e. the fourth, fifth, sixth, seventh and eighth Hadith. Those aḥâdîth rule the permissibility of al-Wakâla or agency in many forms such as the worshipping of tâdhiyya (sacrificing the animals), collecting and distributing ṣadâqa (alms poor), punishment of hudûd laws. The main condition that must be
applied to the transaction of *al-Wakāla* is certainty of agreement of contract between agency and ownership\(^\text{11}\).

In the perspective of public interest, both transactions have been legalised by the Prophet s.a.w to attain benefit for interested parties within the certainty agreement of the contract, which aims to avoid the existence of fraudulent elements in the transaction. In connection with this principle, *al-Iqrār* or the confession is one of many forms of transaction, which applies to achieve the transparency and truth particularly in the agreement of contract. Thus, a specific discussion on *al-Iqrār* will take place in the next sub topic.

\(^{11}\) al-Ṣanʿānī, *Subul*, v.3, p.77-79.
6.2.10 Confession or al-Iqrār

This sub topic of al-Iqrār consists of 1 Ḥadīth Sahih which has one authentic narrator of the Ḥadīth i.e. Ibn Hibbān (narrated 1 Ḥadīth) as follows;

1. Narrated Abū Dhār: Allah's Messenger صلى الله عليه وسلم said to me, "Say the truth even though it is hard." (Ibn Hibbān graded it Sahih (sound) as a part of a long Ḥadīth).

In the analysis of the Ḥadīth, al-Ṣanāʿī highlights the ruling of obligatory to declare or affirm the truth in any transaction although it is hard in the practice. This ruling and its principle are in line with many verses of the Qur'an such as verse 171 of Sūra al-Nisā' in which Allah s.w.t says: "nor say of Allah aught but the truth". In the business transaction, the affirmation of truth in the agreement of contract is vital for both parties that aim to avoid the existence of fraudulent elements in the transaction. Moreover, this principle is juristically applied to the punishment of Hudūd and Qīṣāṣ of which to seek the truth in the procedure of accusation and prosecution.

In line with the concept of public interest, the declaration of truth made by any party of transaction will preserve its honourable life as well as religion. The declaration of truth will also bring the justice and right for a person who declares the truth and to whom he declares the truth.
6.2.11 al-‘Ariya or loan

This sub topic consists of 4 Ahādīth Sahih. In terms of narration, those ahādīth have authentic narrators such as ʿAlīmad (narrated 2 ahādīth), Abū Dāwūd (narrated 5 ahādīth), al-Nasāʾī (narrated 4 ahādīth), al-Tirmīzhī (narrated 2 ahādīth), Ibn Mājah (narrated 1 Ḥadīth), Ibn Hibbān (narrated 1 Ḥadīth) Abū Ḥātim (narrated 1 Ḥadīth), and al-Ḥākim (narrated 3 ahādīth).

In the fiqh literature, the term al-‘Ariya refers to two categories i.e. i) ‘Ariya Madmūna or guarantees of simple loan, ii) ‘Ariya Muʿadda or a trust of borrowed object. In line with those two categorizations of al-‘Ariya, for al-Ṣanʿānī, the first Ḥadīth is a proof to indicate the obligatory of returning something that belongs to someone. However, in the analysis of the Ḥadīth, Muslim jurists differ to determine whether the Ḥadīth is a proof to indicate that ‘āriya can be classified under the category of ‘Ariya Madmūna or ‘Ariya Muʿadda. There are at least three different opinions on this regard. The first group of jurists affirms that the Ḥadīth is a proof of ‘Ariya Madmūna, whereas the second group of jurists verifies that the Ḥadīth is a proof to indicate that it is not obligatory of Madmūna or guarantees on a simple loan. The third group of jurists seems similar to the second group but they affirm that the condition of Madmūna is not apply to a good borrower and a proper storehouse as ruled in the Ḥadīth of which narrated by al-Dāraquṭnī and al-Bayḥāqī. It suggests that the third group of jurists highlights an ethical manner of borrower in dealing with the transaction of ‘āriya.

1. Narrated Samura b. Jundub Allah's Messenger ﷺ said, "The hand which takes is responsible till it pays." (Reported by ʿAlīmad and al-Arbaʿa; al-Ḥākim graded it Sahih (sound)).
2. al-Ṣanʿānī, Subul, v.3, p.81-82.
In line with an ethical manner of borrower, the second\(^3\) and third\(^4\) Hadith underline this aspect by affirming the category of "Ariya Mu'adda. In the second Hadith, the Prophet s.a.w emphasises on ethical manner of borrower to give back what has been entrusted to him by the lender who trusts him, while he warns borrower not to cheat again the lender who cheats him. However, in the analysis of jurists, they differ on the punishment of cheater whether to prosecute him or not to prosecute. Briefly, most of jurists in agreement that the prosecution of cheater is juristically necessary that in accordance with the principle of Islamic law laid down by many legal texts. Only few jurists suggest that the judge should refer to the ruling of the Hadith of which to warn the cheater and not to punish him. However, many jurists rebut their arguments by referring to many verses of the Qur'an and many authentic Hadith that insist to stop abominable through prosecution and education\(^5\). This principle is obviously in line with the concept of public interest of which the preservation of property is given one of the top priorities in the life of humanity.

In connection with the category of "Ariya Mu'adda, the third Hadith rules this category within the mutual consent of agreement between lender and borrower. In the transaction of "Ariya Mu'adda, the borrower will not be charged for the lost or damage of borrowed object. However, this is not in the category of "Ariya Ma'dmuna

\(^3\) 2. Narrated Abū Hurairā Allah's Messenger سلام الله عليه وسلم said, "Give back what has been entrusted to you to him who trusts you, and do not cheat him who cheats you." (Reported by al-Tirmidhi and Abū Dāwūd; al-Tirmidhi graded it Hasan (fair) and al-Ḥākim graded it Saḥīḥ (sound). Abū Ḥātim al-Rāzī disapproved it).

\(^4\) 3. Narrated Ya'la b. Umaiya الله's Messenger سلام الله عليه وسلم said to me, "When my messengers come to you, give them thirty coats of mail" I asked, "O Allāh's Messenger, is it a loan with a guarantee of its return, or a loan that must be paid back?" He replied, "No, it is a loan with a guarantee of its return" (Reported by Ḥāmid, Abū Dāwūd and al-Nasā'i. Ibn Ḥibbān graded it Saḥīḥ (sound)).

of which the lost or damage of borrowed object will be charged to the borrower as the fourth Hadith rules in this respect. In other words, the condition of guarantee is applied to the transaction of Āriya Maḏmūna that aims to preserve the right of lender on his belongings. This objective is in line with the concept of public interest in which the interest and right of ownership is preserved in the business transactions such as Āriya Maḏmūna.

6 4. Narrated Safwān b. Umaiya. At the battle of Ḥunayn, the Prophet ﷺ borrowed coats of mail from him and he asked, "Are you taking them by force, O Muhammad ﷺ?" He replied, "No, it is a loan with a guarantee of their return." (Reported by Abū Dāwūd and al-Nasā’ī; al-Ḥākim graded it Sahih (sound)).
6.2.12 *al-Ghabṣ* or Usurpation

This sub topic consists of 5 *ahādīth* within variation on numbers of the authentic *Hadīth* as follows; *Ṣaḥīḥ* (3 *ahādīth*), *Ḥasan* (1 *Hadīth*) and *Da'īf* (1 *Hadīth*). In terms of reference, this sub topic is referred to authentic narrators of the *Hadīth* such as Aḥmad (narrated 1 *Hadīth*), Bukhārī (narrated 3 *ahādīth*), Muslim (narrated 2 *ahādīth*), Abū Dāwūd (narrated 2 *ahādīth*), al-Tirmīdhi (narrated 2 *ahādīth*) and Ibn Mājah (narrated 1 *Hadīth*).

The discussion on the transaction of *al-Ghabṣ* or usurpation in this sub topic is technically referred to the land which has been taken and utilised without appropriate permission from the owner. There are 4 *ahādīth* of this sub topic discuss on this matter i.e. the first¹, third², fourth³ and fifth⁴ *Hadīth*.

For al-Ṣanāʿī, the first and fifth *Hadīth* are classified as proofs to indicate the ruling of forbidden of the transaction of *al-Ghabṣ* that leads to injustice and

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¹ 1. Narrated Saʿīd b. Zayd رضي الله عنه said, "If anyone takes a span of land unjustly, on the Day of Resurrection Allah will put around his neck its size taken from seven earths." (Agreed upon).

² 2. Narrated Rāfīʿ b. Khadij رضي الله عنه said, "If anyone sows in other people's land without their permission, he has no right to any of the crop, but he may have what he spent on it." ( Reported by Aḥmad and al-Arba'a except al-Nasa'i. Al-Tirmīdhi graded it *Da'īf* (sound), but it has been said that al-Bukhārī proved it weak).

³ 3. Narrated "Urwa b. al-Zubayr رضي الله عنه said, "Two men brought a dispute before Allah's Messenger ﷺ concerning a land in which one of them had planted palm trees and the land belonged to the other, so Allah's Messenger ﷺ ruled that the land belongs to its owner and commanded the owner of the palm trees to uproot his palm trees, and he said, "The labour of an unjust person has no dues." (Reported by Abū Dāwūd and its chain of narrators is *Hasan*. The quoted part of the aforesaid *Hadīth* is found in the books of the authors of al-Sunan from *Urwa's* version on the authority of Saʿīd b. Zayd, but there is disagreement regarding whether it is *Mawṣūl* or *Mursal* and the determination of the name of the Companion who first quoted it from the Prophet ﷺ. رضي الله عنه said, "Your blood and your property and your honours have been sanctioned against violations by you, like the sacredness of this day of yours, in this month of yours, in this town of yours." (Agreed upon).
committing a major sin. In the first Hadith, the Prophet s.a.w warns the severe punishment in the day of resurrection for those who took part in the transaction of al-Ghaşb. In the analysis of the Hadith, many jurists agree that the transaction of al-Ghaşb must be applied to the condition of a guarantee of the land. In other words, any damage and lose on the land which has been taken through the transaction of al-Ghaşb must be paid back to the owner.

Furthermore, the third Hadith of Đaţif underlines that the usurper has no right to the crop of the land but he may have what he spent on it. This principle has been repeated by the Prophet s.a.w in the fourth Hadith of which he rules the injustice on the activity of cultivation on the land that belongs to someone without his permission. In line with this principle, in the second Hadith, the Prophet s.a.w verifies the compensation on value and quantity of a borrowed object in the case of damage and loss. This provision will bring justice for the owner for the cost of damage and loss of a borrowed object he has had. In line with the principle of public interest, the compensation for the cost of damage and loss of the goods will prevent harmful effects particularly to the owner.

2. Narrated Anäs  The Prophet was with one of his wives when one of the Mothers of the Believers sent a bowl containing food with a servant of hers. Then she struck with her hand and the bowl was broken. He collected the pieces of the bowl and began to collect the food in it and said, "You eat", and gave a sound bowl to the messenger and kept the broken one. (Reported by al-Bukhäri and al-Tirmidhi) The latter named the one who broke it as  and added: The Prophet then said, "Food for food, and a vessel for a vessel." (al-Tirmidhi also graded it Sahîh (sound)).
6.2.13 *al-Shuf'a* or Option to buy neighbouring property

This sub topic of *al-Shuf'a* consists of 5 *ahādīth* that are encompassed 3 *Ṣaḥīḥ*, 1 *Hasan* and 1 *Da'if*. In terms of narration, those *ahādīth* have many authentic narrators such as Ḥamad (narrated 1 *Hadīth*), Bukhārī (narrated 2 *ahādīth*), Muslim (narrated 1 *Hadīth*), Abū Dāwūd (narrated 1 *Hadīth*), al-Nasā’ī (narrated 2 *ahādīth*), al-Tirmīdhi (narrated 1 *Hadīth*), Ibn Mājah (narrated 2 *ahādīth*), al-Bazzāz (narrated 1 *Hadīth*) and Ibn Ḥībān (narrated 1 *Hadīth*).

The transaction of *al-Shuf'a* refers to the condition of option to buy immovable property that particularly belongs to neighbour. This type of transaction has been underlined by the Prophet s.a.w in all *ahādīth* of this sub topic. The first *Hadīth* rules the transaction of *al-Shuf'a* which is applicable to immovable property such as land, garden, house, shop etc. In the *Hadīth*, it is also ruled the right of partner's option to be informed before selling the property. However, the rest three *ahādīth* underline that the most preference of buyer in the transaction of *al-Shuf'a* is the neighbour of the property. In the analysis of those three *ahādīth*, some jurists

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1. Narrated Jābir b. Abdullah  ﷺ: Allah's Messenger  صلى الله عليه وسلم decreed that the right to buy a neighbouring property is applicable to everything which is not divided but when boundaries are fixed and separate roads made there is no partner's option." (Agreed upon; the version being of al-Bukhārī). Muslim's version has: "The right to buy a neighbouring property is applicable to everything which is shared, whether a land, a dwelling or a garden and it is not lawful to sell before informing one's partner." Al-Ṭahāwī's version has: "The Prophet  صلى الله عليه وسلم decreed the right of partner's option regarding everything." (Its narrators are reliable).

2. The rest three *ahādīth* is referred to the second, third and fourth *Hadīth* as follows;

2. Narrated Anās b. Mālik  ﷺ: Allah's Messenger  صلى الله عليه وسلم said, "The neighbour of the house has the most right to buy it." (Reported by al-Nasā’ī and Ibn Ḥībān graded it *Ṣaḥīḥ*, but it has a defect concerning its narration through two different chains of narrators).

3. Narrated Abū Rāfi’  ﷺ: Allah's Messenger  صلى الله عليه وسلم said, "The neighbour has more right to be given preference." (al-Bukhārī reported it and it involves a long story.)

4. Narrated Jābir  ﷺ: Allah's Messenger  صلى الله عليه وسلم said, "The neighbour is most entitled to the right of option to buy his neighbour's property and its exercise should be waited for, even if he is absent, when the two properties have one road." (Reported by Ḥamad and al-ʿArba’a; its narrators are reliable).
affirm that it is not necessary to offer the transaction of *al-Shufªa* only to the potential neighbour of the property but it can be offered to any potential partner of the sold property. In rebutting this argument, Ibn Qayyîm asserts that the priority is given to the neighbour who entitles a close friend of the owner of property. In addition, it appears that the right of neighbour should be preferred rather than the right of non-neighbour in the transaction of *al-Shufªa* as two *Ahâdîth Saâhîh* rule in this respect.

The fifth *Hadîth* of *Da'if* in this sub topic highlights that the absence of potential partner would annul the transaction of *al-Shufªa*. However, Ibn Qayyîm suggests that the temporary absence of neighbour in the transaction of *al-Shufªa* does not rescind his right to buy the property. His suggestion on this regard can be learned as the significant right of neighbour in the transaction of property of *al-Shufªa*. In other words, the right of neighbour is preserved although in the transaction of property as this is in line with the theme of the concept of public interest in Islam.

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4. 5. Narrated Ibn *Umar*: The Prophet said, "The right to buy neighbouring property is like loosening a strap." (Reported by Ibn Mâjah and al-Bazzâr, who added: "There is no option to buy a neighbouring property to one who is absent." Its chain of narrators is weak).
6.2.14 *al-Qirāḍ* or Equity sharing between investor and entrepreneur

This sub topic of *al-Qirāḍ* consists of 2 *ahādīth* that are encompassed 1 *Ṣaḥīḥ* and 1 *Daʿīf*. In terms of reference, this sub topic is referred to some narrators of the *Ḥadīth* such as Ibn Mājah (narrated 1 *Ḥadīth*) and al-Dāraquṭnī (narrated 1 *Ḥadīth*).

In the analysis of the topic of *al-Qirāḍ*, al-Ṣanāʿī affirms that the term *al-Qirāḍ* can be defined as *al-Muddaraba* of which frequently refers to profit and property. A standard definition of the term *al-Qirāḍ* and *al-Muddaraba* can be referred to Rayner's definition as an equity sharing between bank or investor and client or entrepreneur.

In the topic of *al-Qirāḍ*, the author of *Bulūgh al-Marām* refers to one *Ḥadīth* *Daʿīf* as the first *Ḥadīth*. Indeed, the *Ḥadīth* has no indication of the legality of *al-Qirāḍ* and *al-Muddaraba*, however the term *al-Mugāraḍa* has been highlighted in the *Ḥadīth* of which refers to the transaction of taking and paying of loan as one of the two blessed transactions. Apart from the transaction of *al-Mugāraḍa*, the *Ḥadīth* also highlights the transaction in which payment is agreed on a fixed later time as the second of the blessed transactions. The *Ḥadīth* also highlights the mixing of wheat and barley for personal use but not for sale as another blessed activity that contains blessings or *al-baraka*.

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3. Narrated Suhaib, The Prophet صلی الله عليه وسلم said, "There are three things which contain blessings: A business transaction in which payment is agreed on a fixed later time, taking and paying of loan, and mixing wheat and barley for one's household use but not for sale." (Reported by Ibn Mājah through a weak chain of narrators).
In the analysis of that Ḥadīth, al-Ṣanʿānī examines the term al-baraka that relates to those transactions⁴. For the first transaction in which payment is agreed on a fixed later time, the term al-baraka or blessings is referred to the application of tolerance, support and assistance to debtor who deals with creditor to pay the credit on a fixed later time. In the transaction of al-Muqāraḍa, the term al-baraka or blessings is referred to the objective of al-Muqāraḍa that aims to assist and facilitate people who involve in taking and paying of loan. In the mixing of wheat and barley for personal use, al-baraka or blessings is referred to this activity only and not for sale. This is because the mixing of both seeds in the sale is classified fraud and cheat. Thus, no al-baraka or blessings in that transaction⁵. This principle is obviously in line with the concept of public interest of which to prevent harmful effects to the life of humanity such as fraudulent elements in the business transaction.

The second⁶ or last Ḥadīth of this sub topic underlines the agreements that incorporated in the transaction of al-Qirāḍ and al-Mušraba. Both parties i.e. investor and entrepreneur must stick and follow to the agreement of al-Qirāḍ or al-Mušraba. Although no compensation is paid for the loss of property but the responsibility of its loss is required in this transaction. Furthermore, the profit of business must be divided in accordance with the terms of agreement for the sake of

⁴ al-Ṣanʿānī, Subul, v. 3, p. 102.
⁵ Ibid
⁶ 766.2 Narrated al-Ḥākim b. Hizām: He used to make a condition on the man to whom he gave his property to trade with and the profit being shared between both, but any loss falling on the property that: "You should not trade with my property in living beings, transport it by sea, or settle with it at the bottom of a ravine; and if you do any of the aforesaid acts you should then guarantee my property." (al-Dāraquṭnī reported it and its narrators are reliable).
Malik said in al-Muwatṭā’ from al-ʿAlī b. ʿAbd al-Rahman b. Yaqūb from his father on the authority of his grandfather that he traded with the property belonging to ʿUthmān (رضي الله عنه) so that the profit would be divided in halves between both of them. (This Ḥadīth is Mawqūf (untraceable) and Sahīh (sound)).
justice and right of both parties as this principle is in line with juristic theme of the concept of public interest in Islam.
6.2.15 *al-Musāqāt* (cultivating and sharing the profit of the land) and *al-Ijāra* (wages).

This sub topic consists of 9 *ahādīth* that are encompassed 7 *Ṣaḥīh* and 2 *Daʿīf*. In terms of narration, those *ahādīth* have many authentic narrators such as Bukhāri (narrated 3 *ahādīth*), Muslim (narrated 5 *ahādīth*), Ibn Mājah (narrated 1 Ḥadīth), Abū Yaʿla (narrated 1 Ḥadīth), al-Bayḥāqi (narrated 2 *ahādīth*), Jābir (narrated 1 Ḥadīth), and Ḥabd al-Razzāq (narrated 1 Ḥadīth).

The first Ḥadīth of this sub topic is a proof to indicate the legality of the transaction of *al-Musāqāt* or is also known as *al-Muzāraʿa*. A standard definition of *al-Musāqāt* is referred to the transaction of cultivating the land and sharing its profit with the owner of the land. One of the differences between the transaction of *al-Musāqāt* and *al-Muzāraʿa* is that the former is usually referred to the cultivation of grains whereas the latter is referred to of fruit trees. Historically, the first Ḥadīth highlights the application of *al-Musāqāt* to the people of Khaybar, a group of Jews in the Prophet’s era. In the transaction of *al-Musāqāt*, the Jews of Khaybar cultivated the palm-trees on the land of Khaybar that belongs to Islamic state. In the agreement between them and the Prophet as a ruler of the state, the former should employ their own resources in working on it and the profit should be divided to the latter in

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1 1. Narrated Ibn ʿUmar رضي الله عنهم. Allah's Messenger صلی الله عليه وسلم had agreed with the people of Khaibar to give (to the Muslim authority) half what it produced of fruits or crops. (Agreed upon). A version by al-Bukhāri and Muslim has: They asked him (صلی الله عليه وسلم) to confirm them in it on condition that they should do all the cultivation and have half the dates. Allah’s Messenger صلی الله عليه وسلم replied them, "We shall confirm you in it on that condition as long as we wish." So they were confirmed in it till ʿUmar (رضي الله عنه) deported them. Muslim has: Allah’s Messenger صلی الله عليه وسلم handed over the Jews of Khaibar, the palm-trees and the land of Khaibar on condition that they should employ their own resources in working on it and keep half of its produce.  
accordance with the terms of agreement. This type of transaction had also been applied in the companion’s era. It suggests that within the transaction of al-Musāqāt also applies the transaction of al-Ijāra of which the wages will be paid to the lessee as the payment of the profit made by the lessor as agreed in the contract of agreement.

In line with the transaction of al-Ijāra, the second Hadith rules the wages of gold and silver as the payment of cultivating the rental land. Furthermore, the Hadith also rules no wages to the owner of the land particularly in the case of disaster of cultivated rental land except for the portion that produced the crop. This principle has been endorsed in the third Hadith. Despite the endorsement of the transaction of al-Ijāra, the third Hadith however forbids the transaction of al-Muzāra in the time of the Prophet s.a.w. This is because the land was less in that time while numbers of people were increase. The transaction of al-Muzāra in that time would burden the lessee to divide the profit of crops with the owner from the cultivated rental land. Thus, the Prophet s.a.w rules the transaction of al-Ijāra that will ease the lessee to pay only on the basis of rental land to the owner. However, whenever more lands of agriculture were allocated particularly in the era of the companions, thus, the ruling of forbidden is changed to permissible in this respect. This provision is juristically in line

4 Ibid.
5 2. Narrated Hanẓala b. Qais (رضي الله عنه): I asked Rāfī b. Khadīj (رضي الله عنه) about letting out land for gold and silver and he replied, “There would be no harm in that for the people used to let out land in the time of Allah’s Messenger صلى الله عليه وسلم for what grew by the streamlets, and the edges of the brooks or for something of the crop; but sometimes this portion of the crop would be destroyed while the other is saved, or vice-versa, thus no wages were payable to the people (the owners of the land) except for the portion which produced a crop.” Therefore, he rebuked (practising) it but for something known and guaranteed there would be then no harm in it. (Muslim reported it).
It includes an account of what was summed up by al-Bukhārī and Muslim regarding the general forbiddance of letting out land.
6 3. Narrated Thābit b. Dābhāk (رضي الله عنه) Allah’s Messenger صلى الله عليه وسلم forbade employing people on land for a share of the produce and ordered that they should be employed for wages. (Reported by Muslim).
with the concept of public interest in which the interest of people is preserved that based on their priority of life.

The rulings of the transaction of al-Ijāra have been prolonged in the rest six alḥādīth of this sub topic i.e. the fourth, fifth, sixth, seventh, eighth and ninth Ḥadīth. The fourth⁷ and fifth⁸ Ḥadīth rule the wage of cupper is lawful although the Prophet s.a.w describes the earnings of a cupper are khabīth or technically can be defined as unreasonable charge. The sixth⁹ Ḥadīth underlines the punishment on the day of resurrection for those who unpaid wage after receiving full service from the worker. The same punishment is entitled to two groups i.e. those who betrayed after confessing in the name of God and those who sold a free man and monopolised his price.

In connection with the most worthy wages to be received, the Prophet s.a.w highlights in the seventh¹⁰ Ḥadīth that the Qur’an is the best in this regard. However, some jurists differ on receiving the wages of teaching the Qur’an whether it is lawful or unlawful. Briefly, al-Ṣanāʿī refers to the Ḥadīth of the Prophet s.a.w of which it is

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⁷ 4. Narrated Ibn ʿAbbās رضي الله عنهم: Allah's Messenger صلى الله عليه وسلم had himself cupped and gave the one who cupped him his pay; and if it was prohibited he would not give him (his pay). (Reported by al-Bukhārī).
⁹ 6. Narrated Abū Huraira رضي الله عنهم: Allah's Messenger صلى الله عليه وسلم said, "Allah Who is Great and Glorious have said, There are three whose adversary I shall be on the Day of Resurrection: A man who gave a promise in My Name and then betrayed; a man who sold a free man and consumed his price; and a man who hired a servant and, after receiving full service from him, did not give him his wages." (Reported by Muslim).
lawful to receive the wages of treatment of patient by using the reciting from the Qur'an\textsuperscript{11}.

The last two \textit{ahādhīth Da‘īf} of this sub topic i.e. the eighth\textsuperscript{12} and ninth\textsuperscript{13} Hadīth underline an ethical manner to pay wages for the worker before his sweat dries as a metaphor in the sense of humanity. Although the sources of this ruling are derived in two \textit{ahādhīth Da‘īf} but a main lesson that can be learned from them is that the right of wages of employee must be fulfilled by employer as this principle is in line with the concept of public interest in Islam.


\textsuperscript{12} 8. Narrated Ibn "Umar \textit{ صلى الله عليه وسلم } said, "Give the hireling his wage before his sweat dries." (Reported by Ibn Mājah). Abū Ya‘ḷa and al-Bayḥāqī reported something to the same effect on the subject of wages from Abu Huraira \textit{ صلى الله عليه وسلم}. Al-Ṭabarānī also reported something similar from Jābir; but all these \textit{Ahādhīth} are weak.

\textsuperscript{13} 9. Narrated Abū Sa‘īd al-Khudri \textit{ صلى الله عليه وسلم } said, "When anyone hires a hireling he should pay him all his wages." (Reported by 'Abdul Razzaq, but there is \textit{Inqila’} (omission) in it, but al-Bayḥāqī proved it \textit{Mawṣūl} through the narration of Abū Ḥanīfā).
6.2.16 *Ihya’ al-Mawāt* or developing barren lands

This sub topic of *Ihya’ al-Mawāt* consists of 9 *ahādīth* that are encompassed 4 Ṣaḥīḥ, 3 Ḥasan and 2 Ḍa’īf. In terms of narration, those *ahādīth* have many authentic narrators such as Aḥmad (narrated 2 *ahādīth*), Bukhārī (narrated 1 *Ḥadīth*), Abū Dāwūd (narrated 5 *ahādīth*), al-Nasā’i (narrated 1 *Ḥadīth*), al-Tirmīdhī (narrated 2 *ahādīth*), Ibn Mājah (narrated 2 *ahādīth*), Ibn al-Jārūd (narrated 1 *Ḥadīth*), Ibn Ḥībān (narrated 1 *Ḥadīth*) and al-Bayḥāqī (narrated 1 *Ḥadīth*).

In the *fiqh* literature¹, the transaction of *Ihya’ al-Mawāt* is practically based on certain factors which are in line with the necessity of people’s custom or known as al-*ʿUrūf* as follows; i) developing the land for the purpose of public interest (*tābyāḍ al-ʿArḍ*), ii) cultivating the land for the purpose of agriculture (*tangiatuha Lilzara*), iii) putting a wall around a barren land for the purpose of building a house (*bīnāʾ al-Ḥāʾit ʿala al-ʿArḍ*).

In connection with those factors of the legality of the transaction of *Ihya’ al-Mawāt*, there are two *ahādīth* that rule the ownership of barren lands i.e. the first² and second³ *Ḥadīth*. Both *ahādīth* affirm that a developer of barren land, which is not belonging to any Muslim or non-Muslim, entitles to get ownership of the land. However, Muslim jurists differ on whether to get prior permission or not from the

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² Narrated *ʿUrwa from ʿAʾisha* 😂 said, "The Prophet صلى الله عليه وسلم *said, "He who develops land which has no owner, has the most right to it."* (Reported by al-Bukhārī) *ʿUrwa said that ʿUmar ruled according to that during his caliphate.*
³ Narrated Saʿīd b. Zayd 😂 said, "The Prophet صلى الله عليه وسلم *said, "If anyone makes a barren land productive, it belongs to him."* (Reported by al-Thalāthā; al-Tirmīdhī graded it Ḥasan saying that it was reported in a *Mursal* form which is the case but there is disagreement regarding the Companion who first quoted it from the Prophet صلى الله عليه وسلم, it was said that it was Jābir, ʿAʾisha or Abdullah b. ʿUmar, and it is preponderated that it was the first one (i.e. Jābir))
government in the transaction of *Ihyā’ al-Mawāt*. It suggests that prior permission from the government is necessary in the transaction of *Ihyā’ al-Mawāt* due to prevent injustice and harmful effects in developing the barren lands. This is juristically in line with the theme of public interest that will remove any harmful effects of humanity whilst simultaneously it will preserve the element of justice and transparency for the purpose of the life of humanity.

The discussion on the transaction of *Ihyā’ al-Mawāt* has been extended through several *ahādīth* in this sub topic. Some of them laid down basic principles that incorporated in the transaction of *Ihyā’ al-Mawāt*. For instance, the third* Hadīth* highlights no preserved land except what belongs to Allah and His Messenger. In the analysis of the *Hadīth*, Muslim jurists insist that no reserve land is given by the government to individual or leadership but only for the purpose of public interest except for juristic reasons. In other words, the gift of reserve land to individual ownership would bring injustice and harmful effects for the society. In line with this injunction, the fourth* Hadīth* rules a general principle that can be related to the transaction of *Ihyā’ al-Mawāt* is that "You should neither harm yourself nor cause harm to others" (*La ʿrar wa la ʿrirar*). It appears that this principle can be seen as a social guidance to achieve justice, peace and mutual understanding among the members of society. In the transaction of *Ihyā’ al-Mawāt*, this principle must be

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3. Narrated Ibn ʿAbbās رضي الله عنه that al-Ṣaʿb b. Jaththāma al-Laythi رضي الله عنه had told him that the Prophet صلی الله عليه وسلم had said, "There is no preserve except what belongs to Allah and His Messenger." (Reported by al-Bukhāri).

4. Narrated (Ibn ʿAbbās) رضي الله عنه (Allah's Messenger صلی الله عليه وسلم) said, "You should neither harm yourself nor cause harm to others." (Reported by Abūmad and Ibn Mājah). Ibn Mājah reported something similar to the aforesaid *Hadīth* from Abū Saʿīd's narration; it is found in al-Muwaffāʾ in a *Mursal* form.
applied officially by the government to develop any barren land that aims to benefit for the people and country and not to bring harmful effects to their lives.

The rest five *ahādīth* of this sub topic can be classified as the legal proof to constitute some principles such as the individual ownership of the land, the necessity of *Harīm* and the right of people to utilise and benefit the natural sources.

Regarding the principle of the individual ownership of the land, there are at least four *ahādīth* on this regard i.e. the fifth, sixth, seventh and eighth *Hadīth*. Each *Hadīth* rules the right of particular individual to get ownership of the land from the government such as someone who puts a wall around a barren land for the purpose of building a house, someone who digs a well for the benefit of people, someone who entitles to get an estate for the purpose of agriculture for fixed period and someone who entitles to get an estate as a reward of his services that benefit to Islam and Muslim ummah.

Concerning the principle of the necessity of *Harīm*, for al-Ṣanāʿī, the sixth *Hadīth* examines in this respect. Although the *Hadīth* is juristically classified *Qa`if*, but Muslim jurists analyse its ruling that parallel with the ruling in some *ahādīth* *Saḥīḥ* such in the fifth *Hadīth*. Thus, in al-Ṣanāʿī’s analysis of the sixth *Hadīth*, he

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6 5. Narrated Samura b. Jundub: Allah’s Messenger said, “If anyone puts a wall around a barren land, it belongs to him.” (Reported by Abū Dāwūd and Ibn al-Jārūd graded it *Saḥīḥ* (sound)).

6 6. Narrated Abdullah b. Mughaffal: The Prophet said, “If anyone digs a well, he has forty cubits (of land) as resting place for his animals near the water.” (Reported by Ibn Majah through a weak chain of narrators).


8 8. Narrated Ibn ’Umar: The Prophet assigned to al-Zubayr the land his horse could cover at a run. He made his horse run, and when it stopped he threw his whip. He then said, “Give to him up to the spot his whip has reached.” (Reported by Abū Dāwūd, but it has weakness).
states that apart from the rule to give ownership of the land for someone who digs a well for the benefit of people, the Hadith also rule the necessity of Harîm. A standard definition of Harîm is referred to natural sources that are preserved from developing and monopolising because of their harmful effects to the life of humanity. In line with the Hadith, the well is classified as Harîm because of its benefit to the life of humanity. In this regard, Muslim jurists affirm that apart from well, river and conservatory area are also classified as Harîm.

The last Hadith of this sub topic rules the principle of the right of people to utilise and benefit the natural sources particularly pasture, water and fire or electricity. For al-Šan‘āni, the Hadith is a proof to rule the public utility of those three natural sources and no personal belonging to them in the case of necessary condition. Those three natural sources have the same feature of public utility. At this stage, it can be learned that on the other words, the Hadith rules the priority of public interest is given more important rather than the priority of the right of personal belonging. This principle is justified with the condition of fundamental basic necessity of human life such as natural sources and the like.

9. Narrated A man of the Companions: I went on an expedition with the Prophet ﷺ and heard him say, "People are partners in three things: pasture, water and fire." (Reported by Ahmad and Abu Dâwîd; its narrators are reliable).

6.2.17 *al-Waqf* or Endowment

This sub topic of *al-Waqf* consists of 3 *ahādīth* *Ṣaḥīḥ*. In terms of narration, those *ahādīth* have authentic narrators such as Bukhārī (narrated 2 *ahādīth*) and Muslim (narrated 3 *ahādīth*).

The transaction of *al-Waqf* or the endowment refers to the donated property that aims to benefit the public interest. Any profit that obtained from the donated property must be allocated continuously to the purpose of public interest. Furthermore, the transaction of *al-Waqf* is divinely classified as one of the three most valuable rewards for Muslim death. The first *Hadīth* affirms the most valuable rewards for Muslim death is reckoned on three types of actions i.e. i) *ṣadaqa* or gifts whose benefit is continuous, ii) knowledge from which benefit continues to be reaped, iii) the supplication of a good son or daughter (for his or her died parents). It appears that this *Hadīth* is a proof to indicate that being a rich person who deals in the transaction of *al-Waqf* is promised by the Prophet s.a.w to gain the most valuable reward after his death.

In conjunction with the transaction of *al-Waqf*, the second and third *Hadīth* rule the types of property of *al-Waqf*. The second* Hadīth* underlines the land as a.

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1. Narrated Abū Hurairah *رضي الله عنه* Allah's Messenger *صلى الله عليه وسلم* said, "When a son of Adam dies no further reward is recorded for his actions, with three exceptions: *ṣadaqa*, whose benefit is continuous; or knowledge from which benefit continues to be reaped; or the supplication of a righteous son (for him)." (Reported by Muslim).
2. Narrated Ibn *Umar* *رضي الله عنه* that *Umar* asked his command regarding it and said, "O Allah's Messenger, I have acquired a land in Khaybar which is the most valuable property that I have ever acquired." He replied, "If you wish you may make the property an inalienable possession and give its produce as *ṣadaqa.*" So *Umar* gave it as *ṣadaqa* that must not be sold, inherited, or given away, and he gave its produce as *ṣadaqa* to be devoted to the poor, relatives, the emancipation of slaves, Allah's cause, travellers and guests, no sin being committed by the one who administers it if he eats something from it.
type of property of *al-Waqf* that can be utilised for the benefit of people such as the poor, relatives, the emancipation of slaves, Allah's cause, travellers and guests. Furthermore, the *Hadîth* affirms the portion of benefit for the authority body that manages the land of *al-Waqf*. However, the authority body of *al-Waqf* has no right to sale and transfer the land to other party.

The third *Hadîth* underlines the movable property such as coats of mail, weapons and animals that can be dealt in the transaction of *al-Waqf*. For al-Ṣanâ`î, the *Hadîth* is a proof to rule the permissibility of material endowment of which valuable for the payment of *zakāt* or alms poor. It suggests that this ruling is formed to give a chance for a person who has no capability to give valuable property such as land and the like for the purpose of *al-Waqf*.

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in a reasonable manner or gives something to a friend to eat, provided he does not store anything as goods (for himself). (Agreed upon; the version is of Muslim).
A version by al-Bukhari has: "He gave it as *Sadaqa* that must not be sold or gifted but its produce must be spent (as *Sadaqa*)."

3. Narrated Abu Huraira : "Allah's Messenger صلى الله عليه وسلم sent `Umar رضي الله عنه to collect *Sadaqa.*" The narrator reported the *Hadîth* and it contains: "As for Khâlid, he has kept back his coats of mail and weapons to use them in Allah's cause." (Agreed upon).
6.2.18 *al-Hiba* (Gifts), *al-`Umra* (life-tenancies) and *al-Ruqba* (giving property for the recipient’s life time)

This sub topic consists of 11 *ahādīth* within variation on numbers of the authentic *Hadīth* as follows; *Saḥīḥ* (9 *ahādīth*), *Ḥasan* (1 *Hadīth*) and *Dā'if* (1 *Hadīth*). In terms of reference, this sub topic is referred to many authentic narrators such as Al mad (narrated 2 *ahādīth*), Bukhārī (narrated 7 *ahādīth*), Muslim (narrated 5 *ahādīth*), Abū Dāwūd (narrated 1 *Hadīth*), al-Nasā’ī (narrated 1 *Hadīth*), al-Tirmīdhī (narrated 1 *Hadīth*), Ibn Mājah (narrated 1 *Hadīth*), Ibn Hībbān (narrated 2 *ahādīth*), al-Ḥākim (narrated 2 *ahādīth*), Abū Ya‘lā (narrated 1 *Hadīth*) and al-Bazzāz (narrated 1 *Hadīth*).

In the *fiqh* literature, the transaction of *al-Hiba*, *al-`Umra* and *al-Ruqba* are practically referred to individual transaction between the giver and the recipient. For instance, the transaction of *al-Hiba* refers to the giver who gives something as a gift to someone or recipient for the sake of Allah s.w.t. Both transaction of *al-`Umra* and *al-Ruqba* practically refer to Jahilliya’s era in which a house is given as a gift. However, the former deals with a life tenancy at the house whereas the latter deals with a lifetime to live at the house.

In line with the transaction of *al-Hiba*, there are ten *ahādīth* that deal with this type of transaction. Only one *Hadīth* deals with the transaction of *al-`Umra* and *al-Ruqba*.

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Those ten *ahādīth* of *al-Hiba* mainly focus on the rulings of ethical manner of the giver and recipient who deal with this type of transaction. The first2 *Hadīth* is a proof to rule the obligatory of equality for parents in giving a gift to their children. However, some jurists suggest that in practice, it’s difficult for parents to apply the equality of quality and quantity in giving a gift to their children, thus, the rule is only recommended in this regard3.

The second and third *Hadīth* emphasises on the ruling of taking back the gift. In general, the ruling of taking back the gift is unlawful as the second4 *Hadīth* indicates in this respect. However, the exception is given to parents as lawful to take back the gifts of their children for some reasons. This ruling has been highlighted in the third5 *Hadīth* of this sub topic. It suggests that the reason of unlawful of taking back the gift is based on unethical manner in doing so for the giver. Although the sense of unethical manner is seen in the case of parents who take back the gifts of their children but the Prophet s.a.w rules as lawful in this regard. It appears that both cases are totally different in terms of relation between the giver and recipient. The second case of parents has family relation, which is much more closed between

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2 1. Narrated al-Nu’man b. Bashir *رضي الله عنهما* and said, "I have given this son of mine a slave, who was belonging to me." Allah’s Messenger *صلى الله عليه وسلم* asked, "Have you given all your children the like of him?" He replied, "No." Allah’s Messenger *صلى الله عليه وسلم* then said, "Take him back then." A version has: My father went then to the Prophet who called him as witness to my sadaqa (i.e. gift) and he asked, "Have you done the same with all your children?" He replied, "No." He said, "Fear Allah and treat your children equally." My father then returned and took back that gift. (Agreed upon).

A version by Muslim has: He said, "Call someone other than me as witness to this." He then said, "Would you like them to show you equal filial piety." He replied, "Yes." He said, "Don't do it, then:"


4 2. Narrated Ibn ʿAbbās *رضي الله عنهما*: The Prophet *صلى الله عليه وسلم* said, "The one who repossesses back a gift is like a dog which vomits and then returns to its vomit." (Agreed upon) A version by al-Bukhārī has: "An evil example does not apply to us, one who repossesses back a gift is like a dog which vomits and then returns to its vomit."

5 3. Narrated Ibn ʿUmar and Ibn ʿAbbās *رضي الله عنهما* The Prophet *صلى الله عليه وسلم* said, "It is not lawful for a man (Muslim) to give a gift and then take it back, except a father regarding what he gives his child." (Reported by Ahmad and al-Arba‘a, al-Tirmidhi, Ibn Ḥibbān and al-Ḥākim graded it *Saḥīḥ*).
parents and children. Thus, the case of taking back of gift by parents is seen as common practice in a family. However, in the first case, the taking back of gift by giver would morally harmful effect to recipient.

In the fourth Hadith, the Prophet s.a.w demonstrates the giving of something in return the gift from recipient as the proper way to express the appreciation of gift to giver. For this prophetic principle, most jurists agree that it is recommended to do that. However, it is obligatory for the giver to have good intention as well as mutual consent in the transaction of al-Hiba as the fifth Hadith rules in this respect. This ruling should be practiced by the giver that aims to avoid the element of corruption which might exist in the transaction of al-Hiba. Moreover, a good intention in the transaction of al-Hiba will bring the sense of caring and loving between giver and recipient and meanwhile it would gently extract grudge particularly for recipient as both aḥādīth in the eighth of Hasan and the ninth of Daʿif highlight on this aspect.

In terms of social relation, in the tenth Hadith, the Prophet s.a.w encourages neighbour to deals in the transaction of al-Hiba although in small quantity and quality as this will strengthen the sense of caring between members of community.

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6 4. Narrated ‘A’isha رضي الله عنها that Allah's Messenger ﷺ would accept a present and give something in return for it. (Reported by al-Bukhāri).

7 5. Narrated Ibn ‘Abbās ﷺ A man gave away a she-camel to Allah’s Messenger ﷺ. So he gave him something in return for it and asked, "Are you pleased?" He replied, "No." So he gifted him abundantly and asked, "Are you pleased?" He replied, "No." Again he gifted him abundantly and asked, "Are you pleased?" He replied, "Yes." (Reported by Ahmad and Ibn Ḥiibbān graded it Sahih).

8 8. Narrated Abū Huraira رضي الله عنه: The Prophet ﷺ said, "Give presents to one another and you will love one another." (al-Bukhāri reported it in al-Adab al-Mufrad; Abū Ya`la reported it with a good chain of narrators).

9 9. Narrated Anās رضي الله عنه that Allah’s Messenger ﷺ said, "Give presents to one another, for a present gently extracts grudge." (al-Bazzār reported it through a weak chain of narrators).

10 10. Narrated Abū Huraira رضي الله عنه: Allah’s Messenger ﷺ said, "O Muslim women, a woman neighbour should not consider even a goat’s trotter too insignificant a gift to give to her neighbour." (Agreed upon).
The seventh\textsuperscript{11} and eleventh\textsuperscript{12} Hadith underline the right of giver in the transaction of al-Hiba. The seventh Hadith underlines that the giver should not buy his gift if the gift is offered for the sale. Muslim jurists differ to determine whether forbidden or reprehensible to buy this type of gift. As a solution, the giver should avoid to buy this type of gift because this is contrast with his first intention of al-Hiba of which seeking for the sake of Allah s.w.t\textsuperscript{13}. However, for some reasons, the giver has the right to take back the gift particularly in the case of no condition in returning the gift. This principle is ruled by the Prophet s.a.w in the eleventh Hadith.

The transaction of al-\textsuperscript{5}Umra and al-Ruqba are highlighted in the sixth\textsuperscript{14} Hadith of this sub topic. As previously discussed, both transactions have interrelated with the transaction of al-Hiba but slightly different in terms of gift in which is referred to the house only. The aim of both applicable transactions is to assist recipient to have a proper shelter to live in within certain agreement of contract. This objective is clearly in line with the concept of public interest because living in a proper shelter will preserve the life of family.

\textsuperscript{11}7. Narrated 'Umar I provided a man with a horse to ride in Allah's cause, but as he did not look after it well, I thought he would sell it at a cheap price. I therefore asked Allah's Messenger about that and he said, "Do not buy it even if he gives it to you for a Dirham." The narrator reported the rest of the Hadith. (Agreed upon).

\textsuperscript{12}11. Narrated Ibn 'Umar The Prophet said, "If anyone gives away a gift, he has most right to it as long as he is given nothing in return for it." (al-\textsuperscript{11}\textsuperscript{11}Hākim reported and graded it Sahih and it is established from Ibn 'Umar's version on the authority of 'Umar that this is 'Umar's saying).

\textsuperscript{13}al-$\text{\textsuperscript{11}}$adani, Subul, v. 3, p. 136-137.

\textsuperscript{14}6. Narrated Jābir' Allah's Messenger said, "What is given in life-tenancy belongs to the one to whom it is given." (Agreed upon).

Muslim has: "Keep your properties for yourselves and do not squander them, for if anyone gives a life-tenancy it goes to the one to whom it is given, both during his life and after his death, and to his descendants."

A version has: "The life-tenancy which Allah's Messenger allowed was only that in which one says, 'It is for you and your descendants.' When he says, 'It is yours as long as you live,' it returns to its owner."

Abū Dāwūd and al-Nāsā'i have: "Do not give property to go to the survivor and do not give life-tenancy, for if anyone is given either, the property goes to his heirs."
6.2.19 *Luqāta* or Lost and found items

This sub topic of *Luqāta* consists of 6 *ahādīth* that are encompassed 5 *Ṣaḥīḥ* and 1 *Ḥasan*. In terms of narration, these *ahādīth* have many authentic narrators such as Alḥmad (narrated 1 *Ḥadīth*), Bukhāri (narrated 2 *ahādīth*), Muslim (narrated 4 *ahādīth*) Abū Dāwūd (narrated 2 *ahādīth*), al-Nasā‘ī (narrated 1 *Ḥadīth*), Ibn Mājah (narrated 1 *Ḥadīth*), Ibn al-Jārūd (narrated 1 *Ḥadīth*), Ibn Hibbān (narrated 1 *Ḥadīth*) and Ibn Khuzaima (narrated 1 *Ḥadīth*).

The transaction of *luqāta* or lost and found items is juristically divided into 3 categories; i) invaluable items and edible, ii) invaluable items and inedible. It must be announced to the public places for three days prior entitlement, iii) valuable items and must be announced to the public places for one year. Shall no claim of ownership, the items can be utilised.

In connection with those three categories of *luqāta*, the first Hadīth is a proof to rule the permissibility of keeping invaluable items if found. However, the Prophet s.a.w as a person who found those items kept them as inedible although those items were edible. For Ṣan‘āni, the Hadīth is also a proof to encourage the sense of carefulness to eat uncertainty of food. At this stage, the Hadīth indicates the second category of *luqāta*.

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1 al-Ṣan‘āni, *Subul*, v.3, p.140
2 1. Narrated Anās -1 The Prophet Lu came upon a date on the road and said, "Were it not that I fear it may be part of the ṣadaqah I would eat it." (Agreed upon).
The second\(^4\) and third\(^5\) Hadith of this sub topic are proofs to rule the obligatory of keeping *luqata* items for the purpose of seeking the owner of those items. A proper announcement is vital to do in order to seek the real owner of *luqata* items. Furthermore, in the second Hadith, the Prophet s.a.w rules the permissibility to eat astray goat after one year for seeking its owner. However, the astray goat has guarantee in terms of its price. The finder must pay compensation to the owner of goat if the goat has been slaughtered. In the case of astray camels, the Prophet s.a.w rules that those camels should be freed to find their foods and water. It suggests that this is because those camels are classified independent animals of which they can survive to live compared with astray goats.

The fourth\(^6\) Hadith underlines the rule of obligatory to seek reliable witness in the transaction of *luqata* and in delivery those items to their owner. This provision is vital to be applied that aims to achieve justice, right and transparency in the transaction of *luqata*. The ignorance of this provision would bring harmful effects particularly to the real owner of those items.

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\(^4\) 2. Narrated Zayd b. Khälid al-Juhäni ﷺ: A man came to the Prophet ﷺ and asked him about a find. He replied, "Note what it is contained in and what it is tied with and make the matter known for a year Then if its owner comes give it to him, otherwise you can do what you like with it." He asked, "What about astray goat?" He replied, "You, your brother, or the wolf may have it." He asked, "What about astray camels?" He replied, "What have you to do with them? They have their stomachs and their feet. They can go down to water and eat trees till their master finds them." (Agreed upon).

\(^5\) 3. Narrated (Zayd b. Khälid) ﷺ: Allah's Messenger ﷺ said, "He who gives refuge to a stray is a stray himself as long as he does not make it known." (Reported by Muslim).

\(^6\) 4. Narrated 'Iyād b. Himar ﷺ: Allah's Messenger ﷺ said, "He who finds something should call two trusty people as witnesses, keep in mind what it is contained in and what it is tied with, and not conceal it or cover it up; and if its owner comes he has then most right to it, otherwise it is Allah's property which He gives to whom He wishes." (Reported by Aḥmad and al-Arbā'a excluding Tirmidhi. Ibn Khuzaima, Ibn al-Järūd and Ibn Ḥibbān graded it *Ṣahih*).
The fifth\(^7\) and sixth\(^8\) Hadith of this sub topic highlight an ethical manner to be practiced in the transaction of luqata. For instance, the fifth Hadith rules the prohibition of taking items that belong to pilgrims. It appears that the aim of this ruling is to prevent the burden of pilgrims as they have spent a lot of money during their worshipping of pilgrimage. Furthermore, the sixth Hadith rules the prohibition of keeping the luqata property of disbelievers who have been preserved their equal rights as Muslims in Islamic state except for juristic reasons. It suggests that this ruling aims to protect the rights of minority in Islamic state as part of main theme in the concept of public interest in Islam for which to protect the property and life of humanity regardless races and religions.

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\(^7\) Narrated \(^{\text{Abd. al-Rahman b. Uthman al-Taymi}}\) The Prophet صلی الله علیه و وسلم禁止 taking what a pilgrim has dropped. (Reported by Muslim).

\(^8\) Narrated \(^{\text{al-Miqdam b. Madiqarib}}\) Allah's Messenger صلی الله علیه و وسلم said, "A beast of prey with a fang, a domestic ass, and a find from the property of a Kafir who has been given a covenant unless he dispenses with it, are not lawful." (Reported by Abū Dāwūd).
6.2.20 *Al-Farāʿiḍ* or Shares of inheritance

This sub topic consists of 13 *ahādīth* within variation on numbers of the authentic *Hadīth* as follows; *Saḥīḥ* (11 *ahādīth*) and *Hasan* (2 *ahādīth*). In terms of reference, this sub topic is referred to many authentic narrators of the *Hadīth* such as Abū Ḥanīfah (narrated 5 *ahādīth*), Bukhārī (narrated 3 *ahādīth*), Muslim (narrated 2 *ahādīth*), Abū Dāwūd (narrated 5 *ahādīth*), al-Nasāʿī (narrated 8 *ahādīth*), al-Tirmīḏhi (narrated 2 *ahādīth*), Ibn Mājah (narrated 6 *ahādīth*), Ibn Ḥibbān (narrated 3 *ahādīth*), al-Ḥākim (narrated 5 *ahādīth*), Abū Zurʿa al-Rāzi (narrated 1 *Hadīth*), al-Dāraquṭnī (narrated 1 *Hadīth*), Ibn al-Madīnī (narrated 1 *Hadīth*), Ṣaʿd al-Bīr (narrated 1 *Hadīth*) and al-Bayhāqī (narrated 1 *Hadīth*).

From 13 *ahādīth* of this sub topic, there are two juristic themes that relate to the transaction of *Al-Farāʿiḍ*. The first juristic theme refers to the principle of the transaction of *Al-Farāʿiḍ* that must be followed and practiced for the sake of justice and right in bestowing the shares of inheritance to those entitle individuals. The second juristic theme refers to the fixed portions of the transaction of *Al-Farāʿiḍ* to those entitle individuals that are laid down by the Qurʾan.

In the first juristic theme, there are seven *ahādīth* which highlight some principles of the transaction of *Al-Farāʿiḍ*, whereas six *ahādīth* underline the second juristic theme that focuses on the fixed portions of individuals in the transaction of *Al-Farāʿiḍ*. 
To begin with, the discussion will examine on the first juristic theme that are encompassed seven *ahādīth* that relate to some principles of the transaction of *al-Farāʿīd* i.e. the first, second, fourth, tenth, eleventh, twelfth and thirteenth Ḥadīth.

The first Ḥadīth rules the obligatory of giving the shares to those who are entitled to the inheritance and the remaining shares must be given to the nearest male heir. In line with this principle of transaction of *al-Farāʿīd*, the verse 11 and 12 of *Sura al-Nisa* laid down six fixed portion of shares as follows; one-half, one-fourth, one-eighth, two-third, one-third and one-sixth. There are two types of entitled individuals in bestowing six fixed portion of shares of *al-Farāʿīd* i.e. i) *Dhu al-Farāʿīd*, juristically refers to children, daughters, parents and husband or wives, ii) *ʿAṣaba*, juristically refers to husband or wives, brothers and sisters, uncles and unties, nephew and nieces, grand fathers and grand mothers, grand sons and grand daughters.

In other words, those individuals are entitled in the transaction *al-Farāʿīd* because of their lineage relation to the deceased. It appears that in the concept of public interest, the application of the transaction *al-Farāʿīd* aims to preserve and utilise the property of the deceased by bestowing to his lineage and relatives. Furthermore, the first Ḥadīth rules that the remaining shares must be given to the nearest male heir because this is in line with the responsibility of male to look after family compared with female.

The second and fourth Ḥadīth underline the principle that Muslim does not inherit from disbeliever and vice versa. The objective of this principle vividly

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1. Narrated Ibn ʿAbbās رضي الله عنهما: Allah's Messenger ﷺ said, "Give the shares to those who are entitled to them, and what remains goes to the nearest male heir." (Agreed upon).
2. Narrated Usāma b. Zayd رضي الله عنهما: The Prophet ﷺ said, "A Muslim does not inherit from an infidel and an infidel from a Muslim." (Agreed upon).
preserves the interest of Muslim’s property for the sake of religion and life. The same
objective is applied to the case of murderer who is excluded from the entitled
individual in the transaction of al-Farā’īd as the tenth Ḥadīth rules in this respect.

The eleventh⁴ and twelfth⁶ Ḥadīth emphasis on the principle of bestowing al-
Farā’īd that belongs to a deceased freed slave. The term al-Walā’ is also referred to
the left property of deceased freed slave. In this regard, both aḥādīth underline that al-
Walā’ cannot be sold or given away because its belong to lineage of deceased freed
slave. In the case of no lineage to be bestowed, the al-Walā’ entitles to individual who
pays the money for the freedom.

The thirteenth⁷ Ḥadīth of this sub topic endorses Zayd b. Thābit as one of
experts in the subject of al-Farā’īd particularly during the life of the Prophet s.a.w. In
other words, it can be learned that the transaction of al-Farā’īd should be managed
and consulted with a knowledgeable person or expert in this subject.

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different religions do not inherit from one another." (Reported by Aḥmad and al-Arba’a except al-
Tirmidhi; al-Hākim reported it with Usāma’s version; al-Nasā‘i reported Usāma’s Ḥadīth with the
aforesaid version).
4 10. Narrated "Amr b. Shu‘aib on his father’s authority from his grandfather Allah’s Messenger said, "One who kills a man cannot inherit anything from him." (Reported by al-Nasā‘i and al-Dāraquṭnī; Ibn 4Abd. al-Barr graded it strong; al-Nasā‘i declared it to be defective,
but the right opinion is that it is Mawqūf at "Amr b. al-Āṣ."
5 11. Narrated ‘Umar b. al-Khaṭṭāb: I heard Allah’s Messenger as saying,
"The property a parent or a child acquires, goes to his inmate whoever it may be." (If either dies leaving
no relative). (Reported by Abū Dāwūd, al-Nasā‘i and Ibn Mājah; Ibn al-Madini and Ibn 4Abd. al-Barr
graded it Sahīḥ).
inheritance from a freed slave is as of a kindred by lineage; it cannot be sold or given away." (al-Ḥākim
reported it through al-Šāfi‘ī’s narration from Muḥammad b. al-Ḥasan on the authority of Abū Yūsuf;
Ibn Hibbān graded it Sahīḥ (sound), but al-Bayhaqī graded it defective).
7 13. Narrated Abū Qilāba on the authority of Abūs: Allah’s Messenger said, "The most versed in the rules of inheritance among you is Zayd b. Thābit." (Aḥmad and al-Arba’a except Abū Dāwūd reported it; al-Tirmidhi, Ibn Hibbān and al-Ḥākim graded it Sahīḥ, but it was
weakened for being Mursal).
The second juristic theme of this sub topic is the fixed portions of individuals of the transaction of al-Farā‘īd. There are six aḥādīth in this subject. For instance, the third Hadīth of this sub topic indicates three fixed portions of individuals i.e. i) half to the daughter, as one of Dhu al- al-Farā‘īd, ii) one-sixth to the granddaughter (from father’s side, as one of `Apba, iii) one-third to the sister, also one of `Asaba.

The fifth Hadīth rules that Dhu al- al-Farā‘īd includes daughters who got two-thirds and also a grandfather who got one-sixth. In this case, the deceased only left two daughters and a grandfather as heirs. However, the grandfather entitles to get another one-sixth because he is also categorised as `Asaba particularly in this case. The portion of one-sixth also entitles to a grandmother in the case of deceased has no mother to inherit before her as the sixth Hadīth rules in this respect.

The seventh and eighth Hadīth rule that a maternal uncle (mother’s brother) has no right in the fixed portions of individuals of the transaction of al-Farā‘īd particularly in the case of nobody is entitled to inherit al-Farā‘īd. If this were the case, the property would be bestowed to the government as public fund (Bait al-

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8. Narrated Ibn Mas‘ūd concerning the situation where there were a daughter, a son’s daughter and a sister: The Prophet ruled, "The daughter gets half and the son’s daughter a sixth, making two-thirds, and what remains goes to the sister." (Reported by al-Bukhārī).

9. Narrated Imrān b. Ḥusayn L At ‘j: A man came to the Prophet and said, "My son’s son has died, so what do I receive from his estate?" He replied, "You receive a sixth;" then when he turned away he called him and said, "You receive another sixth;" and when he turned away he called him and said, "The other sixth is an allowance (beyond what is due)." (Reported by Aḥmad and al-Arbā‘a; al-Tirmidhi graded it Šahīh. It is from al-Hasan al-Baṣrī’s version on the authority of Imrān; but it was said that al-Hasan did not hear the Hadīth from Imrān).

10. Narrated Ibn Burayda on the authority of his father: The Prophet appointed a sixth to a grandmother if no mother is left to inherit before her. (Reported by Abu Dawūd and al-Nasa‘ī, Ibn Khuzayma and Ibn al-Jarūd graded it Šahīh and Ibn ‘Aḍī graded it strong).


12. Narrated Abū Umāma b. Sahīl that Allah’s Messenger wrote to Abū Ubayda: "O Umar! Allah said: "Allah and His Messenger are the Patrons of him who has none."

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Furthermore, the ninth Hadith concludes this subject that a newborn baby entitles as heir of his parent and whenever the baby dies, the transaction of al-Farā'īd must be applied to his relatives.

In the perspective of public interest, the transaction of al-Farā'īd and its incorporated principles should be applied properly to the members of society. This provision aims to preserve the right of deceased’s property of which it would be transferred equally to entitled relatives of deceased.

13 9. Narrated Jābir (r.a.): The Prophet (p.b.u.h) said, "When a new born has raised its voice (and then dies), it is treated as a heir." (Reported by Abū Dāwūd and authenticated by Ibn Hibbān).
6.2.21 al-Waṣāyā or Wills and testaments

This sub topic of al-Waṣāyā consists of 5 ahādīth that are encompassed 3 Ṣaḥīḥ, 1 Ḥasan and 1 Daʿīf. In terms of narration, those ahādīth have many authentic narrators such as Ahmad (narrated 2 ahādīth), Bukhārī (narrated 3 ahādīth), Muslim (narrated 3 ahādīth), Abū Dāwūd (narrated 1 Ḥadīth), al-Tirmīdhi (narrated 1 Ḥadīth), Ibn Mājah (narrated 1 Ḥadīth), Ibn al-Jārūd (narrated 1 Ḥadīth), al-Dāraquṭnī (narrated 2 ahādīth), Ibn Ḥiibbān (narrated 1 Ḥadīth), Ibn Khuzaima (narrated 1 Ḥadīth) and al-Bazzāz (narrated 1 Ḥadīth).

Those five ahādīth of this sub topic underline some principles regarding the transaction of al-Waṣāyā that should be practiced by Muslims. In the first1 Ḥadīth of al-Waṣāyā, the Prophet s.a.w rules that it is recommended for a Muslim to deal in the transaction of al-Waṣāyā before his death. The Prophet s.a.w also emphasises on written form of will in order to make it as confirmation and proof for the purpose of the transaction of al-Waṣāyā. It suggests that the absence of written form of will would normally leads harmful effects in the transaction of al-Waṣāyā particularly in the case of bestowing the property of deceased. Thus, Muslims jurists affirm that a proper written form of will can be considered an official witness or an official statement in the transaction of al-Waṣāyā2.

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1. Narrated Ibn "Umar رضي الله عنهما, "It is not prudent for a Muslim person who has something he wants to give as a bequest to have it for two nights without having his will written regarding it." (Agreed upon).

The second Hadith of Sahih and the fifth Hadith of Da’if rule that the portion of al-Waqaya is one-third of the property of deceased. The reason behind the fixed portion of one-third of al-Waqaya has been clarified by the Prophet s.a.w in the second Hadith as to leave the heirs in adequate wealth is better than to leave them poor and begging from people. In other word, the priority of family is given more important in bestowing property rather than others. This principle is in line with the concept of public interest that aims to preserve lineage in many ways of life such as in property transaction of al-Waqaya.

The third Hadith is a proof to indicate that a sadaqa or charity made by a son on behalf of his mother who has died is accepted by Allah s.w.t as his mother’s sadaqa. This provision highlights the significance of property for the blessing of deceased through the form of sadaqa or charity. At this stage it can be learned on how the property should be managed in the proper way such in transaction of al-Waqaya.

The fourth Hadith of this sub topic is a proof to indicate that a will must not be bestowed to an heir. Muslim jurists affirm that this principle aims to seek justice
among heirs in terms of fixed portions of individuals in the transaction of \textit{al-Farā'īd}.\footnote{al-Ṣan`ānī, \textit{Subul}, v.3,p.168.} Shall any heir entitle a portion of will, the permission of other heirs is needed. This principle must be applied as the way to prevent injustice and harmful effects in the transaction of property as part of main theme in the concept of public interest in Islam.

narration of Ibn ʿAbbās (رضي الله عنهما); and he added in its end: "unless the other heirs wish so." (Its chain of narrators is Hasan).
6.2.22 al-Wadā' or Trust’s property

This sub topic of al-Wadā' consists of 1 Ḥadīth Da‘īf which was narrated by Ibn Mājah as follows;

1. Narrated °Amru b. Shu‘ayb on his father’s authority from his grandfather. The Prophet صلى الله عليه وسلم said, "There is no guarantee on him who is entrusted with something." (Ibn Mājah reported it, but its chain of narrators has a weakness).

In the analysis of the Ḥadīth, al-Ṣan‘ānī defines al-Wadā' as trust’s property that is managed by trustee. In other words, al-Wadā' can also be seen a type of property transaction which is based on the basis of trust. In the book of Subūl al-Salām, al-Ṣan‘ānī highlights two rulings regarding the transaction al-Wadā'. The first ruling is recommended to deal in the transaction al-Wadā' as this is in line with the verse 2 of Sūra al-Mā‘ida that insists believers in helping one another in virtue, righteousness and piety. The second ruling is obligatory to deal in the transaction of al-Wadā' as the way to manage the property from loss and damage¹.

Further analysis of jurists on the above Ḥadīth states that there is no condition of Ḍamān or guarantee in the transaction of al-Wadā' because its operates on the basis of trust. Thus, no compensation to be paid by the trustee for any cost of loss and damage on the property of al-Wadā'. However, the responsibility of trustee in managing the transaction of al-Wadā' is necessary because it will be counted and rewarded by Allah s.w.t on the day of judgement.

In the perspective of public interest, the transaction of al-Wadā' is part of social obligation and contribution because its normally deal with public trust of

¹ al-Ṣan‘ānī, Subūl, v.3, p.171.
property such as *al-Wa'af* or the endowment and the like. The good management in the
transaction of *al-Wad‘a* will benefit not only to the donor and trustee but also to the
whole community. As a matter of fact, the principle of *al-Wad‘a* has been applied to
other transaction that aims to assist Muslims community such as alms poor or *sadaqa*
and the like.
6.3 Summary

The analysis of the *ahādīth* of *Kitāb al-Buyūt* within the juristic concept of *al-Maṣlaḥa wa al-Nāss* in this chapter verifies two fundamental points. The first point is the significant juristic concept of public interest, *maṣlaḥa* in connection with Islamic legal texts of the Ḥadīth. The connection between the former and latter in this chapter forms three juristic methods i.e. firstly, the criteria of *naṣṣ* in determining the existence of *maṣlaḥa*. Within this chapter, 176 *ahādīth* of *Kitāb al-Buyūt* have been examined to identify their basic criteria that are employed to determine the principles of *maṣlaḥa*. Secondly, the interpretation of *maṣlaḥa* from *ahādīth*. In connection with this method, 22 sub topics of *Kitāb al-Buyūt* that are encompassed 176 *ahādīth* have been analysed and examined within the framework of the juristic concept of *maṣlaḥa*. Thirdly, the implementation of *maṣlaḥa* through *ahādīth* of *Kitāb al-Buyūt*. Accordingly, this chapter highlights the dynamic principles of *maṣlaḥa* that have been implemented particularly in the field of business transactions that commenced during the life of the Prophet s.a.w.

The second fundamental point that can be verified from this chapter is the juristic principles of *maṣlaḥa* in the *ahādīth* of *Kitāb al-Buyūt*. It has been found in this chapter the practical principles of *maṣlaḥa* in most of *ahādīth* of *Kitāb al-Buyūt* which are also divided into 22 sub topics. To put it concisely, the juristic principles of *maṣlaḥa*, public interest upon which have been implemented in the area of business transactions aim to preserve the religion, life, intellect, lineage, honour and property of humanity. The preservation on these six constituents of life of humanity is classified by Muslim jurists as the principle of *darūra* or necessity. To some extent, many types of business transactions and their juristic principle of public interest that
have been examined and analysed in this chapter firmly establish the significant
divine source of the Hadîth of the Prophet s.a.w as an evolving and living law for the
life of believers as well as humanity.
CONCLUSION OF THESIS

Conclusion

From six chapters that have been drawn up in this thesis, there are several points of conclusion which can be presented here as follows:

1. Within the framework of Islamic jurisprudence, the concept of al-Maṣlaḥa wa al-Naṣṣ signifies three methods of interaction and dealing between the juristic concept of public interest and the Divine commandments through the legal texts in the Qur'ān and the Sunna, which is termed as naṣṣ (sgl.) or nuṣūṣ (plr). The first method is the criteria of naṣṣ in determining the existence of maṣlaḥa. The second method is the interpretation of maṣlaḥa from nuṣūṣ. The third method is the implementation of maṣlaḥa through nuṣūṣ. These three methods have formed Islamic legal principles on the basis of public interest that always in accordance with the Divine legal texts particularly the Qur'ān and the Sunna.

2. From the historical point of view, the concept of al-Maṣlaḥa wa al-Naṣṣ is well accepted as a valid and legal Islamic principle that emerged during the period of the Prophet and continued during the era of his companions, particularly that of the khulafā' al-Rāshidūn or Rightly Guided Caliphs. In the period of tābilīn or followers, there was significant indication of the further development of the concept maṣlaḥa in accordance with naṣṣ, particularly during the rule of the caliph ūmar ʿAbd ʿAzīz. This growth continued and filtered into the four Sunni schools of law, who contributed both directly and indirectly to the development of the concept of al-
Maṣlaḥa wa al-Naṣṣ. Their contribution to this concept was subsequently well developed by the disciples and jurists from their own schools of thought.

3. From the perspective of theoretical development, the main finding to emerge from discussion of this theory is the effort of Muslim jurists to link the concept of public interest (Maṣlaḥa) with the Divine legal texts (Naṣṣ) such as the Qur'ān and the Ḥadīth. Accordingly, some Muslim jurists have formed a legal principle of Maṣlaḥa that does not endorse with any textual evidence, dalīl or naṣṣ. This form of legal principle is termed al-Maṣlaḥa al-Mursala, developed by Imam Mālik. Also Tūfī has drawn up as a hypothetical form the theory of the priority of maṣlaḥa over the legitimacy of naṣṣ. Nevertheless, because of its controversial nature, many Muslim jurists have examined this theory from various perspectives and aspects in the light of Islamic jurisprudence. Importantly, despite the multiplicity of critical views regarding this theory, it can be stated that at the very least Tūfī contributed a new theory in response to juristic crises of his age.

4. The formation of the theory of the levels of Darūrīyya, Ilājīyya, and Taḥsīnīyya aims to incorporate the basic area of human needs, particularly the preservation of religion, life, lineage, intellect, property and honour. Of great significance here is the priority of legal level in Islamic law; that is, in order to apply Islamic law to humanity, the priority levels of Darūrīyya (lit. necessities), Ilājīyya (lit. needs), and Taḥsīnīyya (lit. improvements) are always to be taken into account. To put it blatantly, Islamic law is prescribed law, but is nevertheless flexible in its application to humanity.
5. The study of the theory of Magāsid al-Shari'a as it connects with Naṣṣ emerges the significance of every single legal text from both the Qur'an and the Ḥadīth, and of their ultimate objectives for humanity. This demonstrates that Islamic law (as the Divine law given to humanity) is a civilised law that has at its heart sound objectives which accord with the human capacity for reason, as can be examined through the legal texts of the Qur'an and the Ḥadīth. To some extent, Islamic law is an evolving and living law, its purpose to protect humanity through its Divine rules.

6. Further juristic discussion on the significance of the process of Ta'āli al-Ahkām for the concept of al-Maṣlaḥa wa al-Naṣṣ, highlights Islamic law as a dynamic law for humanity. Although Muslim jurists differ on the acceptance of Ta'āli al-Ahkām as a valid process of ratiocination, it appears to be a significant method in justifying effective causes, ultimate objectives and the wisdom of Islamic law. Through the process of Ta'āli al-Ahkām, every single injunction of Islamic law deriving from the Qur'an and the Ḥadīth has rational and reasonable sense. Therefore, Islamic law decrees not only correct modes of worship, but also provides the basis of human fulfillment in daily life.

7. In order to demonstrate the systematic nature of Islamic law through the process of applying Ta'āli al-Ahkām to the Naṣṣ, the Ḥadīth has been chosen as particular Naṣṣ and its connection with the concept of al-Maṣlaḥa wa al-Naṣṣ. To be more specific, the book Bulūgh al-Marām, as one of the authentic books of the Ḥadīth has been juristically referred as special reference in the application of the concept of al-Maṣlaḥa wa al-Naṣṣ.
8. The examination of *Bulūgh al-Marām* highlights its juristic features as a concise
book of Ḥadīth that authentically consists of 77.6%  Ṣaḥīḥ, 16.08% Ḥasan and 6.29%
Daʿīf. These figures of percentage-wise prove the quality and significance of *Bulūgh
al-Marām* as the importance reference source for Islamic legal texts of the Ḥadīth.
The examination of compilation methodology of *Bulūgh al-Marām* academically
verifies a defining approach within three main elements i.e. numbers of Ḥadīth,
arrangement of chapters and sub-topics and specific terms of cross-referencing.
Moreover, this pattern of compilation methodology has been followed by many later
jurists as a benchmark approach to compile the legal texts of Ḥadīth.

9. In order to apply the juristic concept of al-.Delaya wa al-Nass to the ahādīth in
the book *Bulūgh al-Marām*, *Kitāb al-Buyūf* has been chosen as a focus of study. *Kitāb
al-Buyūf* or chapter on business transaction encompasses 176 ahādīth within 22 sub
topics. It has been found in this thesis the practical principles of maṣlaha in most of
ahādīth of *Kitāb al-Buyūf* that aim to preserve the religion, life, intellect, lineage,
honour and property of humanity. This type of preservation is juristically classified by
Muslim jurists as the principle of qarīra or necessity which is a main principle of
maṣlaha.

10. Further details on the analysis of the ahādīth in *Kitāb al-Buyūf* within the
framework of the juristic concept of al-Maṣlaha wa al-Nass verify a new approach to
the analysis of the ahādīth of the Prophet s.a.w
Suggestions

Following the above conclusion, this thesis offers a few suggestions in relation to this study as follows;

1. The juristic concept of *al-Maṣlaḥa wa al-Naṣṣ* should be applied to the analysis of the verses of the Qur'an and the *ahādīth* of the Prophet s.a.w in various subjects and themes. This effort should be undertaken by Muslim scholars in order to highlight the significance of Islamic legal texts as a dynamic law that aim to protect and guide humanity through the Divine rules.

2. In practical terms, the juristic concept of *al-Maṣlaḥa wa al-Naṣṣ* should be introduced and learned particularly at university level in the subject of *Tafsīr al-Qur'ān* (Quranic exegesis), *Sharḥ al-Ḥadīth* (Analysis of the Ḥadīth) and *Uṣūl al-Fiqh* (Islamic jurisprudence).

3. Apart from the topic on business transactions (*Kitāb al-Buyūṭ*), further study on other topics in the book *Bulūgh al-Maḥām* should be continued within the framework of the juristic concept of *al-Maṣlaḥa wa al-Naṣṣ*. 
GLOSSARY OF ARABIC TERMS

A

adilla shar'iyya; legal indicants
af al; deeds
ahad; solitary reports
akhkim; rulings
ahl al-ra'y; rationalist
amarah al-hukm; the sign of the law
amr/nahy; commands and prohibitions
amr; imperative
ashah al-hadith; traditionalist
asbuh al-muzil; the particular and general circumstances in which the text was revealed
aqwal; sayings
'ariya; the loan
'ariya madmuna; guarantees of simple loan
'ariya mu'adda; a trust of borrowed object
'araya; refers to the exchange commodities that have same measurement in terms of quantity and quality
'adil; the most trustworthy narrators
'ala al-fawr; to be performed instantaneously
'ala al-tarakhi; to an unspecified time in the future
'am; general term
'aql; reason
'aqli; intellectual
'aqlan; rationally
'awamir; commandments

B

bayan; explanation
bab; sub-topic
bid'a; religious innovation
buyi; business transactions

D

dabir; the most accurate and greatest powers of memory
da'i; weak
dalil; a textual indicant or proof or evidence
dalilat; indications and signs
daman; surety
daruri; necessary
daruri al-ukhrawi; the Muslim submits by carrying out stated obligations and avoiding unlawful actions
daruri al-dunyawi; the basis of daily life such as food, drinks, clothes, marriage, house and the like
daruriyya; necessities
E
ex post facto; the founder

F
fadil al-mal; surplus of property
farā'id; the shares of inheritance
faqih; jurists
fasid; invalid
fasid bi-itlaq; absolutely invalid
faskh; to cancel a contract of sale
fatwas; legal opinions
fit'; a deed
a fortiori argument; non-analogical argument

G
ghalabat al-zann; border on certainty
gharib; irrelevant
gharar; deceit, cheating, danger, peril and risk that might lead to destruction and loss
gharür; deceiving
ghašb; usurpation
ghushsh; deception
ghish; cheating

H
ḥabl al-ḥabla; the absolute futurity and uncertainty of delivery of the contract
ḥadd; definition, the penalty
ḥadith; reports or verbal transmission which conveyed the contents of Sunna
ḥajjyya; needs
ḥajr; seizure
ḥakam; arbitration judge
ḥal; circumstance
ḥaqīqa; a real one
ḥaram; the prohibited
ḥaraj 'ażīm; extreme hardship
ḥasāt; pebble throwing trade
ḥasan; fairness
ḥawāla; the transfer of debt
hiba; refers to the giver who gives something as a gift to someone or recipient for the sake of Allah s.w.t
ḥilf; a sworn testimony
ḥikma; the rationale, divine wisdom
ḥiyāl; Legal stratagems
ḥudūd; prescribed law
ḥukm al-ashyā fi al-ṣāl; the rule pertaining to things in their original state
ḥukm al-taklīf; defining law
ḥusn al-Ḥāl; the good condition
I

ihatikār; storing goods for future profit
ihyū’ al-mawāt; developing the barren lands
ijāra; the wages of gold and silver as the payment of cultivating the rental land
ijmā‘; consensus
Ijtihad al-ra’y; the intellectual activity or the reasoning of the legal scholar whose sources of knowledge are materials endowed with religious (or quasi-religious) authority.

ikhtilaf; juristic disagreement
imdā‘; to ratify a contract of sale
iqrā‘; confession
iqtida; a requirement to commit or omit an act
isnad; the chain of transmission
istithnā‘; exception
istihsan; juristic preference
istikhra‘ bi al-naṣṣ; the induction to legal texts
isti‘ṣhab; the principle of the presumption of continuity
istiṣlah; public welfare and interest
istiqama; straightness
‘illa; ratio legis or the effective cause in Islamic jurisprudence
‘illa; defects
‘ilm al-kalam; theological enquiries
‘ilm muktasab; acquired knowledge

J

al-jadal al-fiqhi; the art of juridical disputation
al-jadal al-hasan; good dialectic
jahil; ignorance
jali; perspicuous
jam‘; harmonization

K

kayl; measurement
kaffara; penance
khāfif dābit; less accuracy and power of memory
khass‘amm; general and specific
khām; alcohol
khabar al-khassa or khabar al-wahid; solitary traditions
khidā‘; deception
khīyār; options of transaction
khīyār al-majlis; option of contractual session
khīyār al-shart; option of condition or stipulation
khīyār al-‘aib; option of defect
khīyār al-ru’yat; option of inspection
khīyār al-ta‘yīn; option of determination
khilafiyat, ikhtilaf; juristic disagreement
kinaya; an indirect declaration of intent
kitāb; chapter
kull; universal
kulliyāt al-istiqrāʾiyyāt; universal rules known inductively

L
luqāṭa; lost and found items

M
maḍarrā; something harmful
madhhab; the legal school and its authoritative, standard doctrine
ma∫hum; linguistic implication
majaz; metaphorical
makhruḥ; the repugnant or reprehensible
ʿamal; practice
mamnūʿ, haram; forbidden
mandub; recommended
manāṭ al-liukm; the cause of the ruling
manṣaʿa; something useful
maqasid al-sharīʿa; the ultimate objective of Islamic law
maqṣūd; aims
mashhur; well known or widespread
masḥaqqa; hardship
masalih; good things
maṣlaḥa; public interest
maṣlaḥa al-qarṭīyya; means any particular common good in the light of a definitive legal text, therefore no interpretation or taʾwīl can be made of it. For instance, the existence of al-Maṣlaḥa al-Qarṭīyya on the subject of the pilgrimage which is obligatory for those who are capable of performing it.

maṣlaḥa al-ẓannīyya; means any particular common good achieved by non-definitive nafs and through the process of legal reasoning on the basis of assumption, ẓannīyya.

mātīn; text
mawsīl; connected linkage of isnād
mfyyāḥ; criterion or standard
muṭtabara; the validity and recognised maṣlaḥa since there is textual evidence in its favour, particularly in the Qurʾān and the Ḥadīth of the Prophet s.a.w.

mursala; the recognised maṣlaḥa although it has no textual evidence in its favour.

mursal; non-continuous linkage of isnād
muṣarrāt; animals whose udders have been tied
mulgha; unrecognized, nullified and discredited maṣlaḥa.
mukhālafa mutaʿāriqta; variance and in contradiction
manf; an impediment
minhaj; methodological path
mubah; the permissible or what is permitted
mufassar; lucidity
mufassar; clear
mufassal; unrestricted
mufti; jurisconsult
muftaddithin; scholars of hadith
muftaqala; refers to the barter sale of dried dates for fresh dates which are still on the tree
mukallaf; legally capacitated person
mukhābara; refers to a lease contract of agricultural land where the lessee cultivates the crops for himself and for the lessor
mukhādara; the transaction in which the purchaser cannot be guaranteed by the seller the quantity of the goods because the contract is agreed prior to the time of consumption of the goods
muktasab; acquired
mu'jamal; ambiguous or obscurity
muftahids; the creative jurists or leading jurists
mula'im; relevant
mula'ama; relevance
munāsaba; suitability
munābadha; the transaction that refers to the act of throwing something
mulāmāsa; the transaction that refers to the act of touching the object of sale
muqallidun; pl. of muqallid; followers or imitators
musāqāt; also known as al-muzāra is referred to the transaction of cultivating the land and sharing its profit with the owner of the land
murtashi; one who takes bribe
mu'afa; temporary marriage
mutakallimun; scholastic theologians
mutaqaddimun; the early religious scholars
mutashabih; ambiguous
mutawādir; multiply transmitted reports
mu'taq; unrestricted word or statement or unrestricted language
muzābana; refers to the barter sale of harvested crops with crops which are still on the tree
ma'nawi; thematic

N
nabi; Prophet
najsh; similar to auction or bidding that purely aims to increase the value of price of the goods and not genuinely to sell them
nahy; prohibitive or prohibition
naql; transmitted
nasikh wa mansukh; abrogating and abrogated verses
naskh; abrogation
nasīṣ (sgl.) nusṣīṣ (pl.); legal text, script, provision, proof or evidence
mutq; the meaning of the language

Q
qabī; certainty of delivery of good of purchase
qasama; compurgation
qasd al-Sharf; the intention of the Lawgiver
qarina pl. qara'in; contextual evidence
qard; interest free loan or gratuitous loan
qarina qaf'a; conclusive evidence
qaf'i; certain
qawl; pronouncement
qawl wahid; a unity of opinion
qibla; the direction of prayer
girad; can be defined as al-mudarraba of which frequently refers to an equity sharing between bank or investor and client or entrepreneur
qiyas; analogical deduction
qiyas 'illa; causative inference

R
raf al-haraj; alleviating hardship
rahn; pledge or pawn
rash; one who bribes
rasul; Messenger
ra'y; opinion
rib; usury or any 'unjustified increase of capital for which no compensation is give'.

rib al-buyu' or rib al-fadl; refers to the exchange contracts that applies to six items i.e. gold, silver, date, raisin, wheat and barley and the like of them
rib al-nasia; refers to the contract of loan in which the additional amount is added to the premium of the loan because of the late time of payment
ruqba; refers to the transaction in which a house is given as a gift for lifetime

S
al-sabr wal-taqsim; classification and successive elimination
sadiq; truthful
sadaga; alms poor or charity
salih; authentic, validity
salb; negation
salm; a contract in which payment is made in advance for the goods which are delivered at a concurred later date
sanna; setting of fashioning a mode of conduct as an example for others to follow
sarih; a direct statement
shakk; doubt
shafa'ir al-zahira; external rituals
shart; proviso or a condition
shirka; partnership
shirka al-abdan; partnership in non-business activities
shufa'a; refers to the condition of pre-emption and option to buy immovable property that particularly belongs to neighbour
shura; consensus and mutual consultation
shudhi; irregularities
sifa; quality
sira; the prophet's biography and the events in which he was involved
sight al-wumum; a single linguistic formulation
sulh; reconciliation between two parties of contract who were disagreement on
particular terms
sunna; an exemplary mode of conduct
sunan al-mu'akkada; commendable actions
sunnat Allah; the convention of God

T
ta'bbudiyya; worshipping or strict obedience
tadhiyya; sacrificing the animals
tafsîs; bankruptcy
tahrim; impermissibility
tahsin, tawsi'a; improvement
tahsinîyya; improvements

tahqîq al-manât; the process of individuating cases and realizing them in the external world or ascertaining the ulla

Tajdid; renewal
tajzi'at al-ijtihâd; permitting a jurist to practice ijtihad
takîfu' al-adilla; principle of Equivalence of Proofs
takhayyur; an amalgamated selection
takhrîj al-manâq al-ijtihâd al-qiyâsi; investigating the texts in order to extract what is otherwise an unspecified ratio legis
takhsîs al-illa; the limitation of the ratio legis
takhsîsî; particularization
takhsîsî al-âmm; specifying the general
takhsîsî al-illa; the limitation of the ratio legis
taklîf mà la yutaq; legal obligation would be intolerable
taqyyîd al-mutlaq; considering the differences between events
talab al-îlm; travel in search of knowledge
talab; request
tamlık; conveyancing
tanassuk; piety and devotion
taqîq al-manâq; the identification of the ratio legis insofar as it is isolated from attributes that are conjoined with it in the texts.
taqyyîd; the qualification
tâ'arûd; conflict of evidence
tard wa-âks; co-presence and co-absence
tarakkkhus; juridical licenses
tarjih; solution
al-ťarīq al-wasâf; a middle-of-the-road position
ṭariq wasâf; a middle course
taşawwûr; a conception
tashâhhi; personal desires
ta'îthîr; efficacy
tawfiq; reconciliation
tawaqqûf; suspended
ta'wil; reinterpretation
al-tawâtur al-laf; the concurrent verbal reports
tawâtur ma'nawi; recurrent thematic reports
ta'il al-alâkâm al-sharîyya; the juristic process of ratiocination of Islamic law or the determination of the cause of Divine commandments by logical and linguistic analysis
ta'diya; extendibility
thunya; the sale of goods with the exempted part of it is unknown

U
‘umra; refers to the transaction in which a house is given as a gift for life tenancy
Usul al-Fiqh; Islamic jurisprudence
usulists; legal theorists
‘usr; undue difficulty
‘urf; customary practices

W
wa‘d‘a; trust’s property that is managed by trustee
wahmi; imaginary
wājib; obligatory
wakāla; agency
wajudan wa ‘adaman; the continued concomitance
waqf; endowment which refers to the donated property that aims to benefit the public interest
wasā‘a; the wills and testaments
waqf al-munāšib; compatible description
waqf dhāti; identical attribute
wazn; weight
wujūb; affirmation

Y
yaqin, qaf; certainty
yatama; orphans
yusr; extreme ease

Z
zanniyya; assumption or probability
zakat; the payment of alms-tax
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