

Chapters and Sections from *Foundational and Legal Principles related to a Muslim Unable to Derive Islamic Legal Rulings on His Own*

By. Dr. Sa'd bin Nasir Ash-Shithri

Translated by: Hanif Randy Fouse (Second Draft of Translation completed on February 17, 2020)

Important Terms (from the translator):

mujtahid (مُجْتَهِد) – translated as “qualified legal advisor,” refers to an individual who has knowledge of the Islamic legal issues, even if only in the area about which he is being questioned, as well as the evidence pertaining to said issues.

mufti (مُفْتٍ) – also translated as “qualified legal advisor,” refers to the *mujtahid* who has actually given advice to someone. The term *mujtahid* refers to one who has the qualifications to give legal advice whereas to term *mufti* refers to one who actually gives advice.

faqih (فَقِيه) – translated as “jurist,” the term is also used to refer to one who is *mujtahid*, however, based upon his area of specialty, which is *fiqh* (i.e. Islamic law)

ijtihād (اجْتِهَاد) – translated as “legal advice,” the term refers to decision-making process that a *mujtahid* goes through when seeking to draw a legal conclusion and/or give legal advice.

'āmmī (عَامِي) – translated as “untaught (person),” it refers to one unable to derive Islamic rulings on his own because of a lack of knowledge of the issues, ignorance of evidence to be referenced on the issues, a lack of awareness on how to derive rulings from evidence, or a host of other reasons.

Please note: Page numbers following headings match those of the Arabic original. Speech added by me for clarification and not mentioned or implied directly by the author has been placed in brackets []. All footnotes have been added by the translator and are not from the original unless otherwise specified.

Beginning of Translation

Part 1

Section One: The Ruling of Doing an Action for which One Does Not Know the Ruling (pg. 13)

Scholars have established that a person is required to know the ruling of an action prior to doing it in order to ensure that the action is not prohibited. Unanimity (i.e. *ijmā'*) has been reported on the impermissibility of one doing an action for which one does not know the ruling.

It has been reported that when Umar bin al Khattab – رَضِيَ اللهُ عَنْهُ - was the caliph, he would not allow anyone who did not know the rulings of buying and selling to pursue the trade business. He would say,

“No business transactions will be performed whatsoever except by those who have understanding of the religion.”

Scholars have mentioned that if a land is void of any qualified legal advisors and one cannot get in contact with qualified jurists, the untaught must abandoned said land; it is impermissible for him or her to remain there. But this issue has become obsolete in modern times as the means of communication are amply accessible.

Third Concept: How to Derive an Islamic Ruling (pg. 16)

If a situation occurs in an individual’s life and one wants to know Allah’s judgment on the matter, that person can only be in one of two possible circumstances:

1) Either one is a qualified jurist, in which case one will derive the ruling directly from Islamic evidence by way of foundational legal principles.

2) One is not a qualified jurist; in which case he will discover the ruling by asking those of knowledge. Several pieces of evidence indicate that. Among them are the following:

a) Allah, the Exalted, states: {Ask the people of knowledge if you do not know} [Surah an-Nahl 16:43] [Surah al Anbiyā’:7].

b) Allah, the Exalted, states: {If only a group of each party did not leave so that they could become learned in their religion so that they could advise their people when they returned; perhaps, they would take heed} [Surah at-Tauba 9:122].

c) The hadith about the hired laborer who asked the people of knowledge, and they gave him a[n incorrect] ruling; the Prophet ﷺ did not rebuke him for asking.

d) The Prophet’s statement ﷺ: ((Should not they have asked if they did not know? The cure for ignorance is asking)).

Ash-Shatibi – رحمه الله - said, “If an untaught person is faced with a religious decision, he has NO religious option, in most instances, but to ask about it.”

Part 2

Section 2: Who Should the Untaught Ask (pg. 22)

If a situation confronts an unlearned person and he or she wants to know Allah’s judgment on the matter through asking someone, he or she should know that not everyone is fit to be asked. There are certain conditions that should be met in the individual whose advice is sought. He should be knowledgeable of overarching, comprehensive Islamic evidence as well as that evidence specific to the issue and able to apply fundamental legal principles to said evidence. Our question, however, is how would an untaught person know if these requisites exist in a person deemed a qualified jurist? Scholars have mentioned various means by which an untaught person would be able to ascertain the suitability of a given legal advisor; among them are the following:

- 1) If he or she already knew the person to be knowledgeable and trustworthy
- 2) If he or she has seen the person take a position to advise or teach and people accordingly hold that individual in esteem as that would generally indicate his suitability to give legal, Islamic advice. But perhaps this would only be a sure indicator if it was known that no one would or could take the post except a qualified legal advisor; anyone else being automatically disqualified.
- 3) If someone else indicates to you that the person is qualified, describing the individual as a trustworthy jurist
- 4) That almost everyone knows among the people that this person is qualified to give legal advice.
- 5) Other scholars refer back to this person's statements and legal decisions.

If the untaught is not aware of an individual's suitability to give legal advice, then he has not right to ask him. The untaught must feel reassured that this person's legal advice is Allah's judgment to the point that he or she is comfortable with it.

Section 3: The Requirement of the Untaught Following the Legal Advice of Qualified Legal Advisor Once Implemented (pg. 24)

Once the untaught has implemented the legal advice given to him by a qualified legal advisor, the untaught must continue to adhere and act in accordance to the advice given to him. He has no right to forgo the advice given him, seeking advice elsewhere on the same issue. Unanimity has been reported on this principle, unless the person knows for certain the religious advice is in opposition with Islamic evidence.

If the untaught has yet to implement the legal advice given to him by a qualified Islamic jurist [perhaps because he is still inquiring with others or is not completely comfortable with the asked person as a jurist], the untaught person is not required to act in accordance with the legal opinion given him unless he feels that the advice given him coincides with Allah's ruling on the issue; in such an instance, he is required to act in accordance with the legal advice given him.

Section 4: Recourse for When the Legal Opinion of the Initial Advisor One Asks Changes (pg. 25)

If a qualified legal advisor gives advice on an issue requiring legal advice [i.e. an issue of non-unanimity] and then the legal opinion of said advisor changes, what should the untaught do [i.e. in this instance]? Should he continue to implement the initial advice given to him or follow the advisors more recent legal opinion? This situation has two possible circumstances:

- 1) He has already acted on the advice given to him initially; in this instance, it is permissible for the untaught to continue to follow the initial advice and he is not required to follow the more recent opinion. An established legal principle asserts that legal advice does not become obsolete due to the presence of [contradictory] legal advice just as a judge's verdict does not become obsolete if the judge's opinion changes.
- 2) If, however, he has not acted on the initial legal advice, then he should follow the more recent legal opinion as opposed to the previous one.

Section 5: Recourse for the Untaught in the Present of Differing Legal Advisors (pg. 26)

If the untaught seeks legal advice from a number of qualified legal advisors and they differ, then the untaught himself must identify the soundest opinion to follow based upon the knowledge¹ and god-consciousness [i.e. of the legal advisor]. Practically speaking, no distinction exists between their opinions except in regard to that [i.e. their knowledge and piety]. It makes more sense that the person who has more knowledge and fears Allah more would be more accurate. It is not then permissible for him [i.e. the untaught person] to contradict what appears to be more reasonably correct.

The other reason [i.e. why this choice must be made by the untaught] is because one of the purported opinions has to be inaccurate as the truth only exists in one of their opinions. The opinions that the untaught has heard are contradictory to him; consequently, he must follow the more accurate opinion based upon the knowledge and god-consciousness [i.e. of the legal advisor] just as any qualified legal advisor must follow the strongest evidence.

The untaught is required to follow and implement Allah's religion, but he has no access to doing so except by [following] the opinion of a qualified legal advisor. Accordingly, if the opinions of qualified legal advisors vary, the untaught is required to implement what he believes is most in line with Allah's religion, regardless of whether he draws that conclusion via the greater number of qualified legal advisors that hold the same opinion, the fact that it is the view held by the more qualified among those holding different viewpoints, or Islamic evidence [i.e. seeming to support the opinion he has heard].

Section 6: Whose Advice the Untaught Should Seek in the Presence of Various Legal Advisors (pg. 27)

The vast majority of scholars hold that the untaught may ask any qualified legal advisor and act in accordance with the legal opinion given him when various legal advisors exist. They make no difference as to whether one advisor is better than the other [i.e. as long as he is qualified]. They cite the following as evidence:

Allah, the Exalted, states: {Ask the people of knowledge if you do not know} [Surah an-Nahl 16:43]

A qualified legal advisor [i.e. as long as he is qualified] is considered from the people of knowledge, regardless if there are other more qualified. As a result, it is permissible to ask either.

There is also unanimity among scholars of the past that qualified jurists of lesser degree could give legal verdicts in the presence of those more knowledgeable. Well-known incidents of such have

¹) **Translator's note:** In the Arabic text, the word for action "عمل", was used here. The context, however, seems to indicate that the word for knowledge "علم" is what was intended. This is supported by the fact that further down, on the same page, the qualities are repeated and the text reads: "عِلْمٌ وَّوَرَعٌ," as opposed to "وَعَمَلٌ وَّوَرَعٌ," leading the translator to believe that the printing of "وَعَمَلٌ وَّوَرَعٌ," here is most likely a typographical error by the publishing company, and Allah knows best.

happened repeatedly throughout history without criticism, indicating unanimity on the permissibility of asking someone qualified, though of a lesser rank, though one more qualified is accessible.

Scholars also assert that doing so [i.e. asking anyone qualified] is permissible because the untaught himself may not be able to identify the more appropriate to ask because of his own unawareness as deciding on the most qualified to ask among available options itself requires an ability to distinguish among options and a certain level of awareness [i.e. of those options].

Other scholars have criticized this line of reasoning, however, as they state that the most qualified among various scholars may become clear to even an untaught person based on word-of-mouth, other scholars seeking said scholar's advice, the number of people who ask a specific qualified legal advisor, or other scholars giving preference for a particular scholar themselves.²

Section 7: When the Untaught Cannot Find a Qualified Legal Advisor to Ask (pg. 28)

Scholars differ as to the recourse of the untaught when he cannot find a qualified legal advisor; the following are their opinions on the matter:

- 1) Some say that the ruling is the same as it was prior to the Islamic ruling being applied³
- 2) Some say the person should, as a qualified legal advisor would, choose what seems most accurate
- 3) Others say the person should fear Allah as much as possible

The issue itself is almost non-existent in present times due to the prevalence of means and instruments of communication. For example, someone in America or Britain can connect to scholars in the Kingdom of Saudi Arabia, speaking to one another in real time. Praise be to Allah who established these means by which to facilitate obedience to Him.

Section 8: Blind following the Legal Advice of One Indifferent about His Legal Opinions⁴ (pg. 29)

If an untaught person knows a particular qualified legal advisor to be unconcerned with advice he gives, it is impermissible for the untaught to follow that advisor's opinion. The only reason why the

²) **Translator's note:** Here, it is important to note the discussion is not about the permissibility of asking someone less qualified than someone else, though qualified himself. The discussion is simply on the validity of claiming that the untaught may not have a means of knowing who is most qualified due to the lack of awareness and ability to distinguish between qualified legal advisors on the part of the untaught. The assertion here is that there are more means to knowing who is the most qualified among legal advisors than simply being able to distinguish among options and having a level of awareness of option; word-of-mouth and volume of questioners are deemed strong indicators as well.

³) **Translator's note:** This is pertaining to issues that are not clear and require a question in order to know the Islamic ruling. As for what is clearly mandatory or clearly impermissible, the author in no way, shape, or form intends that if an untaught person has no one qualified to ask that the impermissible suddenly becomes permissible. We ask Allah to help us to fear Him as He deserves.

⁴) **Translator's note:** the Arabic term used is *mutasāhil*, which the author explains in a footnote as meaning: giving a legal opinion without thoroughly researching the issue or giving it due consideration.

untaught is [supposed to be] implementing the advice of a qualified legal advisor is because he believes that the advice he is giving is in accordance with the rulings of Islam. Accordingly, if a person is known to be indifferent in the advice he gives, then the untaught should draw the conclusion that this person's advice is most likely not in accordance with Islam's rulings. Consequently, the sole reason requiring him to implement the advice given him is non-existent⁵.

Section 9: Pursuing/ Seeking out Concessions (pg. 30)

Scholars have mentioned unanimity on the impermissibility of the untaught pursuing concessions, meaning any time he finds a concession in the opinions of one of the scholars of his time, he implements it. Many scholars have labeled a person who does such as immoral, specifically for his pursuit of concessions, **as there is no Muslim scholars who holds that all concessions are permissible to take**. A scholar may allow for a concession in one instance but does not allow for it in another. This is evidenced by text written on avoiding [the implementation of] the [known] mistakes of a scholar.

This is also indicated by textual evidence encouraging an individual to practice cautiousness regarding his religion, among such evidence is the statement of the Prophet ﷺ: ((The permissible is clear as the impermissible is clear; between them, however, are obscure issues that many people are unsure about. Whoever stays clear of the obscure has safeguarded both his religiosity and honor))⁶. Similar, as well, is his statement ﷺ: ((Leave what makes you suspicious and uncomfortable for what does not make you suspicious or uncomfortable)).⁷

Section 10: The Untaught following a *Madhhab* (i.e. Established Islamic Legal School) (pg. 31)

An untaught person is not required to follow a particular *madhhab* regarding its standard regulations and concessions. The majority of scholars deem an untaught person doing so as impermissible because as an untaught person, he does not understand the wordage and terminology used by the *madhhab*. What is required of him is to ask a qualified contemporary legal advisor.

One may argue that books attributed to particular *madhhabs* are still being written presently regarding Islamic legal regulations. There are books written by jurists of the Hanafi, Maliki, Shafi'i and Hanbali *madhhabs*. What is the point of their being authored people are not required to follow them?

⁵) **Translator's note:** Call to mind that the opinion of a qualified legal advisor is NOT evidence in Islam. As such, it is impermissible to follow anyone's opinion and he knows the truth himself. The reason why asking a qualified legal advisor is allowed is because the untaught does not have the ability to look at the evidence himself and know what the truth is. Therefore, he is required to ask someone he deems knowledgeable, trustworthy and god-fearing to tell him the truth. If there is doubt as to whether or not what the advisor says agrees with Islam, the advice CANNOT be taken.

⁶) Hadith #6 of the 40 Hadith of Imam an-Nawawi

⁷) Hadith #11 of the 40 Hadith of Imam an-Nawawi

My response is that these books are intended for study and instruction, not for implementation. These books are important and are invaluable in helping one learn to better understand the speech of Allah and that of His messenger ﷺ and in being able to conceptualize legal issues.

Section 11: Seeking Legal Advice on the Same Issue Each Time it Occurs (pg. 32)

If an untaught seeks advice from a qualified legal advisor for an issue that occurs and implements that advice and, thereafter, the same issue occurs again, is the untaught person required to repeat his request for legal advice?

This situation has one of two of the following possible circumstance:

1) The untaught person knows that the qualified legal advisor has referenced primary religious source text (i.e. the Quran and Sunnah) or scholar unanimity in reaching his decision⁸. In such instances, there is, without a doubt, no need to repeat the request for legal advice.

2) The untaught person does not know what the qualified legal advisor referenced for his ruling, or he knows that the advisor referenced evidence considered relatively inconclusive. In such instances, should legal advice be sought again with the recurrence of the issue? Scholars differ on the issue and have come to the following two conclusions:

1) the unlearned person must request legal advice again as the opinion of the qualified legal advisor may have changed

2) the unlearned person is not required to seek legal advice again as he was already given acceptable legal advice.

⁸) **Translator's note:** Here the author seems to indicate that the untaught person's request for evidence as regards a particular legal advice is not because the untaught person himself has the ability to measure the strength or weakness of the evidence itself; instead, it is to know the degree to which he can depend on this advice for future recurrences of the similar incidents, and Allah knows best.