

CIFP Part 1

Sources of Shariah in Islamic finance

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SOURCES OF SHARIAH LAW IN ISLAMIC FINANCE

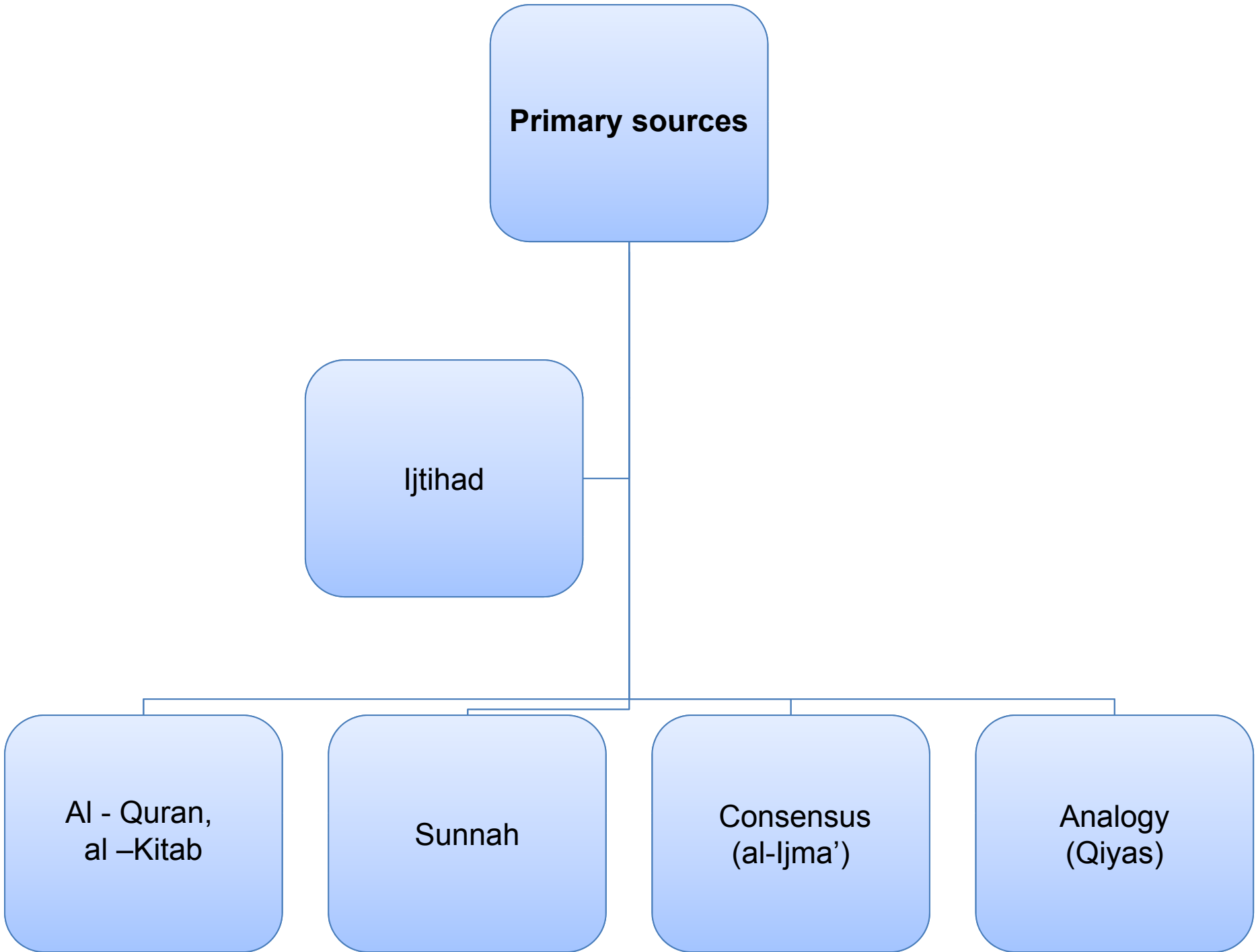
Primary sources

- The Noble Quran, al –Kitab.
- The Sunnah (Tradition of the Prophet)
- The Consensus of legal opinion for Muslim Jurists (al-Ijma')
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Secondary sources

- Juristic preference (al-istihsan)
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Primary Sources of Shariah Law



Primary sources

Ijtihad

Al - Quran,
al -Kitab

Sunnah

Consensus
(al-Ijma')

Analogy
(Qiyas)

Quran

The Holy Quran

It is the final divine revelation from Allah, it is the embodiment of the fairest statements and Divine words of wisdom.

&

the *Quran* serve as the code of conduct in all aspects of human life; spiritual, social, political, economic and beyond.

Literal meaning

The word Quran is derived from root qa ra a which means reading or recitation.

Technical meaning

The book containing the words of Allah revealed to the prophet (s.a.w) in Arabic and transmitted to us by continuous testimony or tawatur.

Quran criteria

- Quran is divided into 114 chapters/Sura.
- It is divided into 30 convenient sections/Juz.
- The shorter chapter (sura) consist 3 verses. Al Kawtar
- The longest consists of 286. / Al Baqarah
- The Quran was revealed within a period of 22 Years and 2 months and 22 days.
- The first revelation began on the 15 night of the month of Ramadah.

Cont.

- The first verses were revealed is: **إقرأ باسم ربك الذي خلق**
Recite in the name of your lord . Al Alaq
- The last verse of the Quran was **اليوم أكملت لكم دينكم وأتممت
عليكم نعمتي ورضيت لكم الإسلام ديناً**
- This is the day we have perfected for you your religion
and I have completed my bounties and I am pleased with
the religion of peace (Islam). Al Baqarah
- The last verses was revealed on 9 Zulhijjah in the 10th
years of hijrah when the prophet was in the 63 years of
his life.

Cont.

- **1:** The Quran is the actual word of Allah, the prophet takes only to convey the message from Allah to mankind.

• وإِنَّهٗ لَنَنْزِيلٍ مِّن رَّبِّ الْعَالَمِينَ. الشعراء: 192

- (And truly this is a revelation from the lord of the alamin (mankind)).

- **2:** The Quran was revealed in Arabic language. This language was chosen by Allah for his revelation.

• بِلِسَانٍ عَرَبِيٍّ مُّبِينٍ. الشعراء: 195.

- (the Quran was revealed in the plain Arabic language).

Cont

- **4:** the Quran is miracle revealed to the prophet for all generation.
- Allah has challenged the most articulate Arabs to produce something similar to al Quran.
- لئن اجتمعت الإنس والجن على أن يأتوا بمثل هذا القرآن لا يأتون بمثله ولو كان بعضهم لبعض ظهيرا. الإسراء: 88.
- (Say if the whole of mankind and jinns were together to produce the like of this Quran they could not produce the like thereof, even they backed-up each other with help and support).
- **5:** it is very complete comprehensive book.
- ونزلنا عليكم الكتاب تبينا لكل شيء وهدى ورحمة وبشرى للمؤمنين. النحل: 89.
- And we have sent down to you the book as an exposition of everything, a guidance, a mercy, and glad tidings for those who have submitted themselves (to Allah as Muslims).

Summary of the main criteria of Quran

The following are the major criteria of Quran:

- the Quran is the speech of God.
- revealed in its precise **meaning** and **wording**.
- through the **Angel Gabriel**.
- transmitted by **many (mutawatir)**.
- **Inimitable (mujiz)**.
- **Unique** (being the only one of its kind) .
- **Protected by God** Himself against any corruption.

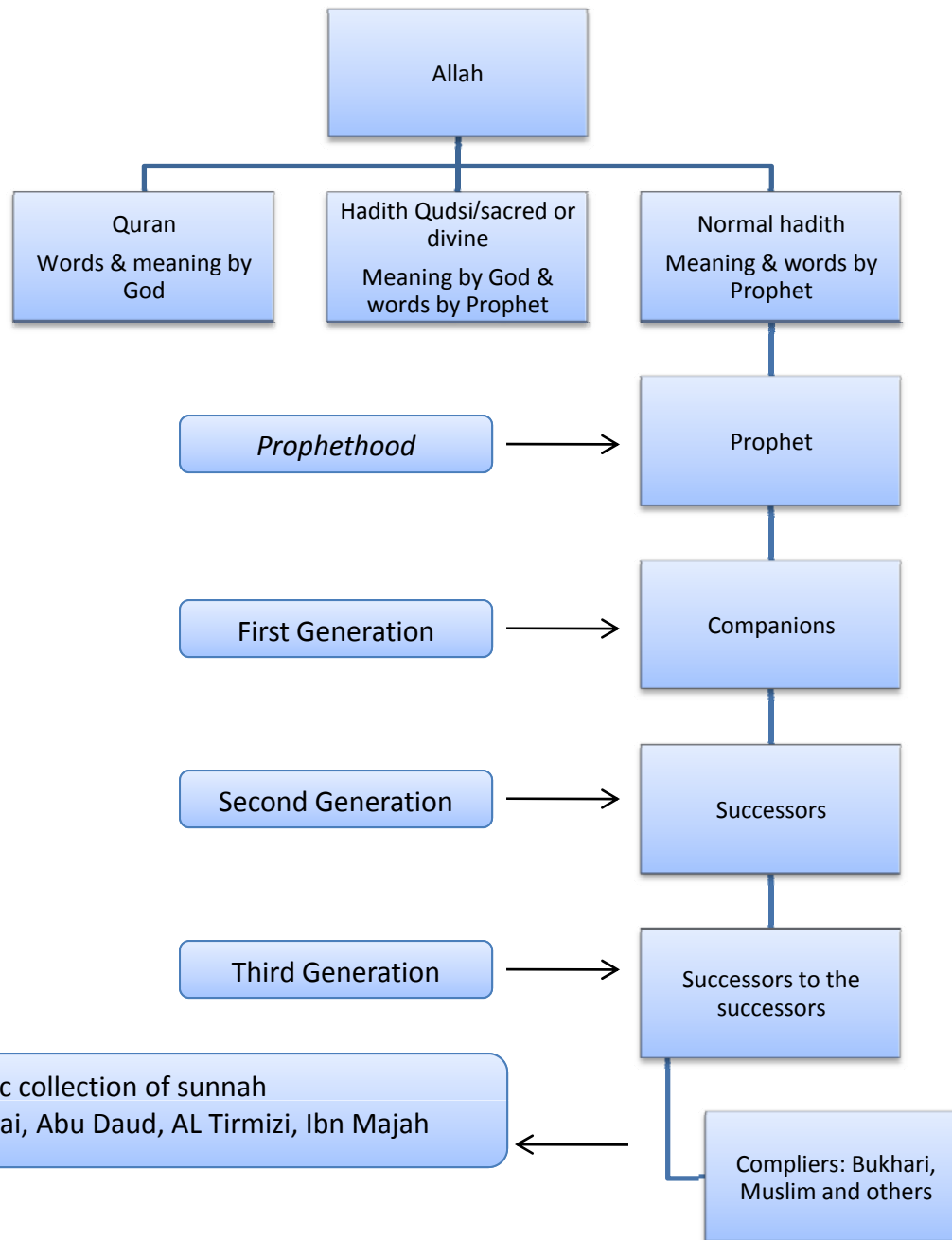
The Characteristics of Quran

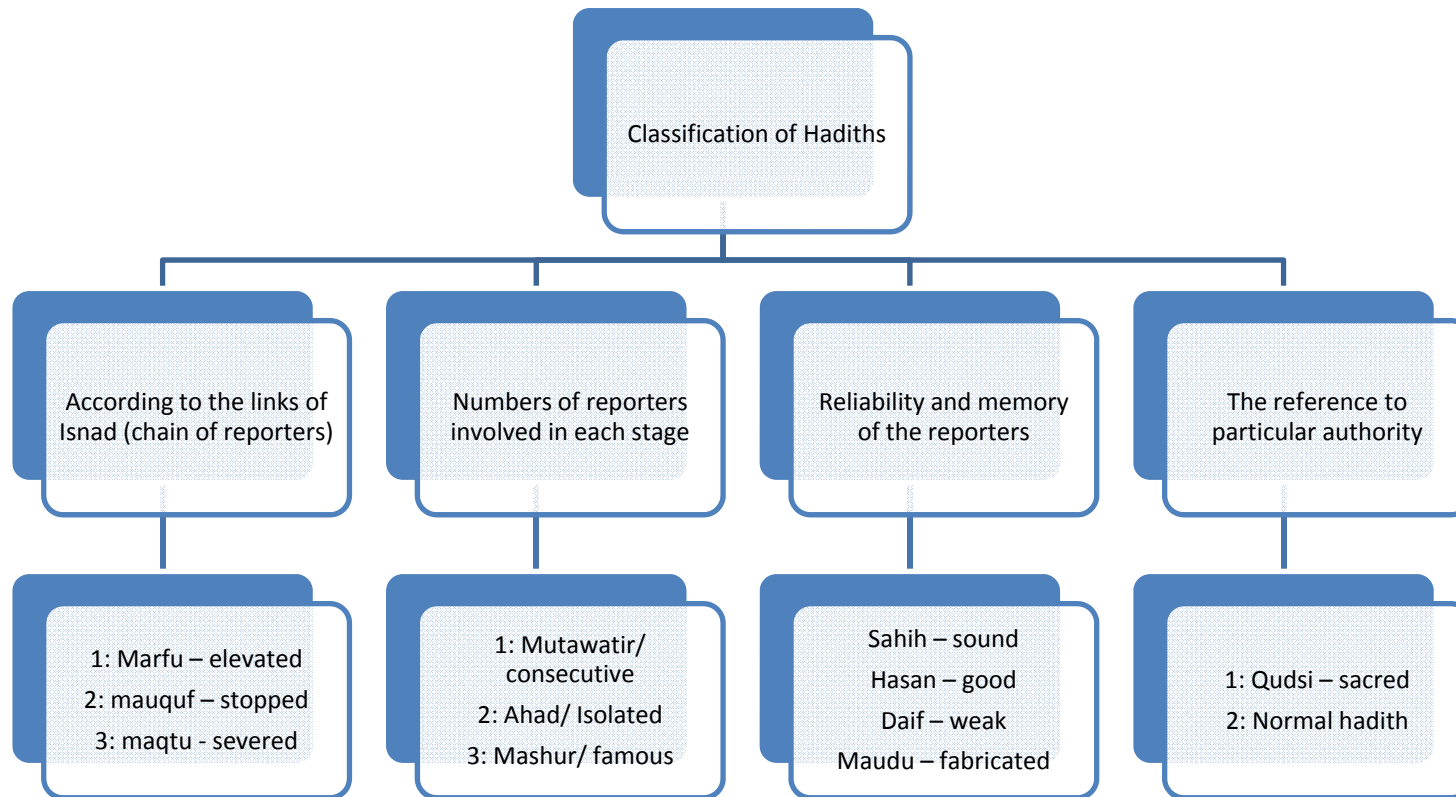
there are only five hundred verses of the *Quran* which have legal connotation. This is less than 10 per cent of the whole number of the *Quranic* verses.

The Quran is the
Mother of All
Legislation in Islam

The Quran Guides to
a Successful Life
in the World and Hereafter

Sunnah





- **Hadith Qudsi**: sacred or divine: it is a revelation from Allah relayed with the words of the Prophet.
- **Hadith marfu**: elevated: the chain of the hadith ends at the Prophet. e.g: I heard the Prophet saying ...
- **Hadith mauquf**: stopped: the chain of the hadith ends at the companion. e.g. we were commanded to ..
- **Hadith maqtu**: severed: the chain of the hadith ends at the successor of the companion
- **Hadith mutawatir**: consecutive: the hadith which is reported by such a large number of people that they cannot to be expected to agree upon a lie, all of them together.
- **Hadith ahad**: Isolated: is a hadith which is narrated by people whose number does not reach that of mutawatir.
- **Hadith mashur**: famous: it is a hadith reported by more than two narrators at any stage in the isnad.
- **Sahih**: sound: it is authentic and sound hadith which fulfill some requirement. Accepted in Ahkam
- **Hasan**: good: less than sahih, but has fulfils the conditions of sahih except that the narrators have less ability in their memorization.
- **Hadith daif**: a weak which is not very reliable. It does not fulfill any one or more of the sahih or hasan criteria.

Literal meaning of Sunnah

The word *sunnah* in its literal meaning, clear path, stands for the “well known path” which is followed again and again.

This may be the path on which people tread or it may be a practice. Whether it is good or bad

Technical meaning of Sunnah

Later the Sunnah was applied to the practice of the Prophet (S.A.W).

It is defined as: “What was transmitted from the Messenger of Allah (peace be on him) of his words, acts and (tacit) approvals”.

The term *Sunnah* shall be used as the *Sunnah* of the Prophet (pbuh) and consider as source of Islamic laws.

Sunnah al-qawliyyah

It is defined as the sayings of the Prophet (peace be on him) through which he intended the laying down of the law or the explanation of the *ahkām*.

Some well known examples are:

(The nature of acts is dependent upon the underlying intentions) الأعمال بالنيات

No injury is to be caused and none is to be borne) لا ضرر ولا ضرار

It is to be noted that not every saying of the Prophet (peace be on him) is a source of law. Only the saying which is related to the Ahkam Shariah

Word: Abu Hurairah reported: I heard Messenger Of Allah saying: By Allah I seek Allah's Forgiveness and repent to him more than Seventy times a day. Al Bukhari

Al-Sunnah al- fi'liyyah

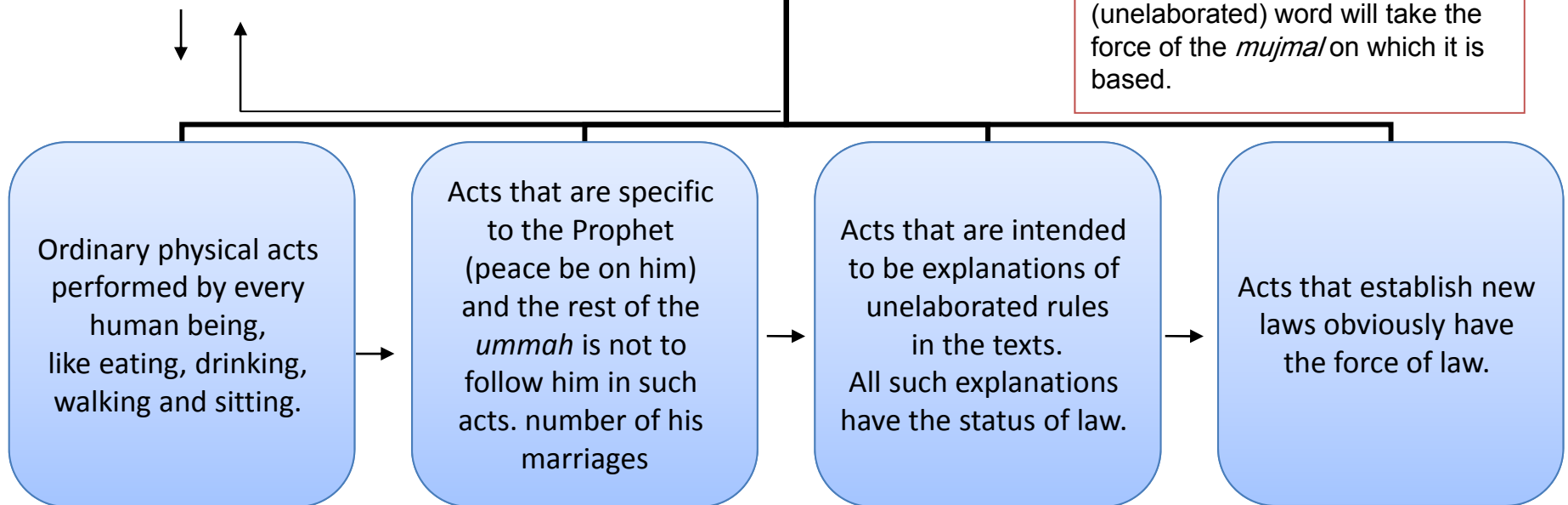
These acts or the method of their performance that he adopted are to be followed in the same way as his sayings.
The acts that do not have a legal content do not become a source of law.

It is defined as the acts of the Prophet (peace be on him) having a legal content, like his prayer, fasts, *hajj*.

- The acts of his prayer, after his saying, "Pray as you see me praying," as well as his acts concerning the rites of *hajj* based on his saying, "Take (the knowledge of) your rites from me," are examples.

- The persuasive force of such explanations is the same as that of the text being elaborated.
- The explanation of a *mujmal* (unelaborated) word will take the force of the *mujmal* on which it is based.

Different acts of the prophet



Act: The Prophet says: "Pray as you see me praying". The way he performed salah, fasting, rituals of hajj, transaction concluded by him (mortgage).

Sunnah taqririyyah

It is defined as the commission of certain acts, by word or deed, by some companions and the maintenance of silence by the Prophet without expressing disapproval.

Implication



His silence in such a case is called *taqrir* or tacit approval and is considered a *sunnah* that becomes a source for the permissibility of an act or a statement.

Implication



An example of this type is the statement of Mu'ādh ibn Jabal when he was sent to Yemen and the Prophet asked him how he will decide cases. This approval was a little more emphatic than mere silence.

Tacit: Amr ibn al As said: I had a wet dream on cold night during the battle of Zat al salasil, I was worried that if I perform the obligatory bath (to purify from the major impurities) it may lead to my destruction (death) and decide to perform tayyamum (dry ablution) instead. I then prayed fajr with the companions and later they mentioned this incident to the Prophet (s.a.w). The Prophet asked me: O Umar you prayed with your companions in the state of impurity? I explained to the Prophet the reason for not performing the obligatory bath and mentioned that I heard Allah said (in the Quran) do not kill yourself, verily Allah is ever Merciful onto you) the Prophet (s.a.w) laughed but said nothing.

- Six great collections regarded as authoritative by the Sunni Schools of Islamic Law are :
 - (i) Jami' As-Sahih Al-Bukhari (d. 869 A.D)
 - (ii) Jami' As-Sahih Muslim (d. 874 A.D)
 - (iii) Jami' At-Tirmizi (d. 892 A.D)
 - (iv) Sunan Abu Daud (d. 888 A.D)
 - (v) Sunan An-Nasai (d. 915 A.D)
 - (vi) Sunan Ibn Majah (d. 886 A.D)

ljma

Ijma

it is used in two senses.

1: The first is determination and resolution. the words of the Prophet (peace be on him). The person who has not resolved to fast prior to dawn has no fast, convey the meaning of deciding and resolving.

2: The second way in which the word is used is agreement upon a matter.

The difference between the two literal meanings is that *ijma*, in the first meaning, is possible from one person, but in the second sense, it requires two or more persons.

**Literally
meaning**

**Technical
meaning**

ijma' is defined as the consensus of *mujtahidun* (independent jurists) from the *Ummah* of Muhammad (peace be on him), after his death, in a determined period upon a rule of Islamic law (*hukm Shar'i*).

Foundations of Ijma

There are two types of *ijma*:

1: Ijma Qawli, unanimous consent expressed in declaration of opinion.

2: Ijma Sukuti, when the majority of the *Mujtahidun* signified their tacit assent to the opinions of the minority by “silence” or non-interference.

Conditions for Validity of *Ijma'*

- In order for *ijma'* to be valid, several conditions which are imposed by the majority of jurists that must be met which are:
 1. The consensus must take place among *mujtahids*, who have attained the status of *ijtihad*.
 2. Unanimity is a prerequisite of *ijma'*. The agreement must be unanimous, that is among all the *mujtahids*.
 3. All the jurists participating in *ijma'* must be from the *ummah* of Muhammad (PBUH).
 4. The agreement must have taken place after the death of the Prophet (PBUH).
 5. The agreement of the *mujtahidun* must be demonstrated by their expressed opinion on a particular issue.
 6. *Ijma'* must be upon a rule of law, the *hukm shari'*.

Analogy (Qiyas)

Technical meaning

- **Technically**
- Qiyas is defined as the extension of a Shari'ah value from the original case, or *asl*, to a new case, because the latter has the same effective cause (*'illah*) as the former.
- The original case is regulated by a text of the Quran or the Sunnah.
- Qiyas seeks to extend the original ruling to the new case.
- The emphasis of Qiyas is identification of a common cause between the original and new case.

Cont.

- Qiyas is a methodology developed by jurists in order to provide shariah ruling base on the original case that have been mentioned in the text.
- The application of qiyas is base on the Quran and Sunah because new rulings are based on the Illah (causes) discovered in the legislation of the Quran and Sunnah.

Cont.

- Qiyas is a rationalist doctrine (because intellect is largely used to find out the Illah).
- In Qiyas personal opinion (Ra'y) is kept subservient to divine revelation (in that Illah is discovered from the text of the Quran and the Sunnah).

Cont.

- Personal opinion (Ra'y) is guided by the shariah rules of Qiyas.
- Qiyas does not change any law of the text (Quran or Sunnah).
- Qiyas as a methodology means that the jurists accept that the rules of Shariah follow certain objectives (Maqasid) which are in harmony with reason.

The Pillars of Qiyas

- The essential requirements of Qiyas are:
 1. Asl (original case, set of facts, on which a ruling has been given)
 2. Hukm (ruling on the original case)
 3. Illah (underlying cause of ruling in the original case)
 4. Far' (new case on which ruling is to be given).

**Pillar of
Analogy
(Qiyas)**

**The case (set of facts)
Mentioned in the text
With its hukm**

الأصل

**The hukm of the set
of facts mentioned
in the text**

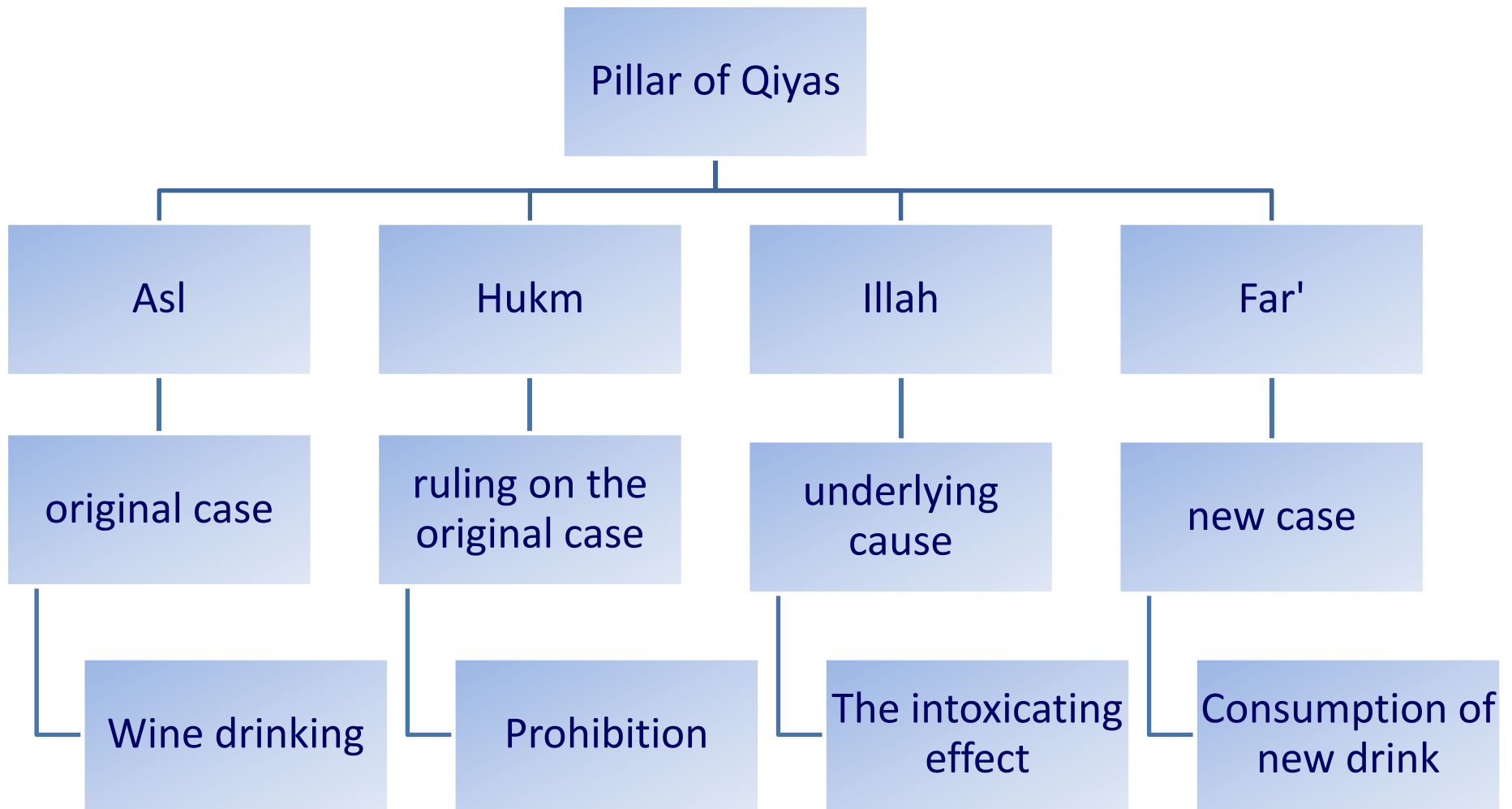
حكم الأصل

**The 'Illah or
the underlying
cause that had
led to the hukm**

العلة

**The new case or the
Set of facts for which
The hukm has not
Been explicitly
Mentioned
and which
needs a hukm**

الفرع



Secondary Sources

Secondary sources

public interest
(al-istislah),
Maslahah
المصلحة
المرسلة

Juristic preference
(al-istihsan)
الاستحسان

Practices of Peoples of Medina
(amal ahl al-madinah)
عمل أهل المدينة

General customary practices
(al-'adah)
العادة أو العرف

resumption of continuity
(al-istishab)
الاستصحاب

Saad Al-dariah
سد الذرائع

Companion's opinion
(qawl al-sahabi).
قول الصحابي

Shar' Man Qablana
(earlier scriptures).
شرع من قبلنا

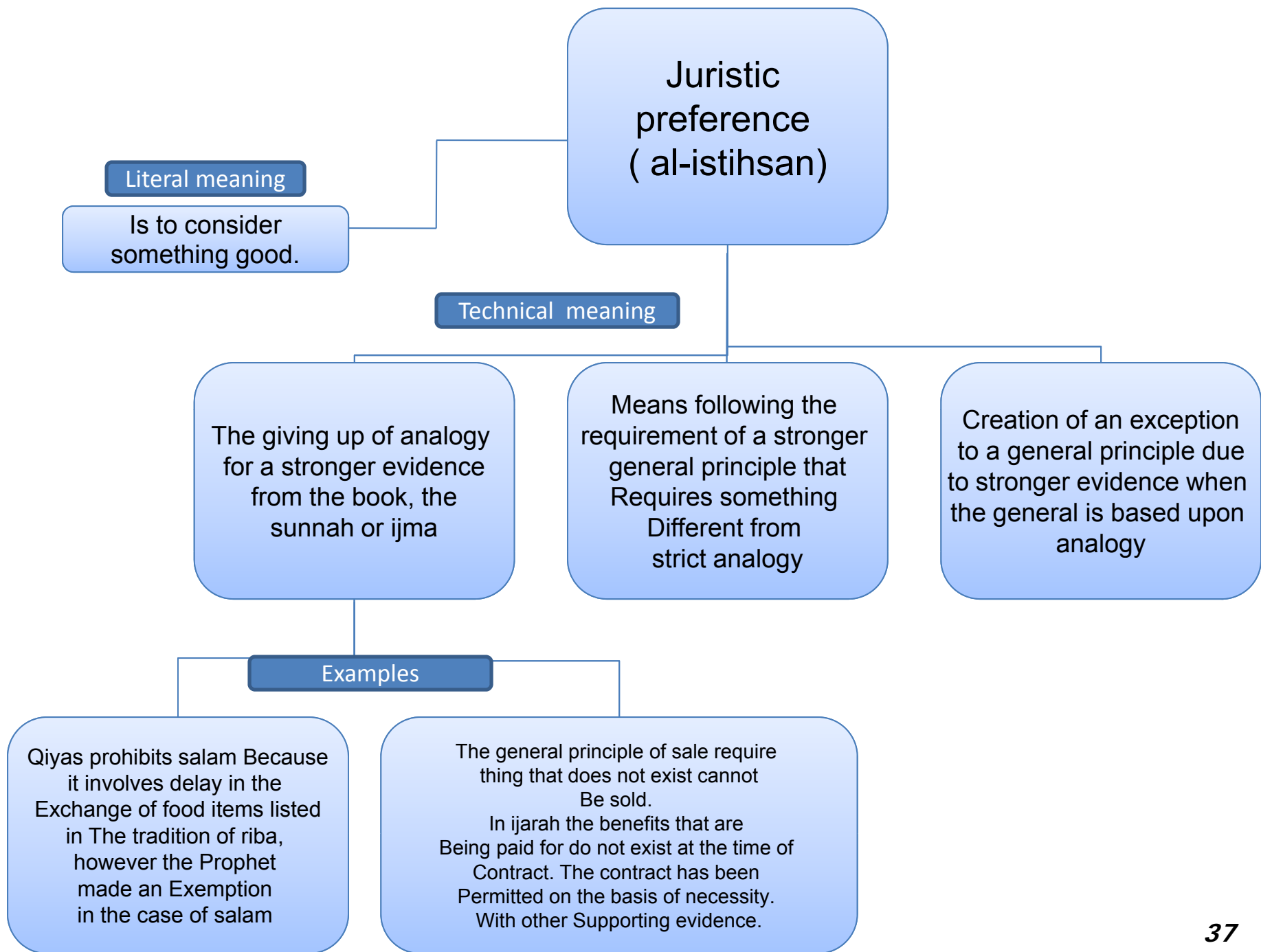
Public interest (al-istislah), Maslahah

Type of maslahah

- 1: maslahah that is acknowledged by the Lawgiver.
- 2: maslahah that is not acknowledged by the lawgiver (maslahah rejected)
- 3: maslahah is neither acknowledged by shariah or rejected (maslahah mursalah)

Conditions of maslahah mursalah

- 1: make sure that the new principle formulated does not clash with the text or alter the implication of a text
- 2: make sure that the new principle does not clash with the existing principles and Propositions of Islamic law
- 3: make sure that the new principle to be Among the purposes of Islamic law Recognised by the Shariah



Resumption of continuity (al-istishab)

- 1: Word istishab means the continuance of companionship
- 2: Technically it means the presumption of the continuance of an earlier rule or status
- 3: the previous rule is accepted unless a new rule is found that goes against it

- The principles that form the basis of istishab
الأصل في الأشياء الإباحة، الأصل براءة الذمة، اليقين لا يزول بالشك
- 1: The original rule for all things is permissibility. the presumption is that all things is permitted unless prohibited by shariah.
 - 2: there is no presumption of liability against anyone and all liability has to be proved.
 - 3: certainty does not give way to doubt.
- This means that once a thing is established beyond Doubt, it can only be set aside through an equality Certain evidence.

**Saad
Al-dariah**
(Blocking the lawful
Means to an unlawful end)

Type of lawful acts



- 1: those that rarely lead to harmful result.
- 2: those that usually lead to harmful result.
- 3: those in which there is an equal probability
Of harm and benefit.

Companion's opinion (qawl al-sahabi)

The companion is someone who saw
The prophet (peace be on him)
believed in him, Supported him,
and was in association with him
For some time so that he
could understand Something
of the ways of the shariah
from him

Hanafis maintain it is binding to follow
The opinion of a companion where is
Talking about the quantities,
numbers and Periods.
Rate of zakat, period menstruation,
gestation period ect...

Thank You

Q & A