

Special Issue on “Urf as a Source of Shariah”

Al-‘Urf as a source of legislation according to Imam al-Nawawi in the book “Al-Majmu”: A Jurisprudential and Fundamental Study

العرف مصدراً للتشريع عند الإمام النووي في "كتاب المجموع":
دراسة فقهية أصولية

Authors Details

1. Dr. Munshid Falih Wadi (Corresponding Author)
PhD, University of Diyala, Iraq.
Email: mnshidalwadi@gmail.com

Citation

Wadi, Dr. Munshid Falih, " Al-‘Urf as a source of legislation according to Imam al-Nawawi in the book “Al-Majmu”: A Jurisprudential and Fundamental Study " *Al-Marjān Research Journal*, 3, no.1, Jan-Mar (2025): 01–21.

Submission Timeline

Received: Dec 12, 2024
Revised: Dec 26, 2024
Accepted: Jan 09, 2025
Published Online:
Jan 18, 2025

Publication, Copyright & Licensing



Article QR



Al-Marjān Research Center, Lahore, Pakistan.

Rights Reserved © 2023.

This article is open access and is distributed under the terms of Creative Commons Attribution 4.0 International License



Al-'Urf as a source of legislation according to Imam al-Nawawi in the book "Al-Majmu": A Jurisprudential and Fundamental Study

العرف مصدراً للتشريع عند الإمام النووي في "كتاب المجموع":
دراسة فقهية أصولية

☆ Dr. Munshid Falih Wadi

Abstract

This study investigates the role of custom (al-'Urf) as a supplementary source of Islamic legislation, focusing on its jurisprudential and foundational status in the writings of Imam al-Nawawi, particularly in his authoritative work *Al-Majmu'*. While the Qur'an, Sunnah, consensus, and analogy remain the primary sources of Islamic law, jurists have long debated the authority of custom in shaping rulings that address practical realities. The central question driving this research is whether custom can be treated as an independent source of law and, if so, under what conditions it may be legitimately applied without contravening definitive scriptural texts. Adopting an analytical-inductive approach, the study closely examines Imam al-Nawawi's treatment of sales-related issues where custom plays a central role, such as *Bay' al-Mu'atāh* (contract by mutual consent without formal verbal exchange) and *Qabd* (physical possession of goods). These cases demonstrate how custom functions not merely as a social habit but as an operative legal mechanism that bridges textual injunctions with lived realities. The findings reveal that Imam al-Nawawi granted custom a notable degree of authority in contextualizing transactions, enabling Sharia to maintain both its permanence and adaptability. The research concludes with a call for structured jurisprudential frameworks that regulate the use of custom in contemporary legal thought, emphasizing the importance of aligning local customs with Sharia objectives. By doing so, Islamic jurisprudence can preserve its normative integrity while addressing modern socio-economic challenges effectively.

Keywords: al-'Urf, Imam al-Nawawi, Al-Majmu', Bay' al-Mu'atāh, Qabd, Islamic Legislation.

Introduction

Praise be to Allah, Lord of the Worlds, and prayers and peace be upon His Messenger, his family, and companions, and those who follow him.

Custom ('Urf) represents one of the foundational pillars relied upon in Islamic jurisprudence for interpreting legal texts and clarifying rulings, ensuring alignment with the evolving nature of life and societies. Its role is particularly evident in regulating daily transactions, such as *bai' al-mu'ata* (transaction by mutual consent) and *Qabd* (possession). Custom facilitates the execution of these transactions while adhering to Shari'ah principles. This study aims to explore Imam al-Nawawi's stance on recognizing custom within the domain of sales,

☆ PhD, University of Diyala, Iraq.

focusing specifically on the matters of bai' al-mu'ata and Qabd due to their significance and interconnectedness, as reflected in his work Al-Majmu. '

The research also sheds light on the necessity of physical possession in usurious contracts and the role of custom in regulating them, emphasizing the flexibility of Islamic law in achieving justice and order in people's dealings.

Significance of the Topic; The importance of this topic lies in demonstrating the interactive relationship between Shari'ah texts and custom while elaborating on Imam al-Nawawi's perspective. Additionally, reliance on custom contributes to the application of Shari'ah rulings without compromising its objectives. The research further highlights the role of customary rules in facilitating daily commercial transactions, ensuring fairness, and preventing riba (usury), making it highly relevant in contemporary times.

Reason for Choosing the Topic; This topic was chosen to illustrate how custom contributes to balancing Shari'ah rulings with practical realities, focusing on pragmatic issues such as bai' al-mu'ata, qabdh, and usurious contracts. Studying this topic also aids in understanding jurisprudential disagreements and their role in simplifying the application of Shari'ah in everyday life.

Research Questions;

1. What is the concept of custom and its role in interpreting Shari'ah texts ?
2. How does custom affect the validity of bai' al-mu'ata and qabdh, and what is Imam al-Nawawi's position on this ?
3. What is the role of custom in the requirement of physical possession in usurious contracts ?

Structure of the Study;

1. The concept of custom and its impact on Shari'ah rulings .
2. Bai' al-mu'ata, Qabd, and the influence of custom on them .
3. The necessity of physical possession in usurious contracts and the role of custom in interpreting it .

Methodology of the Study; This research adopts an analytical approach to study Shari'ah texts related to custom and its applications. A comparative methodology is also employed to clarify the differences among jurisprudential schools in evaluating the impact of custom. Additionally, an inductive approach is utilized to present practical examples highlighting the importance of custom in Shari'ah rulings while considering societal realities in light of recognized Shari'ah objectives.

Chapter One: The Concept of Custom and Its Impact on Sharia Rulings: Definition of Custom in Language and Terminology

1. Custom in language:

The word "'Urf" (custom) has several meanings, including:

Al-Khalil said: "A matter that is 'ārīf" (familiar), 'ma'rūf" (known), or 'arīf" (recognized)." And "'Urf" refers to what is known or familiar.¹, "It was named as such because souls find reassurance and tranquility in it.²

Custom in the terminology of the jurists: "It is what souls have settled upon with the testimony of reason, and what human nature has readily accepted. It is also considered a valid

¹ Al-Farahidi, Abu Abd al-Rahman Khalil ibn Ahmad ibn Amr ibn Tamim (170 AH). Kitab al-'Ain. Edited by Dr. Mahdi al-Makhzoumi and Dr. Ibrahim al-Samarrai. Beirut: Dar wa Maktabat al-Hilal, 2/121 (Bab al-'Ain wa al-Ra' wa al-Fa'),.

² Ibn Faris, Ahmad ibn Faris ibn Zakariyya al-Qazwini al-Razi, Abu al-Husayn (395 AH). Mu'jam Maqayis al-Lugha. Edited by Abd al-Salam Muhammad Harun. Published by Dar al-Fikr, Year of Publication: 1399 AH / 1979 CE, Vol. 4, p. 281, entry ('Urf).

proof, as it is quicker to comprehend. Likewise, habit is what people consistently adhere to based on the judgment of reason, and return to repeatedly."³

"This encompasses practical custom and verbal custom. Practical custom includes practices such as people habitually engaging in the sale of goods through mutual consent without a verbal formula, and their common understanding to divide the dowry in marriage into an advance (muqaddam) and a deferred (mu'akhkhar) portion. Verbal custom includes conventions such as people commonly using the term 'child' (walad) to refer exclusively to males and not females, refraining from using the term 'meat' (lahm- "Meat") to refer to fish, and using the term (dabbah-"beast") to specifically denote a horse.⁴

First: Conventional names with linguistic origins are those where usage has predominantly shifted from the original linguistic meaning. When mentioned, the understanding defaults to the prevalent usage rather than the original meaning. For example, the word "dabbah" (beast) was originally used for anything that moves or creeps, but its common usage later became specific to a horse.⁵

Second: Conventional names with metaphorical meanings: This category explains terms that have moved beyond their original meaning to denote an unfamiliar concept due to the prevalence of custom, such that the new meaning is understood as if it were literal truth.⁶

An example of this is the verse of Allah: {Prohibited to you [for marriage] are your mothers} [An-Nisā', 23]. The prohibition here does not pertain to the essence of the mothers as individuals, but rather to the actions associated with them (such as marriage).

Similarly, the verse of Allah: {Lawful to you is game from the sea} [Al-Ma'idah, 96] does not signify the permissibility of the essence of the game itself, but rather the actions associated with it, such as fishing.

Summary: The text highlights the relationship between literal and metaphorical meanings in these usages, emphasizing that these meanings derive their strength from the predominance of custom, even if they contradict the original linguistic meaning. The intended meaning here is what is conveyed by the custom in the context of communication. This is because usage is divided into three types: linguistic, legal (Sharia-based), and customary⁷. The difference between the first and second point is as follows: Conventional names with linguistic origins: The meaning remains within the framework of the original meaning of the word, but custom specifies it for a particular usage. For example, the term "dabbah" (beast) has been specified by custom to refer exclusively to a horse⁸. As for conventional names with metaphorical

³ Al-Jurjani, Abu al-Hasan Ali ibn Abd al-Aziz (392 AH). Al-Ta'rifat. Edited by Ibrahim al-Abyari. Beirut: Dar al-Kitab al-Arabi, 1st Edition, 1405 AH, p. 193.

⁴ Zuhaili, Wahbah. Usul al-Fiqh al-Islami. Damascus: Dar al-Fikr; Beirut: Dar al-Fikr al-Mu'asir, 1st Edition, 1411 AH - 1991 CE, Vol. 2, p. 829.

⁵ Al-Khatib al-Baghdadi, Abu Bakr Ahmad ibn Ali ibn Thabit ibn Ahmad ibn Mahdi (463 AH). Al-Faqih wa al-Mutafaqih. 2nd edition. Saudi Arabia: Dar Ibn al-Jawzi, 1421 AH, Vol. 1, p. 310. Al-Shirazi, Abu Ishaq Ibrahim ibn Ali ibn Yusuf (476 AH). Al-Luma' fi Usul al-Fiqh. 2nd edition. Beirut: Dar al-Kutub al-'Ilmiyyah, 2003 CE - 1424 AH, p. 10.

⁶ Al-Juwayni, Abd al-Malik ibn Abd Allah ibn Yusuf ibn Muhammad, Abu al-Ma'ali (d. 478 AH). Al-Talkhis fi Usul al-Fiqh. Edited by Abd Allah Julm al-Nabali and Bashir Ahmad al-Umari. Beirut: Dar al-Bashair al-Islamiyyah, Vol. 1, p. 198.

⁷ Ibn Juzayy, Abu al-Qasim Muhammad ibn Ahmad ibn Muhammad ibn Abd Allah, al-Kalbi al-Gharnati (741 AH). Taqrib al-Wusul ila Ilm al-Usul. Edited by Muhammad Hasan Muhammad Hasan Ismail. Beirut: Dar al-Kutub al-'Ilmiyyah, 1st Edition, 1424 AH - 2003 CE, p. 156.

⁸ Fakhr al-Din al-Razi, Abu Abd Allah Muhammad ibn Umar ibn al-Hasan ibn al-Husayn al-Taymi, Khatib al-Rayy (606 AH). Al-Mahsul. Edited and studied by Dr. Taha Jabir Fayyad al-Alwani. Beirut:

meanings, the word transitions to a completely new meaning, different from its original one due to custom. For instance, the phrase "Prohibited to you are your mothers" refers to actions associated with them (such as marriage) and not the individuals themselves.

Al-Karkhi argued that texts attributing prohibition to entities themselves are considered ambiguous, as the prohibition is aimed at actions, not the entity itself. Custom defines the intended meaning. For example, when prohibition is attributed to women, it implies the prohibition of intimacy; and when attributed to food, it implies the prohibition of consumption. Al-Subki refuted this view, referencing the Prophet's statement about the sea: "Its dead animals are lawful (for consumption)."⁹ The reality of the term lies in attributing prohibition and permissibility to the entity itself, as argued by Al-Karkhi. This view, in our opinion, is invalid because rulings, according to us, pertain to actions that are within the capacity of the obligated individual, not to the entity itself. Hence, prohibition or permissibility cannot apply to the entity directly. It necessitates a metaphorical interpretation, with an implied meaning, such as eating, selling, or similar actions. Eating is deemed the most appropriate interpretation, as it is the most significant intent of such matters, according to custom, and thus the term is understood in that context. Furthermore, the principle that Al-Karkhi adopted in his foundational works aligns with interpreting terms according to the most apparent meaning: "The principle is that if a term carries two meanings—one more apparent and the other more obscure—the apparent meaning takes precedence over the obscure one."¹⁰ This aligns with the statement of the Shafi'i school, which holds that adhering to the notion that the literal meaning is not intended and that there are multiple metaphors does not require implying all of them, as necessity is resolved by some, and these do not overlap. Thus, ambiguity becomes favored—as attributed to Al-Karkhi, The response: We imply some meanings and do not concede the numerical preference, as some meanings are stronger and more appropriate, as previously explained.¹¹ As for the Prophet Muhammad's (peace be upon him) statement: "No action is acceptable without intention," it emphasizes the necessity of intention for deeds to be recognized and rewarded in Islamic teachings. The essence of actions lies in the sincerity and purpose behind them.¹² Al-Basri believes¹³, It is considered

Mu'assasat al-Risalah, 3rd Edition, 1418 AH - 1997 CE, Vol. 1, p. 298.

⁹ The statement regarding the sea: "Its water is pure, and its dead animals are lawful." Narrated by the Five and authenticated by Al-Tirmidhi.

Al-Albani, Muhammad Nasir al-Din (d. 1420 AH). Supervised by Zuhayr al-Shawish. Maktab al-Islami. Beirut: 2nd Edition, 1405 AH - 1985 CE, Vol. 1, p. 43.

¹⁰ Al-Karkhi, Abu al-Hasan Ubayd Allah ibn al-Husayn ibn Dalal ibn Dalham al-Karkhi (340 AH). Usul al-Karkhi. Karachi: Jawid Press, p. 316.

¹¹ Al-Subki, Taqi al-Din Abu al-Hasan Ali ibn Abd al-Kafi (d. 785 AH). Al-Ibhaj fi Sharh al-Minhaj (Minhaj al-Wusul ila 'Ilm al-Usul by al-Qadi al-Baydawi). Beirut: Dar al-Kutub al-'Ilmiyyah, 1416 AH - 1995 CE, Vol. 2, p. 208.

¹² "No reward except for sincerity, and no action except with intention". Al-Albani, Muhammad Nasir al-Din (d. 1420 AH). Al-Silsilah al-Sahihah. Volume 5, p. 537. Beirut: Al-Maktab al-Islami, 2nd Edition, 1405 AH - 1985 CE. This narration was referenced by Al-Daylami in his work (Vol. 4, p. 206) tracing the chain of transmission through Ibrahim ibn al-Sari al-Harawi. The isnad (chain of narrators) includes figures such as Abu Ali al-Balkhi, known as Shaykh of Khurasan. As mentioned by Al-Dhahabi, he is categorized as "a weak transmitter," though Al-Albani deemed the narration textually sound due to corroborative evidence.

¹³ Al-Basri, Abu al-Husayn Muhammad ibn Ali al-Tayyib al-Basri al-Mu'tazili (d. 436 AH). Al-Mu'tamad fi Usul al-Fiqh. Known for his theological work following the Mu'tazili school of thought, he was an eminent scholar excelling in this discipline, known for eloquence, clarity of expression, and profound knowledge. Among his notable works in usul al-fiqh is Al-Mu'tamad, a large book, from

ambiguous due to the lack of clarity regarding the negated entity. In response to this, it is clarified that negating validity is more likely than negating perfection¹⁴:

A. The custom of using these expressions to negate benefit.

B. The fact that negating validity carries broader inclusiveness, as invalidity equates to nonexistence.

Thus, the role of custom becomes evident in clarifying ambiguous texts and determining Sharia objectives, relying on prevalent linguistic and social usage.

2. The rulings of custom

A. Evidence of custom: Al-Shafi'i stated, "What is said about the Messenger of Allah, peace be upon him, is said about Allah." If it is argued that the forms of receiving in sales, methods of safeguarding in theft, and the majority of contracts in transactions have no foundation in the Qur'an or Sunnah, we respond that Allah has said: {Show forgiveness, enjoin what is customary, and turn away from the ignorant} [Al-A'raf: 199]. Custom is what people acknowledge and practice in their dealings. Consequently, custom in matters such as receipt forms, safeguarding, and validation becomes recognized in the Qur'an. Thus, we say that the Qur'an is the most exemplary evidence; the Sunnah is derived from it, analogy stems from both the Qur'an and Sunnah, and consensus originates from the Qur'an, Sunnah, and analogy¹⁵.

B. As for general custom and habit, they cannot be used to specify generality because Sharia was not established based on habit. Rather, some argue it is founded on public interest, while others assert it is based on what Allah Almighty intended, which does not rely on habit.¹⁶, The custom referred to here is practical custom, as there is no disagreement regarding the ability of verbal custom to specify generality .

Practical custom, however, has been debated between the Hanafi and Shafi'i schools. The Hanafis view it as akin to verbal custom, which is established through the use of a term in a meaning different from its original linguistic meaning—for example, the term "dabbah" (beast), which is used to specify generality. What unites them is that both evoke a particular meaning upon the term's release. The difference lies in the fact that the origin of this

which Fakhr al-Din al-Razi derived Al-Mahsul. He also authored *Tasfih al-Adilla* (in two volumes), *Ghurur al-Adilla* (in one large volume), *Sharh al-Usul al-Khamsa*, a book on al-Imama, and other writings in the principles of religion that greatly benefited people. He resided in Baghdad and passed away there on Tuesday, the 5th of Rabi' al-Akhir, 436 AH. Ibn Khallikan, *Abu al-Abbas Shams al-Din Ahmad ibn Muhammad ibn Ibrahim* (d. 681 AH). *Wafayat al-A'yan wa Anba' Abna' al-Zaman*. Edited by Ihsan Abbas. Beirut: Dar Sader, Vol. 4, p. 271. Ibn al-Tilmisani, *Abd Allah ibn Muhammad Ali Sharaf al-Din Abu Muhammad al-Fihri al-Masri* (644 AH). *Sharh al-Ma'alim fi Usul al-Fiqh*. Edited by Shaykh Adel Ahmad Abd al-Majid and Shaykh Ali Muhammad Muawwad. Beirut: Alam al-Kutub, 1st Edition, 1419 AH - 1999 CE, Vol. 2, p. 15.

¹⁴ Ibn al-Tilmisani, *Abd Allah ibn Muhammad Ali Sharaf al-Din Abu Muhammad al-Fihri al-Masri* (644 AH). *Sharh al-Ma'alim fi Usul al-Fiqh*. Edited by Shaykh Adel Ahmad Abdul Mawjoud and Shaykh Ali Muhammad Muawwad. Beirut: Alam al-Kutub li al-Tiba'ah wa al-Nashr wa al-Tawzi', 1st Edition, 1419 AH - 1999 CE, Vol. 2, p. 15.

¹⁵ Al-Sam'ani, *Abu al-Muzaffar Mansur ibn Muhammad ibn Abd al-Jabbar ibn Ahmad al-Marwazi* (489 AH). *Qawaṭi' al-Adillah fi al-Uṣul*. Edited by Muhammad Hasan Muhammad Hasan Ismail al-Shafi'i. Beirut: Dar al-Kutub al-Ilmiyyah, 1st Edition, 1418 AH/1999 CE, Vol. 1, p. 29.

¹⁶ Al-Shirazi, *Abu Ishaq Ibrahim ibn Ali ibn Yusuf* (476 AH). *Al-Luma' fi Usul al-Fiqh*. Beirut: Dar al-Kutub al-Ilmiyyah, 2nd Edition, 2003 CE - 1424 AH, p. 37.

Ibn Juzayy, *Abu al-Qasim Muhammad ibn Ahmad ibn Muhammad ibn Abd Allah, al-Kalbi al-Gharnati* (741 AH). *Taqrib al-Wusul ila Ilm al-Uṣul*. Edited by Muhammad Hasan Muhammad Hasan Ismail. Beirut: Dar al-Kutub al-Ilmiyyah, 1st Edition, 1424 AH - 2003 CE, p. 159.

association in verbal custom is the use of the term, which is a significant distinction in judgment .

Most usul scholars, with the exception of some from the Shafi'i school, believe that verbal custom—if it precedes or coincides with the general text—can be utilized to specify this text. This involves interpreting the general text within the customary context and applying it accordingly when clear indicators are absent. The custom prevalent during the prophetic era is considered a tool for specification, as the Prophet Muhammad (peace be upon him) addressed people in alignment with their understanding, which was often shaped by their common customs. Consequently, the implications of custom can surpass linguistic indications in certain cases, as noted by Al-Juwayni, who highlighted the significance of custom preceding the stabilized expression, An example of this is the statement of Allah Almighty ¹⁷. in Surah An-Nur, verse 4: "do not accept from them testimony ever after." The word "ever" is interpreted conventionally as meaning the lifespan of a person, given the impossibility of eternal life.

As for the Shafi'i school of thought, they state that mere practical custom not backed by a decision from the Prophet, peace be upon him, cannot be a specification of the general ruling stated in the Islamic texts. This is because people's actions are not considered authoritative over the Shari'ah. However, if this custom is supported by a decision from the Prophet, then it is the decision that acts as the specification, not the custom itself.¹⁸, "It is required for a custom ('urf) to be consistent, meaning it should not vary across different times. If it is not consistent, it would be possible for that custom to not exist during certain times. Moreover, it might not have existed during the time of the Prophet, peace be upon him, and therefore, it would not be permissible to use it as a basis for reasoning."¹⁹, For example, if the legislator forbids the sale of food items of the same kind with disparity (in terms of quality or weight), and the people among themselves conventionally associate a particular type of food, such as wheat or corn, with the term " al-ta'ām -food." When the term " al-ta'ām -food" is used in their custom, it immediately suggests this specific type. The question arises: can the general term be specified by this custom, or can it not be specified? This is where the well-known debate lies.²⁰

C. The application of a word to a customary meaning is conditional upon the custom being present during the time of the Prophet, peace be upon him, and existing prior to his time. As for a custom that emerged after the Prophet, peace be upon him, and where people agreed to use the word in a particular way amongst themselves, it is not permissible to apply the speech of Allah Almighty or His Messenger, peace be upon him, to it. The reason for this is that we aim to understand the intent of Allah Almighty and His Messenger, peace be upon him, in

¹⁷ Al-Zarkashi, Badr al-Din Muhammad ibn Bahadur (d. 794 AH). *Al-Bahr al-Muhit fi Usul al-Fiqh*. Vol. 2, p. 523. Beirut: Dar al-Kutub al-'Ilmiyyah, 1st Edition, 2000 CE.

¹⁸ Al-Sam'ani, Abu al-Muzaffar, Mansur ibn Muhammad ibn Abdul Jabbar ibn Ahmad (489 AH). *Qawa'at al-Adillah fi al-Usul*. Edited by Muhammad Hasan Muhammad Hasan Ismail Al-Shafi'i. First edition. Beirut, Lebanon: Dar Al-Kutub Al-Ilmiyyah, 1418 AH / 1999 CE, 1:193.

¹⁹ Al-Zarkashi, Abu Abd Allah Badr al-Din Muhammad ibn Abd Allah ibn Bahadir (794 AH). *Tashnif al-Masam'i bi-Jam' al-Jawami' li-Taj al-Din al-Subki*. Edited and researched by Dr. Sayed Abdel Aziz and Dr. Abdullah Rabie, instructors at the Faculty of Islamic and Arabic Studies at Al-Azhar University. First edition. Mecca: Maktabat Qurtubah lil-Bahth al-Ilmi wa Ihya al-Turath – Distributed by al-Maktabah al-Makkiyyah, 1418 AH / 1998 CE, 3:210.

²⁰ Al-Isnawi, Abd al-Rahim ibn al-Hasan ibn Ali, Abu Muhammad, Jamal al-Din (772 AH). *Nihayat al-Sul Sharh Minhaj al-Wusul*. First edition. Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, 1420 AH / 1999 CE, 2:469.

their speech, and it is impossible to determine their intent from the speech unless the custom existed at the time of the revelation. Thus, we know that the use of the word aligns with what the custom indicates.

An example of this is our discussion of the cause of *riba* (usury), which is identified as being related to "al-ta'ām -food," as evidenced by the narration of Muammar ibn Abdullah that the Messenger of Allah forbade the sale of al-ta'ām -food for food except in equal measure."²¹ , al-ta'ām -food is a term for everything that is eaten. They said to us: al-ta'ām -food is a term for wheat and barley, and for this reason, the phrase al-ta'ām -food market" refers to the market where wheat and barley are sold, and not to the place where watermelons are sold.' We replied to them: al-ta'ām -food, in the original language, is a term for everything that is consumed. What they mentioned as a custom is merely a linguistic development that emerged after the Prophet, peace be upon him. It was not known among the Arabs, and therefore, it is not permissible to interpret the words of the Prophet, peace be upon him, based on a custom that developed after his time."²² , It is evident from Al-Shafi'i's opinion that the words of the Legislator (Al-Shari') are not affected by specification through custom, contrary to the view of Abu Hanifa, who considers custom as a specification for legal terms. An example is the sale of food for food, where some of Abu Hanifa's followers attempted to interpret the term al-ta'ām -food" in the Prophetic tradition as specifically referring to "wheat," based on custom. However, Al-Shafi'i holds that the terms of Islamic law are to be understood according to the original linguistic meaning and not based on what people became accustomed to after the time of the Messenger of Allah, peace be upon him. This is because Islamic rulings derive their authority from texts grounded in the Arabic language.²³ "He addresses everyone without considering the differences in customs. Thus, the concept of custom does not alter the meaning of legal terms, nor does it impose specific rulings on the addressees based on a particular agreement."²⁴

Conclusion:

Al-Shafi'i rejects considering custom ('urf) as an absolute determinant of the legal concept. The concept in the legal texts is not independent but is a logical consequence of the text itself, and it can be disregarded if strong evidence supports doing so. However, he believes that the legal texts derive their rulings from the original language and not from the terminologies of custom.²⁵

²¹ Muslim ibn al-Hajjaj Abu al-Hasan al-Qushayri al-Naysaburi (261 AH). *Al-Musnad al-Sahih al-Mukhtasar bin Naql al-'Adl 'an al-'Adl ila Rasul Allah Sallallahu Alayhi wa Sallam* (Sahih Muslim). Edited by Muhammad Fu'ad Abdul-Baqi. Beirut: Dar Ihya al-Turath al-Arabi, 3:1214, Hadith no. 1592.

²² Al-Shirazi, Abu Ishaq Ibrahim ibn Ali ibn Yusuf al-Shirazi (476 AH). *Sharh al-Luma*. Edited by Abdul Majid Turki. First edition. Beirut: Dar al-Gharb al-Islami, 1:181.

Al-Iraqi, Wali al-Din Abu Zar'ah Ahmad ibn Abd al-Rahim (826 AH). *Al-Ghayth al-Hami' Sharh Jam' al-Jawami'*. Edited by Muhammad Tamer Hijazi. First edition. Beirut: Dar al-Kutub al-Ilmiyyah, 1425 AH / 2004 CE, p. 538.

²³ Al-Shafi'i, Abu Abd Allah Muhammad ibn Idris ibn al-Abbas ibn Uthman ibn Shafi' (204 AH). *Al-Risalah*. Edited by Ahmad Shakir. First edition. Cairo, Egypt: Maktabat al-Halabi, 1358 AH / 1940 CE, 1:21.

²⁴ Al-Juwayni, Abd al-Malik ibn Abd Allah ibn Yusuf ibn Muhammad, Imam al-Haramayn (478 AH). *Al-Burhan fi Usul al-Fiqh*. Edited by Salah ibn Muhammad ibn Uwaydah. First edition. Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, 1418 AH / 1997 CE, 1:164-165.

²⁵ Al-Juwayni, Abd al-Malik ibn Abd Allah ibn Yusuf ibn Muhammad, Imam al-Haramayn (478 AH). *Al-Burhan fi Usul al-Fiqh*. Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, 1:167-178.

Chapter tow: The Role of Custom in the Issue of "Do After Prohibition:"

Scholars have differed on the interpretation of "do after prohibition," resulting in several opinions.²⁶

Obligation: The majority of scholars have concluded that a command issued after prohibition signifies obligation²⁷ "Among them is Judge Abu al-Tayyib."²⁸, Abu Ishaq al-Shirazi, in *Al-Luma'*, did not differentiate between the occurrence of this phrase initially or after prohibition; he considered it to imply obligation in both cases. Some of our scholars, however, stated that if it occurs after prohibition, it implies permissibility. The evidence that it implies obligation is that every term that implies obligation, if not preceded by prohibition, still implies obligation even if preceded by prohibition, such as the terms "I have made obligatory" or "I have prescribed." Thus, Al-Shirazi did not distinguish between the two scenarios.²⁹ "And Abd al-Jalil al-Rubai'i."³⁰

Obligation: The scholars clarified that prior prohibition does not affect the indication of a command signifying obligation in its original context. They supported their view with the verse: "And when the sacred months have passed, then kill the polytheists" [At-Tawbah: 5].

Permissibility: Imam Al-Shafi'i and most of his followers held that a command issued after prohibition signifies permissibility. They substantiated this with the verse: " But when you come out of *ihrām*, then [you may] hunt. " [Al-Ma'idah: 2]. In *Al-Um*, Al-Shafi'i stated: "Commands in the Book and Sunnah, and even in common speech, can bear various meanings. One of these meanings is that Allah Almighty forbids something and then permits it; His command becomes the lifting of the prohibition, as in Allah's statement: But when you come out of *ihrām*, then [you may] hunt. ' [Al-Ma'idah: 2] and His statement: And when the prayer has been concluded, disperse within the land ' [Al-Jumu'ah: 10]. Al-Shafi'i explained that Allah prohibited hunting for the pilgrim, and forbade selling during the call to prayer, then permitted both at times other than those for which they were prohibited."³¹ "Prohibition serves as an indication that alters the command from its original implication to permissibility."³²

Recommendation: al-Qāḍī Ḥusayn adopted this view, indicating that the form of the command can be understood as implying recommendation in certain cases.³³

²⁶ Al-Zarkashi, Abu Abd Allah Badr al-Din Muhammad ibn Abd Allah ibn Bahadir (794 AH). *Al-Bahr al-Muhit fi Usul al-Fiqh*. First edition. Cairo, Egypt: Dar al-Kutbi, 1414 AH / 1994 CE, 3:309.

²⁷ Al-Amidi, Abu al-Hasan Sayf al-Din Ali ibn Abi Ali ibn Muhammad ibn Salim (631 AH). *Al-Ihkam fi Usul al-Ahkam*. Edited by Abdul Razzaq Afifi. Beirut-Damascus, Lebanon: Al-Maktab al-Islami, 2:144.

²⁸ Abu al-Tayyib Tahir ibn Abd Allah ibn Tahir ibn Umar al-Tabari al-Shafi'i (450 AH): A judge and jurist in the Karkh district of Baghdad, and one of the prominent scholars and jurists of the Shafi'i school in Iraq.

Al-Dhahabi, Shams al-Din Abu Abd Allah Muhammad ibn Ahmad ibn Uthman ibn Qaymaz (748 AH). *Siyar A'lam al-Nubala*. First edition. Cairo, Egypt: Dar al-Hadith, 1427 AH / 2006 CE, 13:279.

²⁹ Al-Shirazi, Abu Ishaq Ibrahim ibn Ali ibn Yusuf (476 AH). *Al-Luma' fi Usul al-Fiqh*. p. 14.

³⁰ Al-Rubai'i, Abu al-Qasim Abd al-Jalil ibn Abi Bakr (478 AH). *Al-Tasdid fi Sharh al-Tamhid*. Edited by Hamzah Ahmad al-Nahiri. Al-Fath Publishing House, Jordan.

³¹ Al-Shafi'i, Abu Abd Allah Muhammad ibn Idris ibn al-Abbas ibn Uthman ibn Shafi' ibn Abd al-Muttalib ibn Abd Manaf al-Muttalibi (204 AH). *Al-Umm*. Beirut: Dar al-Ma'rifah, 1410 AH / 1990 CE, 5:153.

³² Al-Ghazali, Abu Hamid Muhammad ibn Muhammad (505 AH). *Al-Mustasfa*. Edited by Muhammad Abd al-Salam Abd al-Shafi. First edition. Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, 1413 AH / 1993 CE, p. 211.

³³ Al-Qadi al-Husayn Abu Muhammad (also Abu Ali) al-Husayn ibn Muhammad ibn Ahmad al-

Lifting the prohibition and restoring the original state: Some verified scholars of the Hanbali school, and the opinion attributed to Al-Muzani, stated that a command lifts the prohibition and restores the action to its original state: if it was obligatory, it remains obligatory; and if it was permissible, it remains permissible. They cited as evidence the example of Allah's statement: "And when they have purified themselves, then come to them" [Al-Baqarah: 222]. Detailing Based on the Cause: If the prohibition is justified by the removal of a specific reason, the command is understood to lift condemnation and allow permissibility, such as the case of storing sacrificial meat after the prohibition. However, if the prohibition is not contingent on a temporary cause, whether the command implies obligation or permissibility depends on the context.

Suspension Between Permissibility and Recommendation: Imam al-Haramayn and al-Ghazali mentioned that the introduction of prohibition makes the command ambiguous between permissibility and recommendation, depending on the contextual clues that interpret the text.³⁴

Conclusion:

Custom plays an important role in determining the implication of a command issued after prohibition, as it can serve as an indicator to specify the intended meaning, whether obligation or permissibility. The interpretation of legal texts relies heavily on the context and prevailing custom at the time of the text or its application, where customary usage sometimes takes precedence over linguistic convention.

Chapter three: Sale by Mutual Consent (Al-Mu'ataah)

1. The Concept of Sale by Mutual Consent (Al-Mu'ataah), Al-Mu'ataah refers to mutual action or interaction derived from the root word "Al-Mu'ataah," meaning exchange or taking.³⁵ "It occurs when each party involved provides the other with the item being exchanged without a formal offer or acceptance, or with an offer without acceptance, or vice versa. This is considered a form of implied indication, and it validates the sale for both minor and major transactions according to the Hanafi school.³⁶, "And the Maliki school."³⁷, "And the Hanbali school."³⁸, "And some of the Shafi'i scholars, such as al-Mutawalli."³⁹, "And al-

Marwaruzi (462 AH). Al-Ta'liqa li-Al-Qadi al-Husayn (A Commentary on Mukhtasar al-Muzani). Edited by Ali Muhammad Mu'awwad and Adel Ahmad Abdul-Mawjud. Makkah al-Mukarramah: Maktabat Nizar Mustafa al-Baz.

³⁴ Al-Ghazali, Abu Hamid Muhammad ibn Muhammad (505 AH). Al-Mustasfa. Edited by Muhammad Abd al-Salam Abd al-Shafi. First edition. Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, 1413 AH / 1993 CE, p. 211.

³⁵ Mulla Khusraw, Muhammad ibn Faramarz ibn Ali (885 AH). Durar al-Hukkam fi Sharh Majallat al-Ahkam. Translated and edited by Attorney Fahmi al-Husseini. Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, 2:296.

³⁶ Al-Babarti, Muhammad ibn Muhammad ibn Mahmoud, Akmal al-Din Abu Abd Allah ibn al-Sheikh Shams al-Din ibn al-Sheikh Jamal al-Din al-Rumi (786 AH). Al-Nukat al-Zarifah fi Tarjih Madhhab Abi Hanifah. Edited and annotated by Dr. Bilal al-Hassan Umar Musa'id, Assistant Professor of Comparative Jurisprudence, Department of Islamic Studies, College of Education, King Saud University. Riyadh, Saudi Arabia: Educational Research Center, first edition, 1418 AH / 1997 CE, p. 67.

³⁷ Ibn Rushd al-Hafid, Abu al-Walid Muhammad ibn Ahmad ibn Muhammad ibn Ahmad (595 AH). Bidayat al-Mujtahid wa Nihayat al-Muqtasid. Cairo: Dar al-Hadith, 1425 AH / 2004 CE, 3:187.

³⁸ Ibn Qudamah al-Maqdisi, Abu Muhammad Muwaffaq al-Din Abd Allah ibn Ahmad ibn Muhammad (620 AH). Al-Mughni. Cairo: Maktabat al-Qahirah, 3:481.

³⁹ Al-Mutawalli, Abd al-Rahman ibn Muhammad (478 AH). Tatimmat al-Ibanah an Ahkam Furu' al-Diyanah. Edited by a group of doctoral students, Umm al-Qura University.

Baghawi."⁴⁰ "Contrary to others."⁴¹ "The essence of mutual consent (Al-Mu'ataah) is the payment of the price and the receipt of the exchanged item with mutual agreement between the two parties, without verbal expressions. This implies that mutual giving from both sides is necessary, as it is derived from the concept of 'Al-Mu'ataah,' which denotes interaction and requires involvement from both sides, similar to partnership, division, and dispute."⁴²

Second: The image of Mu'atat (Delivery Sale (There are two forms of Mu'atat (Delivery Sale) :

A. That the transaction is completed without any verbal communication or gesture from either party, and this is permissible according to the Hanafi school of thought ⁴³ . "And the Maliki school ".⁴⁴ "And the Hanbali school "⁴⁵ "Al-Nawawi preferred permissibility contrary to the madhhab (school of thought)."⁴⁶

B. That the transaction is completed through verbal communication by one of the parties followed by delivery, and this is considered a form of Mu'atat (Delivery Sale) according to the Maliki school of thought.⁴⁷ "And the Hanbali school."⁴⁸ Here's the translation: "And the Hanafi school did not consider it to be Mu'atat (Delivery Sale)."⁴⁹

⁴⁰ Al-Baghawi, Muhyi al-Sunnah Abu Muhammad al-Husayn ibn Mas'ud ibn Muhammad (516 AH). Al-Tahdhib fi Fiqh al-Imam al-Shafi'i. Edited by Adel Ahmad Abdul-Mawjud and Ali Muhammad Mu'awwad. First edition. Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, 1418 AH / 1997 CE, 3:534.

⁴¹ Al-Khatib al-Shirbini, Shams al-Din Muhammad ibn Ahmad (977 AH). Mughni al-Muhtaj ila Ma'rifat Ma'ani Alfaz al-Minhaj. Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, first edition, 1415 AH / 1994 CE, 2:3.

Al-Bahuti, Mansur ibn Yunus ibn Salah al-Din ibn Hasan ibn Idris (d. 1051 AH). Daqaiq Uli al-Nuhal Sharh al-Muntaha, Known as Sharh Muntaha al-Iradat. Riyadh, Saudi Arabia: Alam al-Kutub, first edition, 1414 AH / 1993 CE, 2:141

⁴² Ibn Nujaym al-Masri, Zayn al-Din ibn Ibrahim ibn Muhammad (970 AH). Al-Bahr al-Ra'iq Sharh Kanz al-Daqa'iq. Edited and reviewed by Ahmad Izzuh Anayah al-Dimashqi. Beirut, Lebanon: Dar Ihya' al-Turath al-Arabi, first edition, 1422 AH / 2002 CE, 5:451.

Ibn Abidin, Muhammad Amin ibn Umar ibn Abd al-Aziz Abidin al-Dimashqi al-Hanafi (1252 AH). Beirut, Lebanon: Dar al-Fikr, second edition, 1412 AH / 1992 CE, 4:513.

⁴³ Al-Babarti, Muhammad ibn Muhammad ibn Mahmoud (786 AH). Al-Nukat Al-Zarifah Fi Tarjih Madhab Abi Hanifa. Edited and annotated by Bilal Al-Hassan Omar Musa'id. Riyadh: Educational Research Center, First Edition, 1418 AH / 1997 CE, p. 67.

⁴⁴ Ibn al-Hajib, Uthman ibn Umar ibn Abi Bakr ibn Yunus, Abu Amr Jamal al-Din (646 AH). Jami' al-Ummahat. Edited by Abu Abd al-Rahman al-Akhdar al-Akhdari. Riyadh: Al-Yamamah Publishing, Second Edition, 1421 AH / 2000 CE, p. 337.

Ibn al-Hajj, Abu Abdallah Muhammad ibn Muhammad ibn Muhammad al-Abdari al-Fasi al-Maliki (737 AH). Al-Madkhal. Beirut: Dar al-Turath, Vol. 1, p. 296.

⁴⁵ Al-Maqdisi, Abd al-Rahman ibn Ibrahim ibn Ahmad, Abu Muhammad Baha al-Din (624 AH). Al-Udda Sharh al-'Umda. Cairo: Dar al-Hadith, 1st edition, 1424 AH / 2003 CE, p. 315.

⁴⁶ Al-Nawawi. Al-Majmu'. Vol. 9, p. 163.

⁴⁷ Zarrouq, Shihab al-Din Abu al-Abbas Ahmad ibn Ahmad ibn Muhammad ibn Isa al-Baransi al-Fasi (d. 899 AH). Sharh Zarrouq 'ala Matn al-Risala li Ibn Abi Zayd al-Qayrawani. Edited by Ahmad Farid al-Mazidi. Beirut, Lebanon: Dar al-Kutub al-'Ilmiyya, First Edition, 1427 AH / 2006 CE, Vol. 2, p. 718.

⁴⁸ Ibn Qudamah al-Maqdisi, Abu Muhammad Muwaffaq al-Din Abdallah ibn Ahmad ibn Muhammad (620 AH). Al-Kafi fi Fiqh al-Imam Ahmad. Beirut: Dar al-Kutub al-'Ilmiyya, First Edition, 1414 AH / 1994 CE, Vol. 2, p. 3.

⁴⁹ Ibn Abidin, Muhammad Amin ibn Umar ibn Abd al-Aziz Abidin al-Dimashqi al-Hanafi (1252 AH). Radd al-Muhtar 'ala al-Durr al-Mukhtar (Hashiyat Ibn Abidin). Beirut: Dar al-Fikr, Second

C. Sheikh Abu Amr Ibn al-Salah stated: Whatever is found from some of our scholars in their description of it, mentioning phrases such as "Take and give," falls under the general category of evidence we have mentioned. This is assumed in cases where there is no intention of sale through this phrase that is coupled with the act of giving. If sale is intended through this phrase, it becomes the issue of selling through metaphorical expression. Regarding its validity through metaphor, there are two views—the more correct of which is its validity, alongside our statement that it does not conclude through Mu'atat (Delivery Sale)⁵⁰

D. Imam Al-Nawawi mentioned that if the buyer takes something from the seller without giving him anything, and there is no verbal agreement of sale, but they both intend for it to be taken for its customary price—as many people often do—then this is invalid without dispute. This is because it does not qualify as a verbal sale, nor as Mu'atat (Delivery Sale), and it cannot be considered a valid sale; hence, it is void.⁵¹

2. The ruling on selling through Mu'atat (Delivery Sale)

The opinions of the jurists differed regarding the validity of a sale through Mu'atat:

A. The Hanafi Madhhab (school of thought)⁵² They permitted the validity of selling by Mu'atat (Delivery Sale) for insignificant items. However, for valuable items, it is necessary to have an offer and acceptance. The reasoning commonly cited is an analogy to marriage, as it is only concluded verbally, and by analogy to real estate and valuable possessions.

Second: The Maliki Madhhab⁵³ They allowed the validity of selling through Mu'atat (Delivery Sale), as anything that people consider a sale is deemed a sale according to them.

Third: The Hanbali Madhhab⁵⁴ They permitted the validity of selling through Mu'atat (Delivery Sale). The offer and acceptance are not considered mandatory by them, but rather customary. The religious justification is that sale has been permitted by Sharia, but no specific method for concluding it has been prescribed. Therefore, it relies on custom, as is the case with other matters such as possession and safeguarding. Selling existed and was relied upon during the time of the Prophet, peace and blessings be upon him, and his companions. They engaged in transactions through Mu'atat (Delivery Sale) without verbal agreements. The practice of Mu'atat and its continued use by people throughout various eras without objection is considered an implicit consensus.

Fourth: Selling through Mu'atat in the Shafi'i Madhhab⁵⁵, and their opinions regarding it were diverse.

B. In the old Shafi'i Madhhab⁵⁶, scholars permitted selling through Mu'atat (Delivery Sale) and similar methods, whether for valuable items or insignificant ones. Imam Al-Nawawi adopted this view⁵⁷, along with several scholars such as Al-Mutawalli⁵⁸, Al-Baghawi⁵⁹, Al-

Edition, 1412 AH / 1992 CE, Vol. 4, p. 513.

⁵⁰ Al-Nawawi. Al-Majmu'. Vol. 9, p. 163

⁵¹ Al-Nawawi. Al-Majmu'. Vol. 9, p. 163.

⁵² Al-Babarti, Muhammad ibn Muhammad ibn Mahmoud, Akmal al-Din Abu Abdallah ibn Shaykh Shams al-Din ibn Shaykh Jamal al-Din al-Rumi (786 AH). Edited and annotated by Bilal al-Hassan Omar Musa'id. Markaz al-Buhuth al-Tarbawiyah, Riyadh, College of Education – King Saud University. First Edition, 1418 AH / 1997 CE, p. 67.

⁵³ Al-Hattab al-Ru'ayni, Shams al-Din Abu Abdallah Muhammad ibn Muhammad ibn Abd al-Rahman al-Tarabulsi al-Maghribi al-Maliki (954 AH). Mawahib al-Jalil fi Sharh Mukhtasar Khalil. Beirut: Dar al-Fikr, Third Edition, 1412 AH / 1992 CE, Vol. 4, p. 229.

⁵⁴ Ibn Qudamah. Al-Mughni. Vol. 4, p. 4.

⁵⁵ Al-Nawawi. Al-Majmu'. Vol. 9, p. 164.

⁵⁶ Al-Nawawi. Al-Majmu'. Vol. 9, p. 162.

⁵⁷ Al-Nawawi. Al-Majmu'. Vol. 9, p. 162.

Ruyani⁶⁰, and Ibn al-Sabbagh.⁶¹ These scholars emphasized the importance of custom in this matter, as Mu’atāt could be considered a valid sale if it was commonly accepted among people. Ibn Surayj noted that transactions practiced as customary before the advent of Sharia are considered valid; however, practices adopted by people after Sharia are not deemed suitable customs for restricting rulings and must instead rely on analogy.

C. Some scholars permitted Mu’atāt for insignificant items, as mentioned previously. They considered it permissible only for trivial matters. Al-Rafi’i narrated an opinion suggesting that the insignificant item must fall below the threshold of theft punishment, but this view is weak and unconventional. The correct opinion is that selling through Mu’atāt extends beyond trivial matters to what people customarily deem as a sale, according to Al-Nawawi.⁶²

Evidence: Those who permitted Mu’atāt (Delivery Sale) based their argument on the verse: “And Allah has permitted trade and forbidden usury...” (Al-Baqarah: 275). They asserted that Sharia did not stipulate specific words for sales. Thus, anything considered a sale by custom is deemed a valid sale. They supported their opinion by referencing other dealings where no specific wording is established in Sharia, necessitating reliance on custom. Accordingly, whatever people deem as a sale is considered a sale, similar to matters like possession, safeguarding, and land revitalization, which depend on custom for interpretation.

The term “sale” is well-known, and numerous Hadiths of the Prophet, peace be upon him, and his companions, may Allah be pleased with them, have been narrated concerning sales during his time and afterward. None of these, despite their abundance, established a requirement for offer and acceptance⁶³

The Role of Custom:

The influence of custom is clearly evident in this context, as it is considered a standard for determining the validity of selling through Mu’atāt (Delivery Sale). Imam Al-Nawawi moderately adopted the reliance on custom in this matter.

Chapter four: Al-Qabd (Possession)

1. Its Concept and Scholars' Opinions Regarding the Nature of Possession, The meaning of this term revolves around collection and taking. Ibn Faris stated: The letters Qaf, Ba, and Dad form a single, correct root that indicates something taken.⁶⁴ It is mentioned in Lisan al-Arab: "Qabd (possession) is the act of gathering the hand over an object. 'I took something by qabd' means I grasped it. Qabdah refers to what you take with your entire hand. Ibn al-A’rabi stated: Qabd means accepting goods even if you do not move them, while qabd involves transferring goods to your possession. Qabd also refers to taking something with your hand

⁵⁸ Abd al-Rahman al-Mutawalli, Tammet al-Ibānah ‘an Aḥkām Furū‘ al-Diyānah (The Completion of Clarification of the Rulings of the Branches of Religion), 2 vols., edited by Umm al-Qura University, Mecca: Umm al-Qura University, 1428 AH / 2007 CE.

⁵⁹ Al-Baghawi. Al-Tahdhib. Vol. 3, p. 534.

⁶⁰ Al-Ruyani, Abu al-Mahasn Abd al-Wahid ibn Ismail (502 AH). Bahr al-Madhhab. Edited by Tareq Fathi Al-Sayyid. Beirut: Dar al-Kutub al-‘Ilmiyya, First Edition, 2009 CE, Vol. 4, p. 368.

⁶¹ Ibn al-Sabbagh, Al-Shamil fi Furū‘ al-Shafi’iyyah (The Comprehensive Work on the Branches of Shafi’i Jurisprudence), manuscript copy, 573 AH, 208 folios, 25.5 × 17 cm

⁶² Al-Nawawi. Al-Majmu‘. Vol. 9, p. 164.

⁶³ Al-Nawawi. Al-Majmu‘. Vol. 9, p. 163.

⁶⁴ Ibn Faris, Ahmad ibn Faris ibn Zakariya al-Qazwini al-Razi, Abu al-Husayn (395 AH). Mu’jam Maqayis al-Lughah. Edited by Abd al-Salam Muhammad Harun. Beirut: Dar al-Fikr, 1399 AH / 1979 CE, Vol. 5, p. 50.

and touching it. To 'grasp' something or take hold of it means inclining your whole hand over it, making the object in your qabdah, i.e., within your ownership."⁶⁵

Qabd (Possession): Qabd, acquisition, and holding are synonymous terms. They mean taking ownership and control of an item, whether by physical grasp (by hand) or by the absence of barriers preventing domination over the item, which is also known as "evacuation" or "constructive possession." Al-Kasani stated: "The meaning of Qabd is enabling, relinquishing, and removing obstacles according to custom and practical norms."⁶⁶ Ibn Arafah defined it as: "The removal of the attribute of the owner's authority over it by transferring the ability to control it to the giver or their representative."⁶⁷

2. The ruling on Qabd "possession"

Malik stated that possession of all items is achieved through evacuation, drawing an analogy with property. Ibn al-Qasim mentioned in Al-Mudawwanah that taking possession of the item and paying the price by both parties makes the contract binding, and neither returning nor exchanging the item is permissible to avoid doubt in equivalence. If the price is not paid, the contract remains non-binding, allowing the buyer to return or exchange the item, as clarified by the author. Both the author and Ibn al-Qasim emphasized that actions involving the sold item before actual possession, such as consuming it, are not permitted under Sharia unless there is clear consent from the other party.⁶⁸

Abu Hanifa adopted this view⁶⁹.

As for the Shafi'i school of thought: Their view is that possession (Qabd) for real estate and similar items is achieved through evacuation, for movable goods through transfer, and for items handled by hand, through handling. This opinion is also held by Ahmad (Imam Ahmad ibn Hanbal).

Regarding the Hanbali school of thought: Al-Bahuti elaborated on the process of possession, saying: "Possession is established for items sold by measure, weight, count, or length by measuring, weighing, counting, or measuring them. Possession of a pile (of goods) is achieved by transferring it. Possession of movable items like garments and livestock is achieved by transferring them, similar to the pile. Possession of items that can be taken by hand, such as currency and jewels, is achieved by handling them, as determined by custom."⁷⁰

The Shafi'i School: Al-Shirazi mentioned in Matn al-uhadhdhab the concept of possession (Qabd) in sales contracts, dividing it into two cases based on the nature of the sold item. Possession is an essential condition for the validity of a sales contract, and it varies depending on the nature of the item, as follows:

⁶⁵ Ibn Manzur, Muhammad ibn Mukarram ibn Ali, Abu al-Fadl, Jamal al-Din (711 AH). Lisan al-Arab. Beirut: Dar Sader, Third Edition, 1414 AH / Vol. 7, p. 213

⁶⁶ Al-Kasani. Bada'i al-Sana'i. Vol. 6, p. 3017.

⁶⁷ Al-Rassa', Muhammad ibn Qasim al-Ansari, Abu Abd Allah, the Tunisian Maliki (894 AH). Al-Hidayah al-Kafiyah al-Shafiyah li-Bayan Haqaiq al-Imam Ibn Arafah al-Wafiyah (Sharh Hudud Ibn Arafah lil-Rassa'). Al-Maktabah al-'Ilmiyyah, First Edition, 1350 AH, p. 415.

⁶⁸ Al-Dasuqi. Hashiyat al-Dasuqi 'ala al-Sharh al-Kabir. Vol. 3, p. 4.

⁶⁹ -Bada'i al-Sana'i*. Imam edition, Cairo, Vol. 7, p. 3248 .

-Radd al-Muhtar 'ala al-Durr al-Mukhtar*. Dar Ihya al-Turath al-Arabi edition, Vol. 4, p. 42 .

-Al-Fatawa al-Hindiyya*. Dar Ihya al-Turath al-Arabi edition, Vol. 3, p. 15.

⁷⁰ Al-Bahuti, Mansur ibn Yunus ibn Salah al-Din ibn Hasan ibn Idris (1051 AH). Kashshaf al-Qina' 'an Matn al-Iqna'. Beirut: Dar al-Kutub al-'Ilmiyyah, Vol. 3, pp. 246–247. and: Al-Mardawi, Ala al-Din Abu al-Hasan Ali ibn Sulayman (885 AH). Al-Insaf fi Ma'rifat al-Rajih min al-Khilaf. Beirut: Dar Ihya al-Turath al-Arabi, Second Edition, Vol. 4, p. 469. and: Ibn Qudamah. Al-Mughni. Vol. 4, p. 125.

A. For movable items: Possession is achieved by physically transferring the sold item from the seller's place to the buyer's place. This is based on the Hadith narrated by Zayd ibn Thabit: "The Messenger of Allah, peace be upon him, forbade the sale of goods where they were purchased until the traders move them to their own places".

B. For immovable items like real estate and fruits before harvesting: Possession is achieved through evacuation, as possession is mandated by Sharia and is interpreted in accordance with custom. For movable items, custom dictates physical transfer, while for immovable items, custom dictates evacuation⁷¹.

The Shafi'i School of Thought: Al-Shirazi in Matn al-Muhadhdhab discussed the concept of possession (Qabd) in sales contracts, dividing it into two cases based on the nature of the sold item. Possession is a fundamental condition for the validity of a sales contract and varies according to the item's nature, as follows:

-For movable items: Possession is realized by physically transferring the sold item from the seller's location to the buyer's location. This is supported by the Hadith narrated by Zayd ibn Thabit: "The Messenger of Allah, peace be upon him, forbade the sale of goods at the place they were purchased until the traders transport them to their own locations".

-For immovable items, such as real estate and fruits before the harvest time: Possession is achieved through evacuation, as possession is stipulated in Sharia and is applied according to custom. Custom dictates physical transfer for movable items, while for immovable items, it dictates evacuation⁷². Al-Bayhaqi supported this view with the Hadith of Ibn Umar, who said: "During the time of the Messenger of Allah, peace be upon him, we would purchase food, and someone would be sent to instruct us to move it from the place where we purchased it to another location before we sold it."⁷³ And in another narration: "We used to buy food from caravans without measuring it, and the Messenger of Allah, peace be upon him, forbade us from selling it until we moved it from its place."⁷⁴ Imam al-Bukhari titled the chapter: "The prohibition of intercepting caravans and that the sale is invalid because the seller commits a sin if they are knowingly deceptive, as deception in selling is not permissible".

He said: Narrated Muhammad ibn Bashar: "Abd al-Wahhab narrated to us; 'Ubayd Allah al-'Umari narrated from Sa'id ibn Abi Sa'id from Abu Hurayrah, may Allah be pleased with him, who said: 'The Prophet, peace be upon him, forbade intercepting caravans and for a townsman to sell for a Bedouin."⁷⁵

⁷¹ Abu Dawud (Abu Dawood), Sulayman ibn al-Ash'ath ibn Ishaq ibn Bashir ibn Shaddad ibn 'Amr al-Azdi (275 AH). Sunan Abi Dawud (Sunan Abu Dawood). Edited by Muhammad Muhyi al-Din Abd al-Hamid. Beirut: Al-Maktabah al-'Asriyah, Vol. 2, p. 282, Hadith no. 3499. The Hadith is classified as Hasan li-Ghayrih

⁷² Al-Nawawi. Al-Majmu'. Vol. 9, p. 283.

⁷³ Muslim ibn al-Hajjaj Abu al-Hasan al-Qushayri al-Naysaburi (261 AH). Al-Musnad al-Sahih al-Mukhtasar bi-Naql al-Adl 'an al-Adl ila Rasul Allah Sallallahu 'Alayhi wa Sallam*. Edited by Muhammad Fu'ad Abd al-Baqi. Beirut: Dar Ihya al-Turath al-Arabi, Vol. 3, p. 1160, Hadith no. 1527. -Al-Bayhaqi, Ahmad ibn al-Husayn ibn Ali ibn Musa al-Khusrawjirdi al-Khurasani, Abu Bakr (458 AH). Al-Sunan al-Kubra*. Edited by Muhammad Abd al-Qadir A'ta. Beirut: Dar al-Kutub al-'Ilmiyyah, Third Edition, 1424 AH / 2003 CE, Vol. 5, p. 512, Hadith no. 10689.

⁷⁴ Muslim. Al-Musnad al-Sahih al-Mukhtasar. Vol. 3, p. 1161, Hadith no. 1527.

⁷⁵ Al-Bukhari, Muhammad ibn Isma'il Abu 'Abd Allah. Al-Jami' al-Musnad al-Sahih al-Mukhtasar min Umur Rasul Allah Sallallahu 'Alayhi wa Sallam wa Sunanihi wa Ayyamihi. Edited by Muhammad Zuhayr ibn Nasir al-Nasir. First Edition, Beirut: Dar Tuq al-Najat (Facsimile of Al-Sultaniyyah with added numbering by Muhammad Fu'ad Abd al-Baqi), 1422 AH, Vol. 3, p. 72, Hadith no. 2162.

C. Regarding immovable items (fixed properties): Possession (Qabd) is achieved through evacuation between the buyer and the sold item, such as real estate or fruits before the harvesting time. Al-Shirazi holds that this case relies on custom, as possession is mentioned generally in Sharia. Custom dictates the form of possession: physical transfer for movable items, and evacuation for immovable properties.⁷⁶

3. Imam al-Nawawi's statement: In his commentary, Imam al-Nawawi emphasized the importance of the relevant Prophetic Hadith in this context and clarified that the concept of possession (Qabd) varies depending on the nature of the sold item and its circumstances. Al-Nawawi highlighted the obligation to interpret Sharia texts in accordance with established jurisprudential rules and prevailing customs, considering that possession for movable items involves physical transfer, while for immovable items it entails evacuation.

Al-Nawawi elaborated on the rulings and categories of possession, explaining that the legal ruling in Sharia contracts revolves around adhering to custom to determine the nature of possession, as agreed upon by the majority of scholars:

A. Movable items: Such as wood, grains, and similar items. Possession in this case is realized by transferring the sold item to a location not owned by the seller. The Khorasani scholars referenced a differing opinion, suggesting that evacuation alone suffices as possession, a view adopted by Abu Hanifa, may Allah have mercy on him. B. Items handled by hand: Such as coins, banknotes, scarves, clothing, lightweight utensils, and books. Possession here is achieved by handling them manually. This category is unanimously agreed upon by scholars, as stated by Shaykh Abu Hamid in his commentary, Qadi Abu Tayyib, Al-Muhamili, Al-Mawardi, the author of Al-Tanbih, Al-Baghawi, and others. The importance of custom in possession: Custom plays a decisive role in defining the nature of possession for each category. Scholars have relied on the generality of Sharia texts and interpreted them in alignment with prevailing customs for each case.

Conclusion:

Accordingly, the views of the jurists can be broadly categorized into two directions:

The first direction does not distinguish between the various types of contracted items, considering that possession (Qabd) for all of them is achieved solely through evacuation. This is the position of the Hanafis, the Malikis, Ahmad ibn Hanbal in one narration, a view attributed to the Shafi'is by the Khorasani scholars, and the preferred opinion among the Zaydis, Imamis, and Zahiris.⁷⁷ And this is the view inclined to by Al-Bukhari and others.⁷⁸ Another direction distinguishes between movable and immovable items. Advocates of this perspective differ slightly among themselves. The Shafi'is argue that the distinction is based on whether the item is movable or immovable. For movable items, possession (Qabd) is achieved through transfer, while for immovable items, it is achieved through evacuation.

The Hanbalis, on the other hand, rely on a different basis: whether the item is measurable (by volume or weight) or otherwise. Items measured by volume or weight are possessed through measuring or weighing, while other items are possessed through evacuation.⁷⁹ From this, it

⁷⁶ Al-Nawawi. Al-Majmu'. Vol. 9, p. 275.

⁷⁷ Ibn Qudamah. Al-Mughni. Vol. 4, p. 126. Ibn Hazm. Al-Muhalla. Vol. 9, p. 345. Al-Hilli. Al-Mukhtasar al-Nafi'. Awqaf Egypt Edition, p. 148. Al-Husayn ibn Mahmud al-Darani. Al-Bahr al-Zakhar. Beirut: Mu'assasat al-Risalah, Vol. 4, p. 369.

⁷⁸ Ibn Hajar. Fath al-Bari Sharh Sahih al-Bukhari. Al-Salafiyyah Edition, Cairo, Vol. 4, pp. 334–335.

⁷⁹ - Ibn Qudamah. Al-Mughni. Vol. 4, p. 126. -Ibn Hazm. Al-Muhalla. Vol. 9, p. 345 .

-Al-Hilli. Al-Mukhtasar al-Nafi'. Awqaf Egypt Edition, p. 148 -. .Al-Husayn ibn Mahmud al-Darani. *Al-Bahr al-Zakhar*. Beirut: Mu'assasat al-Risalah, Vol. 4, p. 369 --Ibn Hajar. *Fath al-Bari Sharh Sahih al-Bukhari*. Al-Salafiyyah Edition, Cairo, Vol. 4, pp. 334–335.

becomes evident that everyone agrees that possession (Qabd) for real estate is achieved solely through evacuation. For other items, it is achieved through transfer, measurement, weighing, evacuation, or handling

4. The requirement of possession in usurious contracts and its impact on the validity of the contract:

Qabd "Possession" of the two exchanged items must occur in the session of the contract, meaning before the contracting parties physically separate. If a delay (Ajl) is stipulated, the contract becomes invalid because the delay prevents possession. If possession is not achieved, the condition for its validity is not fulfilled. This principle has been explicitly stated by the Hanafis, Malikis, Shafi'is, and Hanbalis, based on the saying of the Prophet, peace be upon him.⁸⁰ And the Malikis.⁸¹ And the Shafi'is and the Hanbalis base their opinion on the saying of the Prophet, peace be upon him:

*"Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt; like for like, equal for equal, hand to hand. But if these types differ, then sell however you wish, so long as it is hand to hand."*⁸²

That is, possession/exchange (Muqabadhah). Scholars unanimously agree on the importance of possession (Taqabudh) in contracts where it is required, such as the sale of gold, silver, and food-for-food transactions, to prevent falling into usury (Riba). Failure to achieve possession results in the invalidation of the contract, as evidenced by Sharia proofs and scholarly consensus. Ibn al-Mundhir stated: "All the scholars we have preserved knowledge from agree that if the two parties separate before possession occurs, the exchange becomes invalid."⁸³ Based on the saying of the Prophet, peace be upon him: "Gold for silver is considered usury, unless it is exchanged hand to hand (immediately)."⁸⁴ Balancing the two exchanged items: Scholars highlight that achieving balance between the two items exchanged ensures the rights of both parties. If both parties waive this condition, the contract becomes invalid. An example is permitting the possession of only one of the exchanged items in certain situations, such as selling one dirham for two pieces of cloth.

5. The expression "hand to hand": The term "hand to hand" in Sharia texts signifies the simultaneous exchange between the two parties. Scholars have deduced the necessity of possession (Taqabudh) from Hadiths, such as the narration of Umar ibn al-Khattab, may Allah be pleased with him, in which he forbade separation before possession, emphasizing the importance of adhering to this condition. Differences between schools of thought: Despite the majority of schools agreeing on the necessity of possession, there are jurisprudential differences. The Hanafis believe that prices are not determined by specification, while the Malikis and Hanbalis require possession in transactions involving food as currency.

Regarding contracts of exchange, such as sale: Jurists differ in their rulings on replacing prices. The Hanafis permit the replacement of prices before possession, as they are not specified by designation, and the contract does not dissolve upon their destruction. This is evidenced by the narration of Ibn Umar, who said: "We used to sell camels at Baqi for

⁸⁰ Ibn Abidin. Radd al-Muhtar 'ala al-Durr al-Mukhtar. Vol. 4, p. 244.

⁸¹ Al-Dusuqi. Hashiyat al-Dusuqi 'ala al-Sharh al-Kabir. Al-Maktabah al-Tijariyyah Edition, Vol. 3, p. 926.

⁸² Hadith: "Gold for gold..." narrated by Ahmad, Muslim, Abu Dawud, and Ibn Majah. Referenced in Al-Fath al-Kabir, Vol. 2, p. 123.

⁸³ Al-Khatib al-Sharbini. Mughni al-Muhtaj. Vol. 2, p. 24.

⁸⁴ Hadith: "Gold for silver is considered usury, except if exchanged hand to hand (immediately)." Narrated by Malik, Al-Bukhari, Muslim, Al-Tirmidhi, Abu Dawud, and Al-Nasa'i. Referenced in Jam' al-USul, Vol. 1, p. 544.

dirhams, then exchange the dirhams for dinars, and sell them for dinars, then exchange the dinars for dirhams. We asked the Prophet, peace be upon him, about this, and he said:

'No problem as long as you part ways and there is nothing between you'⁸⁵,

The intent of the Hadith refers to tangible assets (‘Ayn) and not debt (Dayn). Meanwhile, Al-Shafi‘i and Zufar, from the Hanafis, state that if the price is specific, whether cash or otherwise, it is not permissible to transact with it before possession. However, if it is deferred (Fi al-Dhimmah), replacing it before possession is allowed.

They also use the aforementioned Hadith as evidence to demonstrate that the replacement of the price is not fixed, but rather deferred. This view is similar to the perspective held by the Hanbalis and Malikis.⁸⁶ The rationale behind possession: It is to prevent the occurrence of usury (Riba), which may arise from delaying one of the exchanged items. This requirement ensures fairness and reflects the wisdom of Sharia.⁸⁷

From the preceding explanation, a jurisprudential principle regarding the role of custom (‘Urf) in Sharia rulings can be derived:

"Custom is taken into account in understanding Sharia texts and determining their implications, especially in contexts requiring practical interpretation of Sharia phrases or expressions. If a custom establishes a particular meaning, it is recognized as long as it does not contradict definitive Sharia texts or established consensus".

This principle is evident in the use of terms such as "hand to hand" (Yadan bi-Yad), which has become a customary truth indicating the necessity of possession (Taqabudh). It also highlights the reliance on custom as a reference point for interpreting certain expressions to determine the precise meanings of commands and prohibitions.

Conclusion

The main findings include :

1. The Bay‘ al-Mu‘atah (non-verbal sale) serves as a model that illustrates how custom (‘Urf) contributes to interpreting Sharia contracts. The Malikis and Hanbalis rely on it as a condition for the validity of the contract, while the Shafi‘is focus on verbal formulation in their newer stance .

2. Possession (Qabd) is a fundamental element in regulating contracts and varies according to prevailing custom :

- For real estate: possession is achieved through evacuation (Takhliyah)
- For movable items: possession is achieved through transferring to the buyer's location .
- For combinations of real estate and movable items: details of possession are discussed based on the nature of the sold item and the conditions of evacuation or transfer.

⁸⁵ - Narrated by the authors of Sunan from Ibn Umar in various narrations, as well as by Ahmad, Ibn Hibban, and Al-Hakim, who authenticated it. -Al-Tirmidhi and Al-Bayhaqi stated: "None raised it except Simak - ".Al-Shafi‘i’s ruling on the matter depended on the authenticity of the Hadith, and Al-Hafiz documented varying views about stopping it (Waqf) - Referenced in Talkhis al-Habir, Vol. 3, pp. 25–26, Al-Fanniyah Edition; and Nasb al-Rayah, Vol. 4, pp. 33–34, First Edition .

-Al-Daraqutni narrated it with similar meaning, mentioning in Al-Ta‘liq al-Mughni, that its narrators are trustworthy -.Referenced in *Sunan al-Daraqutni*, Vol. 3, pp. 23–24, Dar al-Mahasn Edition.

⁸⁶ Al-Mawsu‘ah al-Fiqhiyyah. A collection of authors, Ministry of Awqaf and Islamic Affairs – Kuwait. Vol. 1, p. 141

⁸⁷ Al-Nawawi. Al-Majmu‘. Vol. 10, pp. 71–72.

Acknowledgment

I would like to express my heartfelt thanks and appreciation for the invitation to participate in the International Conference of Dar Al-Uloom Al-Siddiqiyah. It is a wonderful opportunity to engage with distinguished scholars and thinkers while contributing meaningful scientific insights. I extend my deepest gratitude to Dr. Israr Khan for his support and recognition, which has greatly enriched this valuable experience. Thank you for the generous trust, and I sincerely hope that my participation has added to the success of this remarkable conference.



Bibliography/ کتابیات

- * Al-Baghawī, Muḥyī as-Sunna Abū Muḥammad al-Ḥusayn ibn Mas'ūd ibn Muḥammad. *At-Taḥdhīb fī Fiqh al-Imām ash-Shāfi'ī*. Edited by 'Ādil Aḥmad 'Abd al-Mawjūd and 'Alī Muḥammad Mu'awwad. Beirut: Dār al-Kutub al-'Ilmiyya, 1418 AH/1997.
- * Al-Baḥūtī, Maṣṣūr ibn Yūnus ibn Ṣalāḥ ad-Dīn ibn Ḥasan ibn Idrīs. *Daqā'iq Ulī an-Nuhā li-Sharḥ al-Muntahā*. Riyadh: 'Ālam al-Kutub, 1414 AH/1993.
- * Al-Baḥūtī, Maṣṣūr ibn Yūnus ibn Ṣalāḥ ad-Dīn ibn Ḥasan ibn Idrīs. *Kashshāf al-Qinā' 'an Matn al-Iqnā'*. Beirut: Dār al-Kutub al-'Ilmiyya, n.d.
- * Al-Bayhaqī, Aḥmad ibn al-Ḥusayn ibn 'Alī ibn Mūsā al-Khusrawjirdī al-Khurāsānī. *As-Sunan al-Kubrā*. Edited by Muḥammad 'Abd al-Qādir 'Aṭā. Beirut: Dār al-Kutub al-'Ilmiyya, 1424 AH/2003.
- * Al-Bukhārī, Muḥammad ibn Ismā'īl Abū 'Abd Allāh. *Al-Jāmi' al-Musnad aṣ-Ṣaḥīḥ al-Mukhtaṣar min Umūr Rasūl Allāh Ṣallā Allāhu 'Alayhi wa Sallam wa Sunanihi wa Ayyāmihi*. Edited by Muḥammad Zuhayr ibn Nāṣir an-Nāṣir. Beirut: Dār Ṭawq an-Najāh, 1422 AH.
- * Al-Farāhīdī, Abū 'Abd ar-Raḥmān Khalīl ibn Aḥmad ibn 'Amr ibn Tamīm. *Kitāb al-'Ayn*. Edited by Maḥdī al-Makhzūmī and Ibrāhīm al-Sāmarrā'ī. Beirut: Dār wa Maktabat al-Hilāl, n.d.
- * Al-Ghazālī, Abū Ḥāmid Muḥammad ibn Muḥammad. *Al-Mustasfā*. Edited by Muḥammad 'Abd as-Salām 'Abd ash-Shāfi'. Beirut: Dār al-Kutub al-'Ilmiyya, 1413 AH/1993.
- * Al-Ḥaṭṭāb ar-Ru'aynī, Shams ad-Dīn Abū 'Abd Allāh Muḥammad ibn Muḥammad ibn 'Abd ar-Raḥmān aṭ-Ṭarābulṣī al-Maghribī. *Mawāhib al-Jalīl fī Sharḥ Mukhtaṣar Khalīl*. Beirut: Dār al-Fikr, 1412 AH/1992.
- * Al-Hillī, Ja'far ibn al-Ḥasan. *Al-Mukhtaṣar an-Nāfi'*. Egypt: Awqāf Egypt, n.d.
- * Al-Ḥusayn ibn Maḥmūd ad-Darānī. *Al-Baḥr az-Zakḥkhār*. Beirut: Mu'assasat ar-Risāla, n.d.
- * Al-Isnāwī, 'Abd ar-Raḥīm ibn al-Ḥasan ibn 'Alī, Abū Muḥammad, Jamāl ad-Dīn. *Nihāyat as-Sūl Sharḥ Minhāj al-Wuṣūl*. Beirut: Dār al-Kutub al-'Ilmiyya, 1420 AH/1999.
- * Al-'Irāqī, Walī ad-Dīn Abū Zar'a Aḥmad ibn 'Abd ar-Raḥīm. *Al-Ghayth al-Hāmi' Sharḥ Jam' al-Jawāmi'*. Edited by Muḥammad Tāmir Ḥijāzī. Beirut: Dār al-Kutub al-'Ilmiyya, 1425 AH/2004.
- * Al-Juwaynī, 'Abd al-Malik ibn 'Abd Allāh ibn Yūsuf ibn Muḥammad, Imām al-Ḥaramayn. *Al-Burhān fī Uṣūl al-Fiqh*. Edited by Ṣalāḥ ibn Muḥammad ibn 'Uwayḍa. Beirut: Dār al-Kutub al-'Ilmiyya, 1418 AH/1997.
- * Al-Juwaynī, 'Abd al-Malik ibn 'Abd Allāh ibn Yūsuf ibn Muḥammad, Abū al-Ma'ālī. *At-Talkhīṣ fī Uṣūl al-Fiqh*. Edited by 'Abd Allāh Julm an-Nabālī and Bashīr Aḥmad al-'Umarī. Beirut: Dār al-Bashā'ir al-Islāmiyya, n.d.
- * Al-Jurjānī, Abū al-Ḥasan 'Alī ibn 'Abd al-'Azīz. *At-Ta'rīfāt*. Edited by Ibrāhīm al-Abyārī. Beirut: Dār al-Kitāb al-'Arabī, 1405 AH.
- * Al-Karkhī, Abū al-Ḥasan 'Ubayd Allāh ibn al-Ḥusayn ibn Dalāl ibn Dalhām. *Uṣūl al-Karkhī*. Karachi: Jawid Press, n.d.
- * Al-Kāsānī, 'Alā' ad-Dīn Abū Bakr ibn Mas'ūd. *Badā'i' aṣ-Ṣanā'i'*. Cairo: Imām edition, n.d.
- * Al-Khaṭīb al-Baghdādī, Abū Bakr Aḥmad ibn 'Alī ibn Thābit ibn Aḥmad ibn Maḥdī. *Al-Faqīh wa al-Mutafaqiqih*. Saudi Arabia: Dār Ibn al-Jawzī, 1421 AH.

- * Al-Khaṭīb ash-Shirbīnī, Shams ad-Dīn Muḥammad ibn Aḥmad. *Mughnī al-Muḥtāj ilā Ma'rifat Ma'ānī Alfāz al-Minhāj*. Beirut: Dār al-Kutub al-'Ilmiyya, 1415 AH/1994.
- * Al-Maqdisī, 'Abd ar-Raḥmān ibn Ibrāhīm ibn Aḥmad, Abū Muḥammad Bahā' ad-Dīn. *Al-'Udda Sharḥ al-'Umda*. Cairo: Dār al-Ḥadīth, 1424 AH/2003.
- * Al-Mardāwī, 'Alā' ad-Dīn Abū al-Ḥasan 'Alī ibn Sulaymān. *Al-Inṣāf fī Ma'rifat ar-Rājiḥ min al-Khilāf*. Beirut: Dār Iḥyā' at-Turāth al-'Arabī, n.d.
- * Al-Mawsu'a al-Fiqhiyya. Prepared by Department of Islamic Research and Encyclopedias. Kuwait: Ministry of Awqāf and Islamic Affairs, 1965–2005.
- * Al-Mutawallī, 'Abd ar-Raḥmān ibn Muḥammad. *Tatmīmat al-Ibāna 'an Aḥkām Furū' ad-Diyāna*. Edited by a group of doctoral students. Mecca: Umm al-Qurā University, 1428 AH/2007.
- * An-Nawawī, Abū Zakariyyā Yaḥyā ibn Sharaf. *Al-Majmū'*. Beirut: Dār al-Kutub al-'Ilmiyya, n.d.
- * Ar-Rassā', Muḥammad ibn Qāsim al-Anṣārī, Abū 'Abd Allāh. *Al-Hidāya al-Kāfiya ash-Shāfiya li-Bayān Ḥaqā'iq al-Imām Ibn 'Arafa al-Wāfiya*. Al-Maktaba al-'Ilmiyya, 1350 AH.
- * Ar-Ruyānī, Abū al-Maḥāsin 'Abd al-Wāḥid ibn Ismā'īl. *Baḥr al-Madhhab*. Edited by Ṭāriq Fathī as-Sayyid. Beirut: Dār al-Kutub al-'Ilmiyya, 1430 AH/2009.
- * As-Subkī, Taqī ad-Dīn Abū al-Ḥasan 'Alī ibn 'Abd al-Kāfi. *Al-Ibhāj fī Sharḥ al-Minhāj*. Beirut: Dār al-Kutub al-'Ilmiyya, 1416 AH/1995.
- * Ash-Shāfi'ī, Abū 'Abd Allāh Muḥammad ibn Idrīs ibn al-'Abbās ibn 'Uthmān ibn Shāfi'. *Al-Umm*. Beirut: Dār al-Ma'rifa, 1410 AH/1990.
- * Ash-Shāfi'ī, Abū 'Abd Allāh Muḥammad ibn Idrīs ibn al-'Abbās ibn 'Uthmān ibn Shāfi'. *Ar-Risāla*. Edited by Aḥmad Shākir. Cairo: Maktabat al-Ḥalabī, 1358 AH/1940.
- * Ash-Shīrāzī, Abū Ishāq Ibrāhīm ibn 'Alī ibn Yūsuf. *Al-Luma' fī Uṣūl al-Fiqh*. Edited by 'Abd al-Majīd Turkī. Beirut: Dār al-Gharb al-Islāmī, n.d.
- * Ash-Shīrāzī, Abū Ishāq Ibrāhīm ibn 'Alī ibn Yūsuf. *Al-Luma' fī Uṣūl al-Fiqh*. Beirut: Dār al-Kutub al-'Ilmiyya, 1424 AH/2003.
- * Abū Dāwūd, Sulaymān ibn al-Ash'ath ibn Ishāq ibn Bashīr ibn Shaddād ibn 'Amr al-Azdī. *Sunan Abī Dāwūd*. Edited by Muḥammad Muḥyī ad-Dīn 'Abd al-Ḥamīd. Beirut: Al-Maktaba al-'Aṣriyya, n.d.
- * Ad-Dusūqī, Muḥammad ibn Aḥmad. *Ḥāshiyat ad-Dusūqī 'alā ash-Sharḥ al-Kabīr*. Beirut: Al-Maktaba at-Tijāriyya, n.d.
- * Al-Albānī, Muḥammad Nāṣir ad-Dīn. *As-Silsila as-Ṣaḥīḥa*. Beirut: Al-Maktab al-Islāmī, 1405 AH/1985.
- * Al-Baṣrī, Abū al-Ḥusayn Muḥammad ibn 'Alī aṭ-Ṭayyib al-Mu'tazilī. *Al-Mu'tamad fī Uṣūl al-Fiqh*. Beirut: Dār al-Kutub al-'Ilmiyya, n.d.
- * Al-Qāḍī al-Ḥusayn, Abū Muḥammad al-Ḥusayn ibn Muḥammad ibn Aḥmad al-Marwarūzī. *At-Ta'līqa li-al-Qāḍī al-Ḥusayn*. Edited by 'Alī Muḥammad Mu'awwaḍ and 'Ādil Aḥmad 'Abd al-Mawjūd. Mecca: Maktabat Nizār Muṣṭafā al-Bāz, n.d.
- * Al-'Āmidī, Abū al-Ḥasan Sayf ad-Dīn 'Alī ibn Abī 'Alī ibn Muḥammad ibn Sālim. *Al-Iḥkām fī Uṣūl al-Aḥkām*. Edited by 'Abd ar-Razzāq 'Afīfī. Beirut-Damascus: Al-Maktab al-Islāmī, n.d.
- * Ar-Rubay'ī, Abū al-Qāsim 'Abd al-Jalīl ibn Abī Bakr. *At-Taṣdīd fī Sharḥ at-Tamhīd*. Edited by Ḥamza Aḥmad an-Nahīrī. Jordan: Al-Faṭḥ Publishing House, n.d.
- * As-Sam'ānī, Abū al-Muẓaffar Manṣūr ibn Muḥammad ibn 'Abd al-Jabbār ibn Aḥmad al-Marwazī. *Qawāṭi' al-Adilla fī al-Uṣūl*. Edited by Muḥammad Ḥasan Muḥammad Ḥasan Ismā'īl ash-Shāfi'ī. Beirut: Dār al-Kutub al-'Ilmiyya, 1418 AH/1999.
- * Az-Zarkashī, Abū 'Abd Allāh Badr ad-Dīn Muḥammad ibn 'Abd Allāh ibn Bahādir. *Tashnīf al-Masāmi' bi-Jam' al-Jawāmi' li-Tāj ad-Dīn as-Subkī*. Edited by Sayed 'Abd al-'Azīz and 'Abd Allāh Rabī'. Mecca: Maktabat Qurṭuba lil-Baḥth al-'Ilmī wa Iḥyā' at-Turāth, distributed by al-Maktaba al-Makkiyya, 1418 AH/1998.
- * Az-Zarkashī, Badr ad-Dīn Muḥammad ibn Bahādur. *Al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*. Beirut: Dār al-Kutub al-'Ilmiyya, 1421 AH/2000.
- * Az-Zarkashī, Badr ad-Dīn Muḥammad ibn Bahādur. *Al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*. Cairo: Dār al-Kutubī, 1414 AH/1994.

- * Fakhr ad-Dīn ar-Rāzī, Abū 'Abd Allāh Muḥammad ibn 'Umar ibn al-Ḥasan ibn al-Ḥusayn at-Taymī. *Al-Maḥṣūl*. Edited by Ṭaha Jābir Fayyāḍ al-'Alwānī. Beirut: Mu'assasat ar-Risāla, 1418 AH/1997.
- * Ibn 'Ābidīn, Muḥammad Amīn ibn 'Umar ibn 'Abd al-'Azīz 'Ābidīn ad-Dimashqī al-Ḥanafī. *Radd al-Muḥtār 'alā ad-Durr al-Mukhtār*. Beirut: Dār al-Fikr, 1412 AH/1992.
- * Ibn as-Sabbāgh, Abū Naṣr 'Abd as-Sayyid ibn Muḥammad. *Ash-Shāmil fī Furū' ash-Shāfi'iyya*. Manuscript copy, 573 AH.
- * Ibn at-Tilmisānī, 'Abd Allāh ibn Muḥammad 'Alī Sharaf ad-Dīn Abū Muḥammad al-Fihri al-Miṣrī. *Sharḥ al-Ma'ālim fī Uṣūl al-Fiqh*. Edited by Shaykh 'Ādil Aḥmad 'Abd al-Mawjūd and Shaykh 'Alī Muḥammad Mu'awwaḍ. Beirut: 'Ālam al-Kutub, 1419 AH/1999.
- * Ibn Fāris, Aḥmad ibn Fāris ibn Zakariyyā al-Qazwīnī ar-Rāzī, Abū al-Ḥusayn. *Mu'jam Maqāyīs al-Lughā*. Edited by 'Abd as-Salām Muḥammad Hārūn. Beirut: Dār al-Fikr, 1399 AH/1979.
- * Ibn Ḥajar al-'Asqalānī, Aḥmad ibn 'Alī. *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*. Cairo: Al-Salafiyya, n.d.
- * Ibn Ḥazm, 'Alī ibn Aḥmad. *Al-Muḥallā*. Beirut: Dār al-Kutub al-'Ilmiyya, n.d.
- * Ibn al-Ḥājib, 'Uthmān ibn 'Umar ibn Abī Bakr ibn Yūnus, Abū 'Amr Jamāl ad-Dīn. *Jāmi' al-Ummahāt*. Edited by Abū 'Abd ar-Raḥmān al-Akhḍar al-Akhḍarī. Riyadh: Al-Yamāma Publishing, 1421 AH/2000.
- * Ibn al-Ḥajj, Abū 'Abd Allāh Muḥammad ibn Muḥammad ibn Muḥammad al-'Abdarī al-Fāsī al-Mālikī. *Al-Madkhal*. Beirut: Dār at-Turāth, n.d.
- * Ibn Khallikān, Abū al-'Abbās Shams ad-Dīn Aḥmad ibn Muḥammad ibn Ibrāhīm. *Wafayāt al-A'yān wa Anbā' Abnā' az-Zamān*. Edited by Iḥsān 'Abbās. Beirut: Dār Ṣādir, n.d.
- * Ibn Manẓūr, Muḥammad ibn Mukarram ibn 'Alī, Abū al-Faḍl, Jamāl ad-Dīn. *Lisān al-'Arab*. Beirut: Dār Ṣādir, 1414 AH.
- * Ibn Nuḡaym al-Miṣrī, Zayn ad-Dīn ibn Ibrāhīm ibn Muḥammad. *Al-Baḥr ar-Rā'iq Sharḥ Kanz ad-Daqā'iq*. Edited by Aḥmad 'Izzūh 'Ināya ad-Dimashqī. Beirut: Dār Iḥyā' at-Turāth al-'Arabī, 1422 AH/2002.
- * Ibn Qudāma al-Maqdisī, Abū Muḥammad Muwaffaq ad-Dīn 'Abd Allāh ibn Aḥmad ibn Muḥammad. *Al-Kāfi fī Fiqh al-Imām Aḥmad*. Beirut: Dār al-Kutub al-'Ilmiyya, 1414 AH/1994.
- * Ibn Qudāma al-Maqdisī, Abū Muḥammad Muwaffaq ad-Dīn 'Abd Allāh ibn Aḥmad ibn Muḥammad. *Al-Mughnī*. Cairo: Maktabat al-Qāhira, n.d.
- * Ibn Juzayy, Abū al-Qāsim Muḥammad ibn Aḥmad ibn Muḥammad ibn 'Abd Allāh al-Kalbī al-Gharnāṭī. *Taqrīb al-Wuṣūl ilā 'Ilm al-Uṣūl*. Edited by Muḥammad Ḥasan Muḥammad Ḥasan Ismā'īl. Beirut: Dār al-Kutub al-'Ilmiyya, 1424 AH/2003.
- * Mullā Khusraw, Muḥammad ibn Farāmarz ibn 'Alī. *Durar al-Ḥukkām fī Sharḥ Majallat al-Aḥkām*. Translated and edited by Fahmi al-Ḥusaynī. Beirut: Dār al-Kutub al-'Ilmiyya, n.d.
- * Muslim ibn al-Ḥajjāj, Abū al-Ḥasan al-Qushayrī an-Naysābūrī. *Al-Musnad aṣ-Ṣaḥīḥ al-Mukhtaṣar bi-Naql al-'Adl 'an al-'Adl ilā Rasūl Allāh Ṣallā Allāhu 'Alayhi wa Sallam*. Edited by Muḥammad Fu'ād 'Abd al-Bāqī. Beirut: Dār Iḥyā' at-Turāth al-'Arabī, n.d.
- * Zarrūq, Shihāb ad-Dīn Abū al-'Abbās Aḥmad ibn Aḥmad ibn Muḥammad ibn 'Īsā al-Baransī al-Fāsī. *Sharḥ Zarrūq 'alā Matn ar-Risāla li-Ibn Abī Zayd al-Qayrawānī*. Edited by Aḥmad Farīd al-Mazīdī. Beirut: Dār al-Kutub al-'Ilmiyya, 1427 AH/2006.
- * Zuhaylī, Wahba. *Uṣūl al-Fiqh al-Islāmī*. Damascus: Dār al-Fikr; Beirut: Dār al-Fikr al-Mu'āṣir, 1411 AH/1991.